

Subject to the approval of the Interim Committee

**MINUTES
NATURAL RESOURCES INTERIM COMMITTEE
December 15, 2009
9:30 a.m. to 3:15 p.m.
Idaho Supreme Court Basement Conference Room
451 West State Street
Boise, Idaho**

Cochairman Senator Gary Schroeder called the meeting to order at 9:30 a.m. Members present were: **Cochairman Representative Dell Raybould**, Senators Jeff Siddoway, Lee Heinrich, Kate Kelly substituting for Clint Stennett; Representatives Bert Stevenson, Scott Bedke, Mike Moyle; and ad hoc members Senator Steve Bair; and Representative Jim Patrick. Senators Charles Coiner and Dean Cameron and Representative Donna Pence, JoAn Wood and Jim Clark were absent and excused. Staff members present were Katharine Gerrity, Ray Houston and Jackie Gunn.

Others present were: Representative Marc Gibbs; Hal Anderson and Brian Patton, Idaho Department of Water Resources; Phil Rassier and John Homan, Idaho Attorney General's Office; Suzi Budge, Dennis Murphy and Deanna Smith, Idaho Working Lands Coalition; Jonathan Bartsch, CDR Associates; Ken Harward, Association of Idaho Cities; Valdi Pace, Idaho Association of County Assessors; Debbie Kauffman, Idaho Association of County Treasurers; Lynn Tominaga and Brenda Tominaga, Idaho Ground Water Association/Idaho Irrigation Pumpers Association; Jim Tucker and Rich Hahn, Idaho Power Company; Randy MacMillan, Clear Springs Foods; Albert Lockwood, CAMP Implementation Committee; Kent Lauer, Idaho Farm Bureau; Zach Hauge, Capitol West; Benjamin Davenport, Risch Pisca; Mike Cooper, Idaho Department of Agriculture; Clark Kauffman, Idaho Grain Producers; Mark Duffin, Idaho Sugar Beet Growers Association; Brad Iverson-Long, Idaho Reporter.com; Mike Roach, Office of U.S. Senator Risch; Sharon Kiefer, Idaho Department of Fish and Game, Jayson Ronk, Idaho Association of Commerce and Industry; Norm Semanko, Idaho Water Users Association; Max Vaughn, Minidoka County Assessor; Dar Olberding, Idaho Grain Producers; Beth Marcley, Idaho Council on Industry and the Environment; Layne Bangerter and Don Dixon, Office of Senator Mike Crapo; Kerry Ellen Elliott, Idaho Association of Counties; Jim Petersen, Egan, Metcalf and Leavitt; Bruce Smith, MSBT; Stan Boyd, Idaho Wool Growers; Lesa Stark and Jerrold Gregg, Bureau of Reclamation; Jane Wittmeyer, Wittmeyer & Associates; Bob Naerebout, Idaho Dairymen's Association; Kelsey Nunes, IFA; Ellen Berggren, U.S. Army Corps of Engineers; Peter Anderson, Trout Unlimited; Tim Breuer, Land Trust of the Treasure Valley, Will Whelan, The Nature Conservancy; and Colby Cameron, Sullivan and Reberger.

NOTE: All copies of presentations, reference materials, and handouts are on file at the Legislative Services Office.

Cochairman Senator Gary Schroeder called for a silent roll call. **Cochairman Senator Schroeder** then requested that the Interim Committee minutes for the September 24th meeting be amended, providing for the addition of the word “annually” following “twenty percent” in the first sentence of the third paragraph on page 15. **Senator Siddoway moved to accept the minutes as amended. Representative Stevenson** seconded the motion. The **motion carried** by unanimous voice vote.

Cochairman Senator Schroeder introduced **Mr. Hal Anderson**, Administrator, Planning and Technical Services Division, Idaho Department of Water Resources (IDWR). **Mr. Anderson** provided the Committee with a status update on the implementation process of the Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan (ESPA CAMP).

Utilizing a map, **Mr. Anderson** identified the Eastern Plain Aquifer as it is defined by the U.S. Geological Survey. He explained that it is this area that is referred to in the draft legislation related to providing a funding mechanism for CAMP.

He delineated Phase 1 (1 – 10 years) actions that include: hydrologic target of 200 kaf – 300 kaf; initiate actions that increase aquifer levels, spring and river flows; geographically distribute benefits across the ESPA; and build institutional confidence with long-term plan implementation. **Mr. Anderson** commented that completion of Phase 1 would reflect the halfway point to completing the overall objective.

Mr. Anderson concluded his review by highlighting the motion passed by the Interim Committee at its last meeting:

“That the interim Natural Resources Committee accept the ESPA Implementation Committee’s conceptual plan to fund the ESPA Plan through a mandatory fee assessed either by the water districts and/or counties and/or other methods and request that the Implementation Committee develop legislation consistent with the conceptual plan for consideration at the next legislative session.”

Mr. Anderson stated that the entire Implementation Committee has not yet reviewed the draft legislation under the Interim Committee’s review today, though noted they would meet within the week. He also praised the help and support provided by treasurers and assessors, counties and cities in their efforts to present the draft legislation at this meeting. **Cochairman Representative Raybould** asked whether the Idaho Water Resource Board (IWRB) has reviewed the draft legislation and **Mr. Anderson** responded that they had not yet reviewed it.

Mr. Jonathan Bartsch, CDR Associates, was the next speaker to address the Committee, providing a status update relating to the ESPA Funding Work Group. **Mr. Bartsch** indicated that he is working closely with the CAMP Implementation Committee, with the purpose of developing recommendations to the Board regarding potential funding collection mechanisms and developing and operationalizing the CAMP.

He highlighted 2009 accomplishments:

- Implemented a recharge effort of over 120,000 acre-feet; awarded an Agricultural Water Enhancement Program (AWEP) grant of \$15 million; initiated planning and implementation of conversions and demand reduction projects.
- Implemented first year of pilot weather modification program; 2010 program has increased capacity, monitoring and continues to have ongoing coordination with local jurisdictions.
- Implementation Committee prioritized projects and developed implementation plans.

Mr. Bartsch continued, outlining the background of the Funding Working Group:

- CAMP establishes that 60% of the funds should come from water users and the balance from the state of Idaho.
- CAMP provides that all fees, assessments and interest collected for plan implementation be deposited in the Board's Revolving Development Fund, however the proposed legislation includes the recently created Aquifer Planning and Management Fund.
- The Board formed a Working Group in January of 2009 for the purpose of developing a specific recommendation for funding the CAMP.
- After much deliberation, the Working Group identified several sideboards for its funding recommendation.

Mr. Bartsch summarized the ESPA Working Group's effort to draft legislation with county (assessors and treasurers) and water district representatives. The Working Group conceptually agreed to the draft legislation but noted that additional consultations were required, including with the Implementation Committee and the county approval process. Sideboards he enunciated included:

- CAMP funding should be based upon the assessment of a mandatory fee rather than a tax.
- The Working Group agreed on a fee based approach because it can be tailored to the benefits received by each water user group. A fee based upon benefits received is likely to enjoy more public support.
- The fee should be collected through the counties and/or the water districts.
- The Working Group considered a conservancy district, but was hesitant because it would entail the creation of another level of governance.
- The fee must be based upon the funding allocation set forth in the CAMP.

The next speaker to address the Committee was **Mr. Phil Rassier**, Deputy Attorney General, IDWR. **Mr. Rassier** provided an overview of the proposed legislation to implement the CAMP Plan. The group determined that a volunteer fee approach would be the most effective, one where all participants met and agreed to the target amounts. **Mr. Rassier** stated that it is possible to develop a funding mechanism within the sideboards set forth by **Mr. Bartsch** and that the most significant legal issue addressed so far is the distinction in the law between what is a tax and what is a fee.

Mr. Rassier outlined the overall structure of the draft legislation:

- The Legislature would approve the fee structure.
- The draft legislation contains a clear statement of legislative findings supporting the proposed fee structure, which demonstrates the relationship between the fee assessed and the benefits received.
- Collection assistance from each affected county assessor, county treasurer, state water district, ground water district, irrigation district and the Department of Water Resources is required.
- Considerable effort is required to determine the amount of the fee to be collected from individual water users or water delivery entities.
- The legislation provides for when the collected fees must be paid to the state and the fund to which the fees would be deposited.
- The legislation authorizes the retention of a percentage of the collected amount as the cost of administration for collection of the fee.

Mr. Rassier explained that the fee would be imposed by the Legislature, not by the taxing district. Specifically, he identified the water district's role in the draft legislation:

- Each water district would by law be required to collect the CAMP fee.
- The fee would be collected annually as part of the water districts created by the director of the Department of Water Resources under chapter 6, title 42, Idaho Code.
- The fee would not be identified as an expense related to water distribution, but instead would be separately itemized as a CAMP implementation fee.

Mr. Rassier explained that the counties would collect the entire fee from the surface water users and one-half of the fee from the ground water users. The second half of the fee from the ground water users would be collected by the water districts. The water districts would also collect the fee from the municipalities and spring water users.

Cochairman Senator Schroeder asked **Mr. Rassier** to explain his use of the word "perhaps" when discussing collection from the municipalities. **Mr. Rassier** stated that the Working Group has not received comment from the Implementation Committee or from the municipalities and that the description was conceptual and open to further development.

Mr. Rassier continued, delineating the role of the counties in the draft legislation:

- The treasurer of each affected county would be required by law to collect the CAMP fee as imposed by the Legislature.
- The county treasurer would be required to mail a notice to each water delivery entity or affected water user stating the amount of the fee payable and the due date, and if not so paid, the amount of the penalty and monthly interest accruing until paid.

He stated that the draft legislation authorizes the water districts, the county treasurers or the IWRB to collect any unpaid assessment. Additionally, enforcement by lien on property, in order to be consistent with requirements, needs to be included in the county tax notice. He indicated that enforcement would also include collection of any unpaid fee, penalty, interest and costs, together with reasonable attorney's fees.

In summary, **Mr. Rassier** indicated:

- The proposal satisfies the CAMP Implementation Committee's desire for a funding mechanism that is mandatory with no added level of governance.
- County treasurers would collect one dollar or the current year fee depending on the state contribution, for all irrigated lands.
- The water districts that administer ground water will collect the fee for all ground water irrigated lands, cities, spring users and industrial ground water users.
- Agreements between the Board and some individual participants will be necessary.
- Draft legislation will be presented to the Implementation Committee on December 16/17, before going before the IWRB.

Mr. Rassier commented that the draft legislation states that bills delinquent for three years would be sent to the Water Resource Board and the Board would be responsible for collection. **Representative Bedke** asked him to point to where that responsibility is stated in the draft and **Mr. Rassier** identified page 8, starting at line 4. **Mr. Rassier** agreed with **Representative Bedke**, noting that the preceding page 7 outlines the county procedures already in place. **Cochairman Senator Schroeder** discussed the use of the word "shall" related to the county's collection responsibility and **Mr. Rassier** stated that his suggestion would be considered. **Cochairman Representative Raybould** turned to page 5 of the draft and asked **Mr. Rassier** to point to where the annual state contribution of \$3 million was listed and suggested an inclusion in the draft to speak to a state contribution amount in lieu of the domestic well user contribution. Turning to page 3, **Mr. Rassier** stated that the state contribution is addressed under the legislative findings section and that the intention is enunciated. **Mr. Rassier** stated that he did not know if monetary amounts were identified to compensate for the domestic water users. In the target language it is identified as \$3 million yet from year to year that amount will vary and he then explained why the draft reflects a 60-40 ratio and he detailed this pro rata approach.

Cochairman Representative Raybould stated that the target amount should be included in the legislation. Referring to page 7, line 1 and to page 8, line 7, **Cochairman Representative Raybould** suggested including language that will give the Water Resource Board latitude to work out a collection plan with the counties and the water districts. **Mr. Rassier** said that the counties would be required to collect the fees. If this optional language is included, some counties might decide not to be a part of the process.

Cochairman Senator Schroeder asked if there are parts of the draft where there is disagreement between the members and **Mr. Rassier** replied that the draft represents a

general consensus of the discussions of the Working Group. He continued, citing the process of collection from spring users (aquaculture) is the closest thing to a disagreement between members. **Mr. Rassier** referenced the top of page 5 of the draft, explaining that there was concern about paying a fixed amount regardless of the fact that the flow amount might decline. He stated that the spring users are reviewing this language but at present there is no agreement.

Cochairman Senator Schroeder followed up, asking if the Working Group is in agreement related to the recharge issue and **Mr. Rassier** stated that the recharge issues are not in the draft legislation and that he could not speak to their present outlook on this issue. **Representative Patrick** cautioned **Mr. Rassier**, warning against enunciating a \$3 million amount in the legislation for the state contribution. Rather, he suggested that the legislation be phrased as “up to” a specified percentage for the state contribution amount.

Cochairman Senator Schroeder stated that well owners perceive wells on their property as “their wells” and want assurances that the government will not place meters on their wells. As a result, he will look closely for this issue being addressed in the legislation. **Representative Bedke** asked if those same well owners acknowledged the need for some management system to be in place and discussed that an awareness for responsibility to the whole must be recognized. **Senator Siddoway** asked for more information regarding the voluntary fee approach, asking if there is leeway for any volunteerism. **Mr. Rassier** stated that the volunteer element is that the large working group had representatives from all categories of water users and they agreed that certain measures must be taken in order to address the water budget in the ESPA and as representatives of these groups they were willing to pay. He stated that this has been a grassroots effort but not every water user has given their consent.

Senator Kelly asked how much state funding was necessary to keep the plan afloat. **Mr. Anderson** stated that the amount was a negotiated amount by the Implementation Committee and by the Advisory Committee - an amount they felt was reasonable and fair. He also stated that there were negotiations and the Governor’s Office was involved. **Senator Kelly** asked if the plan would come to a halt without a state appropriation. **Mr. Anderson** responded that H264 authorized the Water Resource Board to use existing funds to move ahead with the CAMP process. He stated that things are happening and that IWRB can implement their funds if no state funds are appropriated. He cited the recent recharge effort as an example of this. He did emphasize that if the full amount was not implemented, there will be a significant reduction in the number of projects and the ten-year timeline would have to be extended. He stated that completion of Phase 1 is estimated to cost \$100 million. **Senator Kelly** asked if that total was in today’s dollars and **Mr. Anderson** stated that it is. He identified the most appropriate deposit accounts - interest bearing accounts where interest generated would offset the cost increases.

Cochairman Senator Schroeder asked how much money was needed to keep the effort moving forward and **Mr. Anderson** estimated \$1 million. **Cochairman Representative Raybould** pointed to sticking points with the language in H264, noting the addition of Section 4, and asked **Mr. Anderson** if the draft includes any compensation or recognition

for incidental recharge. **Mr. Anderson** identified this as a complicated issue because the underpinning structure of the CAMP Plan is a benefits-based approach and the Plan is threatened once special circumstances or situations are introduced. He commented that the incentivizing approach used by the recharge Work Group has met with some success and he then detailed the specifics.

Cochairman Senator Schroeder commented that there are well-defined water rights for agricultural purposes and asked **Mr. Anderson** to explain the consequences of making changes. **Mr. Anderson** stated that the Board is not trying to redefine the prior appropriation doctrine and would not jeopardize existing uses. **Representative Bedke** stated that he is asked how the high loss canal owners are benefited by paying the fee. **Mr. Anderson** stated that this year high loss canals made, over and above their regular practices, \$70,000 for recharge because of their large capacity. **Representative Bedke** stated that the problem is that in some years recharge will not occur. **Mr. Anderson** agreed with **Representative Bedke** but continued, stating that while this is true, the pilot weather modification system will on average provide 5-10 percent increase of natural flow available for the users and for storage. **Representative Bedke** stated that a belief that the pilot weather modification system will produce the cited results requires a leap of faith. **Cochairman Senator Schroeder** asked **Mr. Anderson** how the \$70,000 would percolate down to the individual. **Mr. Anderson** explained that this year the user recharge benefit versus fees collected would equal out. **Representative Bedke** followed up, asking if it would be a wash every year. **Mr. Anderson** replied that the weather modification system would be an improvement and believes that the scientific projection of net gain is accurate.

Cochairman Senator Schroeder asked for an update on any results from the weather modification program and **Mr. Anderson** stated that Idaho Power has placed three additional generators on the Upper Eastern Snake. Asked by **Cochairman Senator Schroeder** how results are assessed, **Mr. Anderson** stated there are such small percentages of improvement in efficiency, it is difficult to quantify but it can be done. He stated that through cloud seeding the efficiency of the snow storm is improved. **Cochairman Senator Schroeder** asked for reassurance as to the integrity of the science and **Mr. Anderson** stated he was confident that the science behind the weather modification program was solid. **Representative Bedke** asked if language was in place in the draft legislation expressing all the possible funding scenarios and that the prorated language is included. **Mr. Anderson** indicated that this language is included.

Senator Kelly asked if any federal funds are contingent on a match of some kind. **Mr. Anderson** answered that the \$15 million for the Agriculture Water Enhancement Program (AWEP) is split 25 percent IWRB and 75 percent federal funds, mainly focused on conversions. **Representative Bedke** followed up asking if the \$15 million grant is a one-year commitment and **Mr. Anderson** stated that the participation targets do not tally up to the \$10 million a year, but rather \$8 million a year. He stated that the federal funds received are helping to get us to the target. **Senator Cochairman Schroeder** asked **Mr. Anderson** to detail the minimum amount needed from the state. **Mr. Anderson** commented that the most important thing is to pass the funding legislation; it is similar to

what we did on the CAMP Plan. He stated that they need at least \$1 million to get things going and to get the process in place. He believes that it is going to be 2011 before fees come in and that by 2012 perhaps there will be more funds available. **Cochairman Senator Schroeder** stated that the Committee depends upon their accurate minimum amount estimate for state appropriation. **Mr. Anderson** stated that he believes there is enough momentum in place and encourages the Committee to support the legislation and move it forward.

Representative Stevenson stated that the 25 percent of AWEP funding earlier discussed does not come from state funds but from individual participants. **Representative Moyle** noted that the draft legislation does not include all the requirements the Committee gave them last year. **Mr. Anderson** replied that the draft follows the direction given them and stated that the development of the implementation plan will address the issues not in the draft legislation. **Representative Moyle** followed up stating that he believed that all requirements should be in the present draft and encouraged **Mr. Anderson** to include all the requirements in the legislation. **Mr. Anderson** stated he would take the suggestion to the Implementation Committee. **Cochairman Senator Schroeder** led a brief discussion regarding the language in the draft legislation and in H264. **Cochairman Representative Raybould** asked **Mr. Anderson** to work with the Implementation Committee on the language and then place it in the draft for the Interim Committee's review. **Mr. Anderson** commented that there would be language put in the legislative intent section of the draft. **Cochairman Representative Raybould** suggested including language on page 8 that defines the surface water irrigators' involvement in collection.

Mr. Ken Harward, Executive Director, Association of Idaho Cities (AIC), was introduced to address the Committee. He stated that the CAMP group included three mayors on this issue and they have endorsed the concepts of the CAMP Plan. Additionally, he stated that **Mr. Anderson** met with the AIC Board of Directors and other representatives recently, explaining the key concepts. He continued, indicating that the AIC understands that the city itself would be assessed their proportionate share and in turn would break down the bill for each of the city consumers, estimating the amount at 50 cents per connection per month. He closed by saying that, following the presentation by the Board and mayors at their meeting, support for the concept that everyone pay their fair share was expressed.

Ms. Debbie Kaufman, Idaho Association of County Treasurers (IACT) and Twin Falls County Treasurer, was the next speaker to address the Committee. She reported that the IACT met in September and at that meeting considered the feasibility of participating in the collection process. The treasurers voiced several concerns, including the propriety of the treasurers to participate. She stated that they agreed to assist in drafting the legislation, with four members of the IACT participating. Other concerns the treasurers addressed regarding the \$1 fee assessment included:

- That the fee is uniform and easily administered (63-903, Idaho Code).
- That there must be lien authority written into the legislation (63-902(10), Idaho Code).

- That any fees delinquent for over three years must be the responsibility of the IWRB (42-3212, Idaho Code).

Ms. Kaufman noted that many of the county assessors feel the same way as the county treasurers and the IACT will vote on the issue of their support of the draft legislation at a future meeting.

Representative Patrick asked if three percent was adequate for covering the administrative costs. **Ms. Kaufman** stated that it is adequate, as long as it is included on the existing tax bill. **Representative Stevenson** suggested that the language should state “up to three percent.”

Ms. Valdi Pace, Blaine County Assessor, Idaho Association of County Assessors (IACA) was the next speaker to address the Committee. She stated that **Mr. Patton** and **Mr. Rassier** attended their fall meeting of the IACA, where they provided an overview and a request for participation. The result was that most members agreed that they should all work together. She continued, commenting that there would be some programming issues but that they could provide the owners names, parcel numbers and acreage information necessary for the county treasurers to collect fees.

Mr. Lynn Tominaga, Executive Director of the Idaho Groundwater Appropriators (IGWA), then testified before the Committee. He stated the importance of following through with implementation and the risks involved if an agreement is not found. He stated that IGWA has spent \$1 million over the past five years in litigation costs and that other parties have endured similar expenditures yet the litigation does not tackle the problems and the courts end up making the decisions. He identified the CAMP effort as a holistic one and commented that it is a fragile coalition that is based upon equity with no one group receiving special treatment. **Mr. Tominaga** stated that he hoped that the Committee will help work out the differences. **Cochairman Senator Schroeder** asked him to define “special treatment” and **Mr. Tominaga** responded that if a credit is given to one group on the Great Feeder Canal, then others will ask for a similar credit. **Senator Heinrich** asked if he believed that the proposed allocation of proportionate share is fair and equitable and **Mr. Tominaga** responded that it depends on where you sit, but that we have to start putting things on the ground, not continue fighting in the courts.

The Committee recessed for lunch from 11:30 a.m. until 1:30 p.m.

Mr. John Homan, Deputy Attorney General, was the first afternoon speaker to address the Committee. After providing a brief background of the facts on aquifer recharge liability, **Mr. Homan** discussed the concerns of the canal companies and the irrigation districts related to this topic, including flooding claims, groundwater saturation claims and groundwater pollution claims. After delineating present observations and generalizations about the exposure to liability, he discussed the availability of additional insurance coverage. **Mr. Homan** then enunciated the following conclusions:

- Canal companies and irrigation districts may already be covered for recharge activities under their existing general liability insurance if the activities fall within their normal operations.
- Initial discussions with private insurance companies indicate insurance can be purchased to protect against any risks associated with recharge activities.
- Because coverage under the state's policy excludes pollution claims, securing coverage through a private company to insure recharge participants is the most plausible path forward.

Representative Stevenson asked if the state can participate in the recharge aquifer site if it holds title to the site and **Mr. Homan** said that the way to ensure participation is via contract with the Water Resource Board instead of a title transfer.

Senator Siddoway asked **Mr. Homan** to clarify the exclusion for any ground water claims. **Mr. Homan** introduced **Mr. Jim Peterson**, Idaho Falls Insurance Agency, to discuss policy coverage. **Mr. Peterson** replied that it would not be addressed under the general policy but perhaps under the individual coverage. **Senator Siddoway** followed up, outlining a situation that could occur at a dairy related to surface water contamination and **Mr. Homan** stated that he believed that there would be enough flexibility in the policy to provide coverage in that situation and that it would be important to identify the residual responsibilities of the membership with the district.

Representative Bedke asked what prompted this liability issue to be moved forward. **Mr. Homan** stated that his group saw no specific perceived risk. **Representative Bedke** asked if this was a surrogate issue and **Mr. Homan** stated that this could be the perception of some and spoke of a claimant, a well owner, who suspected that recharge caused damage. **Representative Bedke** asked if the concerns of responsible recharge participants were allayed and **Mr. Homan** responded that the recent recharge went off seamlessly – they heard of no operational problems. **Representative Bedke** asked, with this in mind, what happened to have the Committee explore the liability issue. **Mr. Homan** asked for **Mr. Brian Patton**, Idaho Department of Water Resources, to reply and **Mr. Patton** stated that there have been no instances of problems during recharge operations. However, through the ESPA CAMP process, many canal owners stated that their participation in recharge was tied to having their liability concerns addressed.

Cochairman Representative Raybould asked **Mr. Peterson** if he was aware of any claims of water damage related to recharge and **Mr. Peterson** answered there were no claims related to recharge. He continued, commenting that he was contacted by the Department of Water Resources, to explore coverage in the case of a canal breach. He stated that a general insurance policy would cover such an event and the general policy would cover materials introduced by a canal company. **Mr. Peterson** stated that his agency tried to address the issue of ground water contamination due to recharge flow. **Cochairman Representative Raybould** asked him if there were any claims or issues related to this type of event and **Mr. Peterson** indicated there was no such event.

Mr. Brian Patton, Idaho Department of Water Resources (IDWR), was the next speaker to address the Committee. **Mr. Patton** presented an update on the Water Storage Project Studies, beginning with a review of House Joint Memorial Number 8 (HJM 8) as well as Senate Bill 1511 (S1511) and House Bill 644 (H644). All three pieces of legislation passed during the 2008 legislative session. A brief summary included:

- HJM 8 requested that the Idaho Water Resource Board undertake studies of additional water storage projects, including the Minidoka Enlargement, Teton Replacement and Twin Springs Dam, and to move forward with those storage projects that provide the most benefit to the residents of Idaho. It also specified the Galloway Project and the Lost Valley Dam Enlargement as potential priority studies.
- S1511 appropriated \$1.8 million to the Water Resource Board to study enlarging Minidoka Dam and replacing Teton Dam. H644 appropriated funds to the Water Resource Board to undertake Comprehensive Aquifer Management Plans (CAMPs) in several areas. Additional reservoir storage is a strategy to be considered in the Treasure Valley CAMP, therefore some of these funds were reserved for the Boise River Storage Study.

Mr. Patton, using a topographical map, pinpointed the reservoir sites identified for investigation and then provided a synopsis of the Minidoka Enlargement Study, the Teton Study, the Boise River Storage Study and the Galloway Project.

Minidoka Enlargement Study

- Water Resource Board and Bureau of Reclamation entered into an agreement in August 2008 to undertake a study of raising the dam by 5 feet. The study cost was not to exceed \$1.4 million.
- There appear to be no significant technical issues associated with raising the dam by 5 feet.
- The raise would result in about 67,000 acre-feet of additional storage.
- The costs are estimated at \$186 million (\$2,780 per acre-foot).
- The raise could be accomplished at a later date, but at increased cost due to loss of construction efficiencies.
- If the State of Idaho proceeds with the raise at the same time as the spillway reconstruction in order to obtain construction efficiencies, a decision to proceed will be needed by February, 2010.
- No federal funds are available for the raise unless an appropriation could be obtained from Congress.
- Bureau of Reclamation estimates the raise could be completed in 5 years if the state decides to proceed now and is willing to commit the necessary funds.

Teton Study

- The Water Resource Board entered into an agreement with the Bureau of Reclamation in June of 2009 to undertake this study.
- The Bureau of Reclamation and the Water Resource Board are each contributing half of the study cost. The total study cost is projected at \$800,000.

- The study is scheduled to be completed in 2011.

Boise River Study

- In May of 2009, the Water Resource Board signed an agreement with the Corps of Engineers to act as the local partner in completing an Interim Feasibility Study.
- The Interim Feasibility Study will evaluate water storage options for flood control and water supply and the benefits from reducing flood damages. It is scheduled to be complete in early 2012, subject to federal appropriations.
- The Interim Feasibility Study cost is approximately \$1.8 million, with the Board and the Corps each responsible for half of the cost. The Board was granted a \$500,000 credit for previous analysis in the Boise River Basin reducing the funds required from the state to conduct the study. The storage analysis will evaluate 12 previously-identified potential sites.
- The 12 sites include raising existing dams, off-stream storage sites and on-stream sites including Twin Springs. A reservoir built at Twin Springs could be up to 600,000 acre-feet in size.
- The 12 sites will be narrowed to the 3 most promising sites for detailed engineering, environmental and cost analysis.
- The Water Resource Board will use the storage analysis in the Treasure Valley Comprehensive Aquifer Management Plan process.
- By early 2012, the State will need to determine whether to complete the feasibility study through the Corps. This will necessarily entail a wider range of analysis than just water storage, but is a necessary step in the Corps' project delivery process.

Galloway Project

- Galloway would be a reservoir of up to 900,000 acre-feet on the Weiser River.
- It could be used to replace flow augmentation water released from the Upper Snake and Boise River basins allowing more water to be retained in those basins for their needs.
- The Water Resource Board continues to hold discussions with several possible project partners and explore funding avenues.

Mr. Patton concluded his presentation, summarizing the relationship of this effort to underground storage:

- We have been asked by numerous parties if underground storage is being considered as part of this effort.
- An underground storage, or aquifer recharge, program is being implemented for the Eastern Snake Plain Aquifer (ESPA) as part of the ESPA Comprehensive Aquifer Management Plan. Approximately 125,000 acre-feet were recharged into ESPA in 2009.
- The potential for underground storage (recharge) will be evaluated in other areas of Idaho as Comprehensive Aquifer Management Plans are developed for those regions.

Cochairman Representative Raybould asked if the federal government has been approached on supporting either Twin Springs or the Galloway Project in an attempt to relieve the need for flow augmentation. **Mr. Patton** indicated that to date the federal government has not been approached but that they will be asked during the study process. **Senator Kelly** asked **Mr. Patton** to identify where the IWRB is presently getting funds, and specifically, whether the Teton and Boise River studies are funded by General Fund appropriations. **Mr. Patton** responded that the Minidoka and Teton Studies are funded through S1511 and the Boise River Study through H644. All are General Fund appropriations.

Ms. Suzie Budge and **Mr. Dennis Murphy**, Idaho Working Lands, were the next speakers to address the Committee. **Mr. Murphy** reviewed the background topics discussed at the July 31st Interim Committee meeting, including: land conservation studies; economic contribution of working lands; fiscal impacts of land conversion; wildlife habitat consideration; and policy examples. He briefly discussed the proposed and/or in-place funding mechanisms in Montana, Utah, Wyoming, Nevada and New Mexico. **Mr. Murphy** cited the following policy trends: market based incentives; conservation easements – voluntary agreements; partial funding by state, match to external funds; and revenue source and administration varies.

Mr. Murphy presented a concept paper entitled “Enabling Legislation for a Working Lands and Wildlife Trust.” Reviewing the concept paper, he highlighted the proposal to legislatively create an unfunded trust account (“Working Lands and Wildlife Trust”). The account could receive contributions from private, local, federal, and eventually, state sources. The enabling legislation would be designed to provide voluntary market incentives to landowners to prevent loss of working forests, ranches and farms. It could also be used to provide incentives to improve stewardship of natural resources and recreational access on private working lands.

Continuing with a review of the concept paper, **Mr. Murphy** stated that the Legislature would create a trust account advisory committee that would build the infrastructure for the account and manage the account. The committee would be comprised of agency representatives and stakeholders from forestry, agriculture, ranching, conservation and sporting groups. Further, the advisory committee would advise on the development of priorities as well as on the oversight of the strategic plan to secure future funding sources. **Mr. Murphy** commented that, given the present economic conditions, it could be 2011 or 2012 before state funding would be available.

Cochairman Senator Schroeder asked **Mr. Murphy** to explain the benefit to legislatively create an account where contributions would be received only from private sources. **Mr. Murphy** answered that, absent state funding, there is still a benefit because it would ensure that the Legislature creates and oversees the strategic plan. **Cochairman Senator Schroeder** asked **Mr. Murphy** if he would provide the members with draft legislation to review and **Mr. Murphy** agreed that they would provide a draft. **Representative Stevenson** followed up with a question regarding the ability of the trust account to receive individual contributions absent state funding. **Mr. Murphy** stated that

the trust account would have this ability, and explained that Wyoming has set up a similar trust account. **Representative Stevenson** voiced concern about legislative funding that is tied to individual contributions.

Cochairman Senator Schroeder asked **Mr. Murphy** if the enabling legislation proposed would ask the Legislature to create a structure to collect individual contributions, with no promise of state funding in the present or in the future. **Mr. Murphy** agreed with **Cochairman Senator Schroeder** and included one caveat - explaining that some donors are more likely to contribute if there is a state match. **Cochairman Senator Schroeder** in turn stated that the Legislature cannot promise funds they do not have. **Cochairman Representative Raybould** asked if the trust account would run like a municipal account where contributions are tax exempt and where corporate contributions enjoy both federal and state write-offs. **Mr. Murphy** agreed with his comparison, stating there would be a tax deduction for individuals and corporate entities. He noted a separate question - whether the Legislature would be interested in providing a tax credit incentive.

Cochairman Representative Raybould asked why there was a need to legislate something that already existed, as nonprofits can set up their tax exempt status and run it the way they wish. **Mr. Murphy** stated that the enabling legislation would allow the state to maintain control regarding the uses of the trust funds. **Cochairman Senator Schroeder** asked if there would be legislative representation on the advisory committee and **Mr. Murphy** stated that it would depend on the committee structure. **Representative Moyle** asked whether it was their intention to make anything, for example tax credit incentives, transferrable and **Mr. Murphy** responded that it was not.

Representative Bedke asked how the enabling legislation differs from draft legislation brought by them to the Committee in the past. **Mr. Murphy** emphasized that with the enabling legislation the control rests with the single source of the match. He stated that last year's effort suggested the creation of a state income tax credit that could be transferred based on donated conservation easements whereas the concept paper promotes a revenue stream originating from a variety of sources. **Representative Bedke** asked **Mr. Murphy** to explain what the incentive would be for the landowner to contribute. **Mr. Murphy** replied that the incentive would be the compensation for whatever terms are negotiated in the agreement between the landowner and the recipient of the voluntary agreement. An appraiser would look at the easement value before and after and in order to close the transaction, there must be funds raised from various sources. The trust account would be one of several sources that would contribute to that real estate transaction. The owner would receive the funds from whatever mix is necessary to close that deal. **Cochairman Senator Schroeder** asked **Mr. Murphy** to discuss the transfer of development rights and the use of county ordinances. **Mr. Murphy** explained that development rights are not extinguished, but rather transferred.

Ms. Suzie Budge, Idaho Working Lands, addressed the Committee, restating their desire to have Committee input before moving forward. **Cochairman Senator Schroeder** stated that the Interim Committee will not meet before session begins and asked that the

Idaho Working Lands prepare their enabling legislation for review by the germane committee. **Cochairman Representative Raybould** stated he would like to see it early in the session and to possibly schedule a review of it at a joint committee meeting. **Cochairman Senator Schroeder** asked if their representatives wish the Committee to vote on a motion related to reviewing a draft this session. **Ms. Budge** stated that passage of such a motion would be encouraging to the diverse members of the coalition.

Representative Stevenson asked if the concept paper was reviewed by the Executive Office. **Ms. Budge** stated that they have had discussions over the past few years and do have some meetings scheduled in the near future. **Senator Heinrich** asked **Mr. Murphy** about the need for the advisory committee members to develop a needs assessment when this has already been accomplished. **Mr. Murphy** stated that the concept paper speaks to a more formal assessment, with the structure of the advisory committee. **Representative Stevenson** asked if there are efforts to work cooperatively with other individual and agency efforts already underway, in essence, to have these efforts dovetail. **Ms. Budge** stated that there are multiple opportunities for several agencies to partner with Idaho Working Lands and she cited examples where this has begun.

Senator Heinrich stated his concern that the Legislature could become obligated through sideboards. He asked **Mr. Murphy** why the group proposes that the Legislature enjoy controlling interest when they won't have contributed to the trust account. **Mr. Murphy** responded that he believed private funds would only be contributed if and when state funds were first contributed. **Cochairman Senator Schroeder** restated that at present there would be no mandate of funds from the state and **Mr. Murphy** acknowledged his understanding. **Cochairman Representative Raybould moved to agree to review the Idaho Working Lands draft legislation proposal, take a consensus and go from there. Representative Stevenson seconded the motion, contingent on the inclusion of the caveat that the draft legislation will identify the membership of the trust account advisory committee. The motion carried by unanimous vote.**

Cochairman Senator Schroeder adjourned the meeting at 3:15 p.m.