

# Senate Resources & Environment Committee

Minutes  
2009



MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: January 14, 2009

TIME: 1:30 p.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, and Stennett/Thorson

MEMBERS ABSENT/ EXCUSED: Senator Werk

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: Chairman Schroeder called the meeting to order at 1:30 p.m. He welcomed the audience and committee members to the first meeting of the session. Recognition was given to Juanita Budell, returning attache, and Kylee Holdaway, Senate page.

The Chairman then asked each committee member to introduce themselves and comment on their specific interest as it relates to "Resources and Environment." He also advised the members that his job is to make sure that necessary information is provided to them so that judicious decisions can be made. Chairman Schroeder encouraged them to let him know what is needed.

RULES: The meeting was then turned over to Vice Chairman Bair who is in charge of overseeing the rules. Rule books were distributed and assignments given. The assignments are as follows:

DEPARTMENT OF FISH AND GAME

Senator Coiner \*Rules Governing Licensing 13-0104-0801
\*Rules Governing Licensing 13-0104-0802
\*Rules Governing Licensing 13-0104-0803

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Senator Brackett \*Rules Governing the taking of Upland Game Animals 13-0107-0801

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Senator Siddoway \*Rules Governing the taking of Big Game Animals 13-0108-0801
\*Rules Governing the taking of Big Game Animals 13-0108-0802
\*Rules Governing the taking of Big Game Animals 13-0108-0803

Senator Brackett	*Rules Governing the taking of Game Birds	13-0109-0801
	*****	
Senator Bair	*Rules Governing Fish	13-0111-0801
	*Rules Governing Fish	13-0111-0802
	*****	
Senator Pearce	*Rules Governing the trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals	13-0116-0801
	*Rules Governing the Use of Bait for Taking Big Game Animals.	13-0117-0801
	*****	
Senator Cameron	*Rules for Operating, Discontinuing, and Suspending Vendors	13-0119-0801
	*Selection Rules of New Fish and Game License Vendors	13-0120-0801
	*****	

**DEPARTMENT OF LANDS**

Senator Pearce	*Rules of Practice and Procedure Before the State Board of Land Commissioners	20-0101-0901
	*Rules Pertaining to the Idaho Forest Practices Act	20-0201-0801
	*****	
Senator Cameron	*Method of Selling Pole-Quality Western Wood	20-0209-0801
	*****	
Senator Thorson	*Rules for Selling of Forest Products on State-Owned Endowment Lands	20-0210-0801
Senator Werk	*Rules for Selling of Forest Products on State-Owned Endowment Lands	20-0214-0801
	*****	
Senator Thorson	*General Rules, Licensing, and Check Scales of the Idaho Board of Scaling Practices	20-0602-0801
	*****	
Senator Werk	*Measurement Rules for Forest Products of the Idaho Board of Scaling Practices	20-0603-0801
	*****	

**OUTFITTERS AND GUIDES LICENSING BOARD**

Senator Siddoway	*Rules of the Outfitters and Guides Licensing Board	25-0101-0802
	*****	

**DEPARTMENT OF PARKS AND RECREATION**

Senator Cameron	*Rules Governing the Administration of Park and Recreation Areas and Facilities	26-0120-0801
	*Rules Governing the Administration of Park and Recreation Areas and Facilities	26-0120-0802

**DEPARTMENT OF WATER RESOURCES**

Senator Brackett	*Adjudication Rules	37-0301-0801
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Senator Pearce	*Well Construction Standards Rules	37-0309-0601
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<b>DEPARTMENT OF ENVIRONMENTAL QUALITY</b>		
Senator Werk	*Ground Water Quality Rule	58-0111-0801
Senator Werk	*Rules for Administration of Water Pollution Control Loans	58-0112-0801
Senator Thorson	*Wastewater Rules	58-0116-0801
Senator Thorson	*Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites	58-0124-0801
*****		

**Vice Chairman Bair** asked that if clarification and/or information is needed regarding any of the rules, contact him so that arrangements can be made with the proper agency for their response. Hearings will be held on Monday, January 26 and Friday, January 30.

**SPEAKERS:**

**Chairman Schroeder** welcomed **Mr. Jim Unsworth, Chief, Bureau of Wildlife** and **Mr. Nate Fisher, Administrator, Office of Species Conservation**, who provided an update on the wolf situation in Idaho and the Northwest.

Speaking first was **Mr. Unsworth**. He said that this morning at 10 a.m., the Fish and Wildlife Service had a conference call that informed them that on January 27, wolves will be delisted in the Northern Rocky Mountains. The rule that will be published will exclude Wyoming. **Mr. Unsworth** said that the state of Idaho provided a lot of information.

**Senator Pearce** inquired as to why the delisting was so slow in forthcoming. The response was because of the holidays and the time period to review the rules. **Chairman Schroeder** asked what this meant for Wyoming. **Mr. Unsworth** said that Wyoming needs to provide the Wildlife Service with an acceptable state plan, which means a new rule would have to be published.

It was stated that if there are no further delays in the elisiting, it is possible that Idaho will have a hunting season on wolves by next fall.

**Chairman Schroeder** said that a constituent contacted him regarding wolf collars with cameras installed in them and inquired if that was true. **Mr. Unsworth** replied that Idaho does not have or use such equipment.

Two handouts were given out and referred to in the remarks made by Mr. Unsworth. (1) Idaho Fish and Game Wolf Update; and (2) Wolf Management Directives, adopted by the IDFG Commission.

The Directives are inserted into the minutes.

**Wolf Management Directives:**

*Adopted by the Idaho Fish & Game Commission  
November 6, 2008*

The Commission hereby authorizes and directs the Department as follows:

1.  
To review and update the underlying data which supports our Wolf Management Plan to include current data, review of conflict levels, population status, and harvest objectives needed to hunt wolves in the fall of 2009, assuming de-listing occurs.
2.  
To develop and implement plans and methods to obtain census information on wolves within federally classified wilderness areas utilizing the accepted "Minimum Tools Analysis" process.
3.  
To develop and aggressively utilize all available tools and methods to control wolf-caused depredation of domestic livestock.
4.  
To develop and aggressively utilize all tools and methods available under the new 10(j) Rule to control wolves in critical areas that are impacting ungulates starting with the Lolo zone and progressing to other critical areas, in the event de-listing does not occur.
5.  
To continue to develop, implement and utilize wolf monitoring and estimation techniques and modeling.
6.  
To assemble and disseminate accurate factual information to inform and educate the public on wolf biology and successful wolf recovery and management in Idaho.

**Mr. Unsworth** reported that from January 1 through December 31, 2008 agencies documented 151 dead wolves in Idaho (these data are not finalized and still need to be corrected and cross referenced). Of those, 94 were depredation control actions by USDA Wildlife Services, 13 legal kills, 9 illegal kills, 4 natural kills, and 31 other/unknown.

From January 1, 2008 through December 31, 2008, USDA Wildlife Services (tentatively) confirmed that wolves killed: 16 cows, 1 steer, 87 calves, 215 sheep, 14 dogs, 1 foal; Probably killed an additional: 6 cows, 22 calves, 57 sheep.

Under the 10(j) Rule, which is a rule as to how we manage wolves right

now while they are listed as an experimental population, there is one segment in there that would allow us to control wolves if they are impacting ungulate populations. There is a big research project going on in the state -- several hundred elk radio collars all around Central Idaho, as well as a number of mule deer radio collars – that are being monitored in the management zones. There are two management zones that are not currently meeting the objectives and also have high wolf mortality.

**Mr. Unsworth** stated that they are moving forward with a proposal on the Lolo Zone. Wolves are the major cause of mortality on cow and calf elk. They are the main reason the elk population is not able to recover and that the management objectives not being met. The Fish and Wildlife Service asked IDFG prepare a package to seek peer review and submit it to them for their approval. To date, a draft is being developed. The Department's preference is to always work on population management problems with hunting. They are working with the University of Montana and the Nez Perce Tribe to develop better ways to survey the wolf population. They are looking for a better management tool that is not as intensive, or as expensive, as what is being used now, which is radio telemetry. That requires the trapping of animals.

The IDFG Commission has also asked the Department to provide good information. The website is quite complete, with all the documents associated with wolves and wolf management.

**Senator Pearce** inquired as to the numbers of wolves killed in Montana and Wyoming regarding depredation. **Mr. Unsworth** said that he didn't have that information with him, but would provide it; however, Montana has typically been more aggressive than Idaho. **Senator Pearce** also inquired as to the number of wolves in Idaho, Montana, and Wyoming. **Mr. Unsworth** said there are approximately 1,500 wolves in the three states, with Idaho having the majority, 750 to 800 wolves.

**Chairman Schroeder** stated that David Meach, a wolf expert, has indicated that there are more wolves than what has been reported and asked Mr. Unsworth to comment on that statement. **Mr. Unsworth** said that their estimates are more than a minimum, but on the low end of reality from the way they are calculated. **Chairman Schroeder** then asked what percentage of collared elk in the Selway and Lolo areas have been killed by wolves. The response was that for adult cows, the mortality rate was 20 to 30 percent. For six month old calves, the percentage was very similar. On new-born calves, bears and lions cause more mortality than wolves. In those areas, the mortality is such that the population cannot increase.

The **Chairman** then inquired as to how many hunters in Idaho have been charged with illegal shooting of wolves. **Mr. Unsworth** said he would get that information.

**Senator Pearce** indicated that he has met with the Wildlife Services and they indicated that Montana and Wyoming have fewer wolves than Idaho, but have killed more. He asked if there had been a policy change. **Mr. Unsworth** said that he feels Montana has been more aggressive than Idaho and part of the reason is the distribution of wolves there, due to the geography and habitat. Idaho has been conservative, hoping that elisiting would be as soon as possible, and to not do anything to slow the process. **Senator Pearce** suggested that Idaho should get more liberal on the control of wolves, as they are threatening the game population, and that is impacting the small communities.

**Senator Brackett** inquired about the Lolo experiment area. **Mr. Unsworth** said that area is in the Clearwater National Forest, North Fork of the Clearwater and Lochsa drainage, and a new document is almost ready to be put out for peer review, which is the next step. The new 10(j) rule, which is what the Department is operating under now, changed the wording on the burden of proof, or level that has to be met to do this action, was changed from “a major cause of decline” to “a major cause of mortality”. Idaho has data to show “a major cause of mortality”.

**Chairman Schroeder** asked if after delisting, could wolves be shot if threatening livestock, pets, or people? The answer from Mr. Unsworth was yes. If the season is closed, then the carcass would be turned over to IDFG.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** January 19, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Senators Pearce, Coiner, Siddoway, Brackett, and Thorson

**MEMBERS ABSENT/ EXCUSED:** Vice Chairman Bair, Senators Cameron and Werk

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**ANNOUNCEMENTS:** He made the following announcements:

Blue folder contents: A copy of Roy Heberger's email regarding Wolf recovery and delisting; Information packet from Shirts Brothers Sheep.

Red folder contents: RS 18192C1

Meetings: No meeting Friday, January 23. Rules will be heard on Monday, January 26. There will be a 7 a.m. meeting January 28 with the Idaho Department of Parks and Recreation Commissioners and at 1:30 p.m., the Idaho Department of Fish and Game Commissioners will meet with the Committee. Rules will be heard on Friday, January 30, if necessary.

**RS18192C1** Presenting RS18192C1 was **Ms. Sharon Kiefer, Assistant Director of Policy, Idaho Department of Fish and Game**. She said that this proposal was modeled after S 1391, which was passed during the 2006 Session. It provided a mechanism for the Idaho Department of Fish and Game to issue a big game permit or tag to a qualified organization for the purpose of providing children with life threatening medical conditions an opportunity to hunt big game in Idaho. The Department of Fish and Game promulgated rules to implement this fashion. This RS would provide a similar mechanism for the Department to issue a big game permit or tag to a disabled veteran sponsored by qualified organizations, whose purpose includes assisting disabled military veterans, providing them an opportunity to hunt big game in Idaho. The proposal will allow the Department of Fish and Game to promulgate rules to enable qualified organizations to provide this opportunity for disabled veterans. They have worked with a committee of the Idaho Division of Veteran Services, the



Idaho American Legion, and the Idaho Veteran Affairs Commission.

There were no questions from the committee regarding this RS.

**MOTION:** **Senator Coiner** made the motion that RS18192C1 be sent to print. **Senator Pearce** seconded the motion. The **motion passed** by unanimous voice vote.

**SPEAKER:** **Chairman Schroeder** turned the meeting over to Senator Pearce who arranged for a PowerPoint presentation on Domestic Sheep versus Big Horn Sheep by Ron Shirts and Shirts Brothers Sheep.

Before introducing his guest, **Senator Pearce** provided a brief background of events. He said that seven town hall meetings were held and in each one, two to three people brought up the same issue that will be heard today. Senator Pearce stated that Ron is a model citizen, a hard worker and has the support of people in his community.

**Mr. Shirts** then introduced his family, which included his wife and children, sister and brother-in-law, two brothers and his father.

**Mr. Shirts** is a domestic sheep operator in southern Idaho and is fighting to retain his grazing rights on public lands. Bighorn sheep were reintroduced in Hells Canyon through an agreement that domestic sheep operators would be held harmless from any disease transmission problem associated with the bighorn reintroduction. This agreement was made in 1997 with the U.S. Forest Service, the Idaho Department of Fish and Game, and two other sister state agencies. The Idaho Legislature enacted a provision effectively adopting the 1997 commitment as state law.

In 2005, the U.S. Forest Service issued a plan for the Payette National Forest which affected that agreement. It modified up to 60 percent of Mr. Shirt's grazing lands and more restrictions could be forthcoming.

**Mr. Shirts** said that the consequences of the breach of the 1997 commitment impacts him, his brother, and other families in Idaho. He said this issue is not about being for or against bighorn sheep, but is about environmental groups and government agencies using bighorn sheep as a tool to achieve their agendas and not caring who is hurt in doing this.

Mr. Shirts then introduced **Alan Schroeder**, a lawyer in Boise of Schroeder & Lezamiz Law Office, who will present a PowerPoint program on "The need to consider and to reinforce the 1997 commitment made to the domestic sheep operators." Mr. Schroeder has been practicing law since 1986 and he primarily deals with public land litigation issues that involve the U.S. Forest Service, Bureau of Land Management, and the U.S. Fish and Wildlife Service. The issues have included grazing and right-of-ways, both ditches and roads.

An overview of the presentation included three topics:

(1) **THE DEAL:** Bighorn Sheep and Domestic Sheep Land Management Policy: Pre-Payette National Forest Conflict.

(2) **THE DEAL BROKEN:** Payette National Forest Conflict, as related to (purported) disease transmission between bighorn sheep and domestic sheep upon National Forest System Lands within the PNF.

(3) **THE NEED TO REINFORCE THE DEAL:** The State of the Science, as related to (purported) disease transmission between bighorn sheep and domestic sheep.

**THE DEAL** Bighorn sheep were native to Hells Canyon and the Salmon River country. Due to a variety of conflicts, bighorn sheep were extricated from Hells Canyon. There came a time when there was interest in reintroducing the bighorn sheep in the canyon and two events occurred to advance that interest. They were the 1997 agreement and Idaho Code 36-106. The agreement acknowledged that bighorn sheep may occasionally migrate outside of their designated range and come into contact with domestic sheep and will be considered 'at risk' for potential disease transmission and death. The three state wildlife agencies that signed the agreement committed to assume the responsibility for bighorn losses and further disease transmission in their respective states and to take whatever action is necessary to reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators. The signatories to the 1997 agreement accepted the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations. On March 24, 1997, a law was enacted in Idaho to add provisions to Section 36-106. It directed the Director of Idaho Fish and Game to give certain assurances to domestic sheep operators.

**THE DEAL BROKEN** Between 1997 and 2005, all the signatories were living up to that bargain. As a consequence of that, it was put as part of the forest planning process in the PNF forest plans. Because of the disease transmission issue, the Chief of the Forest Service sent back down to the PNF directing the Forest Service to reconsider their forest plan direction. Because of the 2005 decision, the Forest Service has made serious modifications to Mr. Shirts' permits. On September 18, 2008, the Forest Service issued a draft supplemental environmental impact statement (DEIS) which effectively seeks in its "Agency Preferred Alternative" to eliminate all domestic sheep use in the PNF, except for a couple of allotments. The comment period for this DEIS will end in March, 2009.

**THE NEED TO REINFORCE THE DEAL** There is no documented evidence of disease transmission. The Council for Agricultural Science and Technology published an article in August 2008, stating that "a common Pasteurellaceae strain or other agency directly linking bighorn epidemics to either domestic sheep interaction or to emergence of endemic pathogens has not been documented to date". There is a common pathogen issue between bighorn sheep and domestic sheep and the fear is that these common pathogens will be transferred from domestic sheep to bighorn sheep.

There are several reasons why the fear can be unwarranted. First, one must assume the bighorn sheep themselves are free of the offending

pathogens. "Zoo of pathogens" already present in the bighorn sheep in Hells Canyon. (Prevalence of *Pasteurella trehalosi* and *Mannheimia haemolytica*.) Second, one must assume no other vectors of the offending pathogens. More likely vectors of transmission already exist in Hells Canyon. Third, one must assume contact actually occurs, particularly in a free-range environment. There are even other reasons why the fear can be unwarranted: One must assume domestic sheep are carriers of the offending pathogens; one must assume the contact transmits a viable dose of the offending pathogens; if each of these assumptions exist, one must then assume that the pathogens express themselves in the bighorn, though this relates to environmental stressors, like weather, food, predators, etc.; if the pathogens reveal themselves, one must then assume that bighorn will die.

The time is now to reinforce the Deal. The federal land management agencies, or at least the USFS, are requiring domestic sheep operators: to prove a negative (i.e. to prove that contact and transmission will not occur); and to provide a 100 percent guarantee (i.e. to prove beyond any shadow of doubt that separation between the two species will occur). The USFS is apparently ready to eliminate domestic sheep use on the Payette National Forest on all but four domestic sheep allotments in its DEIS process. It is apparent that this (purported) disease transmission will continue to be advanced, whether warranted or not, to condition/restrict/eliminate domestic sheep use of Federal, State, and perhaps even private land in Idaho.

**Chairman Schroeder** asked Mr. Alan Schroeder if he thought the signatories intended to live up to the 1997 agreement and the reply was yes. Chairman Schroeder then inquired as to the legal recourse. **Mr. Alan Schroeder** said they are looking to the Senate Resource committee to look at the statute more carefully about reinforcing the commitment and applying that authority. **Senator Pearce** asked for a review of the legal process, so far. **Mr. Alan Schroeder** said that it has been a process through the Forest Service's administrative process, which is a three-step process. (1) A risk assessment; (2) a draft of EIS; and (3) based upon the EIS, make permit modifications as necessary. The Forest Service is in step two at the present time. However, the Forest Service has modified Ron's permits, after saying that they would not modify anyone's permits while going through this three-step process. Ron has gone through this administratively and has also been in Federal Court. **Chairman Schroeder** asked what evidence they had that would indicate that this is a plan to eliminate grazing on federal lands? The response was that it was only indirect.

Speaking next was **Joe Shirts**, brother of Ron. Joe has been a CPA in Boise for 30 years. Following is his testimony which is inserted into the minutes.

Mr. Chairman and Committee:

I am presenting the value of the sheep industry to Idaho and also the impact of the draft environmental impact study on the life and family of Ron Shirts. The United States Department of Agriculture (USDA)

Statistical Services shows that 220 thousand lambs were produced in Idaho in 2007 and wool production was close to 1.9 million pounds. The 2008 information was not yet available. The 2007 information indicates that 37 thousand of these lambs were kept as replacements, leaving 183 thousand of these lambs available to be sold as a product that was raised in Idaho and sold primarily out of State. The value of these lambs would be close to 19 million dollars at a weight of 104 and a price of 98.2 cents per pound. 104 pounds is the average weight of weaned range lambs in the United States per the USDA in the year 2000 and 98.2 cents was the USDA price of lambs in Idaho in 2007. Shirts Brothers lambs price per pound were \$1.05 to \$1.13 per pound in 2007 and \$1.07 in 2008.

The majority of lambs produced in Idaho is dependent on public lands and are shipped out of State. Idaho lambs produced by Shirts Brothers and many other large producers will exceed 125 pounds if the lambs are not sold early in the year, as was the case of Ron Shirts in 2007 when he was forced from grazing in Hells Canyon. See the article in Range magazine. The weight of lambs is based on several factors.

1. Weather, for example, early springs, sufficient and timely rains and the temperature.
2. Sheep management, for example nutrition, herds bred to produce enough milk and having the genetic qualities to produce large healthy twin lambs.
3. Dedication of the sheep men who spend countless hours in the lambing sheds and on the range to provide the best nutrition and care possible.
4. The range that is so important to provide adequate conditions for the production of a large healthy lamb. The range needs to allow early turn out in the spring and allow changes of elevation to provide tender nutritious feed until the lambs are marketed. In addition, high mountain pastures are a necessity for the breeding of eight-month-old lambs.

The range on the Smith Mountain Allotment on the Payette National Forest provides all of these features. The Smith Mountain Allotment does not border the wild Snake River in Hells Canyon that jet boaters and rafters enjoy, but only the reservoir behind Hells Canyon Dam.

What all of these factors mean to Idaho, is over twenty million dollars is coming into the State from other parts of the United States. It is estimated that sheep men that graze on the Payette National Forest produce three to four million of these funds. The sheep men will not be the only losers. This small group of sheep ranchers spends an estimated \$3 to \$4 million in Western Idaho each year and if these ranches don't exist, there is no money to spend at grocery stores, gas stations, repair shops, hardware stores, feed, etc. That hurts everyone in the State of Idaho. How many times do these millions of dollars multiply in the Idaho economy? You have heard "Buy Idaho" and try to keep dollars in Idaho. These lamb sales bring millions of dollars into our State from other parts of the Country. These lambs are consumed in the large cities all over our nation and the money is coming back to Idaho. Very few of these lambs are consumed in Idaho. If these sheep men go out of business, the people in these cities

will still eat lamb, but the dollars will go to foreign owners and these lambs will be raised in places like Australia, New Zealand or Argentina.

I have mentioned that ranchers are in jeopardy of losing permits, and I want to discuss the situation that deals with one of these ranchers, my brother, Ron Shirts.

Ron is fighting for his livelihood and risking everything he owns on a battle with the U.S. Forest Service. The facts of the conflict are well documented in filings by his attorney, in newspaper stories, and today, in Boise

Several groups wanted to put bighorn sheep in Hells Canyon. The sheep men were concerned about trust. Could they trust these groups to not hurt their livelihood? The Idaho Wool Growers worked with others to achieve that purpose and to protect the sheep industry. In 1997 the US Forest Service, the Idaho Fish and Game, The Foundation of North American Wild Sheep and others signed an agreement. This allowed bighorns to be reintroduced into Hells Canyon in Idaho. The sheep industry only received one consideration for this agreement. They were promised they would not be harmed. Idaho law was passed to back up this agreement.

It may be asked what right Ron Shirts has to graze in Hells Canyon on public lands. The laws of this great Country allow for grazing on public lands, allow for property ownership, and allow for freedoms that are not available in other parts of the world. We are *not* in a country where all property is owned by the state or by a monarchy or some form of communist regime. It isn't easy to buy your own home for the majority of the American people and it certainly wasn't easy for Ron Shirts to build a successful sheep operation *dependent upon public land use*.

Ron Shirts could lose this battle. If he loses, he could lose his sheep, he could lose his ranch, he could lose his way to pay for his children's education, he could lose his retirement, he could lose his right to be a rancher and he could lose his way of life and the joy of passing on a ranching tradition to his children.

What happens to the individuals that are fighting against him at the U.S. Forest Service, at The Idaho Fish and Game, at The State of Oregon and at the Foundation of North American Wild Sheep? What are they risking in this battle? What will they lose? Will they lose the same things that Ron will lose?

Support should be given to Ron Shirts and sheep men, not because they are good people, not because of your love or hate of bighorn sheep, not because of what Ron and others could lose. Support them because of an agreement in 1997. A deal is a deal and this is America. Support them because of the blind justice that this Country was founded on. Support them because it is the right thing to do.

*A glimpse at Ron Shirts hard work and sacrifices can be accessed at [www.idahobetrayal.com](http://www.idahobetrayal.com)*

**Chairman Schroeder** said that with respect to disease transmission, what we are hearing today is not harmonious with what other people have told us. He then requested Mr. Alan Schroeder to provide a copy of the article in Council for Agricultural Science and Technology that seems to indicate, based on your evidence here, that there is no document of evidence of disease transmission. The Chairman then asked what was expected of the Legislature. **Mr. Alan Schroeder** said that he would defer that question to Senator Pearce. **Senator Pearce** stated that he is working on some legislation that will be presented at a later date.

**Senator Siddoway** inquired if there has been any efforts by anyone threatened by the decisions made on the PNF to ask the state to stand with them in defense of this decision. **Mr. Alan Schroeder** said that there have been discussions with the Idaho Department of Fish and Game and he feels that IDFG has done a good job in working with the Shirts in trying to provide the necessary management practices that would alleviate this fear. **Senator Siddoway** said that he was thinking of assistance from the Idaho Attorney General's Office and had they been approached? **Mr. Alan Schroeder** stated that he has been in contact with Mr. Clive Strong of the AG's office and he was made aware of the situation. **Senator Siddoway** said, legally speaking, if the state of Idaho was a co-signator on the 1997 agreement and was willing to live up to and defend that agreement, would that lend any leverage to the AG's office? **Mr. Alan Schroeder** said that it would depend upon what role the state would be willing to take to fulfilling the commitment made in '97 or fulfilling the commitment made in Idaho law about assurances. He feels that IDFG has the role to play in taking care of this issue and taking command since they control the animals.

**Chairman Schroeder** inquired if grazing allotments were recognized as a legal marketable asset. **Mr. Alan Schroeder** replied that they are and that they are taxed. **The Chairman** then asked if the government could just wipe out something like that, then the worth is zero. **Mr. Alan Schroeder** said the short answer would be, under the Federal Land Policy and Management Act, there lies no interest that a permittee has any permit, so therefore if they are taken in the context of a Fifth Amendment taking, they would be paid zero. There could be a compensable value if improvements have been made to the land. **Chairman Schroeder** then asked how the government gets away with applying zero in some cases and compensating people in other cases? **Mr. Alan Schroeder** replied that (1) a permittee fights the issue; or (2) no range improvements have been made.

**Senator Brackett** inquired about unfenced areas. **Mr. Alan Schroeder** stated that he had a set of land status maps that he would provide.

**Senator Pearce** wanted to know exactly what is needed from IDFG that would help this case. **Mr. Alan Schroeder** said that there are three

things. (1) IDFG needs to stand by the separation strategy; (2) AG's office provide a role and hold domestic sheep operators harmless; and (3) IDFG figure out their role in the management of bighorn sheep and perhaps change the policy that is close to the domestic sheep allotments.

**Senator Pearce** stated that he is aware that in Northern California the government had "booted off" people with sheep and now they are paying them to bring the sheep back to graze to help prevent wildfires. The Chairman asked Senator Pearce to obtain that information.

**Senator Thorson** asked how long has the mixing of pathogens been taking place? **Mr. Alan Schroeder** said that he would answer the question in two parts. The first part is that in the late 70's and early 80's, there was not this common pathogen issue. The second part is that there are a variety of strains within strains of pathogens and the fear factor sets in.

**ADJOURN:**

**Chairman Schroeder** thanked everyone for their participation in the meeting, then adjourned the meeting at 2:40 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 21, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Stennett/Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- ANNOUNCEMENTS:** He stated that the unfolding saga of the wolves continues and there is a copy of a letter from Nate Fisher, Administrator of the Office of Species Conservation, in the blue folder. The letter explains that the new administration, within hours of taking office, issued a memorandum to all federal agencies "freezing" all pending rules. Mr. Fisher will keep the committee updated on the status of the rule.
- The Chairman announced that Senator Coiner, Senator Brackett, himself and others received awards at the FFA banquet this noon.
- Also in the blue folder is an invitation to the Monsanto luncheon on Monday, January 26 from Suzanne Budge.
- MOTION:** **Vice Chairman Bair** said that he had reviewed the minutes of January 14 and found them to be correct and **moved** that the committee adopt them. The motion was **seconded** by **Senator Siddoway**. The **motion passed** by unanimous voice vote.
- WELCOME:** **Chairman Schroeder** welcomed the members of the Idaho Department of Water Resources Board and asked each of them to introduce themselves for the benefit of the new committee members. They are: Robert Graham - Bonners Ferry; Jerry Rigby - Rexburg; Claude Storer - Idaho Falls; Chuck Cuddy - Orofino; Vic Armacost - New Meadows; Leonard Beck - Burley; and Gary Chamberlain - Challis. Board member Terry Uhling was unable to attend. From the Department of Water Resources was Dave Tuthill, Director, and Hal Anderson, Administrator of Planning and Technical Services.
- The **Chairman** said that there are certain critical things that the Board does so that agriculture and industry and the productive sector of our



society can continue to function. He asked if any of those groups are in jeopardy because of our budget situation. **Board Chairman Rigby** responded by saying "not yet"; however, obviously, there are always needs. This year, the Comprehensive Aquifer Management Planning (CAMP) process is huge and they are trying to work out the intricacies of funding. The CAMP process is for the Eastern Snake Plain Aquifer which will stabilize, and hopefully, increase the flows from the aquifer. It brings together, by a dual track of litigation, stakeholders that are dedicated to the task and have come up with a plan that they believe for a short term and long term possibility of helping to resolve the aquifer.

**Senator Cameron** stated that last year, \$20 million was set aside for aquifer studies, but the Governor has requested that \$12 million be pulled back. He then asked the Board as to what effect that would have on those studies. **Chairman Rigby** deferred that question to Director Tuthill. **Director Tuthill** said that this year's appropriation is approximately \$2.7 million and it will be used in three basins -- \$700,000 in the Eastern Snake Plain Aquifer, with the remaining money spent between the Treasure Valley Aquifer and the Rathdrum Prairie Aquifer. The Director said they are nearing the end of year one, with three years remaining. The \$8 million remaining in the fund is sufficient to cover the present priority basins, but will not allow them to go forward with the next priority basins which are the Big Wood and Palouse.

**Senator Cameron** inquired as to how to keep the CAMP process moving forward without any money and stated that the Board was given other money (CREP money and other funds). He asked how much of that money is available and can it be earmarked for moving the CAMP process forward? **Chairman Rigby** deferred that question to Director Tuthill and Mr. Anderson. **Director Tuthill** stated that the funding issue is critical and they have focused on potential opportunities using existing funding for CAMP. The Board has assets and the question is -- will those assets be enough? The Director said that they are not seeking any funding from the general fund. **Mr. Anderson** said the Legislature has appropriated moneys in the past to the Water Board for Eastern Snake Plain activities. One was the acquisition of Pristine Springs. There was a loan to the ground water districts to acquire the Springs and revenue will be coming in from the repayment of that loan. As proposed now, the plan that the Board will be considering is an annual need of \$7 to \$10 million. This would be 60 percent coming from the water users and 40 percent from the state. The state's part would be \$3 million. **Senator Cameron** asked if a statutory change would be needed in order to utilize some of the money that has already previously been granted to the Water Board for use in the CAMP process. **Director Tuthill** said that they are looking at statutory provisions. With regards to the Governor taking some of the money now, he is looking at a brighter day in the future to continue with the CAMP process and intends to reestablish funding. He is not abandoning the project.

**Senator Werk** inquired as to the duties of the Board. **Chairman Rigby** said that the Board is a constitutionally created board and can hold water rights and create laws. The Board is independent of the Department, but they work hand-in-hand with the Department and the Director.

**The Chairman** then asked Director Tuthill to describe his semi-quasi judicial role. **Director Tuthill** said the Department and the Board are separate; however, the Board originally started out with their own staff, but in 1974, the Department of Water Administration was melded with the Idaho Water Resource Board to become the Idaho Department of Water Resources. Since that time, the Department has provided staffing for the Board and Mr. Anderson serves as their Executive Director in terms of support. As the Director, Mr. Tuthill has responsibilities to make judgments on contested water issues and other issues that come forth. His decisions can be contested to District Court, so there is recourse. The Director makes decisions on the Board's applications, as well as the general public's applications.

**Senator Werk** then inquired about checks and balances involving the Board, Department, and Legislature. **Chairman Rigby** said there are checks and balances in place. **Chairman Schroeder** pointed out that the Water Board members are appointed by the Governor. **Senator Siddoway** stated that the Board members are subject to confirmation by this committee and the Senate.

**Senator Coiner** asked about the draft of the CAMP process. **Chairman Rigby** said that the stakeholder committee submitted it back to the Board and the Board sent it out for public comment in three locations. One of the areas that is not defined is the funding. When the Board accepts the draft, it will be sent to the Legislature.

**Chairman Schroeder** asked the Director to comment on the dam feasibility studies. **Director Tuthill** said that his interest is not so much in a specific dam, but in the process by which a community decides if there is enough infrastructure. The environmental aspect is being well represented. He stated that what they are looking at initiating is the discussion on what additional infrastructure is needed.

**Chairman Schroeder** then asked **Chairman Rigby** to comment on the interstate issues and the water going out-of-state. **Chairman Rigby** said that with the Basin planning and the studies that we are doing, other states are realizing that they can't assume it will come their way. A strong state-wide plan is definitely needed.

**The Chairman** then asked each board member to highlight areas of interest in their region.

First to respond was **Mr. Chamberlain, Challis**. Mr. Chamberlain said they have some funds that they will use to fix some problems caused by irrigators over the years, doing stream channel repairs and getting rid of diversions that impede fish passage. He is encouraged by the support of the committee for the Snake River Plain.

The rebuilding and enlargement of the Minidoka Dam and the CAMP process are the two main interests of **Mr. Beck, Burley**.

**Mr. Armacost, New Meadows**, said that he is concerned with the ice in the Weiser River. He also worked on a study regarding a project on the

Lower Weiser River called the Galloway Dam. He thinks it would be a good storage site for the State.

**Mr. Cuddy, Orofino**, feels that the aquifer study and how they negotiate with the state of Washington is the most important issue in his region. The second thing is water storage for the future and feels that is something that really needs to be considered. If enough water can be stored to take care of the downstream fisheries issue, that will free up water in the eastern part of the state, and that will enhance the economy of the whole State.

**Mr. Storer, Idaho Falls**, said his concern is the aquifer and feels that there may not be a solution in time. A funding solution is needed to go ahead.

**Chairman Rigby, Rexburg**, said that he had nothing more to add.

**Mr. Graham, Bonners Ferry**, feels the economy is the biggest problem. Water wise – water in Idaho was not an issue, but the last two years, it has become one.

**Senator Coiner** inquired as to what is the annual water deficit of the ESPA. **Mr. Anderson** replied that it is 30,000 to 100,000 acre feet per year and it is impacting our water users.

**Chairman Schroeder** thanked the Board for attending today's meeting.

**ANNOUNCE-  
MENTS:**

He announced there would be no meeting Friday. Rules will be heard on Monday. At 7 a.m. on Wednesday, January 28, the Parks and Recreation Board will be in attendance and the Fish and Game Commissioners will be at the 1:30 p.m. meeting.

**Vice Chairman Bair** announced to the committee that if they feel a rule needs to be reviewed next week, let him know so that the appropriate agency can be notified.

**ADJOURN:**

The meeting was adjourned at 2:45 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 26, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER AND ANNOUNCEMENTS:** **Chairman Schroeder** called the meeting to order at 1:30 p.m., then made the following announcements: Handouts in the blue folder include minutes; a report from the Idaho Forest Products Commission; and a memo from the Chairman regarding S1002 which he would like reviewed, then respond to him.
- MOTION:** **Senator Siddoway** said that he had reviewed the minutes of January 19 and found them to be in order. He made the **motion** that they be accepted. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.
- RULES:** **Chairman Schroeder** turned the meeting over to Vice Chairman Bair, who chairs the Rules Review.
- Vice Chairman Bair** said there were a number of people from out-of-town wishing to testify on the Department of Water Resources Well Construction Standards Rules, Docket number 37-0309-0601. He told them that he would accommodate them so that they would avoid making a second trip to testify.
- Docket 37-0309-0601:** Following is a concise explanatory statement of the reasons for adopting the pending rule: There have been no substantive changes in the Well Construction Rules since 1988. Updates to the rules are necessary to protect the ground water resources of Idaho from waste and contamination. The Department has used an extensive two-year long negotiated rulemaking process to facilitate the development of the proposed rules.
- Mr. Dave Tuthill, Director of the Department of Water Resources**, presented the rule. He stated that the rules had not been updated for 20 years and that they have worked long and hard. This pending rule has been endorsed by all the major stakeholder groups that participated. No

negative written comments were received during the comment period, September 3 through September 24. The Director feels the rules are necessary and asked that the stakeholders speak for themselves.

Portions of the rules undergoing the greatest revision include: 1) Better and more comprehensive definitions; 2) clarification on the minimum requirements for all wells; 3) increased minimum standards on steel casing wall thicknesses; 4) specific provisions and allowance for the use of thermoplastic pipe (PVC) as casing and/or liner with out having to obtain a waiver for each instance; 5) requirements for more effective annular seals to prevent contamination, aquifer commingling, and loss of ground water; 6) increasing the minimum surface seal depth from 18 to 38 feet; and 7) improved standards and methodology concerning well disinfection, to protect public health and safety.

**TESTIMONY:** **Mr. Norm Semanko, Executive Director of the Idaho Water Users Association, Inc.**, testified in support of the rules and provided a background on the process. He stated that the rules are a product of good faith, as well as a negotiated process.

**TESTIMONY:** **Mr. Edward Squires**, Boise, owns a small business and is representing himself and his clients. He is in favor of the rules, but feels they don't go far enough; however, it is a step in the right direction.

**TESTIMONY:** **Mr. Roger Dittus, P.G., Hydro Geologist, United Water Idaho, Inc.**, was next to testify. A copy of his testimony is inserted into the minutes.

Mr. Chairman and members of the Committee:

United Water Idaho supports approval of the revised rules for well construction. United Water is the largest water provider in the State of Idaho, supplying water to the City of Boise and surrounding areas. United Water's 80-plus supply wells are the primary source of supply for over 83,000 customer connections serving over 240,000 customers.

Nearly 70 percent of our source of supply is groundwater, and the remaining 30 percent is surface water from the Boise River. It is groundwater, and protecting that resource, that I'd like to address today.

As a state dependent on good quality groundwater, it is important that all reasonable steps be taken to protect this resource. In United Water's opinion, the most critical improvement to the well construction rules relates to language aimed at adequate well sealing, i.e. reestablishing the continuity of confining strata disrupted during the drilling process. United Water takes care to design wells that will not compromise the aquifer and our current well construction practices are in agreement with those in the proposed rules.

Adequate well sealing prevents commingling of ground waters of differing quality, waste of groundwater, and inhibits the spread of contaminants. Because each hole drilled into the aquifer is a potential pathway for contamination to a common source, every well should be constructed with protection of the resource in mind.

United Water appreciated working with stakeholders during the negotiated rule making process and believes that the proposed rules clarify several important aspects related to well construction. Approval of the proposed rules will result in improved protection of Idaho s aquifers, our primary source of drinking water.

Mr. Chairman and members of the Committee, I appreciate this opportunity to testify today and to support these proposed rules.

**TESTIMONY:**

Inserted into the minutes is a copy of the testimony of **Mr. Henry Baker, Burley, President of the Board of Directors of the Idaho Ground Water Association.**

Mr. Chairman and Committee members:

You are aware there have been no substantive changes in the well construction standards in the last 20 years. The Idaho Department of Water Resources (IDWR) and the Idaho Ground Water Association (IGWA) and other stakeholders have been aware of needed updates and changes for the last 19 of those years. There is now sufficient evidence to prove beyond any doubt there are contaminated aquifers and there are inadequately sealed wells contributing to that problem. Some of these contaminating wells were not drilled to current standards and some are. IDWR is saddled with the responsibility of having in place well construction standards that will protect the state s groundwater against waste and contamination. Mr. David Tuthill and the IDWR staff has indicated this worsening condition and this unpopular subject has been put off too long and needs to be corrected now, not later. The IGWA board of directors agrees with Mr. Tuthill. We, the IGWA board and other stakeholders, have worked for the past two years to pound out changes to the current construction standards that would better protect the groundwater. The cost of construction verses the protection gained has been a hotly contested issue for two years. You need to know that we have come to an agreement. The proposed changes to the construction standards are livable. The least expensive and shallowest well they drill costs somewhere in the \$3,000 range. For a deeper well, in the \$12,000 range, the new rules would increase the cost between \$300 and \$500 more. The changes will not force any drillers out of business. They may elect to cease drilling. But if they think that these new rules will force

them out of business, they need to hear and believe what Albert Einstein had to say about this situation.

He said, "For every difficulty, there is an opportunity". Everyone needs to look for the opportunities in this difficulty, especially those with the fear, real or imagined, of being forced out of business. There is no doubt about the drilling industry being the most imaginative, inventive, innovative, and doggedly persistent, if not dog-eared group of craftsmen there exists. You can be confident that we will find the opportunities. We have the ability to not only find a way to do the task necessary, but we will think up and develop ways to do it easier, faster, more efficiently and less costly than we now envision this task. You have heard it, "Necessity is the Mother of Invention." I know this adage is true. I've seen it, I've done it and I am doing it now in my business. It's our way of life. That is how every driller makes his living. If he can't be successful drilling wells with the new standards in place, he just needs to be enlightened regarding the opportunities.

Which brings up another brief subject. The IGWA conducts three workshops throughout the state every year. Every driller is required by the state to attend sixteen hours of instruction every two years regarding the rules and regulations related to the drilling industry. As the president of the IGWA, I am absolutely committed to seeing that every driller has the opportunity to learn how to be more successful in his profession. His attitude and thinking process may need some minor alterations, a tune-up if you will. If you always think what you always thought, you will always get what you always got. So, basically, our success or failure lies in our attitudes and what lies between our ears and not in the proposed changes in the well construction standards. In conforming to the new standards we will discover new procedures, new techniques, and build the tools to not only get the job done, but do it easier, faster and more economically than we presently think. In the process we will be better businessmen, more capable drillers and more successful. We will discover the opportunities Einstein mentioned.

The wells which were drilled 100 years ago are now beginning to fail. The wells we are going to drill, we expect to last much longer. The casing has twice the thickness and will be properly sealed. To the consumer, the extra cost to properly construct their new well will be small indeed, compared to the benefit of having excellent water for the next 100 years. Ask the housewife if she would be willing to pay a little extra for the increased protection for not only her water; but also that of the aquifer; and listen carefully to her answer.

Passing the proposed changes to the construction standards may be

difficult for some, but the opportunities and benefits are plentiful. If this body leads out, the IDWR and the IGWA will educate the drilling industry as to its opportunities and everyone in Idaho wins. Let s do it now!

The new standards also provide for better understanding of what is required and provides for better enforcement which helps level the playing field for the drillers.

Just in case there is anyone here who thinks I am off base, out in left field or just full of hot air, you are invited to discuss Henry Baker with Senator Denton Darrington. You all know who he is.

**Vice Chairman Bair** asked Mr. Baker how these new rules, with extended casing and surface sealing issues, will apply to existing wells. For example, a farmer has a deep well - 300 to 400 feet deep - and it has been in for some time and needs to repair it. He asked if this person would have to pay extra to have the casing extension done. **Mr. Baker** said to answer the direct question, the answer is no; however, it depends on the circumstances. If an old well seal is disrupted, it needs to be put back to the standard that was required by the law at the time when it was constructed originally. **Vice Chairman Bair** said that his understanding of these rules will not apply to existing wells. **Mr. Baker** said that was correct. **Vice Chairman Bair** then inquired about the extra 20 feet of casing that is being proposed to be required. He asked what scientific evidence they have to improve anything over 20 feet? **Mr. Baker** deferred that question to Tom Neace.

**TESTIMONY:** **Mr. Tom Neace, Geologist, IDWR, and manager of the Ground Water Protection Section**, testified. Inserted into the minutes is a copy of his testimony.

### **Geology Based Sealing Evaluation**

Mr. Chairman and Committee members:

Through the negotiated rule making process, professional drillers in Idaho requested that changes to sealing requirements of the Idaho Well Construction Standards be based on geology. By evaluating a representative sample of official records submitted by Idaho s professional well drillers it is clear that improvements in well sealing should be based on geology.

Six hundred ninety seven (697) drillers reports from 44 counties in Idaho were randomly selected from the publicly available well log data base and were evaluated to determine the adequacy, based on geology, of the



existing minimum required eighteen (18) foot surface seal and the proposed thirty eight (38) and fifty eight (58) foot seal (see attached figure).

Surface seals based on geology require that a suitable confining layer or consolidated formation is encountered in the bore hole within the interval the seal material is placed. Drillers reports were used to establish the depth at which the top of the first confining layer or consolidated formation is encountered and their relative thickness.

Of the six hundred ninety seven (697) wells evaluated only two hundred eighteen (218) encountered the top of the first confining layer or consolidated formation within eighteen feet. Two hundred thirty eight (238) wells encountered the top of the first confining layer or consolidated formation below eighteen feet and above thirty eight feet, and one hundred nine (109) wells encountered the first confining layer or consolidated formation below thirty eight feet and above fifty eight feet. One hundred thirty two (132) of the wells evaluated are currently sealed to depths in excess of fifty eight feet or would require sealing to greater than fifty eight feet.

Based on this evaluation, only two hundred eighteen (218) of the six hundred ninety seven (697) wells evaluated are effectively sealed within eighteen (18) feet of land surface. By increasing the minimum required seal depth to thirty eight (38) feet, an additional two hundred thirty eight (238) wells would be effectively sealed for a cumulative total of four hundred fifty six (456). By increasing the minimum seal depth to fifty eight (58) feet an additional one hundred nine (109) wells would be effectively sealed for a cumulative total of five hundred sixty five (565).

Based on geology, only thirty one percent (31%) of the wells evaluated are effectively sealed within eighteen feet. By increasing the minimum required seal depth to thirty eight (38) feet, sixty five percent (65%) of these wells would be effectively sealed, and increasing the minimum required seal depth to fifty eight (58) feet would benefit eighty one percent (81%) of these wells.

Mr. Neace provided two handouts to the committee. (1) A graph on the number of wells, seal depth, and cumulative effective seal depth based on geology and (2) a map of Idaho showing Fecal Coliform, e. Coli, and Nitrate Contamination in Production Wells between 1990 and 2008.

Mr. Neace said that in order to keep the aquifer pristine and to protect our precious resource, he recommends that the new rules be passed and the seal depth be increased.

**TESTIMONY:** Inserted into the minutes is the testimony of **Tom Richardson**.

My name is Tom Richardson. I am president and owner of H<sub>2</sub>O Well Service Inc. We employ about twenty five people and make our living drilling wells and installing pumps in the Coeur d Alene and Spokane area. Our office is located at 582 West Hayden Avenue in Hayden Lake. I currently serve on the board of directors for the Idaho Ground Water Association and the Drillers advisory board for the State of Idaho. For the last two years, we have been working with the Department of Water Resources on revising the rules that govern our industry and think that we have come up with a good set of rules that will protect our resource and let us run our business.

The new rules provide:

- Better definitions.
- More detailed construction requirements for all wells for the protection of the resource.
- Allowance for the use of PVC pipe as liner or casing in a water well.
- Increased surface seal depth from 18 feet to 38 feet for added protection against surface contaminants.
- IDWR notification for surface seal installation for better compliance.
- Well sighting and separation distances that will coincide with the DEQ & Health Department regulations.
- Deeper sealing requirements to stop the transfer of water from multiple aquifers.

These rules provide for the continuing protection of Idaho s most valuable resource, our water. Please vote in support of these regulations.

**TESTIMONY:** **Mr. Sylvan Adamson, Domestic Pump and Well**, and a driller for the last 35 years, was next to testify. He stated that these rules will greatly help the driller as they clarify the vagueness in the old rules. Rules are the first line of defense against contamination and contamination is one of the drillers' biggest worry. He is in support of these rules.

**TESTIMONY:** **Mr. Roger Buchanan, Andrew Well Drilling Service, Inc., Idaho Falls**, testified. Inserted into the minutes is a copy of his testimony.

Mr. Chairman and Committee members:

The proposed rule changes for well construction standards will protect Idaho s underground water resource. The new rules are more specific, easier to understand, and ultimately easier to enforce than the current set. One of the biggest advantages of the rules is that they are more specific and get rid of the ambiguity that is currently present. Specifically, the rules give added clarification on how they are to be interpreted in day-to-day

well construction. For example, the new rules strengthen the language on sealing procedures. This is important because the potential for contamination of our water resource increases when the seals are done poorly.

There has been a great deal of debate surrounding the proposed rule changes. One of the most used arguments against the implementation of the rules is that they will be an extremely costly endeavor and may put some contractors out of business. I believe this to be an exaggeration by contractors that are resistant to change that will modernize well construction. While it is true that there will be some added cost, it will not be a prohibitive amount. In most cases the increase will range from negligible to very small percentage of increase.

In addition to increasing the cost of doing business, another argument against the rules has been that the rules will greatly slow down the construction of wells due to additional requirements that allow the Department of Water Resources to inspect the installation of seals. The proposed well seal notification can be submitted up to 4 hours before placing the seal. This provides much greater flexibility than in other existing codes that require notification of up to 48 hours prior to installation. Additionally, the new standards clear and concise language could help to save time for well contractors. An example of a time saving procedure is the elimination of the need for application for some common waivers. Currently, well drillers must get a waiver before using PVC piping as a well liner. The new rules provide clear standards and procedures that allow drillers to use PVC without the time consuming task of applying for waivers.

After all of the arguments are considered, I believe the added protection that these rules provide the water resource is worth the minimal impact of time and money. Ultimately these concise and standardized rules will prove to be beneficial for consumers, the well drilling industry, and the water resource that we all rely on. I ask that these rules be approved for the benefit of present and future users of one of Idaho's most precious resources.

During the committee discussion, **Senator Siddoway** indicated that he could not support the rule and doesn't feel that a "one size fits all" rule is appropriate. **Senator Pearce** also had some misgivings regarding the rule.

**Senator Coiner** stated that he feels the Department of Water Resources has done a good job and has come up with a rule that will be acceptable

to all parties.

**MOTION:** **Senator Werk** made the **motion** to accept Docket 37-0309-0601. **Senator Coiner seconded** the motion. The motion **passed** by a majority voice vote. **Senator Pearce** asked to be recorded as voting nay.

**Docket 37-0301-0801:** **Director Tuthill** presented this rule in the absence of Donald Shaff, who is out-of-town. He was assisted by **Gary Baxter**, Deputy Attorney General for the Department.

The rule change is necessary to make the rules consistent with 2006, 2007, and 2008 legislative amendments to Chapter 14, Title 42, Idaho Code, update outdated citations to Idaho Code, and reduce number of claim forms from two to one. The rule change itself does not have a fiscal impact, but will result in a negative impact on the fees collected by IDWR's adjudication programs. (The 2008 Legislature lowered the fees for filing a claim in adjudication.)

These rules provide the opportunity for online claim filing and online payment. To date, the Department has not received any comments from the public.

There was no one signed up to testify.

**MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 37-0301-0801. **Senator Siddoway seconded** the motion. The motion **passed** by unanimous voice vote.

**Vice Chairman Bair** (chair of the Rules Committee) turned the meeting back to Chairman Schroeder.

**ANNOUNCEMENTS:** The **Chairman** reminded the Committee that there is a 7 a.m. meeting Wednesday with the Department of Park and Recreation Commissioners. A confirmation hearing will be held for Randal Rice, providing there is a quorum.

At the regular 1:30 p.m. meeting, the Idaho Fish and Game Commissioners will be in attendance. Dr. Wayne Wright and Gary Power will have their confirmation hearing at that time.

**ADJOURN:** **Chairman Schroeder** adjourned the meeting at 2:50 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** January 28, 2009
- TIME:** 7:00 a.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** Senators Cameron, Pearce, and Coiner
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Chairman Schroeder** called the meeting to order at 7:00 a.m. He announced that **Senator Siddoway** provided the rolls, doughnuts, and orange juice for everyone's enjoyment.
- He welcomed the **Board members of the Idaho Department of Park and Recreation. They are Steve Klatt, Randal Rice, Ernest Lombard, Latham Williams, Jean McDevitt, and Douglas Hancey.**
- He also welcomed House members – **Chairman Stevenson, Chairman Wood, and Representative King.**
- CONFIRMATION HEARING:** The **Chairman** invited **Randal Rice** to speak to the committee. Mr. Rice is from Moscow and is being **reappointed to the Park and Recreation Board. His term is from June 30, 2008 to June 30, 2014.**
- Mr. Rice** said that the Board has done a number of positive things the past few years and there are projects that are not completed. He would like to continue to serve on the Board to see the completion of those projects. Two of the projects are the Heyburn State Park and issues on leases with homeowners and cabins in the Heyburn area. With the initiative that provided capital money the past two years, he feels they have utilized those funds in an efficient manner.
- Mr. Rice** provided some background information. He retired after 30 years of being the Parks and Recreation Director with the city of Moscow and feels that he brings a unique perspective to the Board. He has dealt with many of the similar issues that are dealt with at the state level. Mr. Rice said that he thought long and hard about seeking reappointment and the reason he decided to is to allow the continuation and completion of the projects that have been started by the Board. He stated that the Board is diverse and he enjoys working with all the members. It also

allows them twice a year to go to different parks throughout the State and visit with the staff doing the work in the field. One of their biggest challenges is to face the funding issue and he would like to be a part of that as he feels that he can be a positive influence.

**Senator Bair** asked Mr. Rice to explain how he and the Board and the Department will deal with the reductions that will affect their capital expenditures. **Mr. Rice** said that they knew this was coming, so they are not unprepared. They have prioritized projects through the capital improvements network and have spent many hours looking at long-range planning issues. They want to minimize the impact of the cuts. **Senator Bair** then asked how the budget reductions will affect the day-to-day operations of campgrounds. **Mr. Rice** said that many of the campgrounds are part of an over-all operation that relies on the general fund. The Department, through their self-generating revenue, raise 60 to 65 percent of their revenues. One of his goals is to do what they can to improve their ability to self-generate revenue. He feels they need to market the Department better.

**Senator Siddoway** inquired as to the projections for the use of the state parks because of the recession. **Mr. Rice** said that they have looked at that and their latest data shows that the attendance has been fairly level this past year. It indicates to them that people are not traveling as far or maybe getting more people from closer areas. He said that with gas prices dropping and the revenues staying fairly stable, they have chosen to take an optimistic point of view because they have a great service to offer. **Senator Siddoway** then asked what the cuts of the budget entails, such as which projects will progress or be eliminated and will there be loss of personnel. **Mr. Rice** responded by saying the Board talked about that in their meeting yesterday and they will continue their talks. They don't anticipate losing any personnel with the 2009 budget; however, the 2010 budget could result in affecting some employees. At the present time, it is the consensus of the Board, instead of doing piece meal across the board budget cuts, they will look specifically at programs and services. With the Governor's proposed budget, the Department will experience a \$9 million reduction in their general fund, which represents half of their general fund.

**Mr. Rice** thanked the Chairman and committee for the opportunity to speak to them.

**SLIDE SHOW:**

**Mr. Dave Ricks, IDPR Management Services Division Administrator**, said the Mission Statement of IDPR is: "To improve the quality of life in Idaho through outdoor recreation and resource stewardship." He then presented a six minute slide show, showing the projects that have taken place the past two years. Many of the construction accomplishments has been fixing/improving what they currently have.

Some of the projects were:

- \* New employee housing at Priest Lake
- \* Renovation or replacement of 38 restrooms
- \* New docks at Priest Lake Indian Creek
- \* New docks, pilings, and breakwater at Farragut Eagle Boat Ramp

- \* Marina electrical work at Hells Gate State Park
- \* New docks at Winchester State Park
- \* New moorage docks at Higgins Point
- \* Renovated boat parking and new docks at Ponderosa State Park
- \* Renovated boat parking and docks at Cascade State Park
- \* New docks at Lucky Peak Spring Shores
- \* Boat ramp at Lake Cascade Van Wyck
- \* New pilings and dock at CDA Parkway State Park at Higgins Boat Ramp
- \* Road work at Bruneau Dunes, Henrys Lake, Castle Rocks, Bear Lake - North Beach, Bear Lake - East Beach, Lake Walcott, Farragut, Ponderosa, and Lake Cascade
- \* Re-roofing on 32 facilities in State Parks - Lucky Peak, Hells Gate, Dworshak, Heyburn Farragut, Priest Lake, and Harriman

Miscellaneous repair projects:

- \* Replacing failing drain fields with land application system at Farragut
- \* Replacing failing drain fields with land application system at Heyburn
- \* Replacing failing drain fields at Round Lake
- \* Sewer Line relocation at Massacre Rocks
- \* Water line to shop building at Lucky Peak
- \* Irrigation system at Sugar Loaf - Lake Cascade
- \* Water tank replacement at Bear Lake
- \* Playground equipment replacements at Dworshak, Heyburn, Farragut, and Lake Walcott
- \* Water pump and controls for water slide renovation at Eagle Island

New facilities:

- \* Welcome Centers at Heyburn, Winchester, and Ponderosa
- \* Bridge over the north channel at Eagle Island
- \* New lodge at the Scovel Center; renovation of Harriman Cottage, Jones House, and old bunkhouse at Harriman
- \* New campgrounds at City of Rocks - Smokey Mountain Campground
- \* 60 campsites at Ponderosa
- \* Gilmore campground at Farragut
- \* 30 campsites at Lake Cascade - Van Wyck to be completed 2009

**INTRODUCTION OF THE BOARD:**

**Chairman Schroeder** then asked each Board member to introduce themselves for the benefit of the committee.

**DISCUSSION:**

**Chairman Schroeder** said there are two issues that have attracted attention – alcohol and guns – a rule on alcohol and your efforts to comply with state law on gun regulations.

Responding first was **Mr. Klatt**. He said that according to the statutes of Idaho, they do have the ability to regulate the sale of alcohol in the state park system. **Mr. Williams** stated that the Board has been very careful about how the authority is administered. They do not give blanket authority to park managers or regional managers, as the authority rests solely with the Board and the Director. He also said that they review every application that involves alcohol.

Speaking to the gun issue, **Mr. Klatt** said that the Board feels that the open display of weapons is not appropriate in the general campground



setting. He said that they are not opposed to the rights of individuals to have weapons, but in the past, it has been the display of weapons they have objected to in a campground setting. Hunting is allowed in six of the state parks and he personally feels they can review and expand more hunting in parks around the state. He apologized for the Board not addressing a rule as soon as they should have that was in conflict with state law.

**Chairman Schroeder** said that Mr. Klatt explained to the committee where the statute authority lies with respect to alcohol. He then asked Mr. Klatt to express his understanding of where the statutory authority lies with respect to gun regulations. **Mr. Klatt** said the statutory authority rests with the state of Idaho, meaning the Legislature, and he stated that they haven't disputed that. What they would like to be able to do is to address, through the rules, is a display of weapons in a campground setting. **Chairman Schroeder** asked if that authority is now given to them by statute? **Mr. Klatt** said it is not, but legislation has been prepared addressing that issue. **The Chairman** advised Mr. Klatt that the legislation is now resting in his desk drawer and needs to be reworked before any action will be taken.

**Representative King** inquired about what is being done now when someone displays a firearm in a campground – do they receive a “talking to” or is the firearm confiscated? **Chairman Schroeder** said there is more than display. Discharge is involved also. **Mr. Klatt** deferred Representative King's question to Director Meinen. **Director Meinen** said that what they are looking for is safety within a campground and finding a balance where people can have their firearms. **Chairman Schroeder** said that some of the historical proposals from Park Service has caused suspicion in the past, with respect to concealed weapons. He stated that what he is trying to accomplish is to have a state law on firearm possession so that a state agency or municipality cannot obliquely ???? on gun ownership. The Chairman said the Legislature is going to be very careful regarding this issue and if they give the Park Department authority to regulate discharge, they can, in a sense, give de facto authority to stop hunting seasons in parks because a firearm cannot be discharged, even though Fish and Game has a hunting season there. Chairman Schroeder said that he didn't want the Department to have that authority in areas where hunting seasons have been established. He asked the Director to spell that out in the language of his legislation, so that some future Director or Park Board doesn't use vague language to say that they have the authority to regulate discharge. **Mr. Klatt** asked to address Representative King's question as to how the Department now handles a display of firearms in a campground. He said they ask the person to put the firearm away and they do not confiscate it.

**House Resources Chairman Stevenson** said his question is regarding the policy on alcohol in the parks and are counties involved? **Mr. Klatt** said that having been a county commissioner, counties are involved, and the county issues an off-premise catering license. **Ms. McDevitt** stated that the Board issues permits, not the license for liquor. **House Transportation Chairman Wood** expressed concern about the alcohol

issue. She said the Transportation Department spends a large amount of money for highway safety on the problem of alcohol on the highways and it disturbs her knowing that people can drink in state parks, then be on the highways. She stated that in Idaho Falls parks, there have been problems and now alcohol is banned.

**Senator Siddoway** inquired if the Board's obligations for the Special Olympics is on target. **Mr. Williams** responded by saying yes. **Director Meinen** said that they have been heavily involved since the beginning and will be hosting games at Ponderosa State Park. He feels it is a very worthwhile event to be involved in.

**Senator Brackett** asked about Bayhorse. **Mr. Lombard** said it is progressing very well and they have been working hard to address the issues of the ATV community.

**Senator Werk** complimented the Board regarding the Visitors Center at Yankee Fork.

**The Chairman** asked Mr. Rice to comment on the land trade at McCroskey. **Mr. Rice** said there is a proposal on the table for a land swap under state ownership. Local residents have some concerns and have asked the Board to proceed with caution. The land involved is on the Upper Lochsa, which was formerly Plum Creek. This is to be traded to the Forest Service, as well as some land in the Palouse Ranger District, some adjacent to McCroskey, and it has created much interest. "Friends of McCroskey", a local organization, has been invaluable to the Department with assistance and they are concerned about it. **Mr. Rice** stated that one of the Board's goals is to protect access.

**Chairman Schroeder** thanked the Board members for their attendance and remarks and stated that the issues can be worked out together.

**ADJOURN:**

He then adjourned the meeting at 8:05 a.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** January 28, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

While waiting for a quorum of committee members, **Chairman Schroeder** held an informal discussion with the members of the **Idaho Fish and Game Commission**. **Members are Tony McDermott, Fred Trevey, Bob Barowsky, Wayne Wright, Randall Budge, Cameron Wheeler, and Gary Power.**

**CALL TO ORDER:** **Chairman Schroeder** officially called the meeting to order at 1:45 p.m. He said there would be two confirmation hearings this afternoon. He asked each candidate to tell why they feel that they should be reappointed and called on **Dr. Wayne Wright** to speak first.

**CONFIRMATION HEARING:** Dr. Wright's bio contains the following information:

He is from Twin Falls and is the commissioner representing the Magic Valley Region and is also the current chair of the Commission.

**Dr. Wright** is retired after practicing medicine in the Magic Valley for 28 years. He is a fifth generation Idahoan born in Castleford. A lifelong Republican and avid sportsman, he considers his appointment to be a "real privilege". The bio stated that "hunting and fishing are part of our heritage. Our wildlife is so important and I want to preserve it for our kids and grandkids. I think that is very important for the future of our state."

He and his wife Joanne have been married for 36 years and have three grown children and three grandchildren.

**Chairman Schroeder** asked Dr. Wright to respond as to why he should be reappointed.

**Dr. Wright** said that he would like to be reappointed because he has a love for the job and appreciates the opportunity to work with a great staff

of people. One of the reasons he wanted to do this to begin with is because he thinks our wildlife is our heritage. He feels we are blessed, in spite of the issues, and there are critters to take care of. Dr. Wright said that he feels all the commissioners are on the same page, doing a tremendous job, and would like to continue working with them.

**Senator Brackett** asked Dr. Wright what tasks would he like to see finished that were started in his previous term? **Dr. Wright** said that two issues he would like to see resolved is to preserve habitat and maintain access. Access is being lost up North and in the Magic Valley.

**Senator Cameron** feels maintaining access is a laudable goal. He said that earlier this year he met with some private landowners and large corporations that are willing to consider access, but at a price. He asked Dr. Wright what should the legislature be doing to prepare having that access? **Dr. Wright** said that was a tough question, but the most obvious answer is money. He feels they need to look at creative ways to generate dollars for access. **Senator Cameron** then asked if access should be tied to landowner permits or depredation tags? **Dr. Wright** said yes and that there is a big push in Magic Valley to do something about LAP. Also important is to show our landowners some appreciation for what they do. For example, provide help to landowners for water troughs. A pilot committee is being put together to address the issue on access and landowners and he would like to see Magic Valley be the emphasis on what they do with LAP. Dr. Wright said that unit 45 has a huge problem and it needs fixed. **Chairman Schroeder** said the timber companies up North are not interested in landowner permits. **Senator Cameron** said that he was not implying that the landowner permit would be the remuneration. He is aware of situations in Magic Valley where landowners are allowing access on part of their parcels, but denying access on other portions, and feels this is an abuse of the landowner permits. He said that he was merely asking if they connected.

There were no more questions for Dr. Wright.

**CONFIRMATION  
HEARING:**

**Mr. Gary Power**, of Salmon is the commissioner representing the Salmon Region and is the current Vice Chairman of the Commission.

He retired in 1998 after a 28 year career with Fish and Game. After graduating from the University of Idaho with a degree in zoology, he started as a conservation officer in Yellow Pine. He ended his career as the regional supervisor in the Salmon Region.

Since retiring, he has supervised and participated in a research project in game management unit 28, studying the relationship between predators and their big game prey as part of a masters program for UI. He serves as the county representative on the Forest Service Resource Advisory Committee and guides on the Salmon River.

**Mr. Power** said that he would like to be reappointed and that the last four years have been enjoyable, for a lot of the same reasons that Dr. Wright mentioned. As a Commission, he feels they have moved forward quite well.

He stated that he has a rural background and has been around wildlife all his life, thus blending the two together. In the Salmon area, one of the things they need to do is to work on communication. The model watershed project was started with the agricultural industry, then other agencies became involved with positive things being done, such as stream re-connects and improved water quality. Mr. Power stated that this is done through communication and cooperation.

**Chairman Schroeder** said there is an employee in the Salmon office that uses a chain saw on the elk antlers that Fish and Game puts in the auction. The Chairman said that he has not found any statute authority for that employee to do that and asked Mr. Power to talk to him. **Mr. Power** said that he would.

**Senator Siddoway** said that his concern is with the Bighorn sheep versus domestic sheep and asked Mr. Power if he had a resolution to the problem? **Mr. Power** said there are issues on both sides, and they have worked through some of the separation issues; however, he doesn't like the Forest Service trying to trump what they are trying to get done. There is a lot of work being done regarding disease by Washington State University. **Chairman Schroeder** asked how the Forest Service is trumping the work? **Mr. Power** said it is essentially their removal of livestock off the range.

**Senator Cameron** stated that he had the opportunity to meet with some sportsmen in his area and the message that he heard from them was that they are willing to consider a fee increase if there is more opportunity to harvest animals or improved benefits. They are not supportive of a fee increase just to keep the same operation that we are currently operating under. He asked what kind of things did Mr. Power envision as to improving hunter opportunities to see and participate in taking of game? **Mr. Power** responded by saying that they can't continue to balance the Fish and Game Department on the backs of deer and elk hunters. They are the ones that are primarily paying the bill. He suggested outside funding to look at things in a broader concept. Mr. Power also said that as resources go down, then there needs to be more restrictions. The restrictions would apply, i.e., to the short season in the Salmon area and an unlimited controlled hunt for a week. They are also trying to improve habitat in some areas.

**Chairman Schroeder** said that he has asked Ms. Kiefer to obtain success rates in some of the other states.

**Senator Pearce** said that he would like to see the officers that are out in the field to be more positive and not quite so offensive. He asked if the role of Fish and Game officers will continue to enforce ATV licensing?

**Chairman Wright** said that the enforcement officer is the PR face of the Department and it is important that he does it with good public relations. However, they do have problems with ATVs and someone has to do the enforcement. He feels they need to take to heart the message Senator Pearce related. **Chairman Schroeder** added to the discussion by saying there may be some rookie officers that need some "seasoning", or there may have been lax law enforcement in an area, then someone comes in

and enforces the law. People perceive things differently.

**ANNOUNCE-  
MENTS:**

**The Chairman** announced that voting would take place Friday on the two Gubernatorial appointees. He also announced that this committee, at this time, does not need to be lobbied to support the fee increase of the Fish and Game Department. Chairman Schroeder said that they are allowing the process in the legislature to work.

He then asked each Commissioner to highlight the important issues in their region. **Senator Siddoway** requested that as each Commissioner speaks, if there are wolves in their area, that they address the issue, especially the numbers.

**DISCUSSION:**

**Mr. McDermott** said that he has been deeply involved in the 2008 Wolf Management Plan. The 500 to 700 number, set for wolves, was arrived at knowing it might not be the right number. There are now 830 wolves, but some are convinced the number is more like 1,200 wolves. The wolves have not been counted very well in the Selway and Frank Church areas because of the helicopter issue with the Forest Service. He also said that wolves are a topic of conversation at every meeting that he attends and the people feel that the federal government has broken its covenant with the state. On the other side, the environmental organizations want the numbers to increase to 2,000 to 3,000. Mr. McDermott said that having been embroiled in this for 20 hours a week for the last three years, he feels that numbers are a non-issue. The real issue is getting the wolves delisted and managing them. He stated that the Commission, when given the authority, will work very aggressively.

**Senator Siddoway** said that he hoped the Director heard it loud and clear and that it will be transmitted down through the ranks, so that there will be no mistake that when a livestock producer calls and reports there is a pack of 6, 8, or 10 in their area, they will be able to take whatever is necessary. **Mr. McDermott** said that the Commission gave clear guidance in November that they wanted aggressive action taken for the stock growers, wool growers, and cattlemen.

**Mr. Budge**, representing the Southeast Region, reported that in the southeast region of Idaho, they have not been impacted by wolves, but have had sightings near the Wyoming border. The elk hunting in his region is excellent and he has received virtually no complaints. The fishing is great with opportunities and variety and a lot of success. He feels their biggest challenge is managing mule deer and it is very controversial. Since the herd numbers crashed in the 80's, those numbers have not been achieved again. Mr. Budge said their challenge is to maximize opportunity and still have great quality, especially trophy hunting.

He stated that they do have habitat issues, along with a severe pelican problem, which is out of control. The pelican problem is centered around the Blackfoot Reservoir and it is having a devastating effect on their attempt to restore the fisheries in that area. Because they are a migratory species, there is not much they can do. Mr. Budge said they are working on a pelican management plan and hope to submit it to the Fish and

Wildlife Service to gain approval to manage the pelicans. He stated that he is hoping that they are not creating the next "wolf Issue".

Two other major issues they have in their district are a proposal of a dam near Preston and issues relating to phosphate mines. The issues with phosphate mines are new mines and dealing with the impact of selenium for past and future mining activities. He said these things are largely beyond their control, but will have a significant impact on wildlife, and that is their challenge, dealing with those impacts.

**Chairman Schroeder** said that the Monsanto Company held a briefing on their plans to control selenium. There were no questions from the committee for Mr. Budge. The Chairman then called on Mr. Wheeler

**Mr. Wheeler**, representing the Upper Snake Region, stated that an issue in his district is that the corridors of the North Fork and South Fork are full of white tail and there is a conflict between hunting and non hunting. The ranchers have up to 100 head of deer in their hay fields at night. Another factor is that people are interested in antlers so they do not want to shoot the females. It is difficult to find a solution that works for the people trying to make a living. Another issue is grizzly bears in the Upper Snake. He feels there is less flexibility with the bears than with the wolves. In some areas, the bears have decimated the moose, as well as ranchers are losing their livestock. There is no depredation in place for this problem, so people are on their own for their losses. In the Island Park area, they are feeling the effects of the wolves.

There were no questions for Mr. Wheeler.

**Mr. Barowsky**, representing the Southwest Region, spoke next. He said that a study is being done on the sage grouse in the Owyhees and they will soon have an answer on that. The growth factor in Ada and Canyon Counties is having an impact on the region. Also, on the Boise Front, the wolves have become a serious issue and he feels there will be a major decline in the elk herd. In the McCall and Cascade areas, the fishing is good, but the game herds are diminishing and indicated the 10(j) rule will be enforced. New Meadows is experiencing a population growth also and it is having an effect on the game herds. The Weiser Basin and Adams County has good fishing and an impact by the wolves. Big game animals seem to be picking up more in the Weiser Basin as compared to farther north.

**Mr. Trevey**, representing the Clearwater Region, said that they are blessed with critters, fish, and a huge amount of public land. In referring to the Lolo Zone and the 10(j) rule, Mr. Trevey said that it has taken a huge and expensive effort to accumulate the kinds of scientifically and statistically valid information in order to participate in an incredible bureaucratic process. This week they have radio collared additional elk, wolves, and deer. He was not sure if they were successful in collaring any moose. Mr. Trevey indicated that within the Department, they have to make an effort to have the kinds of information that people are hungry for. He feels the public is inundated with messages from both sides.

**Mr. Trevey** recently visited the community of Weippe where a family had donated land to the Department for a family fishing facility/pond. He said the enthusiasm of the people there did his heart good.

In closing, **Mr. Trevey** talked about the returning of the salmon from the ocean and the economic impact the salmon season has on their area.

There were no questions for Mr. Trevey.

**Senator Pearce** said that he would like to say that he feels Director Groen is working hard and he appreciates what Mr. Groen is doing. **Chairman Schroeder** also expressed appreciation of the Commissioners and what they do and also thanked them for appearing before the committee.

**MOTION:** **Vice Chairman Bair** made a **motion** for the approval of the minutes of January 21. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

**ANNOUNCEMENTS:** **The Chairman** announced that Sharon Kiefer, IDFG, provided four handouts. They are: (1) An inquiry about trout stocking program and pheasant stocking program; (2) Responses to questions during the January 14 meeting about wolves; (3) Legislative Briefing - Nongame Wildlife Program; and (4) Report on IDFG Temporary Employees.

He also announced that at the next meeting, committee consideration would be given to the Gubernatorial appointees and Rules would also be heard.

**ADJOURN:** The meeting was adjourned at 2:50 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** January 30, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** Senator Cameron

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.  
He said the first order of business would be for the committee to give consideration to the three Gubernatorial appointees that spoke last week.

**MOTION:** **Senator Werk** made the **motion** to accept and send to the floor for confirmation the reappointment of **Randal F. Rice** to the Idaho Department of Park and Recreation Board for the term of June 30, 2008 to June 30, 2014. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the floor **sponsor**.

**MOTION:** **Senator Brackett** made the **motion** to accept and send to the floor for confirmation the appointment of **Dr. Wayne Wright** to the Idaho Fish and Game Commission for the term of June 30, 2008 to June 20, 2012. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Brackett** will be the floor **sponsor**.

**MOTION:** **Senator Siddoway** made the **motion** to accept and send to the floor for confirmation the appointment of **Gary D. Power** to the Idaho Fish and Game Commission for the term of June 30, 2008 to June 20, 2012. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the floor **sponsor**.

The **Chairman** announced that Rules would be heard next and will be chaired by **Vice Chairman Bair**.

**DOCKET 13-0104-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs licensing. This rule allows a disabled applicant to self-certify that they are capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment; amend rules so that required

documentation in the disability license and motor vehicle permit rules are correctly referenced; and adopt a definition of 'physician;' amend the lifetime license application to streamline the process; adopt a rule to allow reasonable accommodations for persons with disabilities in special weapon hunts.

**Vice Chairman Bair** inquired if the Department had met with and visited with the groups that represent the handicapped and disabled. **Ms. Kiefer** indicated that they had and the groups were satisfied.

There was no one that testified in opposition to this rule.

**MOTION:** **Senator Werk** made the **motion** to accept Docket 13-0104-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0104-0802:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs licensing. This rule replaces the term "handicapped" with "disabled" to ensure consistency with governing law.

**MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 13-0104-0802. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0104-0803:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs licensing. She said they found a substantial error in this docket and requested that it be rejected.

**MOTION:** **Chairman Schroeder** made the **motion** to **reject** Docket 13-0104-0803. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0107-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs The Taking of Upland Game Animals. This amends the rule to ensure consistency in references to the Disabled Motor Vehicle Hunting Permit by striking the words "Handicapped Persons" and replacing with the word "Disabled".

**MOTION:** **Senator Werk** made the **motion** to accept Docket 13-0107-0801. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0108-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs The Taking of Big Game Animals. She stated that this is another docket in which they found an error. The Commission has requested that it be rejected.

**MOTION:** **Senator Pearce** made the **motion** to **reject** Docket 13-0108-0801. The motion was **seconded** by **Chairman Schroeder**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0108-0802:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs The Taking of Big Game Animals. This amends the rule to allow the use of "red dot" scopes on crossbows by disabled archers; it allows senior and disabled hunters to apply for leftover youth controlled hunt permits; it simplifies the evidence-of-sex rule to apply only during transportation of a big game carcass to a final place of storage or a commercial meat processing facility;

and corrects obsolete rules concerning 3/4 curl and mandatory class requirements for bighorn sheep hunters.

**Chairman Schroeder** inquired as to why the bighorn sheep rule is being deleted, page 51 (300 02. i.) and the mandatory sheep school, page 50 (270 01. 02.). **Ms. Kiefer** said the mandatory school was tied specifically to the full curl. The reason for deleting the full curl requirement is that it is not a biological necessity the way the current seasons are structured.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 13-0108-0802. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0108-0803:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs The Taking of Big Game Animals. The Department is recommending that the muzzleloader equipment rules be amended to allow the use of in-line muzzleloaders.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 13-0108-0803. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0109-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule which governs The Taking of Game Birds. She stated that this rule proposes to extend the youth pheasant hunt season; revise the Wildlife Management Area pheasant program hunter-orange rule; increase turkey controlled hunt tags for general and youth only; expand the general season youth hunt; correct terminology; and delete obsolete rules.

**Ms. Kiefer** said, in referring to hunter-orange, that previously the WMA rule did not specify where hunter-orange should be worn. Now, it specifies that it is to be worn above the waist and be at least 36 square inches.

**Chairman Schroeder** asked Ms. Kiefer to provide him the fiscal impact of the benefits to vendors if the State goes to hunter-orange. **Ms. Kiefer** replied that she would inquire about that, but wanted to make it very clear that this rule is not about that. This rule applies only to WMA areas where pheasants are stocked. **Vice Chairman Bair** asked as to the number of WMA areas and the reply was nine. **Chairman Schroeder** said the reason for this discussion is because he has had a number of constituents feel that some vendors may, in the future, be pushing hunter-orange to their economic advantage.

**Vice Chairman Bair** inquired as to the purpose for removing the shooting/hunting time schedules of the upland game birds. **Ms. Kiefer** stated that it was to help bring down the costs of printing. **Mr. Dallas Burkhalter, Counsel for IDFG**, said another concern was that it is duplicative of the actual rule that sets the upland game bird methods of take (300. 01. a.). What the Department asked for authority to do, is to keep the rule that sets the shooting hours and delete the specific table from the rules so that it won't have to be constantly adjusted. It will be published in the brochure that actually has the rest of the season information from the Commission that is handed out free at licensed

vendors. **Ms. Kiefer** stated that beginning and ending times are set by proclamation.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 13-0109-0801. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0111-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule, Rules Governing Fish. This rule is the implementation component of a statute that this Committee assisted with last session, revising a two pole license validation to become a two pole permit. This will allow children, younger than 14 who are exempted from having a license, to be able to acquire a two pole permit.

**MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 13-0111-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0111-0802:** **Ms. Sharon Kiefer, IDFG**, presented this rule, Rules Governing Fish. She stated that this rule will increase the maximum size of traps and seines for minnows and crayfish because current equipment has changed through time. It restricts the use of live leeches, frogs, salamanders and shrimp as bait, largely because of the transfer of species. The rule also removes the general 12 inch minimum size limit on bass in North Idaho waters (Salmon River and north).

**Chairman Schroeder** inquired as to why one couldn't use bait that was caught on the body of water being fished (201. 10.) **Ms. Kiefer** said that their chief concern was that people were importing bait from out-of-state.

**MOTION:** **Senator Pearce** made the **motion** to accept Docket 13-0111-0802. The motion was **seconded** by **Senator Werk**. The motion **passed** by majority voice vote. Voting nay were **Senators Siddoway and Schroeder**.

**DOCKET 13-0116-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule, Rules Governing The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. The Department is proposing to increase otter harvest quotas in the Magic Valley and Upper Snake Regions; close beaver trapping on Willow Creek drainage in Units 66 and 69; increase beaver trapping opportunity in the Southeast and Magic Valley Regions; and amend the list of Wildlife Management Areas open to trapping.

**MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 13-0116-0801. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 13-0117-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule, Rules Governing the Use of Bait for Taking Big Game Animals. This rule references bear baiting and amends the rules to clarify the application to bait containers and the required removal at the end of each season.

**MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 13-0117-0801. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

**DOCKET** **Ms. Sharon Kiefer, IDFG**, presented this rule, Rules for Operating,

- 13-0119-0801:** Discontinuing, and Suspending Vendors. This chapter deletes obsolete rules concerning reimbursement of telecommunication costs; correct statutory references and terminology; and amends several rules concerning ordering supplies and canceling documents to update terminology to the computerized licensing system.
- MOTION:** **Senator Siddoway** made the **motion** to accept Docket 13-0119-0801. The motion was **seconded** by **Chairman Schroeder**. The motion **passed** by unanimous voice vote.
- DOCKET 13-0120-0801:** **Ms. Sharon Kiefer, IDFG**, presented this rule, Selection Rules of New Fish and Game License Vendors. The Department recommends that the application process be simplified and streamlined to provide better response time to vendor applicants, and that the active vendor ceiling number be amended because of the decreased number of license vendors.
- Chairman Schroeder** inquired as to why the decrease of the vendor ceiling. **Ms. Kiefer** stated that it was because the number of vendors did not reach their expectations.
- MOTION:** **Senator Coiner** made the **motion** to accept Docket 13-0120-0801. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.
- DOCKET 20-0201-0801:** **Mr. George Bacon, Director, Department of Lands**, presented Docket 20-0201-0801, Rules Pertaining to the Idaho Forest Practices Act. The changes include use of the term "stream" at all places in the rule instead of "natural watercourse" because "stream" is defined elsewhere in the Forest Practices Act Rules as a "natural watercourse." Added to the pending Rule is a portion of Section 42-201(5), Idaho Code, concerning notice to irrigation delivery entities. It was included so that forest operators have more direct notice of the requirements of Section 42-201(5), Idaho code. The text was also reformatted for additional clarity.
- Vice Chairman Bair** asked if the Department of Water Resources was okay with the de minimis use of water. **Director Bacon** said that IDWR is in full support of the rule.
- MOTION:** **Chairman Schroeder** made the **motion** to accept Docket 20-0201-0801. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote.
- DOCKET 20-0209-0801:** **Mr. George Bacon, Director, Department of Lands**, presented Docket 20-0209-0801, Method of Selling Pole-Quality Western Red Cedar. He said the purpose is a chapter repeal and portions of the repealed rule have been consolidated with a new rule. This applies to **Docket 20-0210-0801, Rules for Selling of Forest Products on State-Owned Endowment Lands and Docket 20-0214-0801, Rules for Selling of Forest Products on State-Owned Endowment Lands**, as well. In the past, the Department had 22 different sets of rules covering a multitude of things. He feels this will make the rules more concise and pertinent to anyone reading them.

**MOTION:** **Senator Coiner** made the **motion** to accept Docket 20-0209-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Coiner** made the **motion** to accept Docket 20-0210-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Coiner** made the **motion** to accept Docket 20-0214-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**DOCKET 20-0602-0801:** **Mr. George Bacon, Director, Department of Lands**, presented Docket 20-0602-0801, General Rules, Licensing, and Check Scales of the Idaho Board of Scaling Practices. **Mr. Bacon** said that once again, they are combining two rules into one. For many years, they have been referencing the U. S. Forest Service handbook on log measurement practices and it was incorporated into the rules. The Department's rules basically followed that manual except where they didn't like it. A number of years ago the Forest Service notified the Department that they were no longer going to produce that handbook for use in Idaho. The State Board of Scaling Practices, of which Mr. Bacon is Chair, moved ahead and developed an Idaho Scaling Practices manual. These new rules will incorporate that manual by reference.

There were no questions from the committee, nor anyone to speak in opposition.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 20-0602-0801. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 20-0603-0801:** **Vice Chairman Bair** said Docket 20-0603-0801, Measurement Rules for Forest Products of the Idaho Board of Scaling Practices, is a repeal of that chapter.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 20-0603-0801. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**DOCKET 25-0101-0802:** **Senator Siddoway** was assigned to review the Outfitters and Guides Licensing Board docket. Docket 25-0101-0802, Rules of the Outfitters and Guides Licensing Board, removes the requirement that outfitters submit all training documents to the Board for review and storage. It is the outfitter that is liable for providing this verification. Training verification and situations requiring Board investigation and enforcement can now be dealt with on a case-by-case basis. These changes will provide greater efficiency in the licensing process and allow the Board to more effectively deal with pressing issues.

There were no questions from the committee.

**MOTION:** **Senator Siddoway** made the **motion** to accept Docket 25-0101-0802. The motion was **seconded** by **Senator Coiner**. The motion **passed** by

unanimous voice vote.

**Mr. Dean Sangrey, Division Administrator of Operations for the Department of Parks and Recreation**, said that the House Resources Committee **rejected the fee rule**, Docket 26-0129-0801, Rules Governing the Administration of Park and Recreation Areas and Facilities, and **rejected a portion of the pending rule**, Docket 26-0120-0802, Rules Governing the Administration of Park and Recreation Areas and Facilities.

**DOCKET  
26-0129-0801:**

A fee rule has to be approved by both bodies. With the House Committee rejecting it, **Vice Chairman Bair** said there was no point in presenting Docket 26-0129-0801; therefore, it will not be heard.

**Mr. Sangrey** was asked to identify the portion of the rule that was rejected on Docket 26-0120-0802. He said the portion rejected was number 2, listed under the descriptive summary, on page 151.

**DOCKET  
26-0120-0802:**

Mr. Sangrey was asked by **Vice Chairman Bair** to clarify what this portion of the rule speaks to and what the Department is trying to accomplish.

**Mr. Sangrey** said for the past 30 years, the Department has exercised a mechanical process of application by groups of the public when they want to use park facilities. Usually, it is a one-time request that is submitted. The process requires detailed information to be submitted, reviewed by the staff at the requested park, then moves up the chain-of-command to Mr. Sangrey, then to the Director. Timing has been a problem, because of the 45 day advance notice and revenue is sometimes lost because the Board cannot respond quickly enough. In one case, that amount was between \$4,000 and \$6,000. In response to the strong encouragement of the field staff, the approval authority in some instances would be given to the Director, rather than going through the Board. He stated that the Board has endorsed this change and they feel it will help the Department to effectively respond to the requests when time is short. Based on that guidance from the Board, Mr. Sangrey said that was the reason for moving forward with the change.

**MOTION:**

**Senator Siddoway** said that he would like to research this rule over the weekend and made a **motion** for unanimous consent of the Committee that Docket 26-0120-0802 be tabled until Monday, February 2, 2009. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote.

**DOCKET  
58-0112-0801:**

**Mr. Barry Burnell, Administrator of the Water Quality Division, Department of Environmental Quality (DEQ)**, presented Docket 58-0112-0801, Rules for Administration of Water Pollution Control Loans.

**Mr. Burnell** said that this rule is to provide flexibility to DEQ in its use of loan fees to meet statewide planning needs, to reduce administrative burden on a majority of wastewater loan recipients, and to achieve administrative efficiency.

He stated that DEQ is not aware of any controversial issues associated with this rule. It does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal

regulations.

**MOTION:** **Senator Werk** made the **motion** to accept Docket 58-0112-0801. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

**DOCKET 58-0116-0801:** **Mr. Burnell** presented Docket 58-0116-0801, Wastewater Rules. He stated that these rules are facility and design standards for wastewater collection and treatment facilities. This rule is Part 3 of facility and design standards rulemaking. It provides for a qualified licensed professional engineer (QLPE) or DEQ review engineer to approve construction of a simple sewer main extension without first providing DEQ with an updated facility plan, provided that the sewer system has sufficient capacity to service the area served by the sewer main extension. Parts 1 and 2 were conducted in 2006 and 2007.

He said that no comments were received during the comment period. The people involved included the Cities of Lewiston and Moscow; Eagle Sewer District; City of Boise; and a number of engineering firms. **Mr. Burnell** also stated that there are no known controversial issues associated with this rule.

**Senator Thorson** said that he was assigned to review this rule and he feels comfortable with it. **Senator Werk** stated that the waiver at the end of the rule is excessively broad and requested Mr. Burnell to address it. **Mr. Burnell** said that they added this section to provide the Director of DEQ the opportunity to waive certain provisions from the rule, dependent upon those case-by-case sites specific, on instances that might occur. He indicated that he knows of no instance of where they have applied the waiver and he has been in his present position for almost five years.

**Vice Chairman Bair** inquired if any of the rules in this docket are more stringent than federal requirements. **Mr. Burnell** replied that there are no equivalent federal requirements for these standards. The requirements that they have developed in this rule are based on recommended standards for wastewater facilities.

**MOTION:** **Senator Coiner** made the **motion** to accept Docket 58-0116-0801. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote.

**DOCKET 58-0124-0801:** **Mr. Orville Green, Administrator of Waste and Remediation Division, DEQ**, presented Docket 58-0124-0801, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.

This rule had been initiated to formalize the critical elements of the REM (Idaho Risk Evaluation Manual) that are pertinent to evaluation of petroleum release sites in order to clarify and promote consistent corrective action decision-making at these sites. This rule is not broader in scope or more stringent than federal law or regulations.

**Mr. Green** stated that they received only one written comment and that was from IACI (Idaho Association of Commerce & Industry). They felt the



screening levels might be too conservative.

He stated that this rule limits the number of constituents that need to be evaluated at a petroleum site to those that are listed in table 1 (page 373). The second thing the rule does is if the Department asks the releaser to analyze for non-petroleum constituents, the burden is on the Department to demonstrate that there is a need for some historical knowledge or some reason to do that. There is also a time frame to which the Department will respond to submissions. It requires the Department to notify, within 30 days, of the status. IACI asked the Department to prepare a risk evaluation manual for petroleum releases, which they have done.

**Senator Werk** indicated that he is concerned that 'best practices' will not be weakened by negotiations for the manual. **Mr. Green** said that they would be aligned with the ASCM standards.

**MOTION:** **Senator Werk** made the **motion** to accept Docket 58-0124-0801. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**Vice Chairman Bair** announced that this concludes the hearing on Rules, except for one which will be heard next Monday. He then transferred the gavel to Chairman Schroeder.

**ADJOURN:** **Chairman Schroeder** adjourned the meeting at 3:15 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 2, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** Senator Siddoway
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- MOTION:** **Vice Chairman Bair** made a motion to accept the minutes, as written, for January 26, 2009. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.
- ANNOUNCEMENTS:** The **Chairman** announced that Representative Trail has provided some information regarding wolves, which should help to better understand the landscape of pro wolf and anti wolf. The Chairman said that he intends to keep the committee briefed on wolves as things develop.
- Chairman Schroeder** then called on **Mr. Jim Unsworth, Deputy Director of Programs, IDFG**, to brief the committee.
- SPEAKER:** **Mr. Unsworth** said that they had hoped the delisting rule would be published on January 27, but it was not. All rule-making has been suspended by the new administration temporarily.
- He said that he had met recently with the Commission and would relate a few of the high points of that meeting. He referenced some of his talk from the Commission Wolf Management Directives, which has been provided to the Committee.
- The first directive is to review the current information and prepare for a possible hunting season next fall. The Department is doing that and their initial estimate is for 824 wolves, 88 packs, and 38 breeding pairs in the state. That is about 100 more than was estimated last year.
- He stated they are preparing to move forward on the 2009 season frameworks and they are collecting data on deer and elk seasons. The Fish and Wildlife Service has completed their '08 depredation report and it

is included in the handouts today.

The second directive is to work with the Forest Service on possibly marking wolves in the wilderness. The Department believes they have the authority to do that, as stated in the enabling language of the Wilderness Act. The elk and deer herds are counted about every third year in the wilderness. Recently, 66 elk were marked for a research project from a helicopter between Garden Valley and the North Fork of the Clearwater. They also radio-collared 31 wolves. This was done within a two week period.

The third directive is related to livestock depredation. Wildlife Services has identified about 25 wolf pack territories with chronic conflicts with livestock. There have been three incidents the past year and the staff will implement aggressive and efficient control measures, including entire pack removal.

The fourth directive is to pursue options under the 10(j) rule to control wolves that are impacting our ungulate populations. The staff has developed a proposal for the Lolo Zone and submitted it for peer review. The reviewers are: Layne Adams, USGS, Alaska; Mark Boyce, University of Alberta, Alberta; Valerius Geist, University of Calgary, British Columbia; Mark McNay, Retired ADFG, Kansas; and David Mech, USGS, Minnesota. Mr. Unsworth said he hoped to have their comments back by February 9. The staff will incorporate their comments into the draft, which will be put out for public review near the end of this month, then finalized and submitted to USFWS.

The fifth directive is to continue to develop, implement and utilize wolf monitoring and estimation techniques and modeling. The Department continues to support Dave Ausband's (University of Montana) research to develop non-invasive and cost-effective population estimation tools using congressional appropriations.

The final directive is to assemble and disseminate accurate factual information to inform and educate the public on wolf biology and successful wolf recovery. There are currently a lot of people writing letters to the new administration and the new Secretary of Interior endorsing delisting.

**Mr. Unsworth** noted that there are two more handouts for the Committee's review. They are (1) Wolf Delisting: Idaho Perspective; and (2) a map of last year's wolf activity and Idaho wolf statistics. Both are publications of the IDFG. That concluded his testimony.

**Chairman Schroeder** said that what he wants the Committee to understand is that under the 10(j) rule, the Department of Fish and Game is going ahead with a plan to depopulate some wolves in one part of the state. The purpose of the briefing was to update the Committee.

**Senator Pearce** asked how soon would the Feds have to notify the Department about delisting in order to have a 2009 season? **Mr. Unsworth** replied that they could be ready in a matter of a few days.

**Senator Pearce** then inquired about funds. **Mr. Unsworth** said they have been getting an annual appropriation for several years and it is sent to the Office of Species of Conservation. It is authorized by a continuing resolution and the amount is \$700,000. In the FY09 funding, 43 percent had been received. The rest should be received after March and they are currently working with the Nez Perce Tribe on FY2010 appropriations.

**Senator Pearce** said there is a relationship with the Tribe on wolf management and he asked how the money was split. **Mr. Unsworth** said the Tribe is responsible for monitoring and marking wolves in the McCall area and the Clearwater area. Their portion is \$300,000 annually.

**SPEAKER:**

**Mr. Nate Fisher, Administrator for the Office of Species**

**Conservation**, spoke next. He stated that the Nez Perce Tribe had written a letter supporting the delisting, as well as a letter from the Attorney General. There will be one forthcoming from the Governor in conjunction with the Congressional delegation.

He said that their office has received no indication if and when the rule might be published. In a meeting earlier this morning, Mr Fisher said that the Governor asked for patience as they proceed ahead, as they don't know how the new Secretary of the Interior will react to the wolf issue. Also what is important is who the Secretary appoints as Assistant Secretary of Fish and Wildlife, as well as the Solicitor's office. The Solicitor must make a determination whether the rule is valid or not, in that it exempted Wyoming from the delisting. It is Mr. Fisher's hope that either he or the Governor will be able to meet personally with the Secretary.

**Mr. Fisher** said that he would like to acknowledge **Mr. John Robertson** with the **Idaho Conservation League**. The Idaho Conservation League worked with OSC on the development of a management plan that was acceptable with their constituents. Mr. Fisher said they were up-front, above board, and they have honored their commitment to stand by that and he wanted to thank them for standing by their commitments.

**Chairman Schroeder** announced that some legislation is being prepared and will be introduced in the House regarding the wolf issue. He then thanked the two speakers for the update.

**S 1015**

**Chairman Schroeder** passed the gavel to **Vice Chairman Bair** so that he could present S 1015.

Before he presented his bill, he explained about the wolf pelt hanging on the wall. He said it is a Canadian wolf from the Arctic Region and he wanted everyone to see how large it is.

He said the purpose of this legislation is to officially recognize that Idaho has a surplus of wolves and officially offer some of these surplus animals to other states. It provides that the Idaho Fish and Game Department write to their counterparts in all other states and offer some of our surplus animals to these states. The states receiving the wolves will pay costs associated with capturing and transporting wolves to their new homes.

**TESTIMONY:**

**Mr. Nate Helm**, representing **Sportsmen for Fish and Wildlife Idaho**,

said they are in support of S 1015.

**TESTIMONY:**

**Ms. Sharon Kiefer, IDFG**, testified next. A copy of her testimony is inserted into the minutes.

Thank-you for the opportunity to offer technical testimony. The Idaho Department of Fish and Game Commission has not had an opportunity to review this bill for any policy position; they will review the bill later this week.

Wolves in Idaho are currently under protection of the Federal Endangered Species Act pursuant to a 10(j) rule. In January 2006, the U.S. Fish and Wildlife Service (USFWS) acknowledged that northern gray wolves had exceeded their recovery goals in Idaho for multiple years.

Under Idaho's current management agreement with the Department of the Interior, Idaho has authority to "...implement proactive strategies and conduct non-lethal and lethal control actions to reduce or resolve wolf-livestock conflicts" and "implement lethal control or translocation of wolves to reduce impacts on wild ungulates in accordance with the 10(j) process." Wolves may be taken from the wild if such action is to relocate a wolf within the Nonessential Experimental Population (NEP) areas to improve its survival and recovery prospects. There are two NEP areas for the gray wolf that encompass all or parts of Wyoming, Montana, and Idaho.

Senate Bill 1015 directs the Idaho Department of Fish and Game (IDFG) to contact, in writing, all state agencies with authority for managing wildlife to solicit their interest in the translocation of wolves from Idaho to such agency and their respective state. Whether wolves remain listed or are delisted, translocation of wolves outside of the NEP area may require approval from the USFWS and there may be other required assessments such as response for the National Environmental Policy Act. Receiving states would probably have specific animal health import permit requirements that would vary by state, but meeting such requirements would be the responsibility of the receiving state.

Senate Bill 1015 is consistent with IDFG management policies regarding cooperative wildlife translocation for wildlife, in excess of management objectives, to other state wildlife management agencies to establish or supplement populations in other states.

Our assessment is that the cost to implement Senate Bill 1015 would be minimal administrative costs because Senate Bill 1015 requires receiving states to reimburse IDFG for cost of transfer and any associated assessment.

**Chairman Schroeder** thanked Ms. Kiefer for her testimony.

There was no other testimony from the audience.

**MOTION:**

**Senator Cameron** made a **motion** to send S 1015 to the floor with a **do pass recommendation**. The motion was **seconded** by **Senator Pearce**.

The motion **passed** by unanimous voice vote.

**Vice Chairman Bair** returned the gavel to **Chairman Schroeder**.

**ANNOUNCE-  
MENT:**

The **Chairman** said that a request had been made for a list of plaintiffs that have challenged the wolf delisting rule. He indicated that he would make it available at the next meeting.

**ADJOURN:**

**Chairman Schroeder** adjourned the meeting at 2:20 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 4, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He announced there were some minutes for approval.

**MOTION:** **Senator Bair** made a **motion** for the approval of the minutes of the 7 a.m. meeting of January 28. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Siddoway** made a **motion** for the approval of the minutes of the 1:30 p.m. meeting of January 28. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.

**ANNOUNCEMENT:** **Chairman Schroeder** said that he has provided to the committee a list of the plaintiffs that challenged the wolf delisting rule, as was promised at the February 2 meeting.

The **Chairman** said he introduced S 1002 for **Mr. Walter Steed**, a Moscow City Council member and because of his involvement with the bill, he passed the gavel to **Vice Chairman Bair**.

**The Vice Chairman** welcomed Mr. Steed to the committee meeting.

**S 1002** **Mr. Steed** said that Moscow lies immediately adjacent to the Washington state line and the issue is water.

The purpose of this legislation is to add to the definition of a water "service area" by including in the definition areas outside of the State which are adjacent to a municipality. This makes the definition consistent with Chapter 42, Title 4, which regulates appropriations of public waters outside the State. The proposed legislation also strikes language which prohibits cities from providing water outside of city limits through a domestic water system. Currently, Idaho Code Sections 42-202B (5) and (9) permit cities to provide public water outside of their city limits and to

users other than city inhabitants. Eliminating this prohibition will make Title 42 and Title 50, Chapter 3 consistent with each other.

**Mr. Steed** stated that Moscow's water comes from two aquifers - one is shallow and the other is deeper, both being part of the Palouse Basin. The Basin contains about 600 square miles of water supply.

The issue started when a developer proposed building a retail mall on the state line in Whitman County, Washington, which is immediately adjacent to Moscow's city limits. The previous city council contested some water rights that the developer had. Following remediation, the city of Moscow and the developer signed an agreement which said, in part, the city of Moscow would provide water to the developer at his cost. The city made application to the Idaho Department of Water Resources. The Attorney General's Office told them that they needed to form a joint powers agreement with a government entity in Washington. They approached Whitman County, Washington and after several weeks, those officials declined to meet with the Moscow Council. Mr. Steed said in talking with one of the Attorney General's, he asked what the next step should be and he suggested changing State law. They then had a discussion with an attorney and the bill before the committee is a result of that discussion.

**Mr. Steed** said that by changing the State law, it will allow them to provide water to the developer. The two wells that were drilled on the property will be capped and the water rights will revert to the State of Washington. The reason the developer drilled the wells was in case the city of Moscow couldn't provide water and his development could proceed. The city of Moscow will provide water to the developer, with a limited quantity, and it is limited to the developer's adjacent property. Mr. Steed reiterated that this is subject to the approval of the City of Moscow and the Idaho Department of Water Resources.

**TESTIMONY:** Following Mr. Steed's presentation, **Chairman Schroeder** said that he has provided a letter to the Committee from the Attorney General's Office that provided suggested language. The suggested language would remove any barriers in Idaho law that may restrict the provision of such services.

The **Chairman** stated that providing water between border municipalities is already in the Idaho Code. Past legislatures previously decided that it was a good thing to do. The problem they presently have is because Washington won't agree to a joint powers agreement.

**TESTIMONY:** **Mr. Randy Fife, Attorney for the City of Moscow**, testified next. He said there is a local and important issue for Moscow and that is the aquifer. It is a shared aquifer and the upper one recharges, but the lower one does not. His understanding is that the Washington side of the Basin is closed, which means there are not any new water permits being issued. If the city supplies the water, the net result would be there would be limited growth because the agreement states that none of the water can go off the property to be used for further growth. There is a sunset on that agreement and that is when the city of Pullman supplies the water to the developer. There are some larger concerns. Since 1990, there have



been reciprocity agreements with the State of Washington that allows the cities and/or water users to get water from across the border. With that agreement in place, they went to IDWR and presented to them the issue and asked them to make a decision.

**Mr. Fife** said he suggested that the definition of service area, which is already in Idaho Code, be made explicit that cities that are adjacent to areas in another state, can go through IDWR hearing procedures to find out whether it is appropriate for them to deliver water services to an adjacent area.

**TESTIMONY:**

**Mr. Norm Semanko, Executive Director, Idaho Water Users Association, Inc.**, testified. The IWUA considered this legislation in their legislative committee meeting and they are in support of the bill. Idaho Code, Section 42-401 is the code section that provides for use of public water outside of the State. One of the provisions is that the State of Idaho recognizes under appropriate conditions the out-of-state transportation and use of its public waters is not in conflict with the public welfare of its citizens or the conservation of its waters.

**Mr. Semanko** stated that we have been doing this and the laws are very tight to govern this. One example is the Boise Project Board of Control serves and includes irrigation water delivered to the State of Oregon to the Big Bend project. He said Senate Bill 1002 is very tightly worded, is consistent with existing state law, and does not have any adverse impacts on existing water users.

**TESTIMONY:**

**Mr. Dave Tuthill, Director, Idaho Department of Water Resources**, said that he concurs with the statement by Mr. Semanko in summarizing the over-all purview that it is not in conflict with Idaho's water law.

During the committee discussion, **Senator Coiner** said that he would like to add that this legislation gives Moscow a vehicle to get to the public forum where all of the issues can be heard.

**Senator Siddoway** said that counties have the ability to grant or stop projects, as they are the ones that issue permits.

**MOTION:**

**Senator Coiner** made the **motion** to send S 1002 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Coiner** will **sponsor** S 1002.

**Vice Chairman Bair** continued to chair the meeting as the next order of business was to hear the final rule of the Rules Review.

**DOCKET  
26-0120-0802:**

**Mr. Dean Sangrey, Division Administrator of Operations, Department of Park and Recreation**, presented Docket 26-0120-0802, Rules Governing the Administration of Park and Recreation Areas and Facilities.

**Senator Siddoway** said that he was the one that asked for the delay of this rule. His concern is with paragraph two that changes the decision of consumption of alcoholic beverages of 250 people or more from the Board to the Director. He inquired if it could be amended to leave it as a

Board decision only.

**Mr. Dennis Stevenson, Rules Coordinator**, said the subsection would need to be rejected. **Senator Siddoway** then inquired if this action would parallel the House's action. **Mr. Sangrey** stated that the House rejected the entire rule, not just the subsection.

**Senator Cameron** stated that he was unable to attend Friday's meeting and appreciated the delay of this rule until today. One of his concerns is about the ingress and egress of vehicles from campsites (paragraph 1) and asked for clarification. **Mr. Sangrey** said their intent is to provide clarity to staff where motorized vehicle activity takes place – within the boundary of the park -- not just a particular campground. **Senator Cameron** then inquired about a trails leading in and out of parks and asked if cycle riders would be in violation of this rule? **Mr. Sangrey** replied that they would not be in violation, as the staff recognizes the roads and trails for what they are.

There was more discussion about the sale of alcohol and **Mr. Sangrey** said the Department only issues one-time permits to groups to sell alcohol and the park staff is not involved in the selling or dispersing of the spirits.

- MOTION:** **Senator Siddoway** made the **motion** to **reject** Docket 26-0120-0802. **Senator Pearce** **seconded** the motion.
- SUBSTITUTE MOTION:** **Senator Coiner** made a **substitute motion** to **accept** Docket 26-0120-0802. The motion died for lack of a second.
- Vice Chairman Bair** said they would vote on the **original motion**. The motion **passed** by a majority vote. Voting nay was Senator Coiner.
- ADJOURN:** **Vice Chairman Bair** adjourned the meeting at 3 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 6, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER AND ANNOUNCEMENTS:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. He announced that at next Monday's meeting, this Committee will be guests of the House Resources Committee. The meeting will be in the West Conference Room in the Hall of Mirrors at 1:30 p.m. ICIE is presenting a program on noxious weeds. In the Committee's blue folders, the **Chairman** has included an article attacking Governor Palin regarding wolves in Alaska, which he obtained from the Internet. In the red folder are bills that will be heard today. **Chairman Schroeder** then called on **Ms. Sharon Kiefer, Assistant Director of Policy, IDFG**, to present S 1008.

**S 1008** **Ms. Kiefer's** testimony is inserted into the minutes.

**TESTIMONY:** Chairman Schroeder and Committee:  
Senate Bill 1008 is modeled after Senate Bill 1391, passed in 2006, which provided for license exemption of a minor child with a life threatening medical condition who is participating in a hunt associated with a qualified organization such as "Hunt of a Lifetime". That bill also gave the Fish and Game Commission the authority to prescribe the rules to issue a free permit or tag for such a hunt. The rules were approved by the 2007 Legislature.  
Similarly, Senate Bill 1008 would provide for license exemption of a disabled veteran who is participating in a hunt associated with a qualified organization. Qualified organizations are defined as governmental or nonprofit organizations that afford opportunities, experiences, and assistance to disabled veterans. For example sake, a governmental

organization might be the Idaho Division of Veterans Services. A private nonprofit example might be the Wounded Warrior Project. We have also been contacted by landowners who wish to stay informed about passage of this program because of their interest in providing access for this disabled veterans opportunity.

Should Senate Bill 1008 gain legislative approval, the Idaho Fish and Game Commission and Department look forward to working with local veteran representatives to establish the rules to implement this bill. The Department asks for your support.

**TESTIMONY:**

Written testimony was submitted by **Larry D. Williams, Tree Top Ranches**, and it is inserted into the minutes.

The purpose of this letter is to offer our support for SB 1008 s provision of free hunting tags for disabled veterans.

Tree Top Ranches commends the Idaho Department of Fish and Game for its initiation of this Bill. We agree that this program should be governed by appropriate rules set by the Fish and Game Commission. The cost of this program should be very minimal—particularly in comparison to the sacrifice made by our worst-wounded soldiers.

We understand that you will give this Bill proper consideration. We also hope it can be passed into law promptly to allow these servicemen and women this opportunity as soon as possible.

Tree Top Ranches looks forward to hosting disabled veterans at some of our ranch properties, and to include this program in our long-term management planning.

Thank you for your consideration. Larry Williams.

**TESTIMONY:**

Written testimony was also submitted by **Brian Hamel, Hunt of a Lifetime Idaho Ambassador, Bellevue, Idaho**. His testimony is inserted into the minutes.

To the Distinguished Idaho Senate:

Due to certain circumstances, I cannot be with you today.

I would like to convey to you my support for Senate Bill 1008, as the Idaho Ambassador for "Hunt of a Lifetime" program, and a resident of the State of Idaho.

After the inception of 36-408(6) Children with Special Needs Tags, Hunt of a Lifetime has had a few children come to Idaho. The most were in 2008 when we requested four tags from the state, three children came on hunts; one deferred until 2009 due to illness. Due to the generosity of the people of Idaho all three hunts were a success, with harvested animals and a great time had by all. Seeing the faces of the volunteers and children, I know that everyone involved with this type of event has a life-changing experience.

It is my belief that the children's and veterans' programs will be able to work together with Fish & Game under this bill so that all will benefit from the available tags.

I am a member of a family with over 200 years of military service, so I know first hand the sacrifices of the military. It would be a tribute to the men and women of the armed services to bring this bill through the Senate and the House into Idaho law.

Respectfully, Brian Hamel.

**TESTIMONY:** **Mr. Jim Adams, Administrative Support Manager, Division of Veterans Services**, was next to testify.

**Mr. Adams** said that they were approached by an individual who has property near Mountain Home who has offered hunting for two disabled veterans. This would be a yearly activity. Because of this offer, Mr. Adams said that they have been working with Fish and Game for a solution and Senate Bill 1008 is the answer. They are in support of it.

**MOTION:** **Senator Siddoway** made the **motion** to send S 1008 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote. **Senator Thorson** will be the **sponsor** of this bill.

**H 6** **Mr. Rob Hanson, Manager, Department of Environmental Quality**, presented this House bill.

**TESTIMONY:** **Mr. Hanson** said the purpose of H 6 is to extend the current law to include any operable unit of the EPA Bunker Hill Superfund Site. One of the things about the Superfund is that they try to get the people who caused the contamination to do the cleanup, but when they are not able to do that, under Federal law, the State is required to pay all the operation maintenance costs, as well as ten percent of the capital costs. At Bunker Hill, there have not been sufficient companies who could cover those costs, so the state has signed up to pay for ten percent.

What they have done with the Box (a 21 square mile area of land in the Kellogg/Smelterville area) is to use that land that has gone to EPA to help offset those costs. At Bunker Hill, they have gotten about 1,600 acres from EPA and have used that land to help offset the cost for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development or assisting local governmental entities within the site.

**Mr. Hanson** said that what they are asking for in this bill is to extend the rules that they are applying to the original superfund site to the larger superfund site at Bunker Hill.

There was no opposition to this bill.

**MOTION:** **Senator Pearce** made the **motion** to send H 6 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. **Senator Brackett** will be the

sponsor of this bill.

**H 7**

**Chairman Schroeder** said the next bill that will be heard is H 7, which has to do with electric transmission facilities, and will be presented by **Paul Kjellander, Administrator of the Office of Energy Resources.**

**TESTIMONY:**

The testimony of **Mr. Kjellander** is inserted into the minutes.

Mr. Chairman and Committee:

**Proposal:** This legislation seeks to create a mechanism to establish priority status for transmission projects that are determined to have the potential to significantly address Idaho's transmission critical infrastructure needs. This status provides transmission developers with an opportunity to obtain priority status, but does not mandate that they seek it. This proposal would ultimately lead to efforts by relevant state agencies to address opportunities to streamline the process for permits, applications, and related reports and studies associated with transmission projects. This proposal does not impact a state agency's decision-making authority; it merely insures that significant transmission projects are given priority attention. The priority status is not limited to investor-owned utilities and could be sought by any transmission developer seeking to locate a portion of its project in Idaho. This legislation will in no way usurp the authority of local units of government as it relates to their current statutory authority for transmission projects. Local control issues are not impacted by this legislation. The goal is to place the appropriate attention on a project without compromising the integrity of the process.

**Purpose:** Transmission is the critical component in providing for Idaho's energy needs. The existing transmission system is at or near capacity and efforts to facilitate the timely processing of applications for critical infrastructure is essential. Without additional transmission capacity, our state will be restricted in its efforts to develop new electric generation resources such as wind, geothermal, solar, and biomass.

This legislative proposal would allow a transmission project applicant to seek priority designation from the Idaho Public Utilities Commission (IPUC). This designation would not constitute regulatory approval or certification nor would it bind the IPUC in a future cost recovery process. Designation could be sought by any project developer seeking to locate high capacity transmission lines (230 kV or higher) and associated substations within Idaho's borders.

The designations are not intended to rank one project above another that might seek priority status. This will not create a competitive environment where one project has to demonstrate that it is more important than another. The status would be granted on the individual project's merits. Each project granted priority status would be on an equal footing with other priority designated projects.

Operationally, a transmission developer would file a request to the IPUC. The commission would open a case and ultimately issue an order declaring or rejecting priority status. The decision would be based on specified benefits the transmission project represents to Idaho's overall energy needs. Specific public interest criteria would be considered by the IPUC. Orders issued by the IPUC could be used to facilitate a broader public understanding of the significance various transmission projects represent to Idaho customers and the state's overall economic stability.

A designation could also be used to initiate a broader collaborative effort among state, federal, and local units of government as they process transmission applications. It is anticipated that if this legislation is approved, an executive order would be sought from the Governor to initiate a more complete review of the application and permit process within state government agencies for the purpose of establishing the appropriate protocol to assist transmission projects that have been given priority status.

#### **Executive Order Considerations:**

The objective of the executive order is not intended to predetermine an outcome. The autonomy of agency decisions will not be altered through this process. The goal is to attempt to get to an answer quicker regardless of what that answer is.

The executive order could assist in the following areas:

- \*\* Explore opportunities to streamline and consolidate the process to avoid duplication of efforts and avoid costly delays.
- \*\* Formalize a coordinated approach for comments filed on behalf of the state for projects that require access to federal lands.
- \*\* Require a state agency lead and the creation of a structure that deals with priority transmission projects.
- \*\* Require designation of agency specific contacts for priority transmission projects.

(Operationally, this could result in faster turn around for calls/inquiries related to a priority project, coordination of single meetings with agency leads instead of multiple meetings, coordination of timelines to insure problems are identified early and opportunities for resolution are clearly articulated).

- \*\* The creation of a Catalogue of Agency responsibilities related to transmission projects that identifies early which agencies need to be involved and at what level. This catalogue could identify the processes and timelines associated with their involvement and how reports, studies, or other bodies or work are used in the process. This could assist in the identification of steps the state should take in coordinating the response to a project that has priority transmission status.

### **Other Points of Interest:**

\*\* This legislation could help identify the impact of state efforts on a local unit of government that ultimately makes the siting decisions. Accordingly, the legislation could assist in identifying ways to coordinate in a timely fashion the delivery of necessary information to assist local units of government.

\*\* One of the immediate values of this legislation is answering the public perception concerns associated with transmission projects. When a resident discovers that their property might be in the path of a transmission project, the questions they ask include:

Why should I be inconvenienced by this project?

Who says it is critical infrastructure and why should I trust them?

What documentation exists that lead to a decision that this is necessary?

\*\* This legislation would establish an “honest broker” approach to help determine the significance of a transmission project slated for possible construction in Idaho.

\*\* This legislation would result in the creation of a public record that can help local government officials and citizens recognize the genuine need of a transmission project.

\*\* The IPUC would play the role of “Honest Broker” and develop a record of decision that will provide Counties and local residents with a publically accessible rationale for a critical transmission infrastructure project.

### **Closing theme:**

This effort is intended to help streamline the process without compromising its integrity....the goal is to try to avoid delays and provide the necessary information to get to a decision quicker. Delays of a couple of months could dramatically impact the construction cycle or access to financing. This process could also assist in identifying problem areas early that might assist developers in their decision making process. Early identification of problems could lead to route adjustments designed to avoid potential problem areas. In turn this could save time and money....which ultimately impacts the cost of energy and the customers who will pay for it.

That concluded Mr. Kjellander’s testimony.

**Senator Pearce** said there is a transmission line coming through from Oregon and asked if that had anything to do with this legislation. **Mr. Kjellander** replied that specific project could seek priority status. Priority status would have nothing to do with the actual pathway or site. The legislation will not affect the pathway, design, or decision of authority.

### **TESTIMONY:**

**Ms. Liz Woodruff, Energy Policy Analyst for the Snake River Alliance**, testified and a copy of her testimony is inserted into the



minutes.

Mr. Chairman, members of the committee: Thank you for the opportunity to address our support for House Bill 7 relating to priority status designation for transmission projects. My name is Liz Woodruff and I am an Energy Policy Analyst for the Snake River Alliance.

The Snake River Alliance is an Idaho-based non-profit organization established in 1979 to address Idahoans' concerns about nuclear safety issues. In early 2007, the Alliance expanded the scope of its mission by launching its Clean Energy Program. The Alliance's energy initiative includes advocacy for renewable energy resources in Idaho.

The Alliance is pursuing these programs on behalf of its members, many of whom are customers of Idaho's regulated utilities, who are interested in promoting clean and affordable energy initiatives.

The Snake River Alliance recognizes the urgent need for new transmission in the state of Idaho and fully supports the intent of this legislation. We commend the Office of Energy Resources for highlighting this need through creating a mechanism for prioritizing critical transmission projects.

We feel that this legislation provides an opportunity to the Idaho legislature that we would like to bring to your attention. To take advantage of this opportunity we would like to suggest a friendly amendment to the bill.

In subsection 4 you have before you three categories of evaluation in the determination of priority status: A) economic benefits; B) new transmission capacity; and C) promotion of the public interest.

At a time when new sources of energy are being sought and renewable energy is being developed to deal with the state's and region's energy needs, we feel it is an ideal time to show support for renewable energy. Idaho's utilities have acknowledged that renewable energy will be included in new transmission projects and it makes sense to either clarify subsection © in the bill dealing with the public interest to include a reference to renewables, or add a new subsection (D) to specifically say the transmission facilities will "facilitate development of affordable renewable energy resources to serve Idaho's energy needs."

This amendment costs nothing and has the value of showing support in the Idaho legislature for renewable energy. While this is something the PUC will no doubt evaluate and consider a value in designating priority

status, there is no harm in the legislature for showing support for renewable energy—which is a rich resource set in Idaho.

Thank you for the opportunity to share this opportunity with you and I am happy to answer questions.

Ms. Woodruff provided a brochure - Idaho's Energy Future Is Bright! - to the Committee members.

**Chairman Schroeder** suggested to Ms. Woodruff, rather than attaching an amendment, she could, in the future, get a legislator to introduce a bill with her suggestions to amend this legislation.

**Senator Cameron** said that his point is very similar to the Chairman's. He was going to ask Ms. Woodruff to bring her suggestions as a separate bill, as this Legislature, unlike Washington D.C., does not load up bills with multiple concepts.

**MOTION:** **Senator Bair** made the **motion** to send H 7 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Pearce**. The motion passed by unanimous voice vote. **Senator Pearce** will **sponsor** House Bill 7.

**Chairman Schroeder** passed the gavel to **Vice Chairman Bair**, then presented S 1035.

**S 1035** The **Chairman** said that the Idaho Department of Fish & Game is often asked to provide services to public and private entities on matters concerning wildlife. Private sector entities assess fees for these services. This legislation authorizes the Idaho Department of Fish & Game to impose and collect fees for these services that are reasonably related to their actual costs.

He then asked that **Ms. Sharon Kiefer, IDFG**, to testify, then the two of them can answer any questions the Committee may have.

**TESTIMONY:** The testimony of Ms. Kiefer is inserted into the minutes.

To The Senate Resources and Environment Committee  
Testimony of Sharon W. Kiefer, Assistant Director, Idaho Department of Fish and Game  
Senate Bill 1035

Chairman Schroeder and Committee:

Thank-you for the opportunity to offer technical testimony. The Fish and Game Commission reviewed this bill on February 4 and their policy position is to monitor the bill at this time. They will discuss the bill again on February 12.

As you realize, the Fish and Game Commission and the Director have very limited statutory authority to establish fees. Idaho Code 59-10 12 does allow the Fish and Game Department (Department) to charge fees for certain publications and materials. I.C. 36-412 authorizes the Commission to establish fees for hunter education, not to exceed \$8.00. However, fees for vendor fee, licenses, tags, and permits are statutorily defined in various sections of Idaho Code.

The Ad-Hoc Legislative Funding Committee of senators, representatives, and commissioners has discussed creating a funding mechanism to allow the Department to establish fees for certain services that provide a broader societal benefit than just for hunting, fishing, or trapping. A focus of this discussion has been technical services for land use such as development.

Senate Bill 1035 would add a new section to Title 36 authorizing the Department to impose and collect fees for services that are requested by the public or private sector, which we are not required by law to provide. The fees will be reasonable and shall not exceed the actual cost of the service. The fees will be deposited in the fish and game account.

To implement this bill, the Department and the Commission would need to conduct rulemaking to establish a framework of fees and services. Such rules would be reviewed by the Legislature, presumably as a fee rule prior to implementation. Creating an appropriate rule framework will be complex but would offer a broader financial platform for certain technical services. Resistance to fee payment may hinder or preclude solicitation of Department information or our advice about wildlife outcomes from various land and water uses, such as assessment of wildlife mitigation plans for development. If inability to pay fees or resistance to fees was widespread, it could ultimately have a negative outcome for species protected, preserved, perpetuated, and managed by the Department.

It is difficult to quantify the fiscal effect to the Department but it is unlikely that fees alone will provide complete programmatic compensation for technical services because of the complexity of the technical services program. Staff provide service for activities covering the full spectrum of “traditional” sportsmen interests (i.e. advice about effects to key fisheries such as kokanee from dock construction) to broader public interests (i.e. effects to nongame and game species from conversion of lands to subdivisions or assessment of hydropower effects to animal, fish, and plant species). The bill would help provide an opportunity for broadened funding for these services and may allow some of the existing funding support from license and federal funds to be converted to other needs.

The following chart provides an example of the type of services the Department would consider for rulemaking pursuant to this bill. This chart represents just the written comments crafted by regional Environmental

Staff Biologists and other staff on a variety of projects, work we categorically refer to as “technical services”. What are not reflected here are the many hours of work on projects that are required before a comment letter is completed. The chart is provided to give you a sense of the spectrum of work that we now provide and the diversity of customers we serve.

Figure 1. IDFG Technical Services Program Summary

Written comments were provided to State, Federal and Local Governments and Private Companies. This summary represents 187 comments prepared from October 1 to December 31, 2008.

Water withdrawal	13%
Confined Animal Feeding Operations	1%
Development	22%
Dock Construction	4%
Energy	7%
ESA-Sensitive spp inquiry	9%
Grazing permitting	1%
Habitat management	3%
Habitat Conservation Plans	0%
Mining	4%
Recreation Management	6%
Federal Resource Management Plans	2%
Road/bridge construction	6%
Stream/Lake alteration	20%
Timber sales/logging	2%

That concluded Ms. Kiefer’s testimony.

**Chairman Schroeder** said that he, Ms. Kiefer and Kathleen Trevor worked on the language for the bill. The question is - should the sportsmen’s dollars continue to hire people to provide these types of services for free? Another point that he made was that the word “shall” is not in the bill, they are just authorizing permission.

**Senator Cameron** said that he feels the Department should have the ability to collect reasonable expenses that they incur from doing things that are outside of the normal traditional scope of Fish and Game.

However, he objects to the introduction of personal bills and said it makes for bad public policy. He also said the concept of the bill needs discussion, but feels that it should have come before the committee as an agency bill, rather than introduced as a personal bill. He stated that he feels this bill is being used for political gain.

**Chairman Schroeder** said that he didn’t have a problem with the bill being amended or it could be rewritten if that would make it a better bill.

**Chairman Schroeder** said that he wanted to emphatically state that if bills are killed because they are personal bills, then the rule should be eliminated.

**Senator Siddoway** feels that the bill is open-ended and he also has a conflict of interest, as do others that have land.

**Vice Chairman Bair** inquired about the cost of the studies being done by the Department and wondered why the Department didn't refer the people to go to a private industry. **Chairman Schroeder** replied that wildlife is their domain and by providing this service, they feel that they are doing something good and are willing to cooperate with the public. **Ms. Kiefer** said that they also get federal grants for technical services. It's a mix of that kind of funding that supports this. She also stated that they get letters (weekly and monthly) from project sponsors/developers who inquire, (for their various types of permits) if there are any listed species present in the area. The IDFG maintains a data base that is part of a nationwide data base in the Conservation Science Program where they can easily obtain that information. It is easier for people to come to them, rather than the people going to a contractor. That is an example of one of the kinds of service that they provide.

**Senator Coiner** said this bill is not a license to go out and "willy nilly" collect fees. It is a triggering mechanism to write rules which could be done with a lot of public input. Those rules would come back for oversight from this committee, so there would not only be legislative oversight, but public oversight to make sure they are not too broad.

**Senator Cameron** said that what he heard the Department tell the Task Force was that the biggest issue is the cost of doing environmental impact studies, research, assessments, etc., providing those technical services essentially at sportsmen's expense. He said that he agrees that it should not be the case. Senator Cameron said he would prefer a bill that is narrowly crafted with the authority to draft rules, giving them permission to collect fees for doing environmental impact on technical services.

**Chairman Schroeder** stated that he will withdraw this bill and will ask Ms. Kiefer and Ms. Trevor to come up with some language encapsulating Senator Siddoway and Senator Cameron's suggestions. If they agree on the language, then a new bill will be brought before the committee. He does not want to let this issue linger.

**Vice Chairman Bair** returned the gavel to Chairman Schroeder.

**ANNOUNCE-  
MENTS:**

The **Chairman** reminded the committee that on Monday, they would be in the Hall of Mirrors. He also said that he heard this committee would be getting the fee bill.

**ADJOURN:**

The meeting was adjourned at 2:35 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 11, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m. and asked for motions for approval of minutes.

**MOTION:** **Senator Bair** made the **motion** for the approval of the minutes, as written, of January 30, 2009. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Brackett** made the **motion** for the approval of the minutes, as written, of February 2, 2009. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Bair** made the **motion** for the approval of the minutes, as written, of February 4, 2009. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.

**Chairman Schroeder** welcomed the **Idaho Soil Conservation Commission and Administrator for ISCC, Jerry Nicolescu**, to the meeting. Mr. Nicolescu will provide a PowerPoint presentation.

**INTRO-DUCTIONS:** Prior to the presentation, **Mr. Nicolescu** introduced the following people: **Dwight Horsch**, Chairman; **Dick Rush**, Secretary; **Bill Flory**, member; **Steve Miller**, President, Idaho Association Soil Conservation Districts; **Kent Foster**, Executive Director, IASCD; **Steve Becker**, Chairman, Nez Perce Soil Conservation District; **Kyle Wilson**, Supervisor, NPSCD; **Cody Anderson**, Chairman, Latah Soil Conservation District; and **Leon**, member.

**SPEAKER:** Following is an outline of the PowerPoint presentation:

Partnership of Idaho Association of Soil Conservation Districts (IASCD) and Natural Resources Conservation Service (NRCS)

### MISSION STATEMENT

Providing support and service to Idaho Soil Conservation Districts in the wise use and enhancement of soil, water, and related resources.

### FUNCTIONS OF THE IDAHO SOIL CONSERVATION COMMISSION AND CONSERVATION DISTRICTS

To take available technical, financial, and educational resources, whatever their source, and focus or coordinate them so that they meet the needs of the local land user.

### SOIL CONSERVATION DISTRICTS

- Assess the conservation needs of the District
- Prepare long-range plans with goals and objectives
- Coordinate with Federal and State agencies to assure compatibility of District planning
- Establish funding mechanisms to implement sustainable and comprehensive conservation practices
- Provide technical, financial and educational assistance to landowners and land users across Idaho

### KEY PROGRAMS

TMDL, Watershed/Ground Water Priority Area Planning and Implementation

Water Quality Program for Agriculture (WQPA)

Resource Conservation and Rangeland Development Program (RCRDP)

Conservation Improvement Grant Program (CIG)

Carbon Sequestration

Upper Salmon Basin Watershed Program (USBWP)

Clearwater Focus Watershed Project (CFWP)

Conservation Reserve Enhancement Program (CREP)

#### NRCS PROGRAMS

Environmental Quality Incentives Program (EQIP)

Agricultural Watershed Enhancement Program (AWEP)

Conservation Security Program (CSP)

Wildlife Habitat Incentive Program (WHIP)

### CONSERVATION DISTRICT ACCOMPLISHMENTS

Locally-led Conservation:

SCDs/OSCC/NRCS

- Irrigation Water Management
- Water Quality
- Rangeland, Pasture and Hayland

### NRCS'S EQIP, CSP AND WHIP PROGRAMS

EQIP - 430 new contracts obligating \$15.9 million

CSP - 36 new contracts obligating \$1.49 million

WHIP - 15 new contracts obligating \$1.54 million

### IDAHO SOIL CONSERVATION COMMISSION

Water Quality Program for Agriculture Conservation Improvement Grants

### CLEARWATER FOCUS PROGRAM

Coordinates the development and management of fish habitat restoration

in the Clearwater River Sub-basin

UPPER SALMON BASIN WATERSHED PROGRAM

Sulpher Creek Fish Barrier Removal

RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT PROGRAM (RCRDP)

Active Loans: 197

Total Approved Loans: 229

Loans Outstanding Balance \$ 8,471,952.11  
Approved Loans Awaiting Funding \$ 2,556,139.20  
Total Approved Loan Balance: \$11,028,091.31

TMDL AG IMPLEMENTATION PLANS UPDATE

	<u>2007</u>	<u>2008</u>
Total Count of Completed Plans	56	61
75% Completion or Greater	2	7
50% Completion or Greater	12	4
25% Completion or Greater	7	5
New Plans (less than 25% complete)	4	5

FY 2009 BUDGET

Appropriated Fund FY 2009 by Category

General Fund:

Personnel \$1,585,400  
Operating \$ 965,719  
Capital Outlay \$ 7,843  
Trustee and Benefits \$1,885,200

FY 2009 BUDGET HOLDBACKS

4% \$179,124  
2% Reserve \$ 89,562

Taken from Operating Expenses (OE)

FY 2010

4% from FY 2009 \$179,124  
6% from FY 2010 \$268,686  
Total \$447,810

EFFECT OF HOLDBACKS

- Reduce
- Realign duties and responsibilities
- Contract management through Districts
- Alternative funding sources
- Additional Partnerships

CHALLENGES

- Funding for Districts  
District Match
- Adequate Staffing
- Program Sustainability



- Maintain Accountability

#### FUNDING FOR DISTRICTS

##### District Match

FY 2009	Letters of Intent	\$404,000
FY 2009	Request for Matching Funds	\$808,000
FY 2009	Receipt of County Funds	\$453,000
	(revised)	
FY 2009	Request for Matching Funds	\$906,000
FY 2010	Legislative Appropriation	\$693,900

#### ADEQUATE STAFFING

ISCC - 24 full-time employees

IASCD - 17 Contract staff

NRCS - 189 full and part-time employees

ISCC contracts funded from Operating Expenses

NRCS - no possibility of additional staff, with a heavy new workload required in the 2008 Farm Bill

Monitoring - possible loss of shared positions

#### PROGRAM SUSTAINABILITY

\*\*Maintain existing program contracts

CREP	USBWP	319 Program
WQPA	Clearwater	PCSRF
RCRDP	2003 Farm bill	WQ Monitoring

\*\*Initiate new programs and contracts

2008 Farm bill

Agricultural Watershed Enhancement Program (AWEP)

#### ACCOUNTABILITY

Program Contract Holder

Public Funds

#### FUTURE

Support to Districts

Program Progress

Continued Conservation Activities

Retention of Core Staff

Prepare for Economic Recovery

**SPEAKER:**

**Mr. Steve Miller** presented the last half of the ISCC program. An outline of his presentation is as follows:

#### PURPOSE OF PRESENTATION

Two issues of concern due to lack of adequate District funding:

1. Many smaller Conservation Districts will become ineffective.
2. Loss of IASCD TMDL Contract Field Staff.

#### IDAHO ASSOCIATION OF SOIL CONSERVATION DISTRICTS

\* Established in 1944

\* A private Non-profit Corporation (501 ©3 IRS tax status)

- \* Represents Idaho's 51 Conservation Districts
- \* State divided into 6 Districts
- \* A Division Director represents each of the 6 Divisions

#### CONSERVATION DISTRICT FACTS

- \* Idaho has 51 Soil Conservation Districts
- \* Districts are a sub-division of State Government
- \* Regulated by District Law (Title 22, Chapter 27 Idaho Code)
- \* Governed by an elected Board of 5 to 7 members
- \* Over 275 District Board members statewide
- \* Each District develops a unique locally led, voluntary conservation program
- \* Technical Assistance obtained from NRCS, ISCC, and other state and federal agencies
- \* Districts leverage received funds as much as 60:1 to achieve natural resource conservation
- \* A very positive local economic impact on communities

#### MAP SHOWING LEGISLATIVE DISTRICTS AND CONSERVATION DISTRICTS

#### IMPACTS OF DISTRICTS LEVERAGING WQPA FUNDS (Graph)

#### FEDERAL CONSERVATION FUNDS LEVERAGED BY DISTRICTS IN 2008 (Graph)

#### CONSERVATION DISTRICT FUNDING

Districts are partially funded by local entities.  
 The State matches local funding at up to 2 to 1.  
 Local funding over last 10 years has increased.  
 State match funds over last 10 years has decreased.

#### Three Charts on Funding

#### IMPACTS OF REDUCED FUNDING ON SMALL DISTRICTS

22 Districts receive less than \$5,000 in State Match Funds.  
 40 Districts receive less than \$10,000 in State Match Funds.  
 Of 58 District Employees statewide, 15 to 20 may leave by July due to lack of District funding.  
 50% of Employees may have to reduce work hours.

#### LOSS OF TMDL FIELD STAFF

7 Water Quality Resource Conservationists Positions scheduled for termination by April 2009.  
 They are: Bruneau, Fairfield, Grangeville, Idaho Falls, Marsing, Sandpoint, and Soda Springs.

3 Water Quality Analysts positions may be terminated by July 2009.  
 They are: Moscow, Pocatello, and Twin Falls.

In conclusion, **Mr. Miller** said that losing district personnel is a very difficult position to be in. In the Camas County District, they have had three different administrators in two different years and basically, nothing got done.

**DISCUSSION:**

**Mr. Nicolescu** said the Chairman had requested a report of the financial difficulties of the Commission.

Five years ago, they had an embezzlement in the grant program and an embezzlement two years ago in the loan program. Because of the nature in which the last embezzlement occurred, staff was pulled back from looking into it and the Commission took it on.

**Chairman Schroeder** inquired as to who hired the personnel that did the embezzling. **Mr. Nicolescu** stated that the Commission does the hiring. **The Chairman** then asked, "By whose recommendation?" **Mr. Nicolescu** said that they went through the personnel process and hired accordingly. **Chairman Schroeder** said that he is trying to find out who hired the people that did the embezzling and somewhere, someone made a decision.

**Mr. Dick Rush** was asked to address the issue. He said that they were very concerned and was embarrassed by the embezzlements, but wanted to compliment the staff for their work in helping to catch the person involved in the latest embezzlement. The State of Idaho had done some internal auditing, but he understands that forensic accounting and auditing is much different than what one gets in a normal CPA audit. After researching auditing firms, a representative of the firm that was hired is here today, **Ms. Verna Kessler**. Mr. Rush said that she has spent 20 years with the FBI in financial white collar fraud and is a certified forensic financial auditor. He then asked her to address the committee.

**Ms. Kessler** said that her firm was contacted in early November last year to do a consulting engagement (not an audit). They were hired specifically to check an independent investigation of disbursements of known documentation relating to the activities of this one individual, the loan officer at the Soil Conservation Commission. She stated that they reviewed the hiring procedure as to how he got hired and found that the person was very good at lying. Without collusion from an outsider, he couldn't have created this fraud alone because of the procedures at the SCC. The fraud was caught by the current employees of the SCC and Ms. Kessler said her job was to make sure the full extent of the fraud had been discovered. Also, she was to make recommendations that this kind of thing didn't happen again. One of the problems they thought of was if a background investigation had been done on this loan officer before he was hired, they might have seen the several social security numbers or the mail drops that he used for his local businesses. Ms. Kessler said that she was told by the head of the Personnel Department that because it wasn't a security sensitive position, background investigations were not allowed to be done at that point in time; however, they have since been done. Her firm has done a data base search of all the current employees of the SCC and they only looked at the loan program, not the grant program. Several recommendations were made regarding office procedures and almost all have been followed up on. A "clean desk" policy was recommended and that is being worked on.

**Chairman Schroeder** asked for a copy of the recommendations that were made to the SCC and also inquired as to the amount of money that

was taken in both cases of the fraud. **Mr. Nicolescu** said that five years ago, the amount was \$56,000 and they have received full restitution. Two years ago the amount was \$123,750.

The **Chairman** asked **Ms. Kessler** who hired the most recent individual? She stated that there is a hiring committee and the last person convicted of fraud went through three different interviews. The recommendation to hire then went to the Commission.

**Chairman Schroeder** then asked Mr. Rush if this is unusual in government or does it go on all the time? **Mr. Rush** replied that it does go on and happens more than he thought. The **Chairman** also asked Mr. Rush if the head person of an organization is accountable for this type of thing? **Mr. Rush** said that he thinks the head person is accountable in any organization, but that person should make sure there are proper controls and oversight in place.

**Senator Brackett** inquired as to why recommendations were only made on the loan program and not on the grant program. **Ms. Kessler** said their investigation was only on the loan program. **Senator Brackett** asked if the grant program needed to be looked at? **Mr. Nicolescu** said the Commission has gone through the grant program and the two programs are now separate.

**Chairman Schroeder** asked Ms. Kessler if the recommendations that she has made had been in place, would the fraud have happened? **Ms. Kessler** said that it still may have happened, with the exception of the background investigation and independent confirmation of application information.

The **Chairman** said that the question is always there - when incidents like this happen twice, will it happen another time? He thanked the Commission for their reports and attendance at today's meeting.

**Chairman Schroeder** announced that Senator Brackett would introduce the next speaker.

**Senator Brackett** welcomed and introduced **Ms. Gretchen Hyde, Executive Director of the Idaho Rangeland Resource Commission**. Senator Brackett said that the Commission focuses on education and public relations.

**SPEAKER:**

**Ms. Hyde** said the Commission was formed by the Legislature in 1994 and funding for the Commission was approved in 1997. One hundred percent of the funding comes from the assessment of animals from Idaho ranchers.

The five Board members are appointed by the Governor and Ms. Hyde is the only full-time staff person. She is assisted by a part-time employee.

Following is the Vision Statement of IRRC: Idaho Rangeland Resource Commission sees abundant rangeland resources maintained in Idaho through an informed public who understands such management. The work of the Commission will help assure sustainable rangelands that

support people, wildlife, recreation and scenic beauty.

The Mission Statement is: To provide programs that result in an informed public who understands and support balanced responsible management of Idaho's economically vital private and public rangelands.

Goals are:

- \*To increase public understanding that Idaho's rangelands are a renewable source of important consumer products and environmental values.
- \*To provide, coordinate, and disseminate factual information about economic and ecological aspects of rangeland management practices.
- \*To promote public support for livestock grazing on Idaho's rangelands.
- \*To promote responsible rangeland stewardship.
- \*To advocate balanced use of rangeland resources.

The IRRC focuses on long-term goals while being responsive to the industry concerns and needs. This is done through both the education and public relations programs designed and implemented by the IRRC.

Last summer, the IRRC took the lead in hosting an education tour of the Murphy Complex Fire. The list of invitees included sagebrush seed collector volunteers, local leadership, rangeland managers, Society for Range Management membership, and area ranchers. This tour included many stops to showcase the challenges of conditions and the location of the fire.

The IRRC education program continues to host teacher workshops. These workshops include education about rangeland plants, noxious and invasive weeds, livestock and wildlife interactions, and grazing management. The IRRC is working with three other states to begin a new Western National Rangeland CDE for FFA students. Currently, our state winner has to compete in Oklahoma which has vastly different rangeland plants and conditions than Idaho.

IRRC continues to partner with the BLM and USFS on the Care/Share public relations campaign. This campaign has completed 17 new kiosks in the Payette National Forest to minimize conflicts between recreationists and livestock. Grants have supported this program for five years.

The results of a recent public opinion poll conducted by IRRC in conjunction with the Idaho Preferred program will assist in the development of new programs and grant applications for additional research. In summary, on a 10-point scale, Idahoans rated ranches and farms a 7.8 on preserving wildlife habitat and that 62 percent would either sometimes or always buy locally produced beef or lamb if supplied information demonstrating Idaho rancher's practice or responsible stewardship of the land and animals..

The new IRRC Rangeland license plate is finally available. **Ms. Hyde** said they are hopeful that the many people who love Idaho's rich ranching traditions and rangelands will support IRRC education programs with the purchase of this new specialty plate. The IRRC would like to thank the supporters of this plate for allowing IRRC to continue to develop new programs.

**Ms. Hyde** provided the Committee members with a copy of IRRC's Budget Report, as required by Idaho Code.

**Chairman Schroeder** thanked Ms. Hyde for her presentation.

**ADJOURN:** The meeting was adjourned at 2:50 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 13, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**ANNOUNCEMENTS:** He then announced that RS 18578C1, Fish and Game fee increase, has been withdrawn; therefore, it will not be heard.

The **Chairman** said the presentation today is by **Dr. Craig White, a research biologist for the Idaho Department of Fish and Game**. A handout was provided - "Elk Status & Survival Update" to the committee members for their review.

**SPEAKER:** **Dr. White** gave a PowerPoint presentation on the "Ungulate Ecology Project". Following is an outline of the presentation.

Objectives

1. Review cow elk survival and causes of mortality
2. In-depth look at the Lolo Zone
3. Elk/Wolf Interaction Study

Wolf Density by Zone

The wolf density varies from very low in Southern Idaho to very high in Central Idaho (50 or more in the Lolo Zone)

Statewide Elk and Deer Survival 2005-2008

- \* Captured, collared, monitored –1,000 mule deer and elk
- \* Largest big game radio-collar project ever conducted in Idaho

Weiser Zone

Three trends occur across Idaho, with the Weiser Zone in Trend 1, with moderate wolf density. Cow elk population above minimum objectives. Survival of the cow elk was 89%. Harvest was the primary cause of cow

mortality in this zone, with a small amount of mortality caused by wolves.

#### Sawtooth Zone

Trend 2 occurred in the Sawtooth Zone (Loman, Garden Valley and Stanley Basin areas). Cow elk population is expected to be below minimum objectives, with survival at 87%. Wolves and other predators are the primary cause of mortality. Opportunities to hunt cow elk have been cut back in recent years.

#### Lolo Zone

Trend 3 was identified in the Lolo Zone. It has a very high density of wolves and well below the minimum objectives for the past 10 years. The survival in this zone is considered poor at 75% for cow elk and wolves are considered the driving force of cow mortality. All cow harvest has been eliminated in recent years.

#### Lolo Population History

In the late 1980's, there were over 15,000 elk. Recent surveys show only 5,000 elk now. The decline involves the cow/calf ratio in January. The calves were not being recruited into adult population, primarily because of black bear, mountain lion, and habitat issues. In 1996 & 97, it was a severe winter.

#### Potential Current Causes of Population Performance

- \* Calf survival from birth to December is poor
- \* Calf survival from December to June has changed
- \* Adult cow survival has issues

#### Early Calf Survival

The numbers have rebounded since 1999 when the harvest of black bear and mountain lion was increased. Calf survival improved from birth through December. There seems to be a reasonable cow/calf ratio now. Through the use of radio collar studies, the mortality of calves in the early stages that are caused by wolves has been only 2%.

#### December - June Calf Elk Survival

Thirty calves were collared in this age group (6 months old) in 2005 and 2006, the survival is 15-20% lower than what normal survival should be. The cause of this mortality is primarily wolves.

#### Sum of Effects

- \* Early Calf Survival = 27 Calves:100 Cows
- \* Dec-June Calf Survival = 73%
  - \* June Calf:Cow ratios = 22 Calves:100 Cows
- \* Cow Survival = 75%
- \* Cow Population Growth = -13%/year

#### Lolo Summary

- \* Lolo Zone Elk are below objectives
- \* Given low cow and calf survival, the zone is not expected to reach objectives
- \* Wolf caused mortality is the primary cause of low cow and calf survival



### Zone Summary

Looking at all 11 zones, the three trends were: survival is greater than 85%; harvest is the primary cause of mortality; and low to high wolf density.

### Current Research: Measuring Wolf Caused Mortality

- \* Currently, radio-collared elk are needed to identify wolf caused mortality
- \* Radio collar samples are expensive

### Elk/Wolf Interaction

In 2008, a study was begun and the purpose was to model elk survival as a function of wolf abundance relative to elk abundance. Two study areas were selected - the Lolo Zone and the Sawtooth Zone.

### Wolf Impact on Elk Populations?

Objective: Model elk survival as a function of wolf abundance, relative to elk abundance

### Elk/Wolf Interaction

- \* Capture wolf pack members and place a GPS collar on each member
- \* Collar 60 elk (20) and 20 6-month old calves with a GPS collar

### Monitoring Effort in 2008

Sawtooth Zone - 70 Elk Collared 15 Wolves across 3 packs

### Monitoring Efforts in 2009

Sawtooth Zone - 38 Elk Collared 20 Wolves across 4 packs

Lolo Zone - 37 Elk Collared 12 Moose 9 Wolves across 2 packs

### Maps of GPS Tracking of Calf Elk and Wolf

- \* GPS collars make it possible to monitor the interaction of elk and wolves across space and time
- \* The technology is being used to create a management tool that has statewide application for elk and wolf management
- \* The tool predicts the impacts of wolves on elk at different wolf and elk population levels

That concluded Dr. White's presentation, which was followed by a discussion.

During this discussion, **Chairman Schroeder** asked **Dr. White** how many wolves are in Idaho and the reply was that it is estimated to be over 800. The **Chairman** then asked what is going to happen in the Lolo Zone? Will it get to a point when no elk hunting will be allowed because wolves cannot be killed? **Dr. White** said that some of it will be a policy decision, but biologically, the wolf population would start to decline. He said he didn't know if that would be when every elk and moose are gone. **Chairman Schroeder** then asked at what point does hunting stop? **Ms. Kiefer** replied that cow elk hunting has been removed and bull elk hunting will be relative as to their estimates of how many bulls per cows are needed to continue calf production. The **Chairman** asked if no elk hunting in the Lolo Zone could happen and **Dr. White** replied that it could.

There were no further questions.

**MOTION:** **Senator Bair** made a **motion** to approve the minutes, as written, of February 6, 2009. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

**ADJOURN:** **Senator Schroeder** adjourned the meeting at 2:30 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 16, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:45 p.m. The reason for the delay was because the room was in use.
- The **Chairman** welcomed **Mr. Jay O'Laughlin, Director, Policy Analysis Group (PAG), University of Idaho**. Mr. O'Laughlin will present a program on "Off-Highway Vehicle and Snowmobile Management in Idaho" and "Analysis of Procedures for Residential Real Estate (Cottage Site) Leases on Idaho's Endowment Lands".
- SPEAKER:** **Mr. O'Laughlin** stated that both of these reports were suggested by the PAG's Advisory Committee. Representing that Committee are the following: George Bacon, Director, Idaho Department of Lands; Margaret Soulen Hinson, Idaho Rangeland Resources Commission; John Robison, Public Lands Director, Idaho Conservation League; Cal Groen, Director, Idaho Department of Fish and Game; Kent Lauer, Director of Public Affairs, Idaho Farm Bureau Federation; Cecilia Seesholtz, Supervisor, Boise National Forest; Kent Henderson, Idaho Wildlife Federation; Jack Lavin, Idaho Recreation/Tourism Initiative; and Jane Wittmeyer, Vice President of Idaho Affairs, Intermountain Forest Association. In attendance today was **Mr. Bacon**.
- Mr. O'Laughlin** said that many of you are acquainted with the PAG, but some of you are not. The Idaho Legislature created the PAG in 1989 as a way for the University of Idaho to "provide timely, scientific and objective data and analysis, and analytical and information services, on resource and land use questions of general interest to the people of Idaho" (Idaho Code section 38-714). The PAG is a research and outreach unit of the UI's College of Natural Resources, and has been continuously funded since its inception by legislative appropriation through the Forest Utilization Research budget line as a UI Special Program.
- The PAG is currently working on a variety of projects including:

- Public land exchanges: benefits, barriers, and potential in Idaho
- Effects of hazardous fuels treatment on wildfire behavior
- Idaho's endowment lands: a sacred trust (revised edition)
- Forest biomass-to-energy opportunities and challenges in Idaho
- Terrestrial carbon sequestration potential in Idaho

He then presented his report on “**Off-Highway Vehicle and Snowmobile Management in Idaho**” through a PowerPoint presentation. Mr. O’Laughlin also provided booklets to the Committee that included all the information that he presented.

This report analyzes implications of the rapid growth in off-highway vehicle registrations, from 30,000 units a decade ago to almost 120,000 today. Managing the use of these vehicles adds a new dimension to the list of tasks all state and federal resource management agencies deal with. This report offers alternatives but does not recommend any particular one, as per the PAG’s operating guidelines.

**Senator Brackett** inquired as to how they measured impact/success over the years. **Mr. O’Laughlin** said that ideally, what they like to do, is to point to a piece of information that they included in a report that was instrumental in causing a policy change.

Idaho Code does not define off-highway vehicles (OHV) like the federal regulations. Instead, more specific definitions are used – all-terrain vehicle (ATV); motorbike; utility type vehicle (UTV); and snowmobile. Surveys have found that at least one-third of Idaho adults participate in some form of OHV recreation and 21 percent participate in snowmobiling. Currently, thousands of miles of unpaved roads and trails are open to OHVs on the national forests and BLM lands in Idaho. The situation is changing as both federal land management agencies are implementing more restrictive travel management plans.

One challenge for land managers is providing OHV and snowmobile recreation experiences to an increasing number of OHV and snowmobile recreationists. Managers must contend with conflict between user groups. There is a tension between opening more access to OHV and snowmobile travel and reducing the number of open areas in order to concentrate impacts on smaller areas. Potential resource damage is part of the reason landowners restrict access. Resource damage can result from either unauthorized or authorized access, and can be either intentional or unintentional. Preventing resource damage is challenging for several reasons, including that it may be dispersed over large areas that are often remote, making personal contact difficult and expensive for either educational or enforcement purposes. Enforcement is also challenging because many law enforcement agencies do not receive funding specifically for OHV and snowmobile related enforcement.

Not all management alternatives involve policy changes, but understanding the range of actions available to managers provides helpful guidelines for discussions of policy alternatives. Funding is needed for most management actions, whether providing more recreation opportunities or enforcing regulations.

Communication and education programs can be effective ways of dealing with some OHV and snowmobile management issues. To be effective, messages must be appropriately targeted and communication methods carefully considered. Mandatory education requirements for OHV and snowmobile recreationists are one way to address education needs, and some states have adopted such requirements.

**Senator Siddoway** asked who is authorized to do enforcement of OHVs on state land and federal land? **Mr. O’Laughlin** said that it is established in the agencies memorandum of agreements. The key one is the State Fish and Game Conservation Officers who are authorized by the Forest Service to enforce activities on national forest land. **Senator Siddoway** then inquired about enforcement on private land. **Mr. O’Laughlin** said that he couldn’t answer that question, but the details regarding enforcement is in the booklet.

**Vice Chairman Bair** said that in looking through the report, it appears that the PAG visited extensively with the departments that have members on the Board, but did not see any information that off-road vehicle organizations were contacted for their input and asked why. **Mr. O’Laughlin** said they didn’t purposely exclude anyone, but followed the lead of the experts in the area, which are the land managers in this case. The **Vice Chairman** said that it seems to him that if you want to talk about how best to regulate a particular portion of our society, the very people that you are affecting ought to be one of the main people that you are visiting with and it ought to be a huge part of what the report is about. He feels the report does not mean a whole lot when the people you are dealing with were not included in the process. **Mr. O’Laughlin** said that rather than lay out all the different issues that interest groups have, in a report like this, that it is more useful to say, “These are the policies and this is what we do.” They try to provide the facts, rather than people’s values on issues.

**Mr. O’Laughlin** then presented “**Analysis of Procedures for Residential Real Estate (Cottage Site) Leases on Idaho’s Endowment Lands**”.

Idaho’s endowment trust assets include 354 cottage site lots on Priest Lake and 168 cottage site lots on Payette Lake. The state leases the lots, and lessees are authorized to construct and own single-family residences on the sites. The cottage sites are to be managed, like all endowment trust assets, to provide “maximum long term financial return” to the trust beneficiaries, primarily public schools. The State Board of Land Commissioners (Land Board) is the trustee for endowment trust assets and is mandated to “insure that each leased lot generates market rent throughout the duration of the lease.” Maximizing financial return to endowment land assets by obtaining market rent for cottage site leases raises several issues.

For FY 2007, these sites brought in \$4.3 million, representing about seven and one-half percent (7½ %) of the endowment land net income.

Most cottage site lots were leased for the first time during the mid 1940s

and early 1950s. Rents were low and remained relatively flat from 1945 to 1988. After selling 22 lots at Payette Lake in 1987 to determine fee simple market values, the Land Board began using a rental rate of 2.5% of fee simple market value in 1988. As of 2008, the rental rate remains 2.5% of current fee simple value of the vacant or unimproved land. At Priest Lake, the leased property is revalued every five years, and rent is adjusted annually by indexing based on market data. At Payette Lake, rent is adjusted annually based on assessed values determined by Valley County.

In 2008, the Idaho Legislature amended Idaho Code to allow the Idaho Department of Lands (IDL) to increase the lease term for all cottage sites on state endowment lands from 10 years to 35 years. The rationale for lengthening the lease term was that it would more generally coincide with a traditional 30-year mortgage term, and therefore the desirability of state cottage site leases could potentially increase due to the availability of residential financing.

The goals of the Land Board and IDL are for the cottage site leasing program to a) meet the "maximum long-term financial return" constitutional obligation to the trust beneficiaries, and b) ensure that each cottage site lot "generates market rent throughout the duration of the lease" as required by statute.

The setting of lease rental payments for cottage sites can be accomplished via several methods. Appraisals are one method and can be used to estimate market rent in two ways. If a rental market exists, then market rent can be determined by examining rental contracts from comparable properties. Adjustments have to be made for improvements, differences in lease contract terms and conditions, and other property characteristics to arrive at a comparable rent for state land leases. If other similar leased properties do not exist in the market area, then determining market rent is more complicated and is determined by appraising the current fair market value of the land that is being leased and then applying an appropriate annual rate of return to ascertain the contract rent.

Adjusting contract rent to keep current with changes in land value is also challenging. The application of an index of overall price changes in the economy, such as the Consumer Price Index (CPI), does not accurately reflect price changes in the real estate markets at Priest and Payette Lakes. A local real estate price index would more closely reflect land value changes in those areas, but whether such an index could be developed is open to question.

The conclusion is that creating a cottage site leasing program that meets not only the Land Board's fiduciary responsibility to the beneficiaries of the state endowment trust but also the market rent mandate is challenging. Changes to the existing program also involve issues of fairness to current leaseholders.

The Ad Hoc Committee fully recognized that cottage site leasing is an emotional issue. The committee recognized that it easily can be shown that while the market value of the cottage sites has appreciated and will

probably continue to increase, the cash return to the endowments is significantly below the returns provided by other investments. However, a 2.5% cash return on asset value is above the cash returns of 1.1% on rangeland assets.

In December 2007, the Land Board adopted its Asset Management Plan that lays out management objectives for the cottage site leasing program. It appears that despite the difficulties of administering the residential real estate leasing program, the Land Board intends that cottage sites will remain a part of the endowment portfolio for the foreseeable future.

Policy decisions that guide trust land managers have been, and likely will continue to be, a balancing of financial, environmental, and social concerns.

**Mr. O'Laughlin then presented Fact Sheet #4 - High Forest Mortality and Low Timber Removal Rates in the Western States Means Hazardous Fuel Accumulations and Big Fires.**

This analysis compares new forest inventory data for Idaho and Montana (together, the Northern Rocky Mountain region, or NRM) with each of the Pacific Coast states (Oregon, Washington, California, and Alaska) and the Intermountain (INT) region (Arizona, Colorado, New Mexico, Nevada, Utah, and Wyoming). Key points below are supported by the attached [Data Table](#).

The NRM region (Idaho and Montana) has substantial forest resources, comparable in quantity to Oregon, Washington, or California. The six-state INT region also has a comparable quantity of forest resources. Alaskan forest resources are less than half of those in the other coastal states (see [Table](#), line a).

The large amount of sound dead timber is a distinguishing feature of the forests of the eight-state Interior West region (NRM and INT regions combined) compared to the Pacific Coast states (see [Table](#), footnotes to line a). Except for Alaska, inventory data do not show sound dead timber in the coastal states.

- Dead timber accumulations in the Interior West are substantially higher than any other inventory period, dating back to the early 1950s when inventories commenced.
- Dead timber accumulations result from high mortality and low removals in the Interior West states ([Table](#), lines c, d, respectively).

The NRM region (Idaho and Montana) has by far the highest amount of mortality ([Table](#), line c). Mortality is a component of the large annual wood increment in the region ([Table](#), line e).

The Pacific Coast states (except Alaska) each add more than a billion cubic feet of volume to timber inventories every year; so do the NRM and INT regions ([Table](#), line e). One billion cubic feet of wood is enough to cover a football field with a stack of wood four miles high.

Wood is accumulating faster in California and the NRM region than in the other states (Table, line f).

The annual wood increment represents additional fuel for the inevitable wildfire in forests of the Interior West, including portions of the coastal states east of the Cascade Range, and is a problem in dry forests.

The six states in the NT region and Alaska are also experiencing high mortality (Table, lines h, i), but as reflected by very low removals (Table, line d), the forest industry infrastructure necessary to improve the accumulating fuel situation may not exist in some areas (Table, line k).

The NRM region and California have become infrastructure-challenged compared to Oregon and Washington (Table, line k); removals have decreased due to the dominant presence of federal lands and the inherent difficulty of removing federal timber due to public policies.

The traditional forest sustainability measure is the growth/drain ratio; all western states could increase timber removals substantially and still meet this criterion (Table, line j).

**Mr. O’Laughlin then presented Fact Sheet #5 - Environmental Benefits of Using Biomass as an Energy Feedstock.**

Biomass, in the renewable energy context, refers to living or recently dead biological materials that can be used as fuel or for industrial production. Biomass materials are used as a source of energy in many ways. Wood and agricultural residues are burned as a fuel for cogeneration of steam and electricity in the industrial sector, or directly for power generation in the electricity sector. Biomass is used for space heating in residential and commercial buildings. For example, the University of Idaho saves \$2 million per year by heating the campus with steam produced by burning wood instead of natural gas.

Environmental benefits are the most important of the many reasons for increased use of biomass to produce electricity. Substitution is the key idea. Every unit of energy produced with biomass keeps a like unit of fossil fuels in the ground. Compared with coal, for example, biomass feedstocks have lower levels of sulfur or sulfur compounds. Perhaps the most significant environmental benefit of biomass, however, is a potential reduction in carbon dioxide (CO<sub>2</sub>) emissions. Biomass-based generation is assumed to yield no net emissions of CO<sub>2</sub> because plants capture and store CO<sub>2</sub> as part of the natural carbon cycle. Wood and other biofuels are said to contain “biogenic” carbon. Under international greenhouse gas accounting methods developed by the Intergovernmental Panel on Climate Change, biogenic carbon is part of the natural carbon balance and it will not add to atmospheric concentrations of carbon dioxide. The emission factor is zero for wood, wood waste, and other biomass fuels.<sup>1/</sup>

In a life-cycle sense, however, biomass burning is not precisely a net zero emission process. There are CO<sub>2</sub> emissions associated with harvesting, transportation, and feedstock preparation operations, such as removal of



impurities and reduction of moisture and particle size. Emissions arise from fossil fuel consumption for those operations rather than from biomass combustion. Coal and other fossil fuels also produce emissions from such operations.

Dry wood is about half carbon by weight and also contains sulfur and nitrogen, which yield sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) in the combustion process. Although there are environmental impacts of wood burning, the rate of emissions is significantly lower than that of coal-based generation.<sup>2/</sup> Biomass co-firing is the practice of introducing biomass and coal together into an existing coal-fired boiler for electricity generation purposes. The biomass can either be introduced via a dedicated feed system or mixed with coal in the coal pile and fed to the boiler through the coal feed system. The substitution of biomass for coal in power plants has the effect of reducing SO<sub>2</sub> emissions and can also lead to lower NO<sub>x</sub> emissions. Existing coal-fired plants can use 10-20% biomass for co-firing without major modifications.

Sources: "Biomass for Electricity Generation"

<<http://www.eia.doe.gov/oiaf/analysispaper/biomass/>> and "Emission Coefficients" <<http://www.eia.doe.gov/oiaf/l605/coefficient.html>>, US. Department of Energy websites.

1/ Burning wood to produce electricity emits 195 pounds of CO<sub>2</sub> per million Btu; coal burning ranges from 205-227.

2/ For example, per kilowatt hour generated, biomass integrated gasification combined-cycle (BIGCC) generating plants can significantly reduce particulate emissions (by a factor of 4.5) in comparison with coal-based electricity generation processes. NO<sub>x</sub> emissions can be reduced by a factor of about 6 for dedicated BIGCC plants compared with average pulverized coal-fired plants.

In conclusion, **Mr. O'Laughlin** said that he really appreciated the opportunity to present this program to the Committee.

**Chairman Schroeder** thanked Mr. O'Laughlin.

**ANNOUNCE-  
MENTS:**

He then announced the agenda for the next meeting, Wednesday, February 18: Confirmation hearing for Jim Yost to the Northwest Power & Conservation Council; House Bill 31; and a review of the Agencies budget requests.

**ADJOURN:**

The meeting was adjourned at 3:05 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 18, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**PRESENTATION:** The **Chairman** announced that this is the last week for our **Senate Page, Kylee Holdaway**. He presented her with a Senate watch and a letter of recognition, signed by the committee members. When asked what her plans were after high school graduation, Kylee said that she hopes to study medicine in college.

**MINUTES:** **Senator Bair** said that he had reviewed the minutes of February 11 and made the **motion** for their approval. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

**MINUTES:** **Senator Brackett** said that he had reviewed the minutes of February 13 and made the **motion** for their approval. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.

**CONFIRMATION HEARING:** **Chairman Schroeder** stated that a confirmation hearing will now be held for **Mr. Jim Yost to the Northwest Power & Conservation Council (NPCC)**. He is being reappointed and his term is from January 15, 2009 to January 15, 2012.

Mr. Yost was born in Rupert, Idaho and raised in the Magic Valley of Southern Idaho where he learned and applied knowledge of water, agriculture and natural resources. He graduated from the College of Southern Idaho in 1968 with an Associate of Arts Degree and then Boise State in 1971 with a Bachelor of Arts degree in education.

In 1972, he was elected to the Idaho State Senate at the age of 24, the youngest Idaho Senator/Legislator ever elected and he served two terms.

Mr. Yost owned and operated a dairy distributorship for a number of years

in Wendell, Idaho and worked for the Union Pacific Railroad for 10 years. In 1988, he was named Assistant Public Affairs Director for the Idaho Farm Bureau and in 1991 was promoted to Public Affairs Director. In 1995, he worked for a time for the Northwest Power and Planning Council.

Governor Batt appointed Jim as his Natural Resources Senior Policy Advisor. He was retained by Governor Kempthorne from 1999 to 2006. He was retained by Governor Risch for his term. In 2007, Governor Otter retained Jim until the appointment to the Northwest Power and Conservation Council in October.

**Mr. Yost** provided background information regarding NPCC. It was created by the Power Act of 1980, which included four states - Washington, Oregon, Montana, and Idaho. Each state has two members that are appointed by their governors. The Council is not a state agency nor a federal agency, but operates according to the provisions in the statutes established in the Power Act. The funding for the Council's programs comes from the Bonneville Power Administration (BPA).

The Power Act specifically assigns the Council three particular areas in which to function. (1) To provide a fair and equal balanced program of fish and wildlife services; (2) Cheap and equitable power sources; and (3) To provide a report to the Legislature and Governor on the preceding year's accomplishments. This report will be available in a week or so.

**Senator Pearce** posed two questions to Mr. Yost. He asked, "What have you accomplished on the Council and what do you hope to accomplish in the future for the State of Idaho?" **Mr. Yost** replied that one of his attributes is that he has, and will, aggressively protect Idaho's water and the operation of Idaho's water in cooperation with the requirements of the biological opinions of the Northwest Power Act in system operations. He also feels that he brings a fair amount of knowledge to the electrical power generation, conservation, and renewable portfolios that are required for Idaho and what's happening with Idaho Power, Pacific Corp, and Avista and also the co-ops, which are consumer-owned utilities, usually in rural areas. Mr. Yost stated that he works hard to make sure that we have adequate, reliable, and cheap power.

**Chairman Schroeder** inquired as to who pays his salary. **Mr. Yost** replied that his salary is paid by the Bonneville Power Administration.

When asked by **Senator Cameron** if he had personal interest, stocks, or would gain anything financially by serving in this position, **Mr. Yost** replied no.

**Senator Siddoway** asked Mr. Yost if he played a role in re-licensing the Snake River Dams. **Mr. Yost's** reply was no. **Senator Siddoway** then asked if the Council was provided technical assistance by BPA and/or agencies from the four states and the federal government. **Mr. Yost** replied that some information comes from BPA, but the Council also has a proficient staff. They also collect information from each independently-owned utility, co-ops, and the trade associations. **Senator Siddoway** then asked if the Council has the total authority to set its own agenda or

does BPA play a role in that? **Mr. Yost** said that the meeting agendas are set by the Chairman, Bill Booth. However, the Council has a very good relationship with BPA.

**Chairman Schroeder** stated that there are some people who would like to remove some of our Snake River dams that are below Lewiston and he asked Mr. Yost if he had an opinion on that. **Mr. Yost** said that he didn't think it was a good idea to remove the dams. Looking at it from an energy perspective, the economics on energy has changed so much the last 10-15 years that the economic equation has changed. To come up with replacement power for those facilities, you would have to have a lot of windmills and natural gas-fired turbines to make up the difference. He also said that the issue today is how do we reduce our carbon footprint. In an attempt to do that, we have to recognize that the hydro power facilities would have to be made up in some other way and hydro does not have a carbon footprint. He feels it would only complicate the situation that we are already in.

That concluded Mr. Yost's hearing and the **Chairman** announced that voting on his confirmation would occur on Friday, February 20.

**ANNOUNCEMENTS:**

There were two handouts from the Department of Fish and Game for the Committee's review. One was information about "Hunter Orange" and the other was regarding the "2008 Accomplishments of the Pend Oreille Fishery Recovery Program".

**H 31**

**Chairman Schroeder** said that **Mr. George Bacon, Director of the Department of Lands**, would present House Bill 31 relating to fire protection. Mr. Bacon has provided a booklet, [Managing Fire on Lands Protected by the State of Idaho](#).

**TESTIMONY:**

A copy of Mr. Bacon's testimony is inserted into the minutes.

Mr. Chairman and Committee members:

This proposed legislation amends Section 38-111, Idaho Code, which is related to assessments paid by forest landowners for fire protection.

The Idaho Department of Lands is responsible for forest fire protection on approximately six million acres of state and private forest land in Idaho. Our ability to meet that duty is funded through a mix of general, dedicated and federal funds. That funding provides the necessary trucks, equipment and fire-fighters we need, just to be prepared for fire. On average, we respond to, and suppress, 390 forest fires each year.

We know it is vitally important to pounce on fires as fast as we can, and keep them small. For example, we had a light fire season last year, with only 247 fires. Those fires cost us about 6.5 million dollars to suppress. Of that 6.5 million, 5.3 million was spent on just three fires. Those fires got big. As you may know, fire suppression costs are mostly paid for by the general fund.

Conservatively speaking, the timber we protect is worth over seven **billion** dollars, even in today's depressed lumber markets. Besides the timber,

our forests have other unmeasured values. There are watershed, wildlife habitat, recreation and aesthetic values. In addition, when you look at all the homes being built in the wildland-urban interface, (known as the WUI), the property values at risk from forest fires probably increases by tens of billions of dollars.

Currently, Idaho Code provides that the State Board of Land Commissioners will establish fire protection assessments up to sixty cents per acre. In addition, the Board can establish a surcharge up to twenty dollars for each improved parcel - where there is a residence on the property. This surcharge is levied - not to fight house fires - but because homes in the forest drive up our costs to be prepared to fight *forest* fires. The growing WUI requires us to do more planning, to coordinate with more rural fire departments, to deliver more fire prevention programs, and to maintain more resources in an attempt to keep forest fires away from homes.

The current assessments are at the maximums, established in code. This legislation would raise those caps from sixty cents to sixty-five cents per acre and from twenty dollars to forty dollars for an improved parcel. I must point out that this legislation only sets new caps on assessments. The Land Board must decide *when* and *if* it is proper to raise the assessments. Currently, they do not have that flexibility, since the caps are at the maximum.

In addition, this legislation will create a Wildfire Equipment Replacement Fund. Currently, rental payments for the use of fire equipment, goes into the fire protection fund. However, those payments lose their identity in relation to capital equipment. This legislation will cause those rental reimbursements to go into the Wildfire Equipment Replacement Fund, and will ensure some level of funding is always dedicated to the needed replacement of fire trucks, pumps and other capital expenditures.

Why are all these changes needed? The department identified erosion of buying power of the dedicated fire protection account several years ago. Fund projections indicate that the fire protection account will be bankrupt next year.

We have been working closely with forest landowner organizations over the last four years to examine this problem and look for potential solutions. That effort has culminated with this legislation. Both the Intermountain Forest Association (IFA) and the Idaho Forest Owners Association (IFOA) strongly support this proposal.

This legislation will provide the Land Board with the ability to keep the fire protection fund solvent. It will give them more options besides cutting services, which would include cutting services, raising assessments, or a combination of both.

With that Mr. Chairman, I would be happy to stand for any questions.

**TESTIMONY:**

**Mr. Howard Weeks, Chief Fire Warden with the Clearwater Potlatch Timber Protective Association**, testified in favor of this bill. He has

been with the Association of Fire Wardens for over 30 years and feels it is important to have a strong fire preparedness program. Due to the number of additional people living out in the forest land, there is the possibility of human-caused fires, in addition to fires of natural causes.

**TESTIMONY:**

**Mr. Mark Woods, Fire Warden with the Southern Idaho Timber Protective Association**, testified in favor of this bill. He stated that the Timber Protective Association's assessments are also controlled by this legislation and the decisions of the Land Board. He said the job that the Associations are facing is a changing job. As a fire warden, when he hears a fire report that structures are threatened, he knows that they are responsible for the life and property of the landowners. His Association has about a half million acres within their protection boundary. Of those acres, 413,000 are assessed. In those assessments, there are about 5,000 structures. In the coming year, they plan to have 12 firefighters to cover that area. Mr. Woods said that they are the second busiest district in the state, with Clearwater-Potlatch being the busiest.

**TESTIMONY:**

**Ms. Jane Wittmeyer, Vice President for Idaho Affairs, Intermountain Forest Association**, testified. Her testimony is inserted into the minutes.

Mr. Chairman:

My name is Jane Wittmeyer. I am VP for Idaho Affairs for the Intermountain Forest Association. We are headquartered in Coeur d'Alene, Idaho and I am based in Boise. The Intermountain Forest Association is an organization of wood product manufacturers, timberland owners and related businesses in the northern Rockies. We work toward the development and implementation solution-oriented policies aimed at securing a stable and sustainable supply of timber on public and private lands.

Today, I rise in support of House Bill 31, brought before you today by the Idaho Department of Lands. The bill is straight forward and simple as Director Bacon testified. It raises "caps" and creates a Wildfire Equipment Replacement Fund.

Director Bacon also stated the bill does not raise the fees currently assessed on forest land owners. The fees are set, within current statutory caps, by the Land Board.

This program maintains the basic tools of wild land fire fighting – personnel and equipment, materials and training. **The Fire Preparedness program is the "first response" to wild land fires. It is the program that initially attacks any wild land fire with the intent to put it out before it becomes bigger.**

Successful initial attack keeps fire suppression deficiency payments paid by the General Fund down. For instance, if the IDL or Timber Protective Association wild land fire fighters get to a fire when it is from 1 to 10 acres, the cost of putting the fire out is, on average, \$3,500; if the fire fighters get to a fire when it is between 10 and 99 acres, it costs about \$58,000 to fight; if they get to a fire between 100 acres and 300 acres, it

costs \$213,000, on average, to put out. If the fire escapes and a Type 1 Fire Team is called in, the cost immediately goes to \$1 million.

Having well-trained fire fighters, with good equipment and fire engines is a good insurance policy against larger general fund payments for fire suppression costs.

The Fire Preparedness program saves the General Fund millions by being ready to move quickly to put out fires before they become big and expensive. It is an investment well made that should help reduce the costs of fire suppression.

I urge you to send this bill to the Senate with a DO PASS recommendation.

Mr. Chairman, I stand for questions.

**TESTIMONY:**

Written testimony was submitted by **Robert Troxel, President of Food Producers of Idaho, Inc.** His testimony is inserted into the minutes.

To the Members of the Senate Resources and Environment Committee:

Food Producers of Idaho, representing agriculture commodity and farm organizations, at their weekly legislative meeting on February 4, 2009 voted to support HB31. On the back of this letter is a list of members of Food Producers of Idaho. Note: The Idaho Farm Bureau requested to abstain from voting on this issue. The members were informed about the current Fire-Pre-Suppression Program in place for Idaho and the provisions of HB31 which would guarantee the necessary protection in the future.

The Idaho Department of Lands (IDL) has responsibility for wild land protection in Idaho on approximately 6 million acres of private and state forest lands. The IDL Forestry and Fire Program manages a program called the Fire-Pre-Suppression Program through the collection of assessments from private and endowment timberlands, as well as a contribution from general fund assessments. These funds are used to train and equip wild land fire fighting teams throughout Idaho's timber country.

Current assessments are at the maximum established by law, but income is not keeping pace with increased costs of preparing for wild land fires. The dedicated fund known as the Forest Protection Fund was established to receive these landowner assessments and is projected to go "negative" in the first or second quarter of FY 2010. This will immediately and negatively affect the State's ability to get on wild land fires quickly and put them out before they get big. Big fires cost millions to suppress — costs that the General Fund must pay through deficiency payments. Putting fires out when they are small saves the state millions in General Fund expenditures annually.

HB31 will not raise fees but it will increase the "caps" to allow the Idaho Board of Land Commissioners (Land Board) to raise adequate funds in

support of the program when it is clear that the funds are critically needed.

In addition, HB31 will establish a ‘Wildfire Equipment Replacement Fund’ to be used for the replacement of capital wild fire fighting equipment — such as fire trucks. This is essential as it allows for the collection of depreciation funds to help replace capital equipment — much like is done by the private sector.

HB 31 passed the Idaho House of Representatives on February 10, 2009 by a vote of 67-2-1. Food Producers requests your support of HB31 and are asking for your “yes” vote to send the measure to the floor of the Idaho Senate with a do pass recommendation.

**DISCUSSION:** Most of the discussion centered around the fiscal impact and the removal of the interest income from the General Fund.

**MOTION:** **Senator Coiner** made the **motion** to send H 31 to the 14th Order for amending. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote. **Senator Brackett** will **sponsor** H 31.

**Chairman Schroeder** asked **Mr. Bacon** and **Ms. Wittmeyer** to work with **Senator Cameron** on the language for the **amendment**.

**ADJOURN:** The meeting was adjourned at 3:10 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** February 20, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Senators Cameron, Pearce, Coiner, Siddoway, and Brackett
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Bair, Thorson, and Werk
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:40 p.m.
- ANNOUNCEMENTS:** He announced that there are several important handouts in the committee's blue folders which include: the bio's of the two Gubernatorial appointees, Chris Korell and Alex Irby; a letter from the Eastern Idaho Water Rights Coalition in support of the CAMP report; a report from the Idaho Department of Fish and Game (IDFG) regarding the wolf impact on other predators and the economic impact of wolves to Idaho hunting revenue; and a report from the Idaho Outfitters and Guides Association (IOGA) regarding the social-economic impacts of unmanaged wolves on the Outfitting and Guide industry.
- WELCOME:** The **Chairman** welcomed **Mr. Jake Howard, Executive Director, Outfitters and Guides Licensing Board**, and the **Board members**. He asked Mr. Howard to introduce the members. In attendance were **Alex Irby, Chris Korell, Chairman Wayne Hunsaker, and Vice Chairman Will Judge**. **Absent was Tom Long**. **Staff members attending were Roger Hales - Attorney, and Lori Thomason - Office Manager**. They are attending the confirmation hearings in support of the two Gubernatorial nominees, Mr. Irby and Mr. Korell, as well as making their annual appearance before the Committee.
- CONFIRMATION HEARING:** **Mr. Irby** was appointed to the **Outfitters and Guides Licensing Board** with his term commencing May 31, 2008 and ending May 31, 2011.
- Mr. Irby is a resource manager, sportsman and outdoor enthusiast from the Clearwater Region. He is a lifetime member of the Rocky Mountain Elk Foundation, NRA, Clearwater Basin Advisory Committee, past president of the Orofino Chamber of Commerce and was a supervisor for the Clearwater Soil and Conservation District for 11 years.

He is from Orofino and was the Commissioner representing the Clearwater Region of the Idaho Fish and Game Commission. He was appointed June 30, 1999 and served two terms on the Idaho Fish and Game Commission ending June 30, 2007. Mr. Irby's experience on the Idaho Fish and Game Commission will serve him well in this assignment.

**Senator Siddoway** said that last year, broad discretion was given to the Outfitters and Guides Licensing Board on how they could pursue illegal outfitters. He is concerned that it might be too far-reaching and inquired if it has helped or hindered the agency. **Mr. Irby** stated that he has not seen any difference, but feels there was a need to put more pressure on unauthorized outfitting.

**Senator Coiner** inquired about "agents" for outfitters. **Mr. Hales** was asked to respond to the question and he said that each entity (outfitter) is required to have a registered agent (live human being) that is essentially responsible for that entity. **Mr. Howard** stated that in Idaho, the outfitter can use "booking agents", but problems arise when outfitters and guides themselves become the booking agents (third party arrangement).

**Chairman Schroeder** thanked Mr. Irby, then called on Mr. Chris Korell to speak to the committee.

**CONFIRMATION  
HEARING:**

**Mr. Chris Korell** was appointed to the **Outfitters and Guides Licensing Board** and his term is from May 14, 2008 to April 20, 2011. His bio included the following information.

Chris was born in McCall, Idaho in February 1970 and lived in Garden Valley until 1994. He graduated from Garden Valley High School in 1988, and went on to attend Walla Walla Community College for two years on a football scholarship. He presently lives in Emmett, Idaho with his wife of 15 years, Randi, and children Sydnee (14) and Lafe (11).

After college, Chris returned home to Idaho to pursue his first love which is hunting and being in the outdoors. Chris has been around the outfitting industry all of his life, has been a licensed guide since 1988, and has had an outfitter's license for his own business since 1996.

Chris currently owns and operates Korell Outfitters in the Lowman area on the South Fork of the Payette River. He has served on the IDFG winter feeding committee for Region 3, and has worked closely with the department on the wolf/elk studies in outfitter operating areas. He is a member of the IOGA Board of Directors, and has been involved in work groups between the IOGA and IOGLB. He has extensive knowledge of IOGLB policy and its directives for the future. Chris recognizes that IOGLB faces critical issues ahead with the economy and the wolf issue facing the licensed outfitters in this state.

He looks forward to using his knowledge and leadership skills to help get through these next years.

**Chairman Schroeder** said there has been publicity regarding Utah's spider elk bull, and also the number of people involved to locate prize animals. He asked Mr. Korell what his opinion was of this type of hunting.

**Mr. Korell** said that he, personally, does not like that type of hunting, as hunting should be about fair chase.

**Senator Siddoway** asked about Mr. Korell's take on the elk/wolf situation in his area. **Mr. Korell** said it is a "disaster". He is taking a 50 percent reduction in hunters' income this next year and feels he could be out of business within two years, as they depend on the elk hunts for their income. **Senator Siddoway** then asked if there were bighorn sheep in his area and the reply was no.

**Chairman Schroeder** inquired about the cougar population in Mr. Korell's area. **Mr. Korell** said that he hunts from December through February and he has not seen a female with a set of kittens in four years. He has seen wolves kill some kittens, plus the wolves run the cougars off their kill, so they cannot feed their young and therefore are being starved out.

**Senator Brackett** asked about the mule deer population. **Mr. Korell** said that they are holding their own; however, when the elk are gone, he feels the deer will be right behind them.

**Senator Pearce** asked how the wolves are impacting the bears. **Mr. Korell** said that they still have a reasonable bear population, although he has seen evidence that a bear was killed and eaten by wolves. **Senator Pearce** then asked if there were wolf hunts, could he (Mr. Korell) sell wolf tags to out-of-state hunters? **Mr. Korell** said that he could sell 10 right now, but it won't make up for the loss of elk hunts. He was asked if he could find wolves for hunters and he replied that he could.

That concluded the interview with Mr. Korell.

#### **DISCUSSION:**

**Chairman Schroeder** asked Mr. Hunsaker how he viewed hunters that ask people to spot trophy animals for them. **Mr. Hunsaker** said that he doesn't agree with it. **The Chairman** then asked if something should be done about it. **Mr. Hunsaker** replied that it is not a truly unethical practice, just a personal opinion.

The **Chairman** asked Director Howard if the Outfitters and Guides services that are taking place in the State of Idaho, but provided by an out-of-state outfitter, are income taxes being paid into the Idaho treasury? **Director Howard** said that he feels they have gotten the word out on what is required of them.

**Chairman Schroeder** then inquired about non-resident hunters obtaining two deer tags (one non-resident and one left-over tag). It was stated that anyone could buy a left-over tag.

**Senator Coiner** inquired of Director Howard if he dealt with guides of other outdoor sports or just hunting and fishing guides. **Director Howard** replied that they license outfitters for hunting, boating, whitewater trips, fishing, back-country skiing, snowmobiling, and ATV rides. Basically, if it is called "a hazardous terrain", it is a licensable activity, whether it is on public or private land.

**Chairman Schroeder** asked about the bookings for possible wolf hunts.

**Mr. Simonds** said the economic times is having an impact on their industry and to make a long story short, their phones are not ringing.

**Chairman Schroeder** thanked the Board for their attendance and said that the Committee would vote on the two appointments at next Wednesday's meeting.

The **Chairman** said that at this time, voting would take place on the appointment of **Jim Yost to the Northwest Power & Conservation Council** and also, some minutes needed approving.

**MOTION:** **Senator Coiner** made the **motion** to approve the appointment of Jim Yost to the Northwest Power & Conservation Council. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **sponsor**.

**MOTION:** **Senator Brackett** made the **motion** for the approval of the minutes of February 16, as written. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

**ANNOUNCEMENT:** **Chairman Schroeder** reminded the Committee that next Monday, the meeting will be a joint meeting with the House Resources & Conservation Committee in the Hall of Mirrors, West Conference Room. The Department of Water Resources will provide information on the Comprehensive Aquifer Management Plan (CAMP) for the Eastern Snake Plain Aquifer (ESPA).

**WELCOME:** He then welcomed **Mr. Ron Kay, Range Program Manager, Idaho State Department of Agriculture** and **Mr. Jim Unsworth, Deputy Director of Programs, Idaho Department of Fish and Game**. They will present a program on "Wild Horses and Wildlife".

**SPEAKER:** **Mr. Kay** started his presentation by showing a video on wild horses. It gave a history of the wild horses and burros that led up to the passage of two national laws to protect these animals, the "Wild Horse Annie Act of 1959" and the "Wild Free and Roaming Horse and Burro Act of 1971". Wild horses and burros now have a legal right to live on public lands and are now managed in ten western states by the Bureau of Land Management (BLM) and the Forest Service.

Next, Mr. Kay presented a slide show with maps and statistics. Following is an outline of the presentation.

#### **BLM Herd Management Areas**

Six wild horse areas in Idaho: Black Mountain, Hardtrigger, Sands Basin, Four-Mile, Saylor Creek, and Challis

#### **BLM Idaho Wild Horse Population**

The total population as of October 2008 is 940. The projected population as of October 2009 is 1126.

#### **BLM Information**

- Has adopted approximately 220,000 horses/burros since 1971.

- 33,000 horses/burros presently on the range with an excess of 5,700 animals over appropriate management level.
- Three-fourths of BLM's horse budget is used for the long-term feeding and care of approximately 34,000 animals for the next 10-25 years.
- With virtually no natural predators the herd size could double about every four years.

### **National Information**

- There are attempts to remove the limits on the size of herd management area and to expand them into additional suitable acreages as horse numbers increase.
- Add new limitations on the authority to remove wild horses from the wild.
- The slaughter of domestic horses is not occurring, with an approximately 100,000 horses in excess yearly.

### **Conclusion**

- After a horse gather, BLM will be returning the excess unadopted horses back to the range.
- With the excess of domestic horses that are not able to be slaughtered may also end up on the rangelands as horse owners have no alternative to dispose of their unwanted animal.

**Chairman Schroeder** asked about the pending federal law relating to interstate shipment for slaughter. **Mr. Kay** said that as he understands it, what initially started this whole thing was "how to stop the slaughter of horses". Funding was stopped for federal food inspectors and now, they are trying to prevent horses from being exported across state lines and into Canada and Mexico.

**Senator Pearce** said that he understands there are about 30,000 wild horses in Oklahoma and it is costing \$6.65 per day to feed them. He asked if there was a policy to limit the number of horses. **Mr. Kay** replied that the BLM's budget for the horse program is about \$37 million and right now, about three-fourths of that budget is going for the care and feed of those horses. When Idaho gathers wild horses, what isn't adopted are to be turned back out on the range, according to BLM's transition policy.

**Speaker:**

**Mr. Jim Unsworth** spoke about the impacts of wild horses on rangeland. He said there are two types of competition in wildlife management - direct and indirect.

Direct competition is competition for the forage out on the hill. If you look at other critters, there is about an 80 percent overlap in the diet with domestic cattle. When horse numbers are high, then there is a problem with direct competition and behaviorally, horses are the most aggressive.

Indirect competition is seen in overstocked horse ranges. They take the forage in the fall and there is nothing left to support the deer and elk in the winter. There are also problems in overstocked areas in riparian areas. That impacts both non-game birds and non-game mammals and, of course, fisheries.

One result of overgrazing on rangelands is that you can increase shrubs. There has been some evidence of increased sagebrush and bitterbrush in some areas, and that is good for deer.

**Mr. Unsworth** said that one critter they are concerned about is the sage grouse. All the overgrazing issues are important, but one thing that is interesting is the nesting cover issue and the stubble-height requirement. If you are on a range shared between cattle and horses, the producer has to share the range with an animal he doesn't have control over.

That concluded Mr. Unsworth's presentation.

**Chairman Schroeder** said there is a potential problem on the horizon and he wanted to make everyone aware of it.

**ADJOURN:** He adjourned the meeting at 3:15 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

MINUTES

**SENATE RESOURCES & ENVIRONMENT COMMITTEE  
and  
HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** February 23, 2009

**TIME:** 1:30 p.m.

**PLACE:** West Conference Room, J. R. Williams Building

**SENATE MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**SENATE MEMBERS ABSENT/ EXCUSED:** Senator Cameron

**HOUSE MEMBERS PRESENT:** Chairman Stevenson, Vice Chairman P. Shepherd, Representatives J. Wood, Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, F. Wood, Boyle, Hagedorn, and Harwood

**HOUSE MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Stevenson** called the Joint meeting of the Senate Resources and Environment Committee and the House Resources and Conservation Committee to order at 1:30 p.m. The purpose of this Joint meeting is to hear about the Comprehensive Aquifer Management Plan (CAMP). A CAMP booklet was provided to all Committee members and will be referred to during the presentation.

**WELCOME:** He welcomed the **Department of Water Resources Chairman, Dave Tuthill and Division Administrator for Planning & Technical Services, Hal Anderson. Idaho Water Resource Board members present were Terry Uhling, Chairman; Gary Chamberlain, Vice Chairman; Vic Armacost; Leonard Beck; Jerry Rigby; and Chuck Cuddy.**

**Chairman Uhling** said that he would like to lay the framework as to why the Board believes this Plan is such an important endeavor to the State. He said that the two Committees had encouraged and basically asked the Idaho Water Resource Board to take on a monumental task in challenging the water users of the Eastern Snake Plain to come together as a group

with a package to resolve water management for the current task and for the future. Chairman Uhling said that there is a tremendous group of water users representing municipalities, recreationists, environmental communities and surface water users who have spent countless hours and time coming together to work on a proposed plan to lead the future for the Eastern Snake Plain Aquifer. He then asked, "Why is this important to the State?" His reply was that 21 percent of all goods and services are basically borne out of the region that goes from Malad to Ashton. In 2006, that amount equaled almost \$200 billion and it represented 2.1 million acres of irrigated farmland and 60 percent of agriculture output.

**Chairman Uhling** said that he can't tell you, as you look around the world, how important that criteria is now. The projected growth rate of the world is 80 million people annually. He stated that there isn't enough land or water or productivity to continue to meet that growth without the great American agriculture industry. Sixty percent and 2.1 million acres sits in the heart of Idaho. The Chairman stated that it is critical for our future and the future of our children and grandchildren that we figure this out.

**Chairman Uhling** stated that the Advisory Committee spent numerous hours on this - it is not perfect - but a great road map and that this State's life is dependent upon water and the funding they are asking for. That is why it is so important. The Plan is divided into three Phases and Phase One will extend over ten years and specific parameters have been set. On behalf of the Board, Mr. Anderson will provide an overview of this Plan.

**INTRO-  
DUCTIONS:**

**Chairman Stevenson** asked the people who have served on the Advisory Committee to stand and be recognized and to introduce themselves. Participants were: **Jim Tucker, Idaho Power Company; Rich Rigby, Bureau of Reclamation; Linda Lemmon, Thousand Springs Water Users Association; Dan Schaeffer, A&B Irrigation District; Randy MacMillan, Clear Springs Foods; Brian Olmstead, Twin Falls Canal Company; Randy Bingham, Burley Irrigation District; Steve Howser, Aberdeen-Springfield Canal Company; Steve Seer, Bonneville County; Dean Stevenson, Water District 130-140; Jeff Raybould, Fremont-Madison Irrigation District; Alex LaBeau, IACI; Will Whelan, The Nature Conservancy; and Max Vaughn, Minidoka County Assessor.**

**PRESENTA-  
TION:**

**Mr. Hal Anderson** provided a PowerPoint presentation on the **ESPA Comprehensive Aquifer Management Plan (CAMP)**. An outline of that presentation is as follows:

**Background**

- ESPA Framework Plan Process Initiated in 2006, by SCR 136
- ESPA Framework Plan Developed and Adopted in 2007, HCR 28
- Advisory Committee Convened (2007)
- ESPA Advisory Committee Recommendations Developed (2008)
- Board Adoption of the ESPA Plan, January 29, 2009



### **Framework Plan**

Recognized that water supply and demand were out of balance in the aquifer and the Snake River, making more deliberate and coordinated management of surface and ground water on the ESPA a necessity.

### **Goal for ESPA Management**

Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies.

### **Objectives for ESPA Management**

- Increase predictability for water users by managing for reliable supply.
- Create alternatives to administrative curtailment.
- Manage overall demand for water within the Eastern Snake Plain.
- Increase recharge to the aquifer.
- Reduce withdrawals from the aquifer.

### **ESPA Plan - Advisory Committee Background**

- Pursuant to HCR 28, the Board, given input and direction from Governor, created the ESPA CAMP Advisory Committee (2007).
  - Broadly based representatives across ESPA charged with developing consensus-based recommendations to Board (18 month process).
  - Focus on long-term aquifer management plan.
  - Guided by the Goal and Objectives established in the Framework.
- Committee composition established by Board and Governor through a stakeholder nomination and selection process.
- 16 member Committee plus Alternates met for first time in May, 2007.
- 18 Committee meetings and numerous sub-committee meetings held.
- Broad agreement reached on Plan recommendations (2008).

### **ESPA Camp Advisory Committee**

- List on file.

### **Management Alternatives**

- Management Alternatives Examined
  - Managed and incidental recharge
  - Groundwater to surface water conversions
  - Demand Reduction Strategies
    - Conservation Reserve Enhancement Program
    - Dry-year leasing
    - Crop mix (incentives to plant low-water use crops)
    - Buyouts and subordination agreements
    - Water conservation measures
  - Additional surface water storage
  - Weather modification
  - Below Milner Dam salmon flow augmentation exchanges

### **Management Alternative Packages**

- Packages Developed include:
  - Small (300 kaf); least expensive and quickest to implement.
  - Medium (600 kaf); more expensive and takes more time to fully implement.
  - Large (900 kaf); most expensive and will take decades to fully implement.
  - Demand Reduction and Recharge Emphasis.  
(kaf is the acronym for thousand acre feet)

### **Hydrologic Goal – 600 kaf Change**

- 600 kaf Water Budget Change
  - Robust mix of conversions, aquifer recharge, demand reduction and conservation strategies.
- Implementation Timeline
  - 20 years.
- Cost – \$600 million not including O&M.
- Implementation will result, depending upon climate, in:
  - Improved aquifer levels (stabilization and potential enhancement).
  - Increased river reach gains.
  - Increased certainty and water supply for all users.
  - Ability for municipal and industrial growth.
  - Decreased demand for litigation and administrative remedies.
  - Potential Fish and Wildlife enhancement opportunities.

### **Phase I Actions (1 - 10 years)**

- Hydrologic target of 200kaf – 300kaf
- Initiate actions that increase aquifer levels, and spring and river levels
- Geographically distributed across the ESPA
- Build institutional confidence with long-term plan implementation
- Groundwater to Surface Water Conversions
- Managed Aquifer Recharge
- Demand Reduction
  - Buyouts, buy-downs and/or subordination agreements
  - Rotating fallowing, dry-year lease agreement, CREP.
  - Crop mix modification
  - Surface water conservation
- Pilot Weather Modification Program
- Implementation will result, depending on climate, in:
  - Improved aquifer levels (stabilization and potential enhancement)
- Increased gains in some river reaches
- Increased water supply certainty for all users
- Ability for municipal and industrial growth
- Decreased demand for litigation and administrative remedies
- Ongoing public process for CAMP implementation

### **Additional Actions**

- CAMP Implementation Committee - Refocus and possibly

- restructure the CAMP Advisory Committee.
- Environmental Considerations - Continue to integrate environmental and other considerations.
- Clearinghouse - Evaluate options to implement a flexible mechanism that connects willing participants in the implementation of ESPA water management projects.
- Outreach and Education - Develop and fund a broad water education and outreach effort.
- Management Flexibility and Innovation - Explore innovative approaches that can improve water supplies available for conversion, recharge, and/or enhancement of surface supplies.
- Downstream Transfer Policy - Encourage providing water for recharge and conversion projects through downstream transfers of surface water rights to the ESPA in a manner that enhances flows in flow-limited tributaries.

### **Phase I - Implementation Plan**

- A detailed Implementation Plan will be developed that outlines:
  - Sequence of implementation steps, including research requirements
  - Funding requirements and sources
  - Necessary legislation
  - Monitoring and evaluation protocols
- \$70 million – \$100 million dollars estimated to implement a 200 - 300 kaf annual water budget change in first 10 years.
- Most ESPA water users have conceptually agreed to provide 60% of the required funds, with the State of Idaho providing the difference.

### **Phase I - Implementation Plan Funding Participants**

- Irrigated Agriculture
- Idaho Power/Co-Ops
- Municipalities
- Spring Users
- Industrial/Commercial
- State of Idaho
- Federal
- Recreation/Conservation

### **Adaptive Management**

- Involves taking action
- Testing assumptions
- Monitoring
- Adapting and adjustment as necessary
- A way to take action in the face of uncertainty.

## **ESPA CAMP**

### **Phase I Hydrologic Analysis**

A series of hydrologic analyses were conducted to determine the effects of the CAMP Phase I actions on aquifer levels and reach gains (spring

flows) from the aquifer. The period of 1980-2005 was used as hydrologic input into the analysis. It was determined that over this time period, the Phase I CAMP actions could be achieved as follows:

Phase I CAMP Action	Average acre-feet/year
Recharge (Snake River)	91,223
Recharge (Wood River)	22,565
Conversions	85,027
Surface Water Conservation	32,100
Weather Modification	51,500
Demand Reduction	<u>44,835</u>
TOTAL	327,250

### **ESPA CAMP**

#### **Estimated Increase in Reach Gains (Spring Flows) from the Aquifer at Selected Locations**

Map and graphs on file

### **ESPA CAMP**

#### **Estimated Increase in Ground Water Levels at Selected Locations**

Map and graphs on file

### **Plan Approval Process**

- Draft Plan was presented to Board on October 29 and suggested changes sent back to Advisory Committee.
- Advisory Committee finalized recommendations on October 30.
- Board adopted draft plan on November 6 with minimal changes.
- Draft plan was posted on Web and written comments solicited, due January 5, 2009.
- Public meetings held December 2, 4, and 10, verbal testimony was recorded.
- 16 Written Comments received.
- Comments distributed to Advisory Committee and feedback provided to Board.
- Board considered feedback made changes and directed staff to prepare plan for consideration at the January 22 and 23 Board meeting. Plan adopted January 29.
- Board also directed Advisory Sub-Committee to work on legislation needed to assess water users.
- Plan submitted date to House and Senate Resource Committees February 2, 2009.

### **Legislative Adoption**

Idaho Code 42-1734B (6) requires that the comprehensive state water plan or any component thereof be submitted for legislative review and amendment after adoption by the Idaho Water Resource Board.

That ended the presentation by **Mr. Hal Anderson**.

**Mr. Dave Tuthill** gave a presentation on “**The Idaho Department of Water Resources Perspective**” on the **Eastern Snake Plain Aquifer**

**Comprehensive Aquifer Management Plan.** Following is an outline of his presentation, along with his remarks.

**Overview**

- Need
- What is provided
- User perspective

**Director Tuthill** said the aquifer extends all the way from St. Anthony to Hagerman, is a huge and productive aquifer, and is an area where there is significant management concern relative to the available water supplies. It has been a major focus for a long time for the Idaho Department of Water Resources.

There are three areas where there are significant ongoing calls. One area is where the springs and natural flows come in - the Aberdeen and American Falls area. The Surface Water Coalition made a call in 2005. The whole process has been proceeding and an Order was appealed to the District Court. It is scheduled for a hearing later this year. IDWR is preparing an implementation Order. The assessments for the year are based on the snow pack and they should know by April. IDWR is working with the Coalition on acreage counts. This is a river to ground water call and is on a year-to-year basis.

Another area is in the Rupert and Burley area. It is with the A&B Irrigation District and is a ground water to ground water call. There is concern about the pumpage of the more junior wells and the issue is now before Justice Schroeder.

At the end of the aquifer in the Thousand Springs area, there are two calls that have been found to have material injury for Snake River Farm and Blue Lakes. The Order has been appealed to the District Court and is scheduled for a hearing this Spring. A mitigation plan has been established for Blue Lakes, and the mitigation plan for Snake River Farm could have significant action this Spring. These are springs to ground water calls.

**Director Tuthill** said that they have significant management difficulties in this aquifer.

**What Is Provided**

- Process
- Opportunity for Implementation
- Hope
- Approach – For Use Around the State

The **Director** stated that the process is by which water users and a variety of people get together to do something about the water supply. This type of a Plan will provide an opportunity to not only the surface water users, but also ground water users, developers, counties, and others involved. It does provide hope and an approach that will be applicable around the State.

**Director Tuthill** read the “**Perspective**”, written by **Rebecca Casper, Ball Ventures LLC**, to the audience.

### **Perspective**

As a committee member, my hope is that I won't be alone in my optimism and my conviction that implementing this proposal is the best way to begin. Right now, without a plan, there is no coherent action - just frustration, distrust and way too much legal action. But if we can approve the CAMP proposal and then empower a small, but well-rounded implementation team to get to work, there is no telling what they will be able to accomplish using good data, a good plan, common sense, good old-American ingenuity and flexible, adaptive management techniques. We will see success - perhaps baby steps at first, but certainly more down the road. It is not just vital to our state and local economies, it is vital to Eastern Idaho's ability to intelligently manage the growth that is to come. The entire CAMP Committee now recognized that we will never be done managing our aquifer; our challenge is just to get better at it. Who knows how much better off we will be in a few years if we do the hard work of implementation now. Imagine how much better off future generations will be if we can give them a well-managed and healthy aquifer.

**Director Tuthill** said that this perspective is enjoyed by many of the representatives of the Department of Water Resources and he sees great potential and a great future in implementing this Plan.

That concluded Director Tuthill's portion of the program.

### **DISCUSSION:**

**Chairman Stevenson** said he would now take questions from the Committee members.

**Senator Siddoway** inquired about the ESPA water budget. The response from **Mr. Anderson** was that the ESPA water users have conceptually agreed to contribute 60% of the required funds, with the State of Idaho contributing the balance (40%). In addition, other potential sources of funding, including federal and private sources, will be identified and secured to advance implementation of the Plan. The mechanisms are what is needed to be worked on over the next year with the Interim Legislative Committee, Attorney General's Office, and the Board.

**Senator Pearce** asked if the Department/Board had a more direct target for the money that has been appropriated for the Plan. **Mr. Anderson** replied that they have made progress, but there is additional work that needs to be done. There are a number of projects on the table - some are further along than others. It also appears that there might be some federal assistance that they hadn't planned on, and it could help in the area of conversion.

**Representative Wood** asked about the formula that will be used in assessing the business and municipality water users. **Mr. Anderson** stated that the formula is on pages 24 and 30 of the booklet.

**Representative Bedke** wanted to know if the source of federal dollars was part of the stimulus package and if so, does the state agency have

that on the Governor's desk? **Mr. Anderson** said that staff is working with the Natural Resource Conservation Service and the money is provided through the Soil Conservation Commission. The money was appropriated for agricultural programs and water conservation programs. **Representative Bedke** then asked about HR 1 and if that money could be used on these types of things. **Mr. Anderson** said that they have not identified any, but there could be. **Director Tuthill** stated that HR 1 has a lot of money relative to water, but they can't see where the dollars are going to be identified. In talking with the federal agencies, they don't know either and it will take time to sort it all out.

**Senator Coiner** inquired if all the funds have been used that was allotted for the CAMP process or are some of the funds leftover. **Mr. Anderson** said they have about \$70,000 to \$80,000 remaining that was appropriated. **Senator Coiner** then asked if in their targets, have the numbers been peer reviewed, in any way, such as by the hydraulic committee? **Mr. Anderson** said the numbers have been reviewed by the Eastern Snake Plain Modeling Committee. Also, they have cooperated with Idaho Power's technical staff on the estimates. **Senator Coiner** asked if benefit cost ratios have been done on the different procedures. **Mr. Anderson** said that information is not in the booklet, but he would provide it to him.

**Representative Raybould** said his understanding of the mechanism for funding is that the Water Resource Board and possibly members of the CAMP Committee will work with the Interim Committee during the Legislative session to determine the exact method of how this funding is assessed and collected. **Mr. Anderson** said that is correct. If the Legislature approves the Plan, then the details of the mechanism will be worked out. **Mr. Uhling** said that one of the key issues for the Board is trying to figure out how to raise the money. The implementation committee will not only have a chance to prioritize, but also what the best mechanism for the users are. **Representative Raybould** said that he just wanted to make it clear how important it is that the Interim Committee is organized and available for meetings this summer to work with the Water Board and the Department to get this Plan finalized and underway for next year's Legislative session to approve.

**Representative Bedke** asked who names the implementation team and how will they interact with the Legislature? **Mr. Anderson** said the Board made an initial request to the Advisory Committee as to how many would be interested in continuing and he stated that it is the Board's call.

**Representative King** said she is concerned about all the different aquifers and asked if there is a plan for them. **Mr. Anderson's** reply was no. **Mr. Uhling** said they would have to look at each of the aquifers and see what the issues are, then they will provide a plan. However, he stated that they have learned a lot in this process and it was a great way to bring diverse interest groups together to share their thoughts and come to a consensus. **Director Tuthill** said this aquifer accounts for about two-thirds of the irrigated agriculture in the State and is the lion's share of the water problem and water usage.

**Representative Hagadorn** asked what the argument is for the 60/40 split and why couldn't it have been 80/20 or 70/30. **Mr. Anderson** said it was a negotiated settlement and it seemed reasonable.

**Representative Andrus** inquired if this Plan called for more or less water for agricultural use. **Mr. Anderson** said that it would provide more water because of the senior water rights.

**Senator Coiner** said that everyone knows that he has heartburn with the recharge number and he thinks if everything is "lined up", they might get 60,000 feet in one year; but to say they will get 100,000 feet of managed recharge (average), he cannot fathom it. He asked where will the water come from and when it is available, where will you find a place to put it? He also asked about the cost (per acre foot) to construct a place to put the water during the time of availability. **Mr. Anderson** said the hydrologists and engineers agreed on the 100,000 number and invited Senator Coiner to come over and visit with the technical folks.

There were no more questions from the Committee. **Chairman Stevenson** thanked the Committees for their participation, the people who traveled to be here, and the Advisory Committee for their work the past 18 months to develop the Plan.

**ANNOUNCE-  
MENT:**

**Chairman Stevenson** said the House and Senate Committees would each hold hearings on this subject as the legislation is developed. Public testimony will be taken then.

**Mr. Uhling** said that he wanted to say "thank you" on behalf of the Board for the willingness of the Committees sticking with them and helping them as they tackle this tough task for the State of Idaho.

**ADJOURN:**

The meeting was adjourned at 2:50 p.m.

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Representative John "Bert" Stevenson  
Chairman

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** February 25, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:40 p.m. and stated that some committee business would be taken care of prior to the hearing of the bills.

**MOTION:** **Vice Chairman Bair** made a **motion** for the approval of the minutes of February 18, 2009. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Brackett** made a **motion** for the approval of the minutes of February 20, 2009. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Coiner** made the **motion** to approve the appointment of **Chris Korell to the Outfitters and Guides Licensing Board**. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote. **Senator Smyser** will be the **sponsor**.

**MOTION:** **Senator Pearce** made the **motion** to approve the appointment of **Alex Irby to the Outfitters and Guides Licensing Board**. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Heinrich** will be the **sponsor**.

**PASSING OF THE GAVEL:** The **Chairman** passed the gavel to **Vice Chairman Bair** so that he might present his bills, Senate Bill 1020 and Senate Bill 1022.

**S 1020:** **Chairman Schroeder** said Senate Bill 1020 has to do with the sale of items the Fish and Game gets from road kill, seizure, and other sources and is sold at an annual auction rotated between regional offices.

This legislation would prevent a person who has taken wildlife illegally from purchasing it at the auction and also provides that no other person may knowingly purchase that wildlife on behalf of the person that was

cited.

**Senator Siddoway** said that he is supportive of the bill, but wondered how often this happens. **Chairman Schroeder** stated that there are two issues. One is that employees cut up trophy skull plates and the other is that sometimes the “poacher” tries to buy back what the Fish and Game took away.

**Senator Pearce** thought it might be hard to enforce, plus, a buyer might be implicated. **Chairman Schroeder** said the key word is “knowingly” and it is similar to what you have to prove in the conspiracy laws.

**Senator Pearce** inquired about how the public knows about the auctions. The **Chairman** said that all licensed taxidermists and fur buyers in the State get a report, and that it isn’t uncommon for the notice to be in newspapers and on the radio. He also said that Fish and Game probably get calls from people to find out when the next sale is going to be.

**Senator Thorson** said that after a poacher has paid his fine, wouldn’t it be discriminating to not let him make a purchase on the open market? **Chairman Schroeder** replied that one could have that argument.

**Senator Werk** said that to restrict individuals who have violated a law from a constitutionally protected activity, he thought it would be discriminating. **Chairman Schroeder** said that all wildlife is property of the State and you can only possess it if you have a legal mechanism for acquirement.

**TESTIMONY:**

**Mr. Lance Hebdon, Idaho Department of Fish and Game**, testified in regards to S 1020. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Thank you for the opportunity to speak about Senate Bill 1020. Staff from the Department have briefed the Idaho Fish and Game Commission regarding Senate Bill 1020 and they have voted to monitor this bill.

The Idaho Department of Fish and Game accumulates wildlife from a variety of sources including seizure during enforcement cases pursuant to Idaho Code 36-104. Following the resolution of criminal cases, the law allows the magistrate to turn over unlawfully taken wildlife to the director or to provide the wildlife to a nonprofit institution or indigent person. Wildlife turned over to the director may be sold at Fish and Game auction or used for educational display. Currently, no law prevents a person from re-acquiring wildlife confiscated from them by the courts, through purchase at Fish and Game auction. The Department recognizes that some law abiding sportsmen find it distasteful that a person has the ability to purchase at auction wildlife confiscated from them by the courts. Senate Bill 1020 would make it illegal for a person to purchase, at Fish and Game auction, wildlife confiscated from them by the courts and it would prevent someone from knowingly assisting in such purchase.

It is unclear from the legislation who would bear the burden to “prohibit the purchase”, the individual or the Department. However, if Senate Bill

1020 becomes law, the Department would enact administrative procedures at auction to cross-check buyers to prevent a sale prohibited by the statute. We do not believe this administrative step will have substantial financial cost but have not reviewed the scope of action needed.

**Senator Brackett** inquired as to what the penalty would be if rules were written. **Mr. Hebdon** said that they had some discussion about that and one mechanism is that a statute is in place about possession of unlawfully taken wildlife.

**MOTION:** **Senator Werk** made a **motion** to send S 1020 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the **sponsor**.

**S 1022:** **Chairman Schroeder** said that the purpose of S 1022 is to amend 36-1407, Idaho Code, to update processing fees to those currently charged by meat processors.

The original legislation established that any person who pleads guilty, is found guilty, or is convicted of or received a withheld judgment for the illegal killing or the illegal possession or illegal waste of game animals shall be assessed a processing fee. This money is used to pay for the processing of game animals that are distributed by charitable organizations such as food banks or utilized by charitable organizations. The money can be used to pay the processing fees of the illegal kills or donated animals.

First enacted in 1994, the statutory language was established based on meat processors' fees at that time. These fees have increased to the point where the fund will soon be depleted, necessitating an increase in the assessment.

It is estimated that there will be an increase in the total annual revenue from the processing fees from an average of \$12,000 to \$18,000.

There were no questions from the committee.

**TESTIMONY:** **Mr. Lance Hebdon, Idaho Department of Fish and Game**, testified in support of S 1022. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Thank you for the opportunity to speak about Senate Bill 1022. The Idaho Fish and Game Commission has voted to support this legislation.

Idaho Code 36-1047 provides a penalty to be assessed by the court associated with a conviction or withheld judgment on illegal killing, possession or waste of big game animals. These funds are designated for the commercial processing of meat from big game animals that have been illegally taken, accidentally killed, taken as a result of depredation, or donated by sportsmen. The processed meat is donated free to needy Idaho residents or charitable organizations.

Beginning in FY 2006, the annual expenses from this fund exceeded the income to the meat processing account (a set-aside account). In FY 2008 the revenue to the account was \$11,496 and the expenses were \$16,492. Expense to implement this statute has exceeded the account revenue for the last three years because statutory processing fees have not kept pace with the increased cost of processing. Regionally, specific fees range higher or lower, but the fees proposed by Senate Bill 1022 represent an average expectation of processing costs and seem reasonable based on our experience with processors.

We estimate that passage of this bill would result in an increase in revenues to the set-aside account which covers commercial processing fees for big game animals by about 50%. The annual yearly revenue is forecast to increase from \$12,000 to \$18,000.

**Vice Chairman Bair** inquired about the account balance. **Mr. Hebdon** said the account balance on June 30, 2008 was \$2,567.

**MOTION:** **Senator Werk** made a **motion** to send S 1022 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Chairman Schroeder** will be the **sponsor**.

**PASSING OF THE GAVEL:** **Vice Chairman Bair** returned the gavel to Chairman Schroeder.

**ANNOUNCEMENTS:** **Chairman Schroeder** announced that there will be no meeting on Friday, February 27. Coming up are issues concerning wolves, Bighorn sheep, and fee increases. Starting next week, informational hearings will be held on some of these issues. Also, there will be some forthcoming legislation on CAMP, which will start in the House.

**ADJOURN:** With no further business to come before the committee, the **Chairman** adjourned the meeting at 2:10 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 2, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**RS 18578C1:** The **Chairman** said that he had talked individually with most of the committee members regarding RS 18578C1. It is basically a 15 percent fee increase requested by Fish and Game. **Chairman Schroeder** said that without objection, it will be sent for printing to the State Affairs Committee. There was no objection. The Chairman announced that Director Cal Groen will attend Friday's meeting just to provide information regarding this subject.

**SPEAKER:** **Chairman Schroeder** introduced **Mr. Rich Rayhill, Vice President of Ridgeline Energy**, who gave a PowerPoint presentation.

An outline of Mr. Rayhill's presentation is as follows:

#### **THE NEW ENERGY ECONOMY & RURAL ECONOMIC DEVELOPMENT**

- All renewable energy (except tidal and geothermal power), and even the energy in fossil fuels, ultimately comes from the sun.
- The sun emits 386 billion billion megawatts of energy.
- 174 billion megawatts of that energy reaches the earth's surface.
- About 1 to 2 percent of that energy is converted into wind.
- That is about 50 to 100 times more than the energy converted into biomass by all plants on earth.
- During the day, the air above the land heats up more quickly than the air over water. The warm air over the land expands and rises, and the heavier, cooler air rushes in to take its place, creating winds. At night, the winds are reversed because the air cools more rapidly over land than over water.

- In the same way, the large atmospheric winds that circle the earth are created because the land near the earth's equator is heated more by the sun than the land near the North and South Poles.

**WIND ENERGY IS A FACTOR OF THREE THINGS:**

- **Air Density**
  - Dense air packs more power
    - Lower Temperatures
    - Lower Humidity
- **Rotor Area**
  - Bigger Area, More Power
    - Double the rotor Diameter
    - Quadruple the power
- **Wind Speed**
  - Exponential increases in energy
  - Doubling the wind cubes power
    - $2^3 = 2 \times 2 \times 2 = 8$
    - 8 mph has 8X more energy than 4 mph
- **Double Rotor Area & Wind Speed**
  - Increases energy output by 32 times!!! ( $4 \times 8 = 32$ )

Clipper Liberty 2.5 mW  
 104 Ton Nacelle  
 Housing 22 ft x 17 ft

Vestas V-90 1.8 mW  
 148 ft blades  
 75 ton nacelle  
 40 ton blade assembly

GE 1.5 mW (70m rotor d)  
 116 ft blade  
 56 ton nacelle  
 36 ton blade assembly

Gamesa G-87  
 143 ft blades  
 72 ton nacelle  
 42 ton blade assembly

Enercon E-126  
 198 ft blades  
 413 ft rotor diameter  
 453 ft tall tower

**HOW DOES A WIND TURBINE WORK?**

Inflow of wind activates rotor and blades which spin the main shaft and gearbox, which spins the generator, resulting in electrical output.

**IDAHO NEEDS MORE ENERGY**

Idaho's increasing electricity needs will be met by Conservation, Coal, Natural Gas and Wind.

- Idaho Power's average load is expected to increase by 40 aMW (1.9% annually); summertime peak-hour loads are expected to increase by 80 MW (2.1% annually) per year through 2025.
- Idaho Power expects to add 11,000 - 12,000 retail customers per year through 2025.
- The number of households in Idaho Power's service area is expected to increase from around 455,000 in 2005 to over 680,000 by the end of the planning period in 2025.
- Demand side management & conservation are the cheapest available forms of "new generation".
- Beyond that, the plan calls for wind, natural gas and coal.

### **NATURAL GAS PLANT EQUIPMENT SHORTAGE: CANCELLED PLANS FOR COAL PLANTS**

- Industry experts indicate Natural Gas Combined Cycle (NGCC) turbine equipment is on a 36+ month back order.
- The future of coal is increasingly uncertain due to rising construction costs and delays as well as uncertainty regarding -
  - Only 12% of coal plants slated for construction between 2002 and 2007 were actually built.
  - Delays and cancellations have been attributed to regulatory uncertainty (regarding climate change) or strained project economics due to escalating costs in the industry.
- Utilities are removing coal from their future generation portfolio. Plans for construction of 59 new coal plants were cancelled in 2007.
- Idaho Power Company has cancelled its plans to add new coal fired generation.
  - Idaho Power Company is the latest utility to temper its enthusiasm for new coal plants, telling federal stock market regulators that escalating costs, permit issues and greenhouse-gas-emission concerns led it to abandon plans to build enough coal-fired electricity generation by 2013 to light 187,500 more homes.
  - The Boise utility 'determined that coal-fired generation is not the best technology to meet its resource needs in 2013'.
  - The company had planned to get an additional 250 megawatts from coal by then. Instead, it now aims to develop a new natural gas turbine somewhere in southern Idaho by 2012, to augment plans to add 101 megawatts of wind generation in December 2008 and 45.5 megawatts of geothermal generation in phases between 2007 and 2011. One megawatt can light about 750 homes.

### **RISING POWER CONSTRUCTION COSTS MEAN COSTLIER POWER**

- Construction costs have increased 130% since 2000 for all forms of power generation (27% in 2007, 19% in last six months).
- A \$1 billion 2000 energy plant costs \$2.31 billion in 2008.
- Rising commodity prices (steel, copper, nickel) are likely to drive

- prices higher.
- Capital costs/availability create great financial unknowns.
- This study does not take into account carbon costs or fuel.

### **UNCERTAINTY OVER CARBON COSTS IN THE FUTURE**

- Planners at all of Idaho's utilities are factoring in the potential costs of carbon in their long-range planning and looking to hedge.
- International pressure is mounting on the US to change its carbon posture.
- President Obama has indicated he wants the US to play a leadership role in reducing carbon emission.
- Carbon reduction will likely increase energy costs and reduce energy generation options.
- Renewables provide hedge against carbon cost and uncertainty as well as increasing fossil fuel prices.

### **CLIMATE CONCERN**

- Princeton's Dr. Robert Socolow creates wedge theory to address carbon problem.
- We need to create seven wedges to level off carbon growth.
- Four can be created by wind energy development alone.
- World leaders respond to pressure.
- Audubon Society President John Flicker, former opponent of wind energy, calls for 20 to 25 times increase in wind energy production by 2030.
- Carl Zichella at The Sierra Club and William Burnidge at The Nature Conservancy are also calling for increased wind energy production.

### **WHAT ARE CARBON COSTS?**

- Carbon Costs can take many forms
  - Chemical scrubbing (\$24-\$71 per ton)
  - Carbon capture (Coal gasification IGCC\$?)
  - Carbon sequestration (\$25-\$90 per ton)
  - Carbon credits
  - Carbon trading (cap & trade)
    - Set target
    - Divide pollution
    - Issue permits
    - Buy if release exceeds allowed
  - Carbon offset
    - Reforestation
    - Preservation
    - Agricultural replacement, etc.
- Carbon trading is expected to double in the US between 2012 and 2020 and triple in Europe during that same time period.
- Credits ranged from €29.33 on July 1 to €17.44 on October 28 and are projected to rise higher.

### **HOW DO WE FILL A WEDGE?**

- Increase fuel efficiency of 2 billion cars driven 10,000 miles per year from 30 mpg to 60 mpg by 2055.
- Decrease mileage of 2 billion cars from 10,000 miles per year to 5,000 by 2055.



- Displace coal energy generation by 2055.
- Increase the effect 2-4 times by hitting the mark by 2030.
  - Increase residential/commercial building energy efficiency by 25% by 2055 (reduce energy consumption by 25%).
  - Increase nuclear energy generation to 700 gigawatts by 2055 (two times present generation).
  - Increase solar energy generation to 2,000 gigawatts by 2055 (700 times present generation).
  - Increase wind energy generation to 2,000 gigawatts by 2055 (20 times present generation [roughly 100 gigawatts worldwide]).

### **UNPRECEDENTED GROWTH**

- USA now has 25,170 megawatts of wind energy generation.
- 20 times 25,170 is 503,400.
- Capture of 1% of this growth would mean local development of 5,000 megawatts of wind.
- At present pricing, that is a capital investment of \$10 billion.
- At the very minimum, 500 full-time family wage jobs would be created by that development.
- At 2% (10,000 mW): \$20 billion.
- At 3% (15,000 mW): \$30 billion
- In addition, the National Renewable Energy Laboratory calculates that for every wind-related (direct, indirect and induced) job create, eventually .86 manufacturing jobs will follow. This pattern has developed in Texas.
- The rule of thumb in the wind industry is ten permanent jobs are created on the wind farm for every 100 megawatts of installed capacity; 150 temporary constructions that last 6-9 months.

### **US WIND GREW BY 50% IN 2008**

- 2008 greatest US gains ever: 8,358 mW added; 25,170 total.
- Texas added 2,790 (<\$6 billion) (4,185 construction jobs).
  - an additional 984 are planned/under construction in 2009.
- Oregon Policies lead to unprecedented growth.
  - Oregon had 1 megawatt of wind in 2002 (Idaho had more).
  - In the last 2 years, Oregon added 629 mW (\$1.3 billion) and plans 251 more in 2009.
  - As a result of Oregon's commitment to wind (and \$12.5 million in incentives from Portland), Vestas decided to base its headquarters in Portland: 1,250 jobs.
  - With this additional generation. Oregon will jump to 8<sup>th</sup> largest US wind generator.
  - These additions should create >500 jobs and increases the likelihood that, eventually, >775 manufacturing jobs will follow.
  - Oregon is ranked 23<sup>rd</sup> in Wind Power Potential.
- Washington is close behind Oregon in growth and increases from 958 megawatts to 1,375 in 2009.
  - Washington will stay ahead of Oregon with its 5<sup>th</sup> place ranking.
  - Washington is ranked 24<sup>th</sup> in wind power potential.
- Washington and Oregon have combined to develop 63,000 new clean tech and green energy jobs in the coming years.

### **TEXAS LEADS THE WAY**

- West Texas generates 28% of US wind energy with 7,116 mW.
- Since 1995, according to the Texas State Energy Conservation Office, thousands of new temporary and permanent jobs have been created.
- Thousands of additional manufacturing jobs have followed.
- Only four countries in the world generate more wind power than this region.
- Power for nearly 5 million homes.
- Capital investment of \$15 billion.
- Texas has 984 megawatts presently under construction
  - new capital: \$2,066,400,000
  - power for about 700,000 homes.
- “Renewable Energy infrastructure and clean technology provide one of few areas of potential economic growth during this downturn.” Felix Rohatyn, October 31, 2008.
- President Obama wants the country to derive 10% of its electricity from renewable energy sources by 2012, up from 2% today.
- The renewable energy industry was a \$148 billion industry in 2007 and is growing at a rate of approximately 50% per year.
- In 2006, US renewable energy industries (including hydro, wind, solar, biofuels, and geothermal) accounted for 450,000 direct and indirect jobs and \$40 billion in corporate revenues.
- By 2020, the US solar industry will directly employ 42,000 people - 150,000 workers and a US market of \$27 billion.
- By 2030, the US wind industry will employ 180,000 workers directly with supporting workers totaling 500,000.

### **LOOK TO OUR NEIGHBORS**

- “We can make Oregon the national leader in renewable energy and renewable product manufacturing. ....Development of renewable energy will lessen our reliance on fossil fuels, protect Oregon’s clean air and create jobs.” Governor Kulongoski, 2003
- Oregon, the 23<sup>rd</sup> windiest state has implemented 18 of 22 programs found most critical to wind development by DSIRE and is experiencing growth second only to Texas, the 2<sup>nd</sup> windiest state.
- Washington has implemented 14 of 22 and is the fourth wind producing state despite being 24th in wind potential.

### **WHAT DO THE NUMBERS MEAN?**

- In 2004, the IDWR analyzed the impact of a 100 megawatt wind farm and predicted the following would be spent locally:
  - Construction
    - \$1,693,247 local construction labor.
    - \$8,347,250 local construction materials.
    - \$5,219,503 local professional services.
    - 100 temporary construction jobs.
  - Operation
    - \$23,062,477 in local revenue generation.
    - \$3,015,929 in local wage addition.
    - 93 new permanent jobs overall.
    - 22 new permanent jobs in the wind industry.
- Umatilla, Oregon is home to 70% of Oregon’s wind farms.

In 2005, they commissioned a study to predict economic impact and found that for each 100 megawatts added:

– Construction

- 240 direct, indirect and induced jobs.
- \$26 million additional economic activity.
- \$7,600,000 construction wages.

– Operation

- 42 new permanent jobs.
- \$2,780,000 in additional annual local expenditures.
- \$1,260,000 in additional annual local wages.

### **WIND FARMS TRAIN AND HIRE LOCALLY**

- Thirty degree programs
- Twelve new programs in the last 16 month
- These programs follow wind energy development
- When a wind farm is built, a local college develops a program to train and supply workers

### **THE COMPETITION IS FIERCE: IDAHO MUST FIGHT FOR JOBS**

- Minnesota is creating policy to capture 18,405 new manufacturing and wind jobs.
- Ohio created a new department to capture green energy/clean tech jobs.
- In the last six months:
  - Iowa added 1,250 new jobs making wind blades, Iowa's 4<sup>th</sup> blade plant.
  - Colorado added 2,500 jobs at three plants along the Front Range.
    - At one factory, they had over 13,000 applications for 495 jobs.
  - Oregon added 850 new wind jobs at Vestas US Headquarters in Portland.
- Pennsylvania has incentivized wind and wind manufacturing growth.
- New York state expects to create 43,000 new WIND jobs by 2013.
- Oregon has special enterprise zones for wind and along with Washington expects to create 63,000 green and Clean Tech jobs.
- Texas hopes to double wind generation and quadruple wind manufacturing.
- 21 states, including our neighbors Washington and Oregon, have created full-time staff positions whose only task is to find and draw new renewable energy opportunity to their states; TX has twelve; PA has a staff of six; IA has four full-time people.
- Their efforts are paying off in recession proof family wage jobs.

### **WHY ISN'T IDAHO LEADERSHIP FIGHTING FOR RENEWABLES? WHAT DOES IDAHO STAND TO GAIN FROM RENEWABLE ENERGY DEVELOPMENT?**

- False fear of higher prices – all new generation will cost more than

- we pay now.
- Electricity prices trump consideration of rural economic development (the two are not mutually exclusive).
- Idaho currently enjoys the lowest cost energy in the US, but Idaho needs new power generation to meet growing load.
- New generation costs approximately twice what we currently pay and will likely go higher (according to IPCo's IRP materials, IPCo's CCCT plant is proposed to deliver at 12.5 cents per kwhr; Wind is at 8.5 cents).
- Idaho utilities are hesitant to add new generation to meet needs of potential new business in Idaho – new business goes elsewhere.
- Although it's complex, Wind is compatible with hydro; IPCo's new CCCT plant will likely leave IPCo's peaking gas plants free to work with wind.
- « Value of Economic Development
- « New energy generation source for use in Idaho to meet growing load
- « If Idaho utilities don't want the electrons it's a new export cash crop for Idaho farmers
- « 100 Megawatt Wind Farm
  - \$30 M local expenditures for supplies and materials during construction
  - 150 construction jobs
  - Increased money in restaurants, hotels, etc.
  - No increased local services required
  - \$700,000 annual PILOT revenue, escalating
  - 10 full time family wage jobs
  - Ancillary economic activity

That concluded Mr. Rayhill's presentation.

**Senator Brackett** requested a copy of the presentation. (It will be made available for all committee members.)

**Chairman Schroeder** said the next presentation is in regards to the **Murphy Complex Fire**. He welcomed **Mr. Wally Butler** from the **Farm Bureau** and asked him to introduce the rest of the panel. They are **Bill Baker, District Manager, Twin Falls Office for BLM, and Dr. Kelly Crane, Assistant Professor/Range Extension Specialist, University of Idaho, based in Twin Falls.**

**SPEAKER:**

**Mr. Butler** said the Murphy Complex Fire was July, 2007. He provided a PowerPoint program where he had made comparisons of six areas. Photos were taken in August, 2007 (after the fire) and then taken one year later, 2008, showing the recovery.

The first area, MC 002, was burnt about 20 years ago and seeded with crescent wheat grass one year later. The area was grazed in June and July prior to the fire.

The next area, MC 003, had a heavy canopy of sage brush prior to the fire and was grazed also. It is recovering nicely.

MC 005 is one mile south, looking back at MC 003. The photo on the left

was grazed in May, 2007 and the photo on the right was grazed in June and July, 2008.

MC 007, in the area that doesn't appear to be burnt, was grazed at about a 50% level. The fire came through at night in this area and didn't burn as hot. The area on the right was not grazed prior to the fire because it has a road right-away. The only time it would be grazed would be when cattle are trailed through. Recovery is taking place naturally.

MC 008 is BLM land (on left) that was not grazed prior to the fire and on the right is private land that bulls were wintered on. After the fire, it appears there was more damage on the left. However, both recovered very well.

MC 015 shows the drill rows where the seeding took place. On the right, 2008, it shows sage brush plants that are coming back, which could be from seeding or native regeneration.

In conclusion, **Mr. Butler** said the habitat is looking good for sage grouse.

**SPEAKER:**

**Mr. Baker** also presented a PowerPoint program. Following is an outline of his presentation.

#### **MURPHY COMPLEX FIRE**

- Lightning storm caused 22 fires on July 16-17
- Extreme fire conditions
  - Wind gusts reaching 30 mph
  - Dry fuels
  - Temperatures exceeding 100° F
- Elk Mountain, Rowland and Scott Creek fires
  - Very remote locations
  - Rough terrain
  - Limited resources

#### **MURPHY COMPLEX FIRE OVERVIEW**

- Ignition 7/16/07
- Contained 8/02/07

#### **ACRES BURNED**

- 419,335 BLM/ID
  - 63,009 BLM/NV
  - 54,817 PRIVATE
  - 26,000 STATE
  - 88,854 USFS
- TOTAL 652,015

#### **ES & R PLANNING**

- Emergency Stabilization Plan
  - Protect life and property
  - Prevent establishment of invasive species
  - 21 days to complete following containment
  - Signed ES&R Plan on 9/11/07
  - Emergency Stabilization started October 2007

- Rehabilitation Plan
  - To repair or improve lands unlikely to recover naturally
  - Integrate efforts with longer term resource goals
  - Consulted with partner agencies, interested individuals, and permittees to obtain input on seed mixes, seeding polygons, fences and other needed treatments.

**WHAT REMAINS TO BE ACCOMPLISHED?**

- 150,000 bitterbrush and 20,000 sagebrush seedlings
- Fence modification (70 miles - Clover/Sailor Cap fires)
- Noxious weed control (year 2 of 3)
- Fuels restoration treatment (chemical, drill seeding, and aerial sagebrush 10,000 acres)
- Monitoring (year 2 of 3)

**GRAZING IMPACTS**

- 35 allotments affected in the Murphy Complex
- 4 of the 35 had already burned in the Sailor Cap in 2006
- 4 allotments opened in 2008 within the Murphy Complex
- A total of 18 pastures within 8 allotments opened in 2008 in the Murphy Complex

Slides of monitored sites, volunteer project, drill seeding, erosion control, wildlife, and natural recovery.

That concluded Mr. Baker's presentation.

**SPEAKER:**

Closing the presentation was **Dr. Crane** speaking on **Step by Step: Restoration Observations and Lessons from the Real World**

**Rangeland Restoration Realities**

Observation 1: Much of the sagebrush steppe in Southern Idaho has converted to a grassland dominated by exotic annuals.

⌘ Conversion continues to occur in the presence of our best attempts at sustainable rangeland management strategies.

Lesson 1: cheatgrass can invade and dominate native, perennial plant communities in the absence of livestock grazing.

Observation 2: Efforts to establish native, perennial shrubs and grasses on sites dominated by exotic annuals have had limited success.

Lesson: Cheatgrass invasion alters the physical and biological properties of soils, the resultant change in ecological processes may inhibit the reestablishment of native perennials.

Cheatgrass invasion alters soil morphology and organic matter dynamics in Big Sagebrush-Steppe Rangelands.

Lessons:

⌘ Conversion to cheatgrass leads to losses in soil organic matter and changes in its distribution and composition.

⌘ Basic ecosystem functions are altered including the cycling of C, N, and water.

⌘ The intensity of these changes increases with the time cheatgrass

occupies a site.

☒ Effects of cheatgrass conversion are analogous to crop cultivation on grasslands of the Great Plains.

☒ Restoration of native plant communities may require the use of transition species that are capable of competing with cheatgrass while contributing slow-pool SOC to the soil.

Observation 3: Appropriately managed crested wheatgrass seedlings are relatively resistant to fire and invasion by exotic annuals.

Observation 4: Native shrubs and grasses often reestablish in seedlings of exotic perennial grasses (e.g., crested wheatgrass, Siberian wheatgrass and Russian wildrye).

Eighteen photos of rangeland in various stages, taken in various years.

#### **CONCLUSIONS:**

☒ On this site, an apparently vigorous stand of crested wheatgrass provided suitable conditions for the natural establishment of native shrubs after a prescribed fire.

☒ Wyoming big sagebrush can displace crested wheatgrass in the presence of a seed source and suitable growing conditions.

☒ Native grasses did not effectively reestablish on this site concomitantly with Wyoming big sagebrush.

☒ The herbaceous component of this plant community is in poor ecological condition and vulnerable to wildfire and subsequent invasion by exotics.

#### **RANGELAND RESTORATION REALITIES**

The fact that the physical stage must be set for successful restoration of desirable plant communities is found in primary definitions of restoration ecology (e.g., Whisenant 1999), but is often overlooked in the zeal to restore altered plant communities by reestablishing native species.

#### **ADJOURN:**

Due to the necessity of exiting the room for the next committee to meet, the meeting was adjourned at 3 p.m. **Chairman Schroeder** thanked the Gentlemen for their presentations.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 4, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**MOTION:** **Senator Siddoway** made the **motion** for the approval of the minutes of February 25, as written. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Bair** made the **motion** for the approval of the minutes of February 23, as written. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote.

**SURVEY:** **Mr. Jack Lyman**, representing the **Idaho Mining Association**, said they are arranging tours of operating mines in Idaho. For planning purposes, it would help them if the committee members would complete the survey sheet indicating interest and preferences for scheduling. Mr. Lyman said that he would pick up the surveys from the committee secretary tomorrow.

**ANNOUNCEMENTS:** **Chairman Schroeder** said that copies of the presentations given on Monday have been provided, as requested by some of the committee members. Also, there is a handout for today's discussion by IDWR.

On February 23<sup>rd</sup>, a Joint session was held to hear about the CAMP process (Comprehensive Aquifer Management Plan). Today was set aside for the committee members to ask questions of the **Idaho Department of Water Resources (IDWR)**. Providing information and answering questions were **Director Dave Tuthill** and **Division Administrator Hal Anderson**.

**SPEAKER:** **Director Tuthill** said that in response to a question about availability of water for recharge, he referred to graphs on the last two pages of his handout, Summary Excess Milner Spill Accumulation, 1980-2006 Water Years and Accumulated Volume - Potential Recharge Above Milner -



Limited By Canal Capacity, 1980-2006 Water Years.

He said these two graphs depict the accumulated water use, which would be similar to the potential recharge above Milner. The first one is without regard to the capabilities of canals to hold water. The time frame on the graph is from October 1 to December 15, then it starts again on March 1 to July 1. The years include some drought years and high quota years of water.

**Senator Coiner** inquired if Idaho Power's water right was included in this graph. **Director Tuthill** said that Idaho Power has over 40,000 acre feet of storage in American Falls and if that water would have gone over Milner in the time frame described, it is included. **Senator Coiner** said that Idaho Power has 45,000 acre feet and it does flow over Milner in that time frame.

**Senator Coiner** then asked if it included the fish flows? **Director Tuthill** said that to the extent that the fish flows are after July 1, it doesn't; but to the extent they are before July 1, they are included. The Director said the fish flow might be 200,000 acre feet.

**Director Tuthill** said the second graph is a depiction limited to the amount of the size of the canals. It is about half of the flow from the previous graph. He said this gives a sense regarding the flows that are potentially available and there are other refinements that could be made.

The **Director** said that it is from this type of information that Phase 1 of the Eastern Snake Plane Aquifer CAMP Plan identifies the objective for Phase 1, which is about 100,000 acre feet, on average of recharge. Phase 2, on average of recharge, will be about 250,000 acre feet. The question is - is the water there? He said that based on the signed contracts for this year, they could see as much as 100,000 acre feet of recharge this year, depending on water availability. He invited the committee members to explore this more with them.

**Senator Coiner** asked for an explanation regarding the contracts. **Director Tuthill** said they had contracts with the following companies: Harrison, Burgess, Dewey, Silky, St. Anthony Union, Idaho Canal, New Lavaside, Peoples, Aberdeen-Springfield, and American Falls Reservoir District 2. **Senator Coiner** then asked about prioritizing the water - where it would go based on the greatest good to the aquifer. **Director Tuthill** said one challenge is that a benefit to one reach is not necessarily a benefit to another reach.

**Senator Coiner** said there is a section of the Snake River (near Blackfoot and at Blackfoot) where there is 1,000 second feet difference, and that section of the river is a losing reach. He asked if that section has been analyzed regarding the changes over the last 25-30 years? **Director Tuthill** said that he didn't know, but his expectation is that his staff could provide a response. **Senator Coiner** asked for a report.

**SPEAKER:**

**Mr. Anderson** said that another question that had come up was that there wasn't a lot of detail in the Plan on the over-all cost and benefits associated with each of the elements that are identified as action items,

items that could bring about water budget adjustment change. The first page of the handout is a summary table of the numbers that were addressed through the Advisory Committee and numbers that the engineers came up with in estimating the cost of implementing the action items.

The capitol costs for each action do not include administrative, program, engineering, or study costs. They are entered together near the end of the report.

**Mr. Anderson** said they assumed a conservative number for the Weather Modification Feasibility Study (table 13-3) done by the Northern American Weather Consultants. They looked at the possibility of how much water might be realized from the Weather Modification Program in the Upper Snake. The consultant broke it out into basins and it ranges from 25 to 90,000 acre feet a year, additional natural flow, that would be realized from a weather modification program. **Senator Pearce** inquired if any of the surrounding states are doing it. **Mr. Anderson** said that a number of other states are doing it. Utah has a significant Weather Modification Program and Wyoming is investing millions of dollars every year. California and Nevada also have operational Weather Modification Programs. Idaho Power is doing a modification effort in the Payette and they are currently engaged with a group that is doing a modification in the Upper Snake. He said there is a lot of investment being made in the West and it looks like a good potential. If sites in Wyoming could be included, the numbers could be increased even more.

**Senator Coiner** said that the first step is the Implementation Committee and wondered what the plan is for the number of people. **Mr. Anderson** said there has only been limited conversation by the Board and the Board did ask the current members of the Advisory Committee who would be interested in continuing. It appeared to him that most of the Advisory Committee would like to continue. If the Plan passes, the Board will be moving very quickly ahead, working with the Governor's Office, as they did with the initial formulation of the committee.

**Senator Coiner** stated that we now have the actions and wanted to know the cost benefit ratios and also asked what plans are in place to analyze these actions? **Mr. Anderson** said that if one looks at the CAMP Plan, there are targets for every place in the aquifer and they are equally distributed. As the Implementation Committee and technical people start working through developing specific projects that will be recommended to move forward within those targets, that is when more detailed financial analysis will be done and technical and engineering studies will be done. **Senator Coiner** asked if the dollar amount had been plugged in? **Mr. Anderson** said only for that particular action item.

**Senator Cameron** asked if passage of the CAMP proposal obligates the State to future contributions by the State? **Mr. Anderson** said that the CAMP proposal has recommended funding targets. There is nothing in the proposal that makes a requirement on the State. This fiscal year, there is no request for general fund moneys for implementation of the first year. **Senator Cameron** asked if the State desires to move forward, but

is unable to participate to the level that the other participants are willing to participate, does that allow the process to move forward? **Mr. Anderson** said the answer to that question is yes. The Board has funds that were allocated for the measurement and monitoring program for the Eastern Snake and from repayment on the existing groundwater district loan. That amount is close to \$2 million a year and the Board has said that it can be used to implement the CAMP process. **Senator Cameron** said that the State has a responsibility for a number of reasons and asked Mr. Anderson how they arrived at the State's share of what should be contributed. **Mr. Anderson** replied said that the whole process went through a series of deliberations/negotiations, with some saying the State shouldn't pay anything to the State should pay everything. The number was agreed on by the Advisory Committee and the Board - it was a negotiated amount. That amount is \$3 million a year, for a total of \$30 million for Phase One. **Senator Cameron** inquired if the State is unable to fund \$3 million this year or next year or the next, would it still allow the process to move forward? **Mr. Anderson** said that he thought it would.

**Senator Coiner** referred to Appendix B - Phase 1 Funding Recommendations on page 30 of the CAMP booklet. If the Legislature accepts the Plan as presented, he asked if it would establish high expectations from the water users? **Mr. Anderson** said that is a type of question where there are a variety of opinions. There was a lot of discussion about the fiscal realities of what they are dealing with.

**Senator Siddoway** said his concern is regarding the Implementation Team and thought it would be smaller than the Advisory Committee. He is concerned about fairness as to who pays and wondered if there was any criteria about how the money would be collected. **Mr. Anderson** said it was definitely for agricultural irrigation and based upon acreage. There is a 2:1 difference between the ground and surface water users.

**Senator Siddoway** asked if the Board will pick the Implementation Team on "who and how"? **Mr. Anderson** said the Board will make that decision and if this Plan passes, they will be moving ahead very quickly. As to the number of members, that hasn't been decided as yet by the Board.

**Senator Coiner** asked about actions and implementations - buyouts and buy downs - subordination agreements and managed recharge. He stated that a buyout is a one-time expenditure that could shut off a well and that water is in the aquifer. Senator Coiner said it didn't make sense to him to spend tens of millions of dollars to establish recharge sites that can only be used one out of five years (or whatever it is), then to use storage water, it takes more money to get it there. He suggested using those same dollars to buy down or buyout a water right. Senator Coiner asked if these concepts had been discussed. **Mr. Anderson** said they had lots of discussions regarding this issue. They are trying to keep as many acres in production as possible and their one goal is the economic viability of the entire Eastern Snake Plain.

**Senator Coiner** then asked if there was much discussion of limiting ground water users by a 10% or 20% curtailment, as has been done to surface water users. **Mr. Anderson** said they have had discussions and

demand reductions or buy downs are options.

**Senator Coiner** then asked the Director if anyone had approached him regarding mitigation plans in using that concept but on a broader base? **Director Tuthill** said the Conservation Reserve Enhancement Program (CREP) is an incentive to do just that and there are about 20,000 acres in that program right now. It was funded for 100,000 acres. The savings would be about two acre feet per acre.

There were no more questions from the Committee. **Chairman Schroeder** thanked Director Tuthill and Hal Anderson for their participation in this important discussion.

**H 137**

**Mr. Dean Sangrey, Division Administrator of Operations for the Department of Parks and Recreation**, presented House Bill 137.

The purpose of this legislation is to amend Idaho Code 67-4223 to authorize the state park and recreation board to regulate the discharge of firearms for the protection of the public. The discharge of firearms in conjunction with hunting on those state park lands open to hunting will not be affected. The rights of firearm owners to possess and carry firearms and to discharge such firearms in the lawful defense of self, others or property will not be affected. There is no fiscal impact to the General Fund or to the Idaho Department of Parks and Recreation dedicated fund resources.

**Chairman Schroeder** said this legislation mirrors the authority given to the Counties. He stated that this bill has also been worked on by other legislators, the Governor's Office, NRA, and Parks people. It was worked on until there was language in the bill that they could all live with.

There were no questions from the Committee, nor any testimony from the audience.

**MOTION:**

**Senator Siddoway** made the **motion** to send House Bill 137 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. The **sponsor** will be **Chairman Schroeder**.

**ANNOUNCEMENTS:**

The **Chairman** announced that on Friday, HJM 1, urging wolf delisting by Representative Barrett, will be heard, as well as HCR 18, Natural Resources Interim Committee request by Representative Wills. Also on the agenda is John Williams who will talk about "Integration of Wind Energy Into BPA Power Grid". Director Cal Groen, Director of Fish and Game will provide information relating to the Fish and Game's fee increase request.

**ADJOURN:**

The meeting was adjourned at 2:35 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 6, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- MOTION:** The first order of business was to approve minutes. **Senator Bair** made the **motion** for the approval of the minutes of March 2, 2009 as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.
- SPEAKER:** The **Chairman** introduced **Mr. Clive Strong, Division Chief of the Natural Resources Division, Attorney General's Office**, who made an announcement regarding wolves.
- Mr. Strong** said that he was happy to report that as of this morning, the Secretary of Interior Ken Salazar issued a decision to delist the gray wolf. It will become effective 30 days from the publication in the register, which is anticipated to be sometime next week. Mr. Strong also said that litigation is expected.
- Inserted into the minutes is a portion of the New Release from the U.S. Department of the Interior.
- WASHINGTON, D.C. - Secretary of the Interior Ken Salazar today affirmed the decision by the U.S. Fish and Wildlife Service to remove gray wolves from the list of threatened and endangered species in the western Great Lakes and the Northern Rocky Mountain states of Idaho and Montana and parts of Washington, Oregon and Utah. Wolves will remain a protected species in Wyoming.
- "The recovery of the gray wolf throughout significant portions of its historic range is one of the great success stories of the Endangered Species Act," Salazar said. "When it was listed as endangered in 1974, the wolf

had almost disappeared from the continental United States. Today, we have more than 5,500 wolves, including more than 1,600 in the Rockies.”

“The successful recovery of this species is a stunning example of how the Act can work to keep imperiled animals from sliding into extinction,” he said. “The recovery of the wolf has not been the work of the federal government alone. It has been a long and active partnership including states, tribes, landowners, academic researchers, sportsmen and other conservation groups, the Canadian government and many other partners.”

The Fish and Wildlife Service originally announced the decision to delist the wolf in January, but the new administration decided to review the decision as part of an overall regulatory review when it came into office. The Service will now send the delisting regulation to the Federal Register for publication.

The Service decided to delist the wolf in Idaho and Montana because they have approved state wolf management plans in place that will ensure the conservation of the species in the future.

At the same time, the Service determined wolves in Wyoming would still be listed under the Act because Wyoming's current state law and wolf management plan are not sufficient to conserve its portion of northern Rocky Mountain wolf population.

Gray wolves were previously listed as endangered in the lower 48 states, except in Minnesota where they were listed as threatened. The Service oversees three separate recovery programs for the gray wolf; each has its own recovery plan and recovery goals based on the unique characteristics of wolf populations in each geographic area.

Wolves in other parts of the 48 states, including the Southwest wolf population, remain endangered and are not affected by the actions taken today.

**Chairman Schroeder** thanked Mr. Strong for the update. He then called on Representative Wills to present his Resolution.

**HCR 18:**

**Representative Wills** presented HCR 18. This resolution requests the Natural Resources Interim Committee to study the impacts of conversion of working ranches, farms and forests to other uses. The resolution also asks for an examination of the need for new state policy initiatives to protect the values that such lands contribute to local economies, agricultural heritage, wildlife habitat, and recreational opportunities. The Natural Resources Interim Committee is encouraged to seek the view of interested groups and public on these issues.

**TESTIMONY:**

**Ms. Jane Wittmeyer** offered testimony on **behalf of Mr. Kennon**

**McClintock.** A copy of the testimony is inserted into the minutes.

Mr. Chairman and Members,

My name is Kennon McClintock and I reside near Moyie Springs within Boundary County. I am a forestland owner, a tree farmer, and a hay farmer. I have been a forester for the past 29 years, most of that time spent working in Boundary, Bonner, Kootenai, Benewah, and Shoshone Counties.

I currently work for Forest Capital, a forestland owner in Idaho. I have traveled to Boise today to talk to you about something, very close to my heart, our valuable resource-based lands.

Idaho was founded on our resource-based lands. These lands are our heritage, our roots, and the basis for our Idaho culture.

These resource-based lands, our working farms, working ranches, and working forests are the foundation for our communities and for this state. These working lands provide sustainable, renewable commodities and are owned and managed by diligent, dedicated families and professionals. These working lands fuel our economy while providing and maintaining local employment, stability, self reliance, and the ruralness which we as Idaho citizens desire. These working lands are the source of Idaho's strength and represent opportunity and potential for us and for future Idaho generations.

My concern now is that over the past two decades and continuing today, our resource-based lands are being squandered, fragmented and fractured at an alarming rate, with the end result being lands that are underutilized or non-viable for supporting their historic use.

These idle lands, now removed from the regional resource base, contribute marginally to our communities and our economy. As our resource base erodes, our manufacturing and processing infrastructure either downsizes or leaves the state. Some Idaho communities have migrated from resource to service economies, with the predictable outcome of loss of stability, loss of control, loss of opportunity, and loss of self sufficiency. Does Idaho want to follow the paths of so many states, where they have continuously sacrificed long term economic stability and sustainability, for short term and very often, short-sighted financial gain?

It is time that we recognize the multiple, core values of our working lands and map a course, to offer the potential or the incentive for conservation. Idaho and our communities will prosper and be assured of our futures if these working lands remain intact and functional. We have the foresight to understand the importance of working lands, our farms, our ranches, our forests, — and we must thoroughly investigate alternatives for the



conservation of these resource-based lands. This is most definitely in Idaho's best interest.

House Concurrent Resolution 18 is a mechanism which will assess the situation in Idaho and provide needed information to this legislative body. House Concurrent Resolution 18 is a very good first step and I urge you to support these efforts.

Thank you for this opportunity to speak today. It has been my pleasure to do so, and I very much appreciate the time.

**TESTIMONY:** **Mr. Wally Butler, Range and Livestock Specialist for the Idaho Farm Bureau**, testified in support of the Resolution. He said the key issue is in gathering the information from representatives of forestry, ranching, farming, sporting, conservation, business organizations and the public.

He also provided a letter of support from the **Food Producers of Idaho, Inc.**, which is inserted into the minutes.

**TESTIMONY:** **Food Producers of Idaho** represents agriculture and farm organizations in Idaho. The list of current members are on the back of this letter. At the January 21, 2009 weekly Legislative meeting Food Producers of Idaho signed on to endorse the work of the Working Lands Coalition.

HCR 18 is a resolution requesting the Natural Resources Interim Committee to study the impacts of conversion of working ranches, farms and forest to other uses. Many of our members through their individual organizations have been very involved with the Working Lands Coalition over the past few years. Food Producers of Idaho have continued to receive updates from the Coalition and believe that HCR 18 would help to elevate the importance of this issue for Idaho.

Food Producers of Idaho feels a need exists for new state policy initiatives to protect the values that working lands contribute to local economies, agriculture heritage, wildlife habitat and recreation opportunities. We are asking for your YES vote to send HCR 18 to the floor of the Idaho Senate with a 'do pass' recommendation so Idaho's working lands will be properly protected in the future.

**MOTION:** **Senator Coiner** made the **motion** to send HCR 18 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. **Senator Coiner** is the **sponsor**.

**HJM 1:** Presenting HJM 1 was **Representative Barrett**. She expressed her appreciation for the written support of the Gentleman in the Borah Building, Office of Species Conservation, Sportsmen for Fish & Wildlife, Idaho Fish and Game, and the Idaho Farm Bureau. She stated that the

wolf dilemma is very personal to her, as well as to the farmers, miners, ranchers, loggers, and sportsmen in her legislative district.

Inserted into the minutes is a copy of her written testimony, which she handed out to the committee members, but did not provide it orally.

I am Representative Lenore Hardy Barrett, Legislative Dist 35: Custer, Lemhi, Clark, Jefferson & Butte Counties, and Island Park in Fremont County.

The economy of my legislative district is driven by natural resource production: farming, ranching, timber, mining, and recreation. We feed you, clothe you, provide the material for your homes, roads, vehicles, offer you a hunting experience—and don't even complain when you simply want to gawk at our mountains. And when you get lost in the Wilderness, our Search & Rescue will fetch you. We're there for you. baby!

But no good deed goes unpunished. The 1973 federal Endangered Species Act dismantled out resource production, rural culture and custom and our freedom to provide for our families in relative peace and safety. Fortunately, in keeping with our ancestral pioneer spirit, we are genetically engineered to hunker down and endure—until the straw that breaks the camel's back comes along.

The feds couldn't talk the Saudis out of a few camels, so they dumped the Canadian Gray Wolf in Custer and Lemhi Counties instead, figuring, no doubt, that the killer instinct of a pack of wolves was more formidable than a pack of camels that would freeze to death; AND, the back of an elusive wolf would be safe from any lethal straws—especially with the federal government running interference.

Right now, there IS no federal management, the State is forced to pack federal water for pennies on the dollar, with only a token attempt to “monitor,” not manage these killers. And THAT S like keeping an eye on your teenager: you KNOW when he goes to the bar & you KNOW when he sneaks home; so, you roll him into bed and breathe a sigh of relief, when you SHOULD have cracked him over the head with a flashlight as he staggered up the stoop.

Will this HJM 1 do anything at all? I don't know, but it is what it is, and you can't start a forest fire without a match—or at least 2 small sticks to rub together.

This is very personal for me. My people don't want compensation—They want protection. THEY WANT THEIR LIVES BACK!

**TESTIMONY:**

**Ms. Sharon Kiefer, Assistant Director of Policy, Idaho Department of Fish and Game**, testified in support of HJM 1. Inserted into the minutes is a copy of her testimony.

Chairman Schroeder and Committee:

The Idaho Department of Fish and Game Commission voted last week in support of House Joint Memorial No. 1. The Department is appreciative of this legislative statement supporting delisting and resulting state management.

The Memorial directs Fish and Game and the Office of Species Conservation to work together to annually determine and report the amount of monetary damage caused to state interests by wolf predation on domestic animals and wildlife for the period when federal inaction on the delisting rule has prevented delisting. Because of today's notice of delisting by the federal government, I estimate we have about two months of information to gather and report to you next year.

**TESTIMONY:** **Mr. Wally Butler** testified in support of HJM 1. He stated that the **Farm Bureau** is in support of this Memorial and they welcomed the news of the delisting.

**MOTION:** **Senator Pearce** made the **motion** to send HJM 1 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Senator Pearce** is the **sponsor**.

**RS 18578C1:** **Chairman Schroeder** said that he invited Director Cal Groen to speak to the Committee on what RS 18578C1 does and why we should support it.

**SPEAKER:** **Mr. Cal Groen, Director, Idaho Department of Fish and Game**, provided several sheets of information which he referred to during his talk to the Committee. They are:  
Idaho Fish and Game Fiscal Facts  
Philosophies for Fee Schedule  
Cash Flow forecast with a 15% revenue increase in FY 2010  
Cash Flow Forecast without a revenue increase in FY 2010  
Fee Increase Information  
What Does the Fish and Game Revenue Increase Mean to Customers?  
Idaho Department of Fish and Game Business Plan  
Summary of Proposed Program Expansion.

The Statement of Purpose for RS 18578C1 states that this bill would increase most license, tag, and permit fees, effective April 15, 2009. The last fee increase was effective on July 1, 2005. The increased fees in this bill are necessary to continue existing department activities in FY 2010 through FY 2012. During the three year period, approximately 71% of the new revenue generated by this bill will be used to maintain a balanced budget supporting existing services. The remaining new revenue will be used to implement program enhancements desired by sportsmen. The effective date allows fee adjustment prior to the controlled hunt application period, which provides fee certainty for those customers. The

bill also cleans up sections of statute dealing with pelt tags that are related to fees.

**Director Groen** said that IDFG receives no general fund money. The 2009 budget was \$76 million, with \$41.7 million from federal and other funding and \$34.3 million that was license generated dollars. A \$76 million investment yields \$808 million in economic benefit to Idaho. In 2006, Idahoans and nonresidents spent \$282.9 million on fishing; \$259.7 million on hunting; and \$265.4 million on wildlife watching (total= \$808 M).

IDFG last license fee increase occurred in 2005. During FY 2006 through 2009, State agencies realized an average increase of 24.9 percent. During that same timeframe, IDFG's increase was just two percent (2%).

**Director Groen** referred next to the "Philosophies for Fee Schedule", which include 11 items. He discussed #1, which states - "Fishing and hunting license revenue is to be directed at benefitting hunters and anglers." The Director then talked about #6, which states - "All that benefit should pay, all that pay should benefit."

The next topic covered was the "Cash Flow Forecast with a 15% revenue increase in FY 2010 and without a revenue increase in FY 2010."

The Commission developed a "Possible Enhancements" list which is as follows: New fishing waters, maintain fish production, habitat initiative (MDI and sage grouse), Access Yes!, WMA deferred maintenance, increase in fire protection costs, maintain pheasant stocking, additional Deputy AG, financial system improvements, restore prior cuts to engineering, two part-time volunteer coordinators, and communication of Outdoor Youth initiatives. Another enhancement that was asked for by sportsmen was elk and deer counts and wolf predator survival studies.

CEC is a big issue and it has about a \$400,000 impact on the Department. There will be no CEC this year. **Chairman Schroeder** said there has been some discussion about lowering CEC and inquired if that possibility has been factored in. The **Director** replied that it had not been factored in at this time.

Another area of concern are the non-resident trends, especially non-resident elk sales. Right now, the Department is about 30% off in revenue and they are also concerned about the impact of wolves on the elk herds. Non-resident tags make up about \$9.9 million for the Department.

**Senator Pearce** inquired about the patterns of deer and elk tag sales. **Director Groen** said that right now the trend has declined about 30%. He is hoping that it picks up. For 2008, the elk tags were sold out. Resident sales increased and non-resident sales had a slower buying pattern.

**Senator Bair** asked about one of the enhancements - the possibility of hiring a Deputy AG. **Director Groen** said that position has been approved by the Governor.

**Senator Cameron** wanted to know more about the free fund balance. **Mr. Jim Lau, Bureau of Administration Chief, IDFG**, responded. The \$2 million that was in the free fund has now been spent, with \$3.8 million remaining in the stabilization account. The balance, as of today, in the free fund is about \$700,000.

**Senator Cameron** said that he wanted to express appreciation to Mr. Lau, the Department, and the Board for making some important strides forward. He stated that every State agency has taken significant reductions in FY 2009 and 2010 and he asked how he could explain to his constituents how the Department of Fish and Game is different. **Director Groen** said that a fee increase was taken off two years ago and efficiency measures were incorporated within the Department. Now, they have pressing needs and challenges - such as sage grouse, wolves, and noxious weeds.

**Director Groen** said that the Department is (1) listening to what the constituents are saying; (2) delivering service; and (3) making cuts by freezing hires and going to zero based budgets. He said that the State has to be prepared to understand what services are going to be lost and how it will affect some of the initiatives.

With regard to the fee increase, **Director Groen** said that they have received 823 responses to the revenue proposal. Supporting the proposal was 83.8%, with 16.2% opposing the proposal. Support comes from 89 organizations, 107 businesses and 491 individuals. Two letters of non-support were received from two organizations. The Director said they would provide the letters to the Committee, as they wish to share the information.

**Senator Cameron** asked that the link on the Internet for Fish and Game be provided to the Committee so that they could let their constituents register their opinions.

**Chairman Schroeder** said that it bothers him that fees are raised for disabled veterans. **Director Groen** said there will be discussions regarding that.

The **Director** said that he wanted to talk about enhancements next.

Hatchery Trout	\$350,000
Wildlife Habitat	\$300,000
Two volunteer coordinators	\$75,000
Wildlife Management Areas	\$100,000
Pheasant Hunting	\$50,000
Family Fishing Areas	\$350,000
Engineering & design	\$36,000

Public Access	\$250,000
Kids in the Outdoors	\$12,000
Financial System	\$100,000
Legal Support	\$135,000
Total	\$1,758,000

**Director Groen** said that sportsmen would also like to see more deer and elk studies/surveys and they are working on that now.

Under the Department's business plan, they have four short-term objectives; five mid-term objectives; and five long-term objectives which the Director reviewed. He then read letters of support from the Farm Bureau and the Intermountain Forest Association. Enforcement, resident fish stocking, and aerial surveys are the "big three". About 800,000 acres are being opened up with Access Yes!, with about half of those acres in Magic Valley.

There was discussion regarding the cost of helicopters versus fixed wing. It was pointed out that with helicopters, they can fly low enough to classify animals and obtain data that will hold up in court.

**Senator Brackett** said that he appreciated the Director's efforts the past couple of years and that of the Commission, also. He stated that the biggest challenge now is the economy.

**Senator Siddoway** asked about the temporary hiring program - specifically about wages and benefits. The **Director** said they had 528 full-time people and approximately 500 temps throughout the year. There are three different types of temps - some are full-time with benefits and some with no benefits.

**Chairman Schroeder** said there are two issues. One - what is going to be the impact of where CEC ends up? Two - the 15% fee increase. He then asked the Director for spreadsheets with various scenarios so that the Committee could review them (at the next meeting).

**Senator Siddoway** inquired as to why the tags were doubled on predators. The response was to bring it up to the national average.

**ADJOURN:** The meeting was adjourned at 3 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 9, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/  
EXCUSED:** Senator Coiner
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee 's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Vice Chairman Bair** called the meeting to order at 1:40 p.m. He reordered the agenda to accommodate **Chairman Schroeder** who was appearing before the House Resources and Conservation Committee.
- PRESENTATION:** **John Williams**, Idaho Constituent Account Executive, Bonneville Power Administration (BPA), gave a presentation regarding wind energy development in the Pacific Northwest in terms of how it is being integrated into the BPA Power Grid (Attachment #1). BPA is a Northwest federal based utility. BPA's high voltage transmission system has been utilized to bring a variety of power sources to the region.
- Mr. Williams** stated that wind is now one of the most sought after resources in the Pacific Northwest in terms of a renewable source. Several factors are driving the need to develop renewables in the Northwest: 1) increase demand for power; 2) state renewable portfolio standards, and 3) climate change concerns. California, Oregon and Washington have mandated that their utilities acquire renewable resources, and they must acquire them in such a way as to reduce their carbon footprint.
- Ten years ago, about 25 megawatts of wind was integrated into the BPA system. Today BPA has over 1500 megawatts of wind power. During the past few years, BPA has built five new substations and tap lines. Wind power requires reserves to maintain balance between scheduled output and actual generation. BPA must increase or decrease its generation in like amounts immediately to maintain the constant balance of generation and load to keep the transmission

system stable. Excessive wind generation imbalance is beginning to impose real consequences on power system operation that could affect both system reliability and protection of Columbia and Snake River Salmon listed under the Endangered Species Act.

**Mr. Williams** provided a graph comparing the power generated by the Lower Snake River Net versus the Total Control Area Wind generated power for January 19, 2009 through January 27, 2009 (Attachment #2). This graph shows the demand fluxuation during a 24-hour period, and highlights the fact that no wind generation occurred until January 26<sup>th</sup>. Although BPA may receive a schedule from the wind generators that they expect wind to be fully operational and putting something into our system, when it doesn't happen we need to back it up with reserves.

**Mr. Williams** advised that BPA is working with its customers, wind developers, regulators, and interested parties to find practical, equitable and viable ways to meet the technical requirements of integrating wind power in the Northwest. To meet those challenges, BPA is proposing the following solutions:

1. Protocols will limit wind operation to stay within balancing reserves – shifts the responsibility for balancing for under-generation of wind to the transmission contract holder and its balancing authority (utility's transmission control area) and to the wind power customers.
2. Interconnection Agreements that define the responsibilities of BPA and each generator that connects to BPA's transmission system.
3. Balancing reserves (to back up wind) will be forecast in rates. However, BPA cannot reduce hydro generation to compensate for wind over-generation if doing so would increase nitrogen saturation in the river above legal limits (Clean Water Act and Endangered Species Act listed fish impact).

#### **PASSING OF THE GAVEL:**

**Vice Chairman Bair** passed the gavel to **Chairman Schroeder** who invited questions of the committee for **Mr. Williams**.

**Senator Werk** stated he had read articles indicating wind tends to blow more at night than during the day and inquired as to how this might affect the power grid and what effect society's move to electric hybrid automobiles might have on power generation. **Mr. Williams** repeated the need for better forecasting tools and advised that when we reach a point in our society where we have substantial utilization of hybrid and electric vehicles and it would be opportune to recharge those during the nighttime.

**Senator Pearce** inquired regarding the cost of gas fired or coal fired power. **Mr. Williams** indicated he did not have an exact cost, but if the hydro system is exhausted another resource would most likely be coal or natural gas. He stated that BPA has recently put out a



request for information to third party resources trying to find out if there are other generators out there that can provide reserve services for wind. Eighteen responses were received.

**Senator Pearce** stated that production of alternative fuels like ethanol is inefficient and inquired if anyone has studied taking electricity, be it grid power or hydro or anything else, and plugging it into a car and the battery. **Mr. William** responded there were no studies to his knowledge, but emphasized the major plan needs to be renewable resources. If we are to utilize electric vehicles, we need to make sure they are so efficient that they conserve the energy that they need to run on.

**PASSING OF  
THE GAVEL:**

**Chairman Schroeder** passed the gavel to **Vice Chairman Bair** in order to present the next agenda item.

**RS 18807**

**Chairman Schroeder** presented RS 18807 relating to Fish and Game, allowing the Idaho Department of Fish and Game to adopt rules governing the collection of fees to recover costs for the performance of technical services relating to land and water use. Also, that the department, subject to commission approval, may provide upon solicitation, whether by the public or private sector, which services are not required to be performed by the department pursuant to Idaho law.

**MOTION:**

**Senator Pearce** moved and **Senator Cameron** seconded that RS18807 be sent to the Senate Judiciary and Rules Committee for printing. **The motion passed unanimously.**

**PASSING OF THE  
GAVEL:**

**Vice Chairman Bair** returned the gavel to **Chairman Schroeder** who announced that Dave Tuthill, Director, Idaho Department of Water Resources is presenting testimony to another committee and his presentation will be moved to the end of the agenda, or rescheduled on Wednesday if necessary.

**PRESENTATION:**

**Dr. Glen Weiser**, University of Idaho, Caine Veterinary Teaching Center, Caldwell, Idaho, provided the committee with a summary of the results of a survey on bighorn and domestic sheep respiratory diseases (Attachment #3).

**Dr. Weiser** initiated his presentation with a slide diagramming the factors leading to stress and ultimate lung injury in bighorn sheep. He identified the factors leading to pneumonia, including: 1) population density; 2) Interspecific competition; 3) domestic livestock; 4) human harassment; and 5) weather. All of these things interact with their behavior and range deterioration, which in turn affects nutrition. This leads to parasites, viruses and bacteria, all of which cause stress and lead to impaired resistance and lung injury.

Numerous research projects involving sheep grazing and rangeland management have been conducted at the U.S. Sheep Experiment Station (USSES) since its inception in 1915. Recently, heightened concerns over the possible contact transmission of respiratory disease

from domestic to wild sheep, and other issues, have put legal pressure on the USSES to assess its environmental impact.

Methodology to discriminate respiratory pathogens, primarily bacteria in the family Pasteurellaceae, from domestic and wild ruminants has been developed and applied at the Caine Veterinary Teaching Center (CVTC). **Dr. Weiser** provided a PowerPoint presentation reviewing the *Pasteurella* bacteria studies performed at CVTC over the past 20 years (Attachment #4). He showed the committee slides of the methods used, and stated that over 10,000 different strains of *Pasteurella* from wild sheep have been isolated. If those are matched up with the pelt of the animals when they are collected, 81 percent of these organisms are found in healthy animals, and only 19 percent are associated with sick animals. He stated that this illustrates a couple of concepts: 1) these organisms are able to be commensal – they can live with an animal and not cause any problems; and 2) something turns them into an opportunistic pathogen and then they become a problem.

CVTC has studied a virulence factor called Superoxide dismutase (SOD). This is a very important bacterial enzyme that fights the host sheep immune defense. It has also looked at the Leukotoxin, which is a toxin that attacks sheep immune cells and is also responsible for the breakdown of red blood cells. CVTC has gone so far as to take those Leukotoxin genes and dissect them getting a restriction profile, and we can look at different patterns. Some of those patterns correspond to the relative toxicity of the virulence factor, so we can even go a little bit further in defining how virulent these organisms might be. This research was supported by a grant received from the Morris Animal Foundation, Englewood, Colorado.

CVTC has isolated, and keeps archives of, over 13,000 unique bacteria from wildlife and domestic animals from thirteen states and British Columbia and Alberta, Canada. The majority were from wild sheep. The Hells Canyon sheep have been studied more than any other population. This project began in 1988 by Dr. Alton Ward and has been funded by the Idaho Legislature since 1992 with Idaho Fish & Game revenue. Significant achievements have come out of this work. Transport media and sampling techniques to keep fragile *Pasteurella* alive in transit have been developed. It was also found that most of the *Pasteurellas* are in the tonsils rather than the nasal cavity.

These studies have led to the current CVTC project testing all detectable bacteria and viruses that may contribute to respiratory disease. This project began with sampling of 125 sheep on February 5, 2009. Both newly developed culture methods as well as new culture-independent pathogen identification methods will be utilized. **Dr. Weiser** stated that new technology finds things that were not previously identified with cultures. Over the next year, possibly two years, three samples per year will be taken from these

125 domestic sheep. Duplicate samples will be tested with a technology that has just recently been developed in response to 9/11. Homeland Security and USDA made grants to Isis Biosciences, now Abbott Laboratories, to develop technology that would allow soil, air, water, and virtually any kind of sample that a terrorist organization might spread, to be analyzed rapidly. CVTC was lucky enough to become involved with some people who helped develop that technology, and will be using the Polymerase Chain Reaction Electrospray Mass Spectrometer. This equipment uniquely fingerprints every pathogen and can do more than 1500 in a 24 hour period. This instrument connects to world viral centers in Japan and other European databases to expand the research worldwide.

This project is the most comprehensive sheep respirator survey ever done. It involves Universities (Idaho and Washington State), federal (USGS, ISDA-ARS), state (IF&G) and industry (Isis Biosciences, now Abbott Laboratories). It also will provide additional resources for decision making regarding interacting scientific and social (legal) issues.

CVTC believes that the benefits of the study will facilitate better science-backed grazing policy decisions by public lands managers, enable us to understand more about the processes that allow *Pasteurella* bacteria to cause diseases, and identify other pathogens that may interact with *Pasteurella* bacteria to cause disease in wildlife and domestic animals.

**Senator Siddoway** questioned why it took almost 14 years to see results from the study of the 1990s die off of Hells Canyon sheep. **Dr. Weiser** related personnel illness and changes as the dominate factor. He stated that the first paper on the study was accepted for publication in the late 1990's but there was a six or seven year delay before it was published due to those personnel problems. He also stated that new technology has allowed more testing on archived samples and given a better picture of what happened. The last paper was published on that study in December 2007. **Senator Siddoway** also asked if there are statistics regarding mixing bighorn sheep with domestic sheep on the open range. **Dr. Weiser** stated there is one study to his knowledge of isolated cases of goats and domestic sheep coming into contact with wild bighorn sheep. That study involved about 14 to 17 instances, and more than half of those did not result in disease. He stated a wide spread die off due to the transfer of disease from domestic animals into a group of wild sheep has not occurred to his knowledge. He also stated that when feed is good and animals are in good condition he does not find it likely that there will be a transmission of disease, but he has no actual evidence of this.

In response to a question from **Senator Cameron** related to project funding, **Dr. Weiser** advised that CVTC receives \$100,000 from Idaho Fish & Game, which is used for salaries and research. Other funding comes from the University of Idaho in cooperation with USDA-ARS

and Washington State University, who administers the US Sheep Experiment Station in Duboise.

**Chairman Schroeder** asked that **Dr. Weiser** comment on the tagged bacteria project. **Dr. Weiser** stated this project took some *Pasturella* bacteria from domestic sheep, and through a process of tagging with fluorescent proteins put those tagged organisms back in the domestic sheep. Those sheep were placed in an enclosure of about 1.5 acres with four bighorn sheep. The domestic sheep were kept in paddocks and moved closer and closer over a period of time to the bighorn sheep. When they reached the fence line and had nose to nose contact, one bighorn sheep showed some of these fluorescently tagged bacteria which resulted in pneumonia. The sheep were then moved into the same paddock with the remaining three bighorn sheep and the three bighorn sheep contracted pneumonia while the domestic sheep remained healthy.

**Senator Brackett** inquired whether there were studies in other geographical locations on mixing domestic sheep with wild bighorn sheep. **Dr. Weiser** responded that there were no controlled studies to his knowledge. He also stated that he felt research in that area would be a lower priority than looking at interacting organisms and ways of managing grazing. He advised some studies have shown that well timed grazing, that is not allowed to be over grazed, will actually improve the quality of the forage going into the winter when the domestic animals are off the range.

**Chairman Schroeder** asked **Dr. Weiser** to comment on the wandering males' problem. **Dr. Weiser** reviewed the social structure of the sheep family and stated males can wander up to 70 miles. He stated that one of the prime management tools in grazing is to try to avoid having sheep in estrus out on the open range. Then the bighorn males are not going to have an interest in going to see domestic sheep. The possibility of getting a pathogen and taking it back to a herd would be significantly less.

**Chairman Schroeder** thanked **Dr. Weiser** for his presentation and advised the committee that he had papers published by **Dr. Weiser** if anyone would like to review them.

**ADJOURNMENT:**

**Chairman Schroeder** advised that the Fish & Game bill will be on the agenda on Wednesday and Friday and that the committee would have the meeting room available all afternoon on Friday.

With no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 11, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**MOTION:** **Senator Coiner** said that he had reviewed the minutes of March 4, 2009 and made the **motion** that they be approved. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

The **Chairman** then invited **Mr. Dave Tuthill, Director, Department of Water Resources**, to speak to the Committee regarding the notice of curtailment order for south-central Idaho groundwater users.

**SPEAKER:** **Mr. Tuthill** provided handouts to the Committee which he referred to in his presentation. They included the Idaho Snow Survey SNOTEL Data, as of March 9, 2009; map of impacted area; copy of Order; and list of dairy owners.

The Director addressed the SNOTEL data and said it is better than a week ago. The upper portion of the Snake River Basin ranges from 81% to 94%, and what was anticipated this year was 85% or greater. It appears there will be no mitigation plan for groundwater users; however, if there is a requirement, it should be small.

The purpose of the briefing today is to look at the lowest call on the river, which is the Clear Springs Foods Snake River Farm call, and is located near Buhl. He then referred to the map of the impacted area. About 41,000 acres are subject to the call.

**Mr. Tuthill** then reviewed the Order for the benefit of the Committee. The proceedings were commenced on May 2, 2005 when CEO Larry Cope of Clear Springs Foods requested senior surface water rights. On July 8, 2005 the Director issued an order that Clear Springs had been injured by diversions by junior ground water users and involuntary curtailment would

be phased in over a five year period. Junior ground water users were given a choice of providing replacement water to the Buhl Gage to Thousand Springs spring reach or replacement water directly to Clear Springs.

In the years 2005, 2006, and 2007, the Magic Valley Ground Water District and the North Snake Ground Water District provided replacement water to the Buhl Gage to Thousand Springs spring reach. Replacement water to the reach was provided mainly through the federal government's Conservation Reserve Enhancement Program (CREP) and conveyance of leased surface water through the North Side Canal Company's delivery system to allow incidental recharge of the ESPA.

On June 13, 2008, a Mitigation Plan from the North Snake Ground Water District and Magic Valley Ground Water District was received. The plan proposed to maintain a similar level of conversion and CREP acres as in 2006 and 2007 and to provide water directly to Clear Springs for the remaining obligation.

An Amended Mitigation Plan was filed on September 5, 2008 by the Ground Water Districts. It stated that reach gains resulting from CREP may vary annually based upon increases or decreases in CREP acreage.

A letter was sent by the Director on October 22, 2008 to the holders of junior-priority ground water rights warning of potential curtailment during the 2009 irrigation season. On December 18, 2008, the Ground Water Districts filed their Second Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District Providing for Monetary Compensation.

On January 29, 2009, the Director ordered the Ground Water Districts and Clear Springs to settle their dispute. They participated in negotiations and no settlement was reached. On February 17, 2009, the Ground Water Districts filed their "Notice of Withdrawal" with the Director. They withdrew their Amended Mitigation Plan dated September 5, 2008 and their original Mitigation Plan dated June 13, 2008. It is the Ground Water Districts' intent to proceed with their Second Mitigation Plan for Monetary Compensation dated December 18, 2008.

A status conference was held on February 19, 2009, with attorneys for the Ground Water Districts, Clear Springs, and Blue Lakes Trout Farm, Inc. It was decided that parties would be given until March 2, 2009, to provide any additional briefing to the Director on his authority "to approve a mitigation plan providing for monetary compensation as an alternative to replacement water supplies in response to a delivery call without approval of the holder of the calling right."

On February 23, 2009, protests were received by the Department against the Ground Water Districts' Second Mitigation Plan from Blue Lakes, Clear Springs, Idaho Aquaculture Association, Inc., Rangen, Inc., Surface Water Coalition, and Thousand Springs Water Users Association, Inc. The protests object to the Ground Water Districts' proposal to provide monetary compensation in lieu of water. Also on February 23, the Department received the Ground Water Districts' Amended Second

Mitigation Plan. It is identical to the Second Mitigation Plan except it offers an alternative to monetary compensation and that is proposing that the Director order the “direct delivery of fish consisting of rainbow trout of the same type, size and timing as could be produced at Clear Springs’ Snake River Farm to replace the lost fish production.”

The Department has reviewed the Ground Water Districts’ reporting and has independently reviewed the number of acres enrolled in CREP and the number of conversion acres. Using the ESPA Model, the Department has determined the resulting benefit to the Buhl Gage to Thousand Springs spring reach from those activities:

- Conversions 9.44 cfs
- CREP 0.44 cfs
- Total Provided 9.88 cfs
- Required 38.72 cfs
- Shortfall to Reach 28.84 cfs
- Shortfall to Clear Springs 1.99 cfs

The Ground Water Districts state that the deficiency is to be made up in the form of monetary compensation or replacement fish to Clear Springs. If monetary compensation or replacement fish is not an acceptable form of mitigation, involuntary curtailment could be required to replace the remaining water. If curtailment were required, it would impact approximately 860 consumptive ground water rights located in Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties. The curtailment would impact approximately 41,000 acres of land irrigated by ground water.

The Order is as follows:

1. That the Ground Water Districts’ Notice of Withdrawal of Amended Mitigation Plan is GRANTED without prejudice.
2. That the Ground Water Districts’ proposal for monetary compensation in the Second Mitigation Plan is DENIED. The Ground Water Districts’ proposal for replacement fish in the Amended Second Mitigation Plan is DENIED. The Ground Water Districts’ proposal to continue the enrollment of the same number of acres in CREP and irrigate the same number of conversion acres as in 2008 is GRANTED.
3. That Clear Springs’ request for costs and attorney’s fees is DENIED.
4. That the Ground Water Districts’ Motion to Strike is DENIED.
5. This is a FINAL ORDER.
6. An appeal must be filed within 28 days of the service date of the final order. (Idaho Code 67-5273.)

If no further action is taken by March 12, 2009, the Director will order curtailment on March 16, 2009. This notice was dated March 5, 2009.

That concluded **Director Tuthill’s** explanation of the curtailment. The **Chairman** allowed time for questions and discussion.

**TESTIMONY:**

Written testimony in opposition to the curtailment was submitted by **Lynn Tominaga, Executive Director for Idaho Ground Water Appropriators**



**(IGWA).** A copy of the testimony is inserted into the minutes.

#### IDAHO GROUND WATER APPROPRIATORS, INC.

The Idaho Department of Water Resources has ordered over 830 irrigation, industrial, commercial and municipal water rights in Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties to shut off their water, so that Clear Springs Food Inc. can continue to receive a mere two cubic feet per second of additional water flow.

“This Order is a train wreck which will cause a disaster to the economy of the Magic Valley and the State’s largest industry, the dairies,” said Lynn Carlquist, Chairman of North Snake Ground Water District. Carlquist pointed to a story in Saturday’s Idaho Statesman announcing the Idaho jobless rate is at a 21 year high of nearly 7 percent, with some 53,000 unemployed; the state is expecting a 12 percent drop in tax revenue. Economists say joblessness will continue to rise nationally for the rest of the year and into early 2010, with the unemployment rate reaching 9 to 10 percent before it turns around.

“It’s amazing we would inflict this much economic devastation to protect a \$34,000 claim to water,” Carlquist said. “To avert this catastrophe, we have offered to immediately pay Clear Springs for their actual lost profits, but IDWR Director Tuthill has rejected multiple mitigation plans which were carefully designed to provide replacement water or fish or monetary compensation for lost profits, any of which would fully prevent any material injury.”

Economic studies performed by the State and private experts estimate the economic impact from such a curtailment to be \$24 M in annual crop losses, as well as the loss of thousands of jobs and hundred thousands of dollars in tax revenues to the state and local governments. The shutoff will potentially run dairymen out of business, who can no longer meet their waste management obligations through irrigation.

The curtailment order is the latest step in a decade-long dispute between groundwater pumpers on the Snake River Plain Aquifer and the aquaculture industry that uses spring flows from the aquifer. In a groundwater system, it is often impossible to point to any one particular user who is reducing flows to others. So spring users, including Clear Springs Food, sought to exercise its senior water rights and have all junior groundwater rights on the Snake River Plain shut down.

Based on Clear Springs’ own records, the profits from fish produced is about \$17,000 per cfs if the water was immediately available. The Ground Water Districts proposed to immediately pay Clear Springs in full for its lost profits due to the 1.99 cfs shortage for a total of \$34,000 or to provide fish to replace the lost production, but Director Tuthill flatly rejected both proposals.

“It is ironic now that IDWR, the very state agency that helped establish a viable agricultural economy, is now using its own rules to curtail the ground water rights they issued and it return the region to a desert,” said

Dean Stevenson, a board member with Magic Valley Ground Water District.

Instead, the Director has ordered the curtailment of all agricultural, commercial, industrial and municipal water rights junior to November 16, 1972 impacting more than 860 water rights in Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties and drying up over 41,000 acres of irrigated land.

“The economic disaster is being done to supply a mere 1.99 cfs of flow to Clear Springs, most of which would not appear for decades,” said Lynn Tominaga, Executive Director, IGWA. “All indications are that Clear Springs would not sell more fish due to the depressed markets and surplus supply.”

### **History of Compromise**

IGWA and Ground Water Districts have worked hard to protect the rights of senior users. In addition, groundwater users have been among the first water users to adopt stringent water conservation technologies.

Recognizing the complexity of ground water use, in 1994, IDWR adopted rules allowing junior ground water right holders to avert a shutdown of their rights, if they submit plans to replace water or provide other compensation to senior water rights holders. IDWR first issued an order in 2005 curtailing surface pumpers' rights. In response, IGWA and the Ground Water Districts submitted annual mitigation plans that prevented injury to Clear Springs and thereby avoided curtailment. Even though the 2005 Order is currently pending on appeal in Gooding County, the Ground Water Districts moved forward in good faith with several alternative mitigation plans, including:

- Funding and supplying surface water for 9,300 acres of land irrigated from ground water to surface water irrigation.
- Spending \$11 M to purchase Pristine Spring aquaculture rights.
- Direct delivery of replacement water below the rim to Clear Springs from nearby springs owned by Idaho Fish and Game.
- Drilling of new wells to supply water.
- Drying up of land above the rim and delivering water from those wells.
- Installing oxygen aeration and pump and filtration facilities to allow re-circulation of existing water supplies.
- Compensate Clear Springs for all their lost profits or to replace their lost fish production.

“Clear Springs Foods have repeatedly rejected all of these proposals and they to want nothing other than curtailment of irrigated land or to hold the Ground Water Districts hostage, extract millions of dollars and force hearings and infrastructure that Clear Springs may or may not use,” said Lynn Tominaga, Executive Director for IGWA. “The Director appears to have a preference for agendas based upon curtailment and has chosen to ignore the plain language of his own rules that specifically allows mitigation plans that provide for either replacement water or other

compensation plans.”

Because of Clear Springs repeated protests to every replacement water plan submitted, the Ground Water Districts decided to withdraw their replacement water mitigation plans. But, the Ground Water Districts proposed a viable plan pending before the Director to fully mitigate Clear Springs’ injury by providing money to pay Clear Springs for their lost profits or provide replacement fish equivalent to what might have been produced with the lost two cfs of water.

The Ground Water District’s attorney Randy Budge anticipates an appeal of the Order by the District Court indicating “the Ground Water Districts believe that the Director’s Order was arbitrary and capricious and without any sound policy or purpose simply ignored or misinterpreted the Department’s own Conjunctive Management Rule 43 which specifically authorizes mitigation plans that provide for ‘other appropriate compensation’ or ‘replacement water.’ “Clearly it would seem that Clear Springs can have no injury if the fish they could have produced from the two cfs water are replaced in kind or if they are paid in money the lost profit from this small reduction in fish production.”

Tominaga stated that the Director’s Order puts the parties back on the course of continued litigation losing yet another opportunity to help develop both short and long term solutions.

**TESTIMONY:**

Presenting Senate Bill 1141 was **Ms. Sharon Kiefer, Assistant Director-Policy, Idaho Department of Fish and Game (IDFG)**. A copy of her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

My comments have four parts—I) I will just walk you through Senate Bill 1141 so you understand the sections of the bill; 2) I will provide you with some examples of what the fee structure in S 1141 means to customers; 3) I will summarize the written public input we have received; and 4) I will provide you a few excerpts of the input the Department received on behalf of stakeholders who are not present

#1: Most of you recognize that we have made a concerted effort to keep most of our fee references in a single section of code, 36-416. Thus Section 1 of the bill modifies most of the fees in 36-416.

Some fees are not modified in S1141 because of current law requires no charge, such as the Educational Fishing Permit. I remind you that the fees in 36-416 do not include vendor fees, which are not changing. These modifications, combined with our sales projections (based on 2008 sales) are estimated to raise \$5.1 million in new revenue starting in FY2010. Notably, because of the philosophies discussed by Director Groen on Friday, March 6 to keep the price of basic hunting and fishing affordable for residents, the cost of a resident combination license does not increase.

Section 2 repeals code referencing beaver tags, which are obsolete. I am sure you always appreciate deletion of obsolete sections of code.

Section 3 deletes the code reference to lynx tags because there is no lynx season, thus we do not issue lynx tags. However, because we have implemented an otter season and do utilize otter tags, we have incorporated the otter tag reference.

Section 4 is an emergency clause for implementation of this bill on and after April 15, 2009. Thus, we estimated that \$1.27 million may accrue in the last quarter of FY2009.

#2: I am sure all of you have a calculator and can figure out the revised price for any combination of licenses, permits and tags that you are interested in. However, I just wanted to highlight a few examples that illustrate the philosophies discussed last Friday as shown in attachment to this testimony. The examples are from a handout in your folder from last Friday. I emphasize again, these fees do not include vendor fees.

#3: Let me again briefly review the written responses (letters and email) the Department has received about this revenue proposal as shown in attachment to this testimony. This is a snapshot; we receive additional responses practically every day

I also have three exhibits to support this summary that I will leave for the committee's perusal-- a spreadsheet of all of the written responses organized by Fish and Game regions so that you can see the geographic scope of written response. I have also provided the written letter responses, which include the "pros" (green folder) and the "cons" (orange folder). I have not provided a copy of all the emails, but I can if you want a bigger pile of paper

#4: I'd like to read just a few excerpts on behalf of those that are not here but who took the time to provide us with their thoughtful input; all of these letters are included in the aforementioned folders.

To date we have received 837 responses on our Revenue Proposal.  
83.8% of the responses support the Department's proposal  
16.2% oppose the proposal.

We have received 51 letters of support, 10 letters of non-support.  
We have received 19 e-mails of support and 83 non-support.  
We have received 667 form letters in support.

We have received support from 87 organizations, 107 businesses and 500 individuals including:  
Eight Chambers of Commerce: Challis, Grangeville, Jerome, Lewiston, Coeur d'Alene, Rexburg, Salmon Valley, Greater Idaho Falls.  
Four County Commissions: Blaine, Camas, Cassia, Jerome.  
Seven newspapers  
Idaho Sportsman's Caucus Advisory Committee (ISCAC) representing 28 individual sportsmen's organizations

We have also received letters of non-support from two organizations:  
Magic Valley ATV Riders  
Southeast Chapter Sportsman for Fish and Wildlife (SFW)

Of the 16.2% opposed:

18.3% were opposed because of the wolf issue;

15.3% were opposed because of the increase in the fishing tournament permit, which the Department resolved with a reduced increase;

16.8% were opposed because of the bad economy;

7.6% were opposed because they felt fees were too high now.

**TESTIMONY:**

Next to testify was **Dr. Wayne Wright, Magic Valley Commissioner, Commission Chairman, Idaho Fish and Game Commission**. A copy of his testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Thank you for the opportunity to speak to you about Senate Bill 1141.

Mule deer, elk, fishing, and Wildlife Management Areas don't "just happen". It takes a dedicated Commission and the work of a dedicated, professional agency. It takes the support and efforts of dedicated sportsmen and sportswomen. And, it takes money.

We are here today because in July, after careful deliberation and scrutiny of the Department's priorities, programs, and with consideration of sportsmen's expectations for their hunting and fishing resources, the Commission directed the Department to craft a proposal to increase our license revenue. The Commission specifically wanted a multi-year proposal to provide fee stability to our customers and to provide a strategic approach to programs. We specifically approved a 15% license revenue increase that not only sustains current services but creates the financial support for new services like more places to fish and more habitat restoration to sustain more deer on the hill.

The Commission and Department staff reached out to organized and individual sportsmen to inform them about our revenue need, explain the fee proposal, and to solicit their opinion. Yes, we asked for their support.

We also reached beyond sportsmen to other stakeholders because the majority of Idahoans value wildlife and because hunting, fishing and wildlife watching generates millions of dollars across our state.

Talking about the Magic Valley Region specifically, I personally have visited with many sportsmen at many venues. From the Magic Valley region, we heard from 21 organizations, 6 businesses, and 66 individuals who provided written support.

In addition, Regional staff gave presentations to: Three Sportsmen's breakfasts, Sportsmen's Chili feed, and twenty sportsmen's and recreation organizations with about 500 people attending. Also, six County Commissions, three radio shows, one television show and the Times News, as well as three big game/fisheries meetings in Burley, Jerome and Hailey.

Programs like *Access Yes!*, the Mule Deer Initiative, and the Sage Grouse Working Groups are bringing hunters, anglers and landowners together to

do great things for wildlife. In 2008 in the Magic Valley region, the Access Yes! Program opened approximately 166,000 acres of private land to hunting and fishing and the program also opened nearly 221,000 acres of public lands with new access through private land. We've got aggressive habitat restoration for wildlife going on across the state - our Mule Deer Initiative is a prime example. This is just a snapshot of how Department staff and partners are putting dollars on the ground to benefit hunting and fishing today. I remind you that putting programs and dollars on the ground takes people, a lot of people.

Yes, I believe we need to do more to strengthen the future of our wildlife resources as well as our hunting and fishing opportunities. I became a Commissioner to contribute to ensuring that my grandkids enjoy the diversity and richness of hunting and fishing in this state that I do.

Granted, without the fee increase, there will still be hatchery trout, mule deer and elk. But, there will be less. Programs will be compromised over the next couple of years as the Department cuts back. The Commission will have less scientific information to base seasons on. Instead of achieving sportsmen expectations and being proactive about the future of wildlife, habitat, and hunting and fishing opportunity, we will fall further behind as inflationary increases in the cost of doing business continues an inevitable march.

Standing still or falling behind is not the vision we heard from sportsmen and other stakeholders and it is not by vision as a Commissioner. Sportsmen want more and we had a lot of them tell us they are willing to pay a bit more for that. I know the economy is having a negative effect on many of our customers but they still want to hunt and fish and they still desire Department services. I believe Senate Bill 1141 creates a reasonable and affordable fee schedule that provides "something for everyone" to still hunt and fish.

I want you to think of Senate Bill 1141 as a stimulus package that will help Idaho's wildlife and help secure programs to help hunting and fishing now and into the future. The Department needs your support - on behalf of the Commission, I ask you to vote yes.

**TESTIMONY:**

**Director Cal Groen, IDFG**, testified next. His testimony is inserted into the minutes.

***Vision: Guided by a citizen Commission, the Department of Fish and Game shall work with Idaho residents in providing abundant, diverse fish and wildlife and ensuring a rich outdoor heritage for all generations.***

As director, I have developed five underlying themes with the Commission to achieve this vision. Despite the challenging economy, we are holding fast to our themes of honoring and strengthening our hunting and fishing heritage and utilizing strong on the ground partnerships and initiatives to make a difference for the wildlife and people of Idaho. I feel that the **Commission recommended 15% revenue increase** will keep the Department in position to meet the challenges facing Idaho's wildlife and

continue our momentum in developing and maintaining broad-based partnerships as defined in the **Idaho Department of Fish and Game Business Plan**, which I provided to you last Friday.

1) The Problem: 1) Sportsmen's license fees have not kept up with fish and wildlife program demands and pressing public expectations including the cost of government and inflation. The Commission and sportsmen advocate that their license dollars should be directed at hunter and angler activities.

2) The ten percent revenue increase the Department received in July 2005 was programmed to last two years, yet the Department made it last four years by deferring several important projects and implementing a number of efficiency measures. Over the past four years, the Department budget has grown on two percent while other agency budgets have averaged a 25.9 percent growth.

3) The Commission has approved and recommends a 15 percent overall revenue increase that would generate \$5.1 million per year that will enable the Department to catch up with inflation pressures and achieve some on the ground program enhancements desired by sportsmen. Nearly 70 percent of this revenue proposal will go to maintain existing programs and handle inflation costs over at least the next three years. The remaining 30 percent, approximately \$4 million over the next three years, would support needs such as sportsmen driven habitat restoration efforts, improved access, new family fishing waters, increased fish production, deferred maintenance needs for wildlife management areas and marshes, greater volunteer efforts, and connecting youth to our outdoor heritage.

4) The revenue increase would last at **least three years** and provide for programs desired by hunters and anglers.

5) Without this revenue increase the Department anticipates it **will drain** the Emergency Fund (Budget Stabilization Account, \$3 million) within this three year period and further erode existing sportsmen services. A portion of this fund is needed to just cover fluctuating cash flow for the Department expenses so we need to retain a working balance.

6) The proposed fee increases will be generally **less for residents** yet stay competitive with surrounding states for non-resident licenses and tags. For example: Resident combination license would not increase while a non-resident combination license will increase 20 percent (\$40.25). The price of a resident fishing license would increase \$3.75 while a non-resident fishing license would increase \$16.50.

7) The Department is strongly advocating and pursuing alternative funding for nongame and species at risk programs to provide match money required for existing federal funds.

8) The Department cannot raise sportsmen's fees; however, **the Commission, which sets Department policy**, has been deeply involved

in and **has approved** the proposed fee structure. Fees can only be established with Legislative and Governor approval. Today's hearing is a step in that process – we appreciate the Committee's legislative attention to our proposal.

**9) The Department receives no GENERAL FUND (TAX) monies.**

**Revenue Enhancement Notes**

The Department fully recognizes the difficult economic environment we are all operating in but at the same time we have heard loud and clear from sportsmen that they desire a strong and progressive Fish and Game Department. Our revenue enhancement request supports this goal and has tile unanimous strong endorsement of our Commission for a 15% increase in our revenue that will carry us through the next three years.

I would like to advise this committee regarding the key assumptions we used in developing our revenue request. We have projected no CEC Increase for FY 2010 and have also provided several alternate scenarios the event that the legislature further reduces budgeted personnel costs. We have included projected CEC increases of 3% in FY 2011 and FY 2012.

We have included in our spending plans several important new projects that the Commission has requested us to undertake over the next 2-3 years. These will assure continued progress in developing enhanced hunting and fishing opportunities for our citizens which include new fishing-waters, maintaining fish production in the face of increased costs, improving important habitat, improving access for our sportsmen, attending to critical deferred maintenance issues, and maintaining pheasant stocking as well as other projects. Total spending of \$4.4 million on these projects over the next three years is included in our projections. Without adequate revenue increases the department will not achieve the goals of this Commission nor meet the expectations of Idaho s sportsmen.

The Commission and I feel strongly that a revenue increase of 15% is necessary to support us for the next three years. We recognize the significant effort that is required to inform sportsmen of what changes are requested and why they are important to the success of the department. A smaller increase that may be intended to last a shorter period will fall short of sportsmen expectations and will then require another major effort as early as next year to address the same issues again. Sportsmen we talk to want to see progress and commitment and they are willing to pay for it.

I must also comment regarding a potential issue on our horizon. We currently are experiencing a slow start of sales to non-resident hunters for next fall's hunts. We are feeling the impact of the economy on these sales as hunters are delaying purchasing decisions and may be reconsidering the cost of travel to Idaho to hunt. We suspect some hunters may not return until the wolf issue if finalized once and we can manage wolves as we do other species. We are still early in the license buying season and hope this disappointing early trend will turn upward. We have sold out non-resident tags (capped at 10%) for the past several years and we trust we will still achieve this – just later in the season. Last year tag sales to non-residents generated \$9.3 million for the department and non-resident hunting licenses added another \$3.8 million. We will not know the final outcome until



later this summer but it is clear that any significant drop-off in non-resident sales will have a direct impact on the department and we will be prepared to modify our operating plans if and when needed. This was the genesis of past Commissioners establishing our Emergency Fund (Budget Stabilization Account, \$3 million).

**TESTIMONY:** Testifying in opposition to S 1141 was **Charlie Chapin, Legislative Chairman for the Disabled American Veterans**. A copy of his testimony is inserted into the minutes.

Mr. Chairman and members of the Committee:

The Disabled American Veterans are the ones who bit the bullets.

The Disabled American Veterans have three issues with this bill:

1. The \$10.00 that was put on the veterans over 65, three years ago.
2. The increase in the Disabled American Veterans tag fees.
3. Lower veterans benefit rates from 40% to 10%.

We have many of our veterans are living on \$400.00 to \$600.00 a month. They get food stamps to help tide them by. These are proud people. They are not on social security yet.

Many of them suffer from PTSD. Hunting is a vehicle to get them out of their homes. They just cannot stand any increases.

They just get by hand-to-mouth now. The \$10.00 increase hit many hard. Now you want to increase tags again. We just can't accept this.

I want to tell you about an article that was in the Field and Stream magazine, December 08 and January 09. This lad from California was hit with an IED in Iraq. He was just 21 years old. He woke up a week later with his mother pulling on his arm. His first thought was Mom - what are you doing in Iraq? He was in Walter Reed Hospital. His jaw was wired shut so he could not talk. He spent many months in the hospital and he lost a leg as well. The DAV organization found out about him and they spent a lot of time with him. Many of them can relate with him as they have been there and done that. He got his new leg, so they took him hunting in Texas. They have a disabled blind there. He shot his first buck that day. From there, they took him on other trips. One day, he looked into the mirror while shaving and said, "If I can hunt, I can work".

He now is a productive citizen again, because of hunting. This is real in the lives of 80 to 90 percent of veterans, even the veterans over 65. They just did not get service connected. We knew it was going to be hard on us. A veteran rated over 50 percent is rare, if he can hunt.

Many states have a hunting season for the Disabled Veterans. Some have hunting the last week of the season and they can kill either sex.

As a Disabled American Veteran, I ask that the Idaho Legislature to not

raise the tags for the Disabled Veterans. Reduce the license on 65 and over, reduce benefits from 40% to 10%. Thank you for listening.

**TESTIMONY:** **Mr. Mike Smith, Idaho DAV State Commander**, testified in opposition to S 1141 because of the increase directed at the veterans.

**TESTIMONY:** **Mr. Dave Torell, Rocky Mountain Elk Foundation**, testified in support of S 1141.

**TESTIMONY:** The **Idaho Fish & Game Advisory Committee** sent a letter in support of S 1141, signed by **Dr. J. Kent Marlor, Chairman and John Romero, Co-chairman**.

**ADJOURN:** Due to time constraints, there was only time for a short discussion. The meeting was adjourned at 3 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 13, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** Senator Brackett

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.

**MOTION:** **Senator Bair** made a **motion** for the approval of the minutes of March 6 and March 9, 2009. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote.

**S 1141** The **Chairman** said that public testimony would now be taken on Senate Bill 1141, Fish and Game's fee increase bill.

**TESTIMONY:** **Mr. Bill London, with the Idaho Conservation Officer's Association**, was the first to testify. He testified in favor of S 1141 and a copy of his testimony is on file.

**TESTIMONY:** **Mr. Harold Mohlman**, a retired citizen, also testified in support of S 1141.

**TESTIMONY:** **Mr. David O'Neal**, representing "**Save Elk Grassroots Coalition**", testified in opposition to S 1141. He presented a paper, "**Hunters Against Raising Fees**", signed by **11 people**. He also read **emails** from **Marshall and Holly Sage, Clancy Anderson, John L. Runft, Mike Dubrasich, Tony Mayer, and Steve Alder**, all opposing S 1141. All documents are on file.

**TESTIMONY:** Testifying next was **Margaret Soulen Hinson**. A copy of her testimony is inserted into the minutes.

#### **Chairman Schroeder and Members of the Committee:**

I am Margaret Soulen Hinson, a sheep and cattle producer from Weiser, Idaho. My family has been in the livestock business since the 1920 s. My grandfather dealt with wildlife issues, mostly coyotes, a few black bears and the occasional cougar. Today I spend an inordinate amount of time

working on wildlife issues, everything from bull trout to bighorn sheep. As you can imagine, being a permittee on the Payette National Forest, I am finding out just how contentious these issues can be.

Wildlife Management is a critical component of our ranching operation whether it is through our access hunting program or dealing with predation from wolves, cougars, or bears. It is so big that we must consider Fish and Game as a partner, rather than an adversary. For this to happen, we need an increasing amount of support and advice from the Department, not only on our game species and to maximize our hunting opportunities, but also for those species which may become listed as “threatened” or “endangered”. Let s consider two examples.

Wolves are an acknowledged biological success story, here to stay in Idaho and at levels we believe are sustainable. They are also newly removed from the “threatened” list, returning them to the management of the State and as a game animal. We believe this is appropriate. For the past 14 years following their re-introduction in Idaho, we have probably suffered more livestock losses from wolves than anyone in the country, averaging perhaps 100 sheep per year. We are getting better at understanding what we have to do to cut those losses, but we must still rely on the Department for assistance and overall management. Despite our losses and the fact that our sheep are accompanied at all times by herders with rifles who would dearly love to shoot a wolf, we have never killed one. However, we do believe that a properly managed hunting season will instill in the wolves a respect for humans and firearms that they don t now seem to have. If that is to be the case, then we must rely upon Fish and Game to provide that hunting opportunity and believe that it will become an important part of our strategy for minimizing losses from wolves.

Ironically, while we seem to have managed to live with wolves, it is another species of sheep that pose the larger threat. This Committee has heard all about the issues surrounding potential disease transmission from domestic sheep to bighorns, and I won t belabor that issue now. However, if we are to solve it in a way that allows the domestic sheep industry to continue in Idaho, it will be through research and management actions on the ground. Again, bighorns are a game species, are not listed under the ESA and remain totally within the management responsibility of the State. We intend to look to the Department for leadership in resolving this contentious issue in a manner that protects bighorns but also maintains our industry and the livelihoods of our employees.

For these reasons, we need a strong, well-staffed and trained Department of Fish and Game. We do not and will not always agree with everything the Department does, but we do agree they are an integral partner in our ranch operation and we support the license fee increase.

Thank you, and I’ll be happy to answer any questions.

**TESTIMONY:** Testimony was given by **Joseph Hinson, Natural Resource Consultant**, and a copy of his testimony is on file. He supported S 1141.

**TESTIMONY:** **Mr. Cameron Wheeler, Idaho Fish and Game Commission member**, testified in support of S 1141.

**TESTIMONY:** **Ms. Jane Wittmeyer, Vice President of Idaho Affairs, Intermountain Forest Association**, testified next. A copy of her testimony is inserted into the minutes.

The Intermountain Forest Association (IFA) is an organization of wood product manufacturers, timberland owners and related businesses in the northern Rockies. The Association develops and implements solution-oriented policies aimed at securing a stable and sustainable supply of timber on public and private lands. On behalf of our members, IFA is writing to advise you of our support for the Idaho Department of Fish and Game's proposal to increase revenues by adjusting license and tag fees during the 2009 Legislative Session

A well-funded and effective Department is important to those who purchase licenses and tags and to those of us in the natural resource fields that work with the Department. In addition, it is important to maintain the Department's efforts to expand hunting, fishing and outdoor opportunities by increasing the opportunities for Idahoans and others to access private sector forestlands. IFA members support this revenue enhancement as a good first step in increasing revenues. We also support and encourage future revenue enhancements that will provide for an Enhanced Access Yes Program that would provide Idaho's larger forestland owners the opportunity to enroll their lands to the benefit of the hunters, fisher people, trappers and outdoor recreational enthusiasts.

We also support the concept of assessing a fee to those Idahoans and others who do not hunt or fish but access the Wildlife Management Areas for non-hunting, fishing and trapping pursuits. IFA urges the Department to consider this in the near future. Adequate funding is necessary to ensure all Idahoans to continue to enjoy the state's great outdoor opportunities.

**TESTIMONY:** **Mr. Fred Dixon** testified in support of S 1141. He is a **member of the Idaho Hunter Education Association and a new member of the Idaho Sportsmen's Caucus**. Mr. Dixon said that he had previously attended a meeting and the bill was explained to him. With that understanding, he wanted to show his support today for S 1141.

**TESTIMONY:** A copy of **Ms. Cherie Barton's** testimony is inserted into the minutes.

Good Afternoon: My name is Cherie Barton. Having been born and raised in Idaho, I have had a long appreciation for our "Outdoor Idaho". I fly fish, ride horses, and hunt elk, deer, waterfowl, upland game birds and just plain enjoy what Idaho offers.

As an independent contractor, licensed in real estate for 30 years now, I have a

pretty good idea of why lots of people move to the Gem State. They want to enjoy our clean air, recreate in the outdoors and have a great quality of life. Part of that enjoyment is seeing abundant wildlife in our open spaces. I hear about it all the time in my business. As a real estate agent, I am also very aware of the economic climate in Idaho.

That said, the Fish and Game Department, by statute, manages all fish and wildlife for all the citizens of Idaho. They have not had a revenue increase for four years where other state agencies have. They need this one to stay a viable Agency. Since they do not receive any tax dollars from the state, it is always a puzzle to me, why there is so much concern over their finances. Sportsmen and women all but demand the services they want from their Department, and purchase their licenses accordingly. If the Department provides the services and manages the wildlife to provide adequate hunting and fishing, their constituents are happy. If the Department doesn't, they aren't. So why would you not pass this Bill, and let the sportsmen and women of Idaho determine what they want out of the Department. It's the cheapest entertainment and longest lasting dollars I spend all year. It costs about \$20 to go to the show for one evening. By the time you buy popcorn and a drink for two, I can go fishing all year for under \$30.

You might ask why should you grant the Department a fee increase in these challenging economic times when everyone else is cutting back? I would answer, that sportsmen and women are funding the Department; not the general tax payer, and we support the fee increase and are willing to pay more to ensure the proper management of our fish and wildlife resources.

If Fish and Game Department doesn't have the money to manage our fish & wildlife then we will all lose. If you do not pass this, then I feel it will start a down-hill spiral of the Department. They will have to cut services which will affect the Department's ability to manage fish and wildlife to the degree that sportsmen want. Not to say anything about how it will affect businesses all over the State. Over \$800 Million dollars are spent by sportsmen and women each year on hunting, fishing and related outdoor activities.

You need to pass this Bill and demonstrate to all Idahoans that you too want a strong and viable Department to manage all of the fish and wildlife for Idahoans. Thank you.

**TESTIMONY:** **Joe Curry, a resident of Boise and a hunter, fisherman, and sportsman**, said that he is willing to pay his fair share for these sports. He stated that if you choose to not participate, it costs you nothing and he is in full support of S 1141.

**TESTIMONY:** **Nate Helm, on behalf for Sportsmen for Fish and Wildlife Idaho (SFW)**, said a letter was sent earlier supporting S 1141. He stated that his objective today is to answer the question at the crux of this discussion – “How do you give Idaho Fish and Game a fee increase when all the other agencies are taking significant reductions?” Mr. Helm said the SFW views

this bill as planned implementation. They have been working with the Department, the Commission, and the Governor's Office to identify a plan and by working together, it will be accomplished.

**TESTIMONY:** **Doug Schleis, representing Idaho Walleye Unlimited and the Poachers Club,** testified in support of S 1141. He stated that they firmly believe that the fee adjustment is needed and required for the continued support of the IDFG, our partners in preserving, protecting and perpetuating Idaho's great wildlife heritage.

A copy of his written testimony is on file.

**TESTIMONY:** **Mark Bell, a sportsman and also with the National Turkey Federation,** stated that the revenue increase is not to build new programs, but to continue the programs that are existing. He is excited that IDFG has open meetings, as well as the Commission, and that sportsmen have input regarding the expenditures that are paid by the fees. He asked for the Committee's support regarding S 1141.

**TESTIMONY:** **Robert Minter, President of Ada County Fish and Game League,** testified next. The League is an outdoor sportsman's organization that was formed during the mid 1920's. Although membership has dwindled, they are still as passionate today as they were in their early years regarding wildlife resources.

The League considers S 1141 a reasonable proposal given growing operation costs and what is considered necessary for maintaining resource management needs. Mr. Minter encouraged the Committee to approve this legislation with a "do pass" recommendation.

A copy of his written testimony is on file.

**TESTIMONY:** **Jay Stark, Board member of Hunter Education Association and member of the State Association,** testified. They have over 1,120 active members statewide and the membership supports the Department with over 15,000 hours of volunteer time every year. He asked that the Committee support the sportsmen of Idaho by providing the Department the needed fee increase.

**TESTIMONY:** **Brad Smith, Idaho Conservation League,** said they support the proposed fee increase to the Department to continue to manage the hunting and fishing for all Idahoans. The Idaho Conservation League has also encouraged their members to provide additional funding to the Department by supporting the license plate program and tax check optional.

**TESTIMONY:** **Jeff Barney, a Board member of Trout Unlimited,** was next to testify. He said they are enthusiastic supporters of the proposed fee increase (700 members across southwest Idaho). The local chapter of Trout Unlimited has a program called "Trout In the

Classroom". Mr. Barney is a biologist who volunteers at Cole Valley Christian School and there are 37 classrooms across southwest Idaho who participate in this program. This program allows students from grade three through high school to raise trout in the classroom. They learn about fresh water ecology and habitat needs of fish. Most of the students indicated that they fish. Mr. Barney asked for support of S 1141.

**TESTIMONY:** **Matt Compton** is with the **Idaho Sportsmen's Caucus Advisory Council (ISCAC)** and provided a pamphlet that told about the group. Mr. Compton said that what he was prepared to say has already been said by others that have preceded him. He did say that the small cost of the increase for him would equal the cost of a box of shells.

**TESTIMONY:** **Angela Rossmann** testified regarding roadkill along Highway 21.

**TESTIMONY:** **Delmar Phillips**, retired, opposed S 1141. He said the issue isn't the cost, but the administration of the funds which he feels are being misused. Mr. Phillips provided four handouts - November 1999, North American Hunter; March 2000, Outdoor Life; January 29 and March 13, 2009, Idaho Statesman; and one with no date, Wildlife.

**EXPLANATION AND SUMMARY:** **Jim Lau, Bureau Chief of Administration, IDFG**, provided an explanation and summary of the packet provided by IDFG.

Information was provided for various scenarios regarding Personnel Expenses:

No change in PE - orange sheet;  
PE reduction of 1.5% - yellow sheet;  
PE reduction of 3% - blue sheet;  
PE reduction of 5% - green sheet.

The key assumptions are:

What is the proper personnel reduction?

Is this committee willing to look at a three year revenue increase?

What is the appropriate revenue increase that would support those assumptions?

The summary page (white sheet) summarizes the 24 different scenarios in the packet and identifies, by year, what the change in the free fund balance would be, based on that matrix. At the bottom of the page is the cumulative three year change in the free fund balance.

There are six different pages, all of which have a PE reduction of 5% reflected in the importance. For each of the six pages, each one has a different revenue assumption. This packet is on file.

**WRITTEN**

Written testimony supporting S 1141 was received from the following:



**TESTIMONY:**

**Idaho Cattle Association, Kent Mann, President**, and contingent upon a portion of the fee increase to be used to supplement depredation and Access Yes!

**Tree Top Ranches, William Mulder on behalf of Larry D. Williams.**

**Conservation Voters for Idaho, Lee Flinn, Executive Director.**

**ANNOUNCE-  
MENT AND  
ADJOURN:**

**Chairman Schroeder** announced that voting on S 1141 would take place on Monday and there will be no more public testimony taken.

The meeting was adjourned at 3:20 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 16, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.
- Information that had previously been requested is in the Committee's blue folders. It includes Employee Classification from the Fish and Game Department; a response to Senator Brackett regarding DAV tags, also from IDFG; and Disability Compensation Rates for Veterans, provided by Charlie Chapin.
- S 1141:** During his opening remarks, the **Chairman** said that he appreciates the way this Committee has deliberated on Senate Bill 1141.
- He then said Senate Bill 1141 was before the Committee for discussion and/or a motion.
- MOTION:** **Senator Thorson** said that he is generally in support of what Fish and Game has brought forth, with one exception, and that is he finds it difficult to support any fee increase for the Disabled American Veterans. He made a **motion** to send Senate Bill 1141 to the 14<sup>th</sup> Order for amendment to remove the fee increase to the DAV. The motion was **seconded** by **Senator Brackett**.
- Chairman Schroeder** said one more thing might be added to the bill in the amending order and that would be to add legislative intent that the wolf and elk studies continue.
- DISCUSSION:** **Senator Cameron** stated that he has struggled with this bill and he is convinced that the Department does need some financial help and they have done an admirable job of trying to find efficiencies. A number of citizens, not associated with any sportsmen's groups, have expressed concerns to him regarding the increase. Another thing Senator Cameron expressed concern about was that fee bills are to start in the House and

this bill was started in this committee. He said that he agrees with Senator Thorson in removing the fee increase for the DAV, but that he cannot support the motion/bill because of the State's financial straits.

**Chairman Schroeder** gave a history of the bill. He and Representative Stephenson had an audience with the Governor. As a result of that organizational meeting, they promised the Governor that the legislative process would proceed with this bill. Pro Tem Geddes brought a RS to the Chairman, but asked that printing not be scheduled right away. The Chairman was later directed to have the RS printed, and now, it is the bill before the committee.

**Senator Coiner** stated that he was less than enthused about this bill until he started listening to his constituents and reading emails. He said that he is willing to send the bill to the floor and letting the process work. Also, he does agree with the amendment.

**Senator Cameron** said that purchasing licenses are voluntary, but the bill is imposing a fee on others. He feels there will be less licenses purchased and urged caution.

**VOTING:**

A roll call vote was taken. There were eight ayes and one nay (Senator Cameron). The bill passed by a majority vote. **Senator Thorson** will have the **amendment prepared** and is also the **sponsor**.

**DOMESTIC SHEEP VS. BIGHORN SHEEP**

**Chairman Schroeder** said there is an issue between domestic sheep and bighorn sheep. Some legislation has been introduced, a copy of the Attorney General's response to that legislation was provided, domestic sheep ranchers have talked to the Committee, Dr. Weiser talked to the Committee about sheep diseases, and the Governor has put together a group to work on the sheep issues. One of the issues is that domestic sheep graze on allotments from public lands and the ones that seem to have the problems are those that graze in the Payette National Forest – which is federal land, with federal regulations, and federal managers. Chairman Schroeder said that he thought the people involved in this issue should talk to the Committee. He then welcomed **Suzanne Rainville, Payette National Forest Supervisor, Chans O'Brien, GIS Analyst, and Pattie Soucek, Forest Planner.**

**SPEAKERS:**

A packet of information was provided to the Committee members. It contained the following:

- Copies of the PowerPoint slides to be presented;
- Attorney General's Opinion regarding S 1124;
- Governor's letter requesting Payette National Forest to explain its jurisdictional authority with respect to bighorn sheep;
- State of Oregon's letter to Chief of US Forest Service regarding the Payette National Forest Bighorn Sheep Draft Supplemental Environmental Impact Statement;
- State of Washington's letter to Ms. Rainville regarding the Payette National Forest Bighorn Sheep Draft Supplemental Environmental Impact Statement;
- Decision for Appeal;
- Risk Analysis of Disease Transmission between Domestic Sheep and Bighorn Sheep on the Payette National Forest;

- Summary of the Science Panel Discussion, 11/02/06;
- Western Association of Fish and Wildlife Agencies Wild Sheep Working Group recommendations;
- Review of Disease Related Conflicts Between Domestic Sheep and Goats and Bighorn Sheep;
- CAST Commentary on Pasteurellosis Transmission Risks between Domestic and Wild Sheep.

**POWERPOINT PRESENTATION:**

The PowerPoint presentation was shared by **Ms. Rainville, Ms. Soucek, and Mr. O'Brien.**

Following is an outline of their presentation:

**SEIS-Bighorn Sheep Viability**

**Purpose of Briefing**

- Provide information on the Bighorn Sheep Viability Supplemental EIS
- Clarify identified issues and concerns regarding the Supplemental EIS
- Answer questions

**Background**

- Forest Plan FEIS signed July 2003
- Forest Plan FEIS appealed November 2003
- Appeal Decision March 2005
- Found not compliant with NFMA for bighorn sheep viability issues
- Bighorn sheep Forest Plan direction remanded

**Appeal Direction**

- Regional Forester conduct bighorn sheep viability analysis in the Payette National Forest
- Ensure habitat is available for a viable population of bighorn sheep (NFMA)
- Support determination of compliance with Hells Canyon NRA Act, 36 CFR 219.19, 36 CFR 292.48
- Amend Forest Plan to add direction that ensures bighorn sheep viability

**Information Gathering**

- Bighorn Sheep Habitat
- Bighorn Sheep Population
- Risk for Contact with Domestic Sheep  
Risk Assessment
- Collected Science Information  
Science Panel  
WAFWA

**Current Lawsuits**

- Western Watersheds, Hells Canyon Preservation Council, Wilderness Society and Shirts Brothers  
Challenging Lack of Action  
Challenging AOI's

- Two Tribal Governments amicus curiae (friend of the court)  
Idaho Woolgrowers Assoc., Marie Bulgin  
Hearing on March 23, 2009  
FACA challenges on Risk Assessment and Science Panel  
Discussion

#### **Current Challenges**

- American Sheep Industry  
Data Quality Standards Act  
Forest Service RMRS-GTR-209 regarding bighorn sheep  
science review

#### **Forest Plan EIS Assumption**

- Disease risk to terrestrial wildlife species  
Potential risk of disease transmission from domestic sheep  
to bighorn sheep
- Not challenged through appeal
- Comments made regarding the assumption  
University of Idaho, Have not seen conclusive evidence  
that any bighorn has died from diseases carried by  
domestic sheep in Idaho

#### **Key Points**

- Payette must address the Forest Plan appeal decision
- Payette is by law responsible for providing habitat for wildlife  
species including BHS
- SEIS is the result of scientific study, cooperative processes,  
careful consideration
- Payette is looking to separate the two sheep species and provide  
habitat

#### **Viability Screen**

- Two components to viability – how many and how long, which is  
population persistence through time (i.e. 99% population over  
1,000 years)
- For persistence of bighorn sheep, viability models suggest a  
frequency of less than once contact annually with domestic sheep
- Based on conservative modeling: 1 contact per year, 50% chance  
of disease transmission, 50% population losses (literature often  
cites higher population losses)
- No population of any species can repeatedly lose nearly half its  
numbers and remain viable

#### **Agency Preferred – 7G**

- Based on available science, separation is recommended
- Balance competing demands in managing the Payette NF such as  
bighorn sheep viability and domestic sheep grazing
- Preferred identified based on input from the IDT and Cooperators

#### **Supplemental EIS Timeline**

- Comment period closes March 16, 2009
- Cooperator Meetings May, June, July

States of Idaho, Oregon, Washington  
Nez Perce, Shoshone-Bannock, Shoshone-Paiute,  
Umatilla Tribes

- Pre-Decisional Review November 2009
- Decision December 2009

#### **In Summary**

- Complex Issue
  - Social, Economical, Tribal, Political, Biological
- Balance Competing Demands in Managing the National Forest
- Convergence of Several Efforts
  - Forest Service BHS Viability Analysis
  - State of Idaho BHS/DS Advisory Group Recommendations
  - State of Idaho Updated BHS Management Plan
- Tribal Trust Responsibilities
  - Treaty Rights and Executive Orders
- Provide for Separation to Minimize the Risk

**Ms. Soucek** stated that the only comment they received during this process was from the University of Idaho that there was no conclusive evidence that any bighorn sheep had died from diseases carried by domestic sheep in Idaho.

**Ms. Rainville** said that as a forest supervisor, she is responsible for providing habitat for wildlife species, including bighorn sheep. She stated that the bottom line, from everything she has seen, read, and heard is that they need to look at a way to separate the two sheep species and to provide habitat.

#### **DISCUSSION:**

**Vice Chairman Bair** said that he is getting mixed signals and there seems to be a contradiction with the UI report and a point on the Viability Screen which states that one contact per year, there is a 50% chance of disease transmission. **Ms. Rainville** said there are opposing viewpoints and that is an issue that she will need to look at. **Vice Chairman Bair** said that if there has not been a documented case of a disease transmission, why do we need to be so pro-active and go to the expense and trouble of separating the two species, when in fact, it may not be necessary? **Ms. Soucek** said that when the two species are put together, the bighorn die; but what they do not understand is the causal mechanism (the culprit) that goes from one species to the other.

**Senator Pearce** understands that deer, elk, and birds carry the disease and he inquired as to how that will be dealt with. **Mr. O'Brien** said that there was some published work on looking at a form of pasturella transferring from avian sources to domestic livestock and there was no transmit-ability from avian to non-avian sources, even in closed pen settings. When asked where the research was done, **Mr. O'Brien** replied that it was done in Europe.

**Senator Pearce** inquired if there would be control of sheep on private land that is in the allotments. **Ms. Rainville** stated that they don't have jurisdiction over private land. As part of the environmental impact statement, they have to identify who and what affects on federal lands.

**Senator Siddoway** said that he is questioning the science used on

testing bighorns for pasturella. **Ms. Rainville** said that a lot of the bighorns that do die have pasturella in them and some of them carry pasturella even without contact of domestic sheep. What the science community is looking at now is that pasturella is probably not the pathogen that is transferring it – it is something else. **Senator Siddoway** said if that is the case, why the urgency now? He also said that domestic sheep have been on private allotments for 125 to 140 years and now all of a sudden, it's necessary that we kick the domestic sheep off, even though it is not known what the transmission mechanisms are between the species. He then suggested that we find out what it is, then make a decision. **Ms. Rainville** said the Chief of the Forest Service basically said they needed to do a viability analysis and they are in the process of doing that. Based on the information they have, most, if not all sciences, recommends separation and to error on the side of caution. **Senator Siddoway** said that he doesn't see how removing the sheep is on the side of caution. The lambs are born in the Spring and the incubation period for pasturella is 20 days, and the death of the lambs is four to six months away from contact. **Ms. Rainville** said there are opposing viewpoints and that is part of the process they are going through.

**Senator Pearce** said an agreement was signed in 1997 by a forest service official who was in charge at that time, and he asked how it could be justified by going back on the agreement. **Ms. Rainville** said that in the appeal decision, a decision was made at a higher level, in the determination regarding the management of domestic sheep on the Payette National Forest.

**Ms. Rainville** said they have received over 16,000 comments from people weighing in on the sheep issue and once they have reviewed them, it will tell them what they need to do.

**Senator Pearce** said that he hoped Ms. Rainville and her staff has reviewed what the Government has done to all the forested land in Idaho. The logging industry has been lost, as well as the mills, jobs and people, and now for this to hit, it has impacted a lot of people.

**Chairman Schroeder** asked Ms. Rainville to explain the process of laws and superiors, and also, what can and can't be done. **Ms. Rainville** stated that they are bound to manage habitat for all species. There are regulations in the Hells Canyon Recreation Act that she must be in compliance with and one of the regulations regarding the sheep issue is that she must look to the wildlife. Forest supervisors and their superiors are bound by federal law to pursue a course of action.

**Chairman Schroeder** then asked Mr. O'Brien about the telemetry results of the herds. **Mr. O'Brien** stated that there were instances of animals moving from one group to another. The **Chairman** then asked if there were temporal separations. **Mr. O'Brien** said that would be difficult to determine because the herds operate differently between the north half and the south half of the canyon, mainly driven by topography.

**Vice Chairman Bair** inquired if there was a natural attraction between wild and domestic sheep? **Mr. O'Brien** said that in talking to a biologist who has worked on these projects in Hells Canyon for ten plus years, they

have seen a very strong attraction between these species. The wild sheep are very visual and can see the domestic sheep, so they tend to want to congregate together. There has been photographic evidence that they co-mingle. When asked about collars on sheep, Mr. O'Brien said that no collars are on domestic sheep.

**Vice Chairman Bair** requested the pages of Code from the Hells Canyon Recreation Act that specifically favor wild sheep over domestic sheep.

There were no more questions from the Committee and the **Chairman** thanked the Supervisor and staff members of the Payette National Forest for their presentation.

**ANNOUNCE-  
MENT:**

**Chairman Schroeder** announced that on Friday there will be some Gubernatorial appointees here from the Idaho Water Resource Board for their confirmation hearing.

**ADJOURN:**

He then adjourned the meeting at 2:55 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 18, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, and Thorson

**MEMBERS ABSENT/ EXCUSED:** Senator Werk

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

The first order of business was to approve some minutes.

**MOTION:** **Vice Chairman Bair** made the **motion** for the approval of the minutes of March 11, 2009, as written. The motion was **seconded** by **Senator Thorson**. The motion **passed** by unanimous voice vote.

**CONFIRMATION HEARING:** **Chairman Schroeder** welcomed Ms. Louise Stark, **Gubernatorial appointee to the Outfitters and Guides Licensing Board**.

**PASSING OF THE GAVEL:** **Chairman Schroeder** then passed the gavel to **Vice Chairman Bair**, as he had to present a bill in another committee.

The **Vice Chairman** invited Ms. Stark to tell the Committee about herself and why she should be appointed to the Outfitters and Guides Licensing Board.

**CONFIRMATION APPOINTEE:** **Ms. Stark** said that she and her husband own White Cloud Outfitters out of Challis and they have been in business for 23 years. They operate a land-based business in the White Clouds. Her position in the business is business manager and she is also a licensed guide in Idaho. They offer guided fishing and float trips on three stretches of the Main Salmon River out of Challis. They are also licensed in Arizona and up until last year, they were licensed in Nevada.

Ms. Stark said that she has done this type of work the majority of her adult life and she also worked for the Forest Service about eight years. She and her husband spent three years in Alaska and her husband holds an assistant guide's license there.

**Senator Pearce** inquired as to the extent of business of the White Cloud Outfitters. **Ms. Stark** said they offer big game hunts, summer pack trips, high mountain lake fishing, general archery hunting as well as controlled rifle hunting for elk and deer. Antelope hunting has been reinstated. She said these types of things are what goes on in the White Clouds. In Challis, they are getting ready for spring steelhead fishing. She also teaches first aid.

**Senator Pearce** then asked **Ms. Stark** what she sees as her role on the Board. She replied that after being in business all these years, her role is to maintain sensible regulations, rather than constraining the Outfitters and Guides industry to the point where they can't operate anymore. **Ms. Stark** said that they need to remain viable, as they contribute a lot to the communities.

**Senator Pearce** wanted to know what the biggest challenge is facing her business today. **Ms. Stark** replied that large forest fires, presence of wolves, aggressive cow elk management – all those things cause businesses to operate in a much more condensed season structure and that is where the difficulty comes in.

**Senator Coiner** asked **Ms. Stark** to describe the fishing that will be starting next week. **Ms. Stark** said the fish that come into Challis are the same fish that came into the Salmon River system by Riggins last Fall. When the river temperature comes up, the ice jams go away, then those fish come up into the Challis area because that is where the out-plants took place. She stated that her business is normally on the river the last week of March and the first three weeks of April offering steelhead fishing.

**Senator Siddoway** inquired about bookings. **Ms. Stark** said their business mainly comes from their past clientele base. Also, the zone reduction from Fish and Game will have a bearing on their business. **Senator Siddoway** then asked what percentage of their business is returning clients. **Ms. Stark** replied that if they aren't direct returnees, then they are direct referrals. Their clientele knows the level of service they receive, as well as being familiar with the country.

When asked about wolves, she stated that they are seeing them, usually in the winter months. **Senator Brackett** said that "if and when" there is a season on wolves, what will that mean to her business? **Ms. Stark** said that they would encourage those booked with them to purchase a tag.

**Senator Pearce** asked as to what effect it would have on her business if out-of-state fees are increased for hunters. **Ms. Stark** said that she is encouraging their clients to buy early. Those that want to hunt elk are willing to pay the price.

**Vice Chairman Bair** thanked **Ms. Stark** for appearing before the Committee and said that voting on her confirmation would take place at the next meeting. He also thanked the Outfitters and Guides Board for their attendance and showing support for **Ms. Stark**.

**Vice Chairman Bair** welcomed Chairman Schroeder back to the meeting

from presenting a bill in another Committee and said that the Chairman would now present Senate Bill 1149 to this Committee.

**S 1149**

**Chairman Schroeder** then presented Senate Bill 1149. The purpose of this legislation is to allow the Idaho Department of Fish and Game to adopt rules governing the collection of fees to recover costs for the performance of technical services relating to land and water use that the department, subject to commission approval, may provide upon solicitation, whether by the public or private sector, which services are not required to be performed by the department pursuant to Idaho law.

The Chairman said that all this bill does is recover the cost of the technical services the Department of Fish and Game is asked to do, when they are not required to do it. This bill is a rewrite of a previous bill, Senate Bill 1035. It also addresses the discussions made by the Ad-Hoc Committee and Commissioners about the creation of a funding mechanism for IDFG to establish fees for certain services.

**TESTIMONY:**

Testimony was provided by **Ms. Sharon Kiefer, Department of Fish and Game**. Her testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Thank-you for the opportunity to offer technical testimony. The Fish and Game Commission will review this bill on March 19, so the Department does not have a policy position on Senate Bill 1149. However, I offer that staff has provided legal and technical assistance to Senator Schroeder to craft this bill at the explicit direction of the Director and the Commission.

As we previously discussed with Senate Bill 1035, the Fish and Game Commission and the Director have very limited statutory authority to establish fees. Furthermore, we also previously discussed the work of the Ad-Hoc Legislative Funding Committee of Senators, Representatives, and Commissioners and their discussions about creating a funding mechanism to allow the Department to establish fees for certain services that provide a broader societal benefit than just for hunting, fishing, or trapping. A focus of this discussion was technical services.

Senate Bill 1149 addresses concerns expressed about Senate Bill 1035 by more explicitly framing technical services and explicitly making Commission rulemaking the conduit for setting fees. This brings in the elements of public input, public hearing, and Legislative review prior to rule and fee implementation.

Senate Bill 1149 would add a new section to Title 36-104, Powers and Duties of the Commission, authorizing the Commission to adopt rules governing collection of fees to recovery costs for performance of technical services that the Department would provide upon solicitation by the private or public sector, and which are not required to be performed by Idaho law. This bill provides several examples of the expected form of

technical services. The fees will be reasonable and shall not exceed the actual cost of the service. The fees will be deposited in the fish and game account.

As I stated previously, creating an appropriate rule framework will be complex and challenging but would offer a broader financial platform for certain technical services. Resistance to fee payment may hinder or preclude solicitation of Department information or our advice about wildlife outcomes from various land and water uses, such as assessment of wildlife mitigation plans for development. If inability to pay fees or resistance to fees is widespread, it could ultimately have a negative outcome for species protected, preserved, perpetuated, and managed by the Department.

Let me state emphatically that this bill is not a substitute for the overall revenue needs reflected in Senate Bill 1141. In fact, as reflected in the fiscal note, we do not anticipate much revenue from this bill in FY2010 because of the process of rulemaking and review for any fee implementation will not conclude until spring, 2010, assuming rules are supported by the Legislature.

It is unlikely that these fees alone will provide complete programmatic compensation for technical services because of the complexity of our technical services program that spans the state. However, we feel this bill offers opportunity for broadened funding for these citizen services to assist with matching federal funds we receive for technical service programs or to allow federal or license funds to be converted for other uses.

**MOTION:** After some discussion, **Senator Coiner** made a **motion** that Senate Bill 1149 be sent to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**.

**SUBSTITUTE MOTION:** **Senator Siddoway** made a **substitute motion** to hold S 1149 in Committee. The motion was **seconded** by **Senator Brackett**.

**DISCUSSION:** **Senator Siddoway** said that his concern is that the Department is even in the business of competing with private business and for someone to go to the Department and have them assess the effects and propose improvements or mitigation measures to someone that may or may not be necessary, and cause increased costs. He said that he doesn't like the Bill for those reasons.

**Senator Coiner** stated that if a party comes to the Department and solicits work from them, not the other way around, then the Department should be able to get their costs back for the work performed.

**Senator Pearce** requested Ms. Kiefer to supply three instances of requests. **Ms. Kiefer** said that in the past two days, they have had

several requests for the endangered species information for development. A Northern County Zoning Commission requested information on a rural subdivision to get some kind of a conservation planning status and assessment of their particular issues, as well as assessment of what issues relative to fish and wildlife should the County be asking about in terms of when they craft a permit for operating guidelines of a subdivision. **Senator Pearce** asked Ms. Kiefer if the biologists at the University of Idaho could take on this work? **Ms. Kiefer** replied that it is not a matter of “taking on” work, but it is a “reflection” of the Department’s work that is ongoing.

**Vice Chairman Bair** asked Ms. Kiefer if the Department has determined how many dollars a year they are missing out on? **Ms. Kiefer** said that they have not.

**Senator Siddoway** said that makes his point. If entities go to the Department of Fish and Game that are concerned about endangered species, why aren’t they going to the Office of Species Conservation? He stated that maybe 99% is written at the Department of Fish and Game, but the outcome would be the state’s position on where we ought to be, rather than the agency’s position on where we ought to be.

**Senator Cameron** said there are a myriad of other demands requested of the Fish and Game now and the question for him is, do we want the sportsmen to pay for those services? The IDFG is forced to provide the service, either because of other political pressure or because of necessity of their expertise. Senator Cameron also said that he doesn’t think the OSC has biologists or the ability and it would take funds for them to have that ability. He feels the right people are in the Fish and Game Department and that the sportsmen can no longer continue to pay the entire bill for the duties that the Department is carrying out. The Senator feels this bill is a much more narrowly drafted bill and they are not trying to put anyone out of business – they are only trying to recover their costs.

**Senator Siddoway** said that when the OSC writes a return for a request for information, as far as fish and wildlife issues are concerned, that request is ultimately going to end up at the Department of Fish and Game. If our Idaho State Tax Division starts getting tight on money to hire people in their office, then will we figure out a way for the Tax Commission to start bringing money in on the side? He said that doesn’t sound kosher to him, nor does this bill sound kosher. He went on to say that there is an agency that was put together to provide fish and wildlife for the hunters and fishermen of this State, and no matter what project comes about, if that agency feels like it will interfere with opportunities that they should be providing for fishermen and hunters of this State, they should stand up and fight.

**Vice Chairman Bair** said that what Senator Siddoway has said is true, but by statute, the Fish and Game Department currently has direction to

govern and care for all non game species in Idaho and feels that we need to support the statute.

**Senator Cameron** pointed out that other agencies charge for services, such as the State Controller charging their services to other agencies; the Attorney General charges their services to other agencies; and he could point out some others. It seems reasonable to him that if the Department had to do an environmental statement or a judgment on whether an endangered species would be affected for a road project, or for a waste water treatment facility, or even a private development, the Department should be able to recoup their costs and the sportsmen not be forced to fund that cost.

**Senator Siddoway** said if that's the case, then it should be limited to state and county agencies. **Senator Cameron** said that it is not just state and county agencies – it is cities and municipalities, as well as private developers. He said the bill is narrowly crafted and there will be rules, which this committee will have an opportunity to see, but it does not replace the need for a fee increase. It doesn't solve their problems, but takes one small piece, the burden off the sportsmen, and allows the entity who is requesting the service to pay for it.

**Chairman Schroeder** said that in some cases, the people who are hired by the projects to do this work, go to Fish and Game and have them do the work for them.

**Senator Pearce** inquired if the Department of Environmental Quality, in assisting other state agencies, bill them for their services? It was said that they bill the private sector.

**Senator Thorson** stated that having experience with Planning and Zoning in Blaine County, charging for services whether done by a government agency or the private sector is appropriate, otherwise those services will be inundated to get free advice. He doesn't feel the developers are as adversely affected because when they go to Fish and Game and get an OK, and when they haven't gone to Fish and Game, no one would believe their input they provided. He said that he agrees with Senator Cameron that this bill is narrowly focused and it serves both the public and private sectors.

**MOTION:** **Senator Pearce** made an amended substitute motion to hold Senate Bill 1149 until the next meeting so that there can be further study and get more information. The motion died for lack of a second.

**VOTING:** A roll call vote was taken on the **substitute motion**, which was to hold in committee. Voting aye were Senators Brackett, Siddoway, Pearce, and Bair. Voting nay were Senators Thorson, Coiner, Cameron, and Schroeder. Senator Werk was absent. The **vote was 4-4 and the motion died.**

A roll call vote was taken on the **original motion**, which was to send it to the floor with a do pass recommendation. Voting aye were Senators Thorson, Coiner, Cameron, and Schroeder. Voting nay were Senators Brackett, Siddoway, Pearce, and Bair. Senator Werk was absent. The **vote was 4-4 and the motion died.**

**PASSING OF  
THE GAVEL:**

**Vice Chairman Bair** returned the gavel to Chairman Schroeder.

**ANNOUNCE-  
MENTS:**

**Chairman Schroeder** announced that on Friday there would be four Gubernatorial appointees from the Idaho Department of Water Resources Board here for their confirmation hearing. Also, committee consideration will be given to Louise Stark who appeared earlier. Next Monday, House Bill 213 will be heard.

**ADJOURN:**

The meeting was adjourned at 2:45 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 20, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, and Brackett

**MEMBERS ABSENT/ EXCUSED:** Senators Thorson and Werk

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** The meeting was called to order at 1:30 p.m. by **Chairman Schroeder**.

**MOTION:** **Vice Chairman Bair** made a **motion** for the approval of the minutes of March 13, as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Siddoway** made the **motion** that Louise Stark's Gubernatorial appointment to the Outfitters and Guides Licensing Board be sent to the floor for confirmation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Siddoway** is the **sponsor**.

**WELCOME:** **Chairman Schroeder** welcomed the four **Gubernatorial appointees to the Idaho Water Resource Board**. They were **Terry Uhling, Leonard Beck, Vince Alberdi, and Roger Chase**.

**APPOINTEE:** **Mr. Terry Uhling** was the first to speak. He received his baccalaureate in Business Administration from Washington State University and a Juris Doctor from the University of Nebraska, Lincoln College of Law, in June 1980. He has been employed by the J. R. Simplot Company since 1989 and is the Senior Vice President, Secretary and General Counsel for Simplot. Mr. Uhling is Chairman of the Idaho Water Resource Board and is also a member of several associations. He and his wife reside in Boise and they have two daughters.

This is a reappointment for him to the Board and **Mr. Uhling** said that it is a privilege to serve. (He has served since 1995.) He said they have important issues, as a state, to address from a water resource perspective, dealing with conflicts among users and trying to plan for beneficial uses within the state. Mr. Uhling said that he is looking forward to addressing those issues.



A question was asked if his employer (J. R. Simplot Company) uses irrigation water and the answer was yes. Another question was regarding the water bank rules. **Mr. Uhling** said they try to be very diligent with the water bank rules and in processing the water rights.

When asked about conflict and getting it resolved, **Mr. Uhling** replied that he would like to describe a vision that is within the state's reach and that is the water base and how to manage it amongst our users and also the CAMP process for the Eastern Snake Plain Aquifer that is in place. There are enough resources and time to manage the techniques and reasonably solve the problem and see a good economic base and good growth base for the state.

**Senator Pearce** asked if the latest call on the water can be resolved without causing economic damage to Central Idaho? **Mr. Uhling** replied that his optimistic answer is yes. The way it gets framed and how many acres is involved will continue to get better. He said there are demand reductions and voluntary reductions, but there will be pain along the way.

**Senator Coiner** asked Mr. Uhling if he could outline the responsibilities of the Board and what their mission is. **Mr. Uhling** used the ESPA as an example. The issuance of water rights and the administration of water rights sits squarely with the Department of Water Resources. It is not a Board function. Where the Board can help is in the planning and policy and trying to help with developing a vision. They can provide help, facilitation, the planning process, and funding, if appropriate.

**Senator Schroeder** inquired as to what will happen if the CAMP bill in the House doesn't pass? **Mr. Uhling** said that was a tough question and he hopes it will pass. If it doesn't pass, it will come back to the Board and they will have serious concerns after all the time and effort that was put into the plan.

**Senator Schroeder** then asked Mr. Uhling if we needed more water storage capacity, and if so, what should we do? **Mr. Uhling** replied that his answer is yes for a number of reasons. He said there is a subcommittee and they are looking at the Galloway Project. Another one would be raising the Minidoka Dam. He said they need to see if the projects are economically viable and feasible for the state.

**Senator Brackett** wanted to know if there was a serious need for funding for 2010. The response was they propose to use the Board funds that come from the water district and there is no serious funding needed for 2010.

That concluded the interview for Mr. Uhling.

Next to speak was **Mr. Leonard Beck**.

**APPOINTEE:**

**Mr. Beck** said that it has been an enlightening experience to serve on the Water Board. He and his wife represent third generation farmers in their community and they live on the family farm that was started in 1918. They raise alfalfa, sugar beets, wheat, dry beans, and whatever else they might choose.

**Senator Coiner** inquired of Mr. Beck if he participated in the CAMP planning meetings and if so, how many? **Mr. Beck** replied that he attended about four. He explained why he distanced himself from that and it was because he sits on a Surface Irrigation Board and did not want to portray prejudice. However, he is a supporter of CAMP. He was then asked how he anticipated the funding process going within the next year and getting everyone on board. **Mr. Beck** said that if the state could come up with funding from whatever sources, then use it to keep the other water entities on course. He stated that the County Commissioners feel it could be done through the County tax rolls. **Senator Coiner** then inquired about credits for incidental recharge and what would that do for participation. **Mr. Beck** said that he struggles with credits – because where would they stop?

**Chairman Schroeder** asked what conservation efforts, that might make a significant impact on use of water, might be done? **Mr. Beck** said that he doesn't feel that we can conserve ourselves out of a water shortage. Construction of additional water supplies would be monumental. He stated that they don't know the extent of drought resistant crops, as yet, and they have also talked about cloud seeding.

The **Chairman** asked Mr. Beck if the second Teton Dam is a dream or a reality/possibility? **Mr. Beck** said that for someone who sits below the dam, it needs to be a reality, but for someone who has gone through the hardships of the collapse of the other one, he doesn't know what his answer would be.

There were no more questions for Mr. Beck.

**APPOINTEE:**

Next to be interviewed was **Mr. Roger Chase**. He currently is the Mayor of Pocatello, previously served in the Legislature for five years, and served on the Pocatello City Council for seven years. Mr. Chase said that he was employed by the Simplot Corporation for 21 years and received experience around the state on different issues.

Regarding water issues, he said that it is a big issue and each year he learns more about it. Mr. Chase feels that he can bring some broad and new views on the water issues and is excited about serving on the Board.

**Chairman Schroeder** asked Mr. Chase what his specific areas of interests are that he plans to devote his time to. **Mr. Chase** responded that his interests are varied in many ways, but the water from southeastern Idaho is a finite resource, and also water for municipalities have issues that need to be addressed. He feels that he can offer some expertise in that area.

**Mr. Chase** said that Pocatello is unique. They own 50,000 acre feet of surface water in storage at Palisades Reservoir and groundwater rights in the Portneuf Aquifer. They also own several water rights in streams and have water for future growth. Low power rates are also an asset for bringing in new businesses to their city.

**Senator Cameron** inquired as to what other water experience Mr. Chase has, other than previously stated. **Mr. Chase** said he has had some experience working with the Tribe in Bannock County, and also served on the Agricultural Committee in the Legislature. He stated that most of his knowledge regarding water is from municipalities and agricultural use and that he works hard to understand the agricultural perspective. He said that he is willing to work hard to understand the issues.

**Senator Cameron** then asked Mr. Chase if he was aware of the Swan Falls Agreement and does he support it? **Mr. Chase** replied that he is aware of the Agreement and is supportive of it, as it stands today.

**Senator Cameron** said there are two constitutional provisions that are oftentimes in conflict with each other. They are “first in right, first in time”, prior appropriation doctrine, versus a provision in the Constitution which allows for the full economic development which often is a real important issue for cities as they are growing. He asked Mr. Chase to respond. **Mr. Chase** said that “first in time” should be the way they operate and that the laws of the State of Idaho should be followed.

**Senator Cameron** also wanted to know how Mr. Chase felt about recharge and if it is a beneficial use of water. **Mr. Chase** said that recharge is something they have to look at and it is of beneficial use.

**Senator Coiner** asked Mr. Chase what he thought would be the best way to structure CAMP funding so that everyone pays and also, what are his thoughts on credits. **Mr. Chase** said that his concern with credits is – where do you stop? Eventually, too many credits destroys the process. As for funding, it is a heated issue. A lot of compromises were made to get where we are today and to have a plan that will work. It is critical that the State steps up and helps with the process and he hopes the Legislature can find some funding.

**Senator Siddoway** wanted to know more about the 50,000 acre feet of water that the city of Pocatello owns. **Mr. Chase** said that when the Palisades Reservoir was constructed, the city invested a quarter of a million dollars in the reservoir to buy that space. It was purchased with the idea that it would be there for mitigation and to help them with future needs. In the contract, it states that after they use 10,000 feet out of the aquifer, they have to replace one acre feet from Palisades for every two acre feet they pump. **Senator Siddoway** then inquired about the remaining water. **Mr. Chase** said they lease the water to various agricultural groups across the state and presently have 14,000 feet carryover.

**Chairman Schroeder** asked Mr. Chase how he felt about building dams for storage. **Mr. Chase** said they need to find new ways to store water, especially with the changes in the climate. He feels that the Minidoka dam makes sense to him, as well as Galloway. As far as Teton, he doesn't know if that will ever happen because of the changes in the valley.

That concluded the interview for Mr. Chase.

**APPOINTEE:**

**Mr. Vince Alberdi** of Kimberly was the last Gubernatorial appointee to speak to the Committee. A biography that he submitted is inserted into the minutes.

Vince was born in Wendell, Idaho in 1945 and grew up in Jerome and graduated from Jerome High School in 1963. He then went to college at Idaho State University and graduated with a Bachelor of Business Science Degree with an emphasis in Civil Engineering in January 1968. He then went to work for the North Side Canal Company in Jerome, Idaho as their engineer and hydrographer. In 1971 Vince left the North Side Canal Company and went to work for Intermountain Gas in Twin Falls, Idaho and worked as a Customer Relations Representative and was promoted to Customer Relations Manager for the Southern Division of Intermountain Gas in 1974. Vince always was Interested in home building and in 1977 he joined Wills Incorporated, a large home building firm In Twin Falls. Within a couple of years he was promoted to General Manager and continued in that capacity until returning to water management. In 1988 he rejoined the North Side Canal Company as their Assistant Manager for the next five years. In 1992 Vince was hired as the General Manager of the Twin Falls Canal Company and spent the next sixteen years as the company s General Manager retiring in March of 2008.

Vince has been active in Idaho Water Users, numerous water committees, including the recent IDWR s Comprehensive Aquifer Management Plan Committee, Twin Falls Rotary Club, Twin Falls Chamber of Commerce, and has served on several advisory boards.

He and his wife Colleen have three married children and have been married for the past forty-one years. They have eleven grandchildren that keep them busy. Vince and Colleen live north of Kimberly and are both enjoying retirement.

**Senator Siddoway** asked Mr. Alberdi to address the concerns that the Upper Snake River Valley patrons have concerning the calls that the Twin Falls Canal Company has made and the ramifications on the economic impact to the State. **Mr. Alberdi** said that he went to the Twin Falls Canal Company in 1992 as their manager, and to successfully manage a company, there were three things that were needed: 1) A good team of people; 2) A good financial base; and 3) Understand, develop, and protect the business. In his case, it was understanding water and water rights. They had senior water rights, but their location deemed it necessary to protect and preserve their water rights. As manager of that company, that was to whom he owed his allegiance, and that was why he made the call. **Senator Siddoway** stated that his concern is with the bias that Mr. Alberdi seems to have towards the curtailing of the junior water rights and the vast economic hit that it could give the State. He said, "Now you are asked to be on a Board that will stand up for the State of Idaho and uphold the State of Idaho in court proceedings, in an unbiased fashion, to protect the water rights and economic benefits for the State." He asked Mr. Alberdi if that is going to happen. **Mr. Alberdi** said that it is not within the responsibilities of the Board to administer the

water. That responsibility is with the Director of the Department of Water Resources. He said that he is no longer employed by the Twin Falls Canal Company, retiring one year ago, and is now a private citizen. He pledged that he is not coming to the Board with biases, is open-minded and fair-minded, and his history of serving for the water companies has given him a greater understanding of how the water laws work. Mr. Alberdi also said that there is no glory in a call or curtailment and it is a difficult decision to make.

**Senator Bair** inquired if Mr. Alberdi did contractual work or lobbying for the Twin Falls Canal Company at this time. **Mr. Alberdi** said that he is not involved in the day-to-day activities of the company, but is serving on an Advisory Board that is working with Idaho Power on an Integrated Resource Management Plan. The aspects of this Board is just looking for power sources for the future and has nothing to do with water management. **Senator Bair** asked Mr. Alberdi if he receives remuneration and the reply was only for mileage.

**Senator Bair** then asked Mr. Alberdi to express his feelings/philosophy regarding the conjunctive management rules. **Mr. Alberdi** said that it was a tremendous undertaking for the Director and looking back, he wished that they would have pushed things along further. He said that conjunctive management rules will never be perfected until there is a reason to have them. He feels they have a good set of rules (not perfect) now, but is a place to go from and will refine over time. **Senator Bair** inquired if Mr. Alberdi felt those were good viable tools that the Director should be using? **Mr. Alberdi** said that he is an advocate of prior appropriation of water administration and water administration needs to be used in times when needed.

**Senator Bair** asked Mr. Alberdi to state his goals and what he would like to see accomplished on the Water Board. **Mr. Alberdi** said that aquifers have not been successfully managed because we can't see them and get over-extended. He feels the CAMP process is an excellent place to start. Another thing is the State Water Plan needs to be continually looked at as things are changing.

**Senator Coiner** asked Mr. Alberdi what his observation was of the curtailment of surface water users in Twin Falls and the economic injury that was done. **Mr. Alberdi** said that in a typical normal year, with a full water supply, they would do a thorough analysis of what their projections were to carry them through the entire season. When in a drought, they assessed the weather conditions and made necessary reductions to the water. When their water right of 3,000 feet dropped to less than 1,200, they used their storage to keep the canals full. The consequences of the actions that they had to do to have enough water to harvest the crops caused a shortage at other places.

**Senator Coiner** asked about funding for CAMP and credits. **Mr. Alberdi** said the problem he sees with credits is that once you start, you don't know when to stop. In regards to funding of CAMP, the time is right to move forward and the momentum should not be lost that took so much to generate. The State needs to take the leadership and the water users will

follow.

**Senator Cameron** asked Mr. Alberdi if he supported the Swan Falls Agreement and he said that he did. The Senator then asked about his past relationship and current relationship with Idaho Power. **Mr. Alberdi** said that his past relationship with Idaho Power, while manager of the Twin Falls Canal Company, was with two subsidiaries. One was Milner Dam Incorporated and it interfaced with Idaho Power at Milner. They produced the power and they operated the dam during the non irrigation season. The company also has another subsidiary – the Twin Falls Energy Company and it has a hydro plant on one of the canals owned by the Twin Falls Canal Company. They own the plant on a 50/50 basis with a subsidiary of Idaho Power, Ida West and he interfaced with Ida West as well. His current relationship with Idaho Power is serving on an Advisory Board, as indicated in earlier testimony, and he does not see a conflict of interest. The Advisory Board will be concluding their work in two to three months.

**Senator Cameron** said that he needed assurance that Mr. Alberdi would have an unbiased perspective serving in his new capacity. **Mr. Alberdi** said that he didn't owe his allegiance to anyone as he is now a private citizen. His reason to serve on the Water Board is not one of disguise. He said that he is his own man, will make his own decisions, and will be open minded and fair minded. Mr. Alberdi said that he is giving his word on this and beyond that, he doesn't know what further assurance he can give.

**Senator Siddoway** asked Mr. Alberdi if he believed a water right was for a maximum amount or minimum amount. **Mr. Alberdi** said if the water right will no longer provide them at a level that they need, then the water right is no longer a valid water right and that is the reason for a call (in a nutshell).

**ANNOUNCE-  
MENT:**

That concluded the questions for the appointees and **Chairman Schroeder** said that on Monday, March 23, the Committee would vote on the appointments.

**PASSING OF  
THE GAVEL:**

The **Chairman** passed the gavel to **Vice Chairman Bair** so that he could present RS 18875.

**RS 18875:**

**Chairman Schroeder** said that this legislation would allow the cities to do what they are already doing, and that is to provide water to residents outside the city. It would strike the language "only to the inhabitants of the city".

**Senator Coiner** asked for a unanimous consent request to send RS 18875 to the Judiciary and Rules Committee for printing. There was no objection to the request.

**ADJOURN:** The meeting was adjourned at 3 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 23, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** The meeting was called to order by **Chairman Schroeder** at 1:35 p.m.
- He said the Committee would now give consideration to the four **Gubernatorial appointees** to the **Idaho Water Resource Board**. They are **Terry Uhling, Leonard Beck, Vince Alberdi, and Roger Chase**.
- MOTION:** **Senator Coiner** made the **motion** that the appointment of **Terry Uhling** be sent to the floor for confirmation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Werk** is the **sponsor**.
- MOTION:** **Senator Coiner** made the **motion** that the appointment of **Leonard Beck** be sent to the floor for confirmation. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote. **Senator Cameron** is the **sponsor**.
- MOTION:** **Senator Brackett** made the **motion** that the appointment of **Vince Alberdi** be sent to the floor for confirmation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Brackett** is the **sponsor**.
- MOTION:** **Senator Siddoway** made the **motion** that the appointment of **Roger Chase** be sent to the floor for confirmation. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote. **Senator Bilyeau** is the **sponsor**.
- Chairman Schroeder** welcomed **Representative Eric Anderson** who presented House Bill 213.
- H 213** **Representative Anderson** provided several handouts to help explain this legislation. It included: 100<sup>th</sup> Meridian Initiative - "Zap the Zebra"; post card from the Idaho Department of Parks and Recreation; Estimated



Potential Economic Impact of Zebra and Quagga Mussel Introduction Into Idaho; Two maps of Mussel Sampling Waterbodies; Map of Quagga and Zebra Mussel Sightings in the West; 2008 Annual Report from the Idaho Invasive Species Program; and an Idaho Press-Tribune article by Chris Nye regarding the passage of H 213 in the House.

**Representative Anderson** provided the following background information on the Quagga and Zebra Mussels:

- First discovered in North America in 1988.
- In five years, most of the Mississippi River and the entire Great Lakes region was infested.
- First discovered in the Western US in January 2007 (Lake Mead, NV).
- In one year, the majority of the lower Colorado River Basin was infested.
- Mussels and now in Nevada, California, Arizona, Colorado and Utah.
- The Utah population is 180 miles from the Idaho border (Electric Lake).
- There are now 32 lakes, dams, and reservoirs infested in five of the Western states.

**Representative Anderson** stated that this bill has been in the making for three years. What it does is to require an aquatic invasive species sticker on vessels. There are four categories: 1) Registered motorized vessels in Idaho would be \$10.00; 2) Non motorized vessels would be \$5.00; 3) Registered motorized vessels outside Idaho would be \$20.00; and 4) Allowance for a fleet rate for Outfitters and Guides. Small rafts and other inflatable vessels less than 10 feet in length are exempt.

There are approximately 90,000 registered motorized vessels in Idaho, plus an estimated 9,000 non-resident motorized vessels that recreate on our public waterways each year. Non-motorized boaters are estimated at between 90,000 and 120,000.

The funds would pass through the Idaho Department of Parks and Recreation to the Invasive Species Fund. These funds would pay for our own protection of our own resources. The Department of Agriculture will be involved, as well as IDPR, and a plan has been adopted how the funds will be spent. It was asked if enough funds could be raised for the task and **Representative Anderson** replied that it probably would not be enough.

**Senator Siddoway** asked if it would be better to take this task on at the national level, rather than the state level. **Representative Anderson** said there are some efforts being taken on at the national level, but he feels it would be more successful at the state level.

**Senator Pearce** inquired about wash stations and their placement. **Representative Anderson** said there would not be enough money generated to have a wash station at every single lake; however, through education efforts, wash stations could be strategically placed throughout the state. He feels concentration should be placed on the southern

border of Idaho, but engaging our bordering states will help. **Senator Pearce** stated that it sounded like to him that it is a combination of mandatory taxing and volunteer cooperation and that concerns him. The Senator said that it sounds like enforcement will be the weak link.

**Mr. Dean Sangrey, Operations Division Administrator for the Idaho Department of Parks and Recreation**, said that two state agencies will be involved (IDPR and the Department of Agriculture) in promulgating rules.

**TESTIMONY:**

**Mr. Howard Miller** testified and a copy of his testimony is inserted into the minutes.

Thank you for considering my testimony today. My name is Howard Miller I am a **board member of the Idaho Whitewater Association** and I am here today to represent that organization and its members.

It has been stated many times that this is very serious problem that will affect all Idahoans. That is why we believe that the emphasis should be taken away from a small portion of recreationists with at best, a questionable role in this issue. It cannot be stressed enough that this issue is bigger than boaters. Electric Lake in Utah is believed to have been infected by water trucks used for drilling. There are many other modes of transport for invasive species we should be concerned about. Which is a more likely scenario? A float tube being taken to Electric Lake in Utah which is known for its fishing, then being in Priest Lake a couple days later or a whitewater kayak in that same example. This would have been a good start if it addressed motorboats and fishermen. But most of the craft they use are exempt. But still, everyone needs to be involved in the fight against invasive species. You've all heard it many times; **this will affect the entire state and everyone in it.** HB 213 is like carrying a band aid in case of major trauma.

HB 213 will not solve our problem. It will take money out of the pocket of some college kid who uses his kayak on the Payette River a few days a year. This will take money out of the pocket of a family that has an old canoe in the back yard they use to float the Boise River. This money will go to the state where we have no assurance the Governor won't take it like the \$2 million already removed from the State Invasive Species fund.

Be assured that we are not denying that we have a part in this problem. We just believe there is a better way to address it. The best plan would be to use an existing source of funding that is already in place and involves everyone affected by this issue. A small increase in the Waterways

Improvement Fund would raise more money than the current proposal and the cost would be fairly distributed to all those affected by this threat. This fund is already dedicated to the State Parks Department for use on boating related issues. The cost to the average Idahoan would be minimal compared to the cost slated for a small group of users.

Two other options exist that we believe are better than HB213;

1.

A \$5 fee added to fishing licenses would cover a user group that is proven to transport invasive species. This could be done in addition to a sticker program for motorboats. This would also save costs since a statewide system of selling stickers to non-motorized boats would not have to be implemented. Non-motorized craft are in effect covered this way.

2.

As a compromise a plastic or other waterproof hang tag that could be zip tied to a raft or kayak. This would solve the problem of stickers not adhering to rafts and kayaks. At \$10 all boaters would be paying the same amount. The sticker program could still work for motorboats.

We would have liked to have had the opportunity to discuss these options in depth; however, our user group was not given that opportunity. We had no part in drafting legislation that affects us in a major way. This is the wrong time to impose a fee on Idaho recreationists when all Idahoans should be taking part in preventing this problem. Because of these concerns we ask for a "NO" vote on HB213.

Mr. Howard also submitted written testimony as a private citizen. It is on file.

**TESTIMONY:**

**Mr. John Robison, Public Lands Director, Idaho Conservation League**, was next to testify. A copy of his testimony is inserted into the minutes.

Since 1973, we have been Idaho's leading voice for conservation. We have over 9,000 members who support us to protect Idaho's clean water and quality of life.

I am here to express our support for House Bill 213.

In Idaho, water means life. From the desert runs in the Owyhee's, to Snake River, the Middle Fork of the Salmon, Clearwater River and on to Idaho's great lakes to the north, Idaho's quality of life is defined by water. Idaho's salmon and trout, our families and our communities, depend on clean water and functioning ecosystems.

The Idaho Conservation League has been working on the issue of invasive species for years beginning with Eurasian milfoil. We have learned that prevention is the best approach

Idaho's natural heritage and quality of life are at immediate risk. These species are at our doorstep. Zebra and quagga mussels devastate aquatic ecosystems and threaten native species. Once they infest a water body, there is no way to eradicate them. The latest estimate is that these species will come to Idaho this summer. Immediate action is needed.

Let me also state that I own two kayaks, a canoe, and a raft and I use them every year. I also have worked as a river guide and kayak instructor.

As a non-motorized boater, I appreciate the concerns of the non-motorized community about this bill and applaud them for being engaged.

While Idaho Conservation League members do not like paying fees, we believe that on the balance this fee is a small price to pay to help keep Idaho, Idaho.

We have been coordinating with state and elected officials to design a prevention plan. We have researched programs and funding mechanisms in other states and decided this type of proactive program is the best approach.

We appreciate that the funds from this program are dedicated to the invasive species fund used to support activities related to the prevention, detection, control and management of invasive species in Idaho, as described in the Idaho Invasive Species Act of 2008. We also appreciate that this fund cannot be co-opted or diverted.

You will hear from some that fees from this program will be insufficient; that alternative funding sources should be developed and that other vectors (like felt-soled wading boots) need to be addressed. We agree. But that does not relieve us of our obligation to do what we can today to

protect Idaho's waterways and preserve our natural heritage. We agree that bills for additional funding mechanisms should be pursued, but we are concerned that it will be too late for Idaho's waterways if we do nothing until then.

No one here debates the importance of protecting Idaho's waterways, only how to do it. Given the debate about this fee, it will be critical for all interested parties to be involved in the rulemaking process to make sure that funds are used for strategic prevention and education measures that make sense.

In closing, we believe that House Bill 213 will help provide much needed funds to stop invasive species before they infest our waters. Idaho's lakes and rivers are priceless and worth protecting.

Thank you very much. I would be happy to stand for questions.

[ICL is first and foremost a conservation organization. Our mission is to protect Idaho's environment. We believe that on the balance this fee is a small price to pay to help keep Idaho, Idaho.]

**TESTIMONY:** **Grant Simonds, Director, Outfitters and Guides Association**, said they support the goal of this legislation and stand ready to work effectively with government and non-government entities to educate the boat owners and users to prevent the spread of invasive species. He stated that their concern is that of a new tax on Idaho citizens and business owners to support the creation of a government program and it is unfortunate that the government program that funded eurasian milfoil is going away. It seems to him that it would have been a good program to initiate these efforts. Also, the noxious weed program is not funded by user taxes and it seems to him that it is a societal issue. He would like to see another mechanism to fund this.

**TESTIMONY:** **Norm Semanko, Executive Director, Idaho Water Users Association**, said that this is one of their biggest issues that they are facing and the threat is real. They support the legislation. When the pipes get clogged, they can't deliver water and once the critters get here, it is too late. He said prevention is the key and that is what this legislation does. Two points Mr. Semanko said that he wanted to make was: 1) the program exists and the fund has been established; and 2) the State is not the only soldier in this battle. Irrigation districts are doing everything they can to stop these critters from coming in by having traps in canals, but they are

brought in by boats and that is what this legislation is designed to do. The water users are in favor of House Bill 213.

**TESTIMONY:** **Roger Smith** testified as a private citizen in opposition to House Bill 213. He said that it isn't the right thing to do and it doesn't adequately address the problem. It lacks provisions for consideration from other sources of infiltration that are very significant, such as out-of-state fire fighting equipment and float planes that land in our lakes. The legislation does not address the port at Lewiston and that is a legitimate threat. The secret to successful project management is to define the issue, the scope, a solution, and then adequately fund the mechanism and means for the solution. He feels this bill skips right to the end by appropriating funds and then determining how it will be allocated effectively in the end.

**TESTIMONY:** **Greg Dickerson** testified and a copy of his testimony is inserted into the minutes.

Mr. Chairman and members of the committee, my name is Greg Dickerson and I am the **President of the Western Whitewater Association** (WWA). I am here today to request your support of House Bill 213, as it is currently drafted. This legislation provides a dedicated funding stream to defend Idaho's waterways from aquatic invasive species, such as quagga and zebra mussels.

The Western Whitewater Association is an organization of approximately six-hundred jet boating enthusiasts who work diligently to foster safe whitewater jet boating, encourage family recreation and promote shared access to rivers and waterways. Since our charter, in 1978, we have taken an active role in the protection and continued clean-up of Idaho's waterways and scenic areas. We have an on-going partnership with the Idaho Department of Agriculture, U.S. Forest Service and private land owners to actively assault noxious weeds along the Salmon and Snake River corridors.

As an active group of registered boaters we don't seek to arbitrarily increase our own registration fees; however, in this instance we believe that inaction would likely result in irreparable damage to our waterways and much higher costs to our economy. House Bill 213 includes an equitable fee structure for all of Idaho's river users and we all share the responsibility of working together and funding together to prevent this problem.

Thank you for allowing me the opportunity to share our position on House Bill 213 and we urge your support on this important piece of legislation.

This concludes my prepared testimony on this bill, and I would be pleased to answer any questions you may have.

**TESTIMONY:** **Ted Day**, a **private citizen**, said that what is notable to him is the exclusion of so many funding sources, such as the fishing crowd. He stated that the legislation, as written, does not go far enough and he is willing to be part of the solution to the problem.

**TESTIMONY:** **Doug Schleis**, representing **Idaho Walleye Unlimited** and **Idaho Bass Federation** testified. He feels it is a great opportunity to close the door, at least partly, on the quagga mussels. Tournament fishing is a great source for education and they want to be a part of that. The loss to fisheries would be in the millions of dollars and quarantined lakes would cost Idaho millions in tourist dollars. He stated that eventually everyone would have to pay, but their group is willing to pay their share now.

**TESTIMONY:** **Laura Johnson**, **legislative liaison for the Idaho Department of Agriculture**, said that she wanted to clarify two issues and one is why doesn't the State prohibit out-of-state boats. Because of the interstate commerce laws, the State does not have the ability to prohibit the movement of out-of-state boats into Idaho. Boats can be inspected, quarantined, decontaminated, etc., but not prohibited. The other issue is voluntary compliance. Last year, House Bill 643 provided some authority and rules are being developed that will include mandatory inspection for out-of-state boats at certain border points.

**Dean Sangrey**, **Operations Division Administrator, Idaho Department of Parks and Recreation**, did not have prepared testimony, but was available for questions. There were no questions for Mr. Sangrey from the Committee members.

**TESTIMONY:** Written testimony was submitted by **Idaho Rivers United** and they asked for a NO vote from the Committee.

**TESTIMONY:** Written testimony was submitted by the **Food Producers of Idaho, Inc.** They are in support of House Bill 213 and asked for a "do pass" recommendation.

**MOTION:** **Senator Werk** made the **motion** to send House Bill 213 to the floor with a **do pass recommendation**. The motion was **seconded** by **Senator Coiner**. A roll call vote was taken. Voting aye were Senators Werk, Thorson, Brackett, Siddoway, Coiner, Bair, Schroeder. Voting nay was Senator Pearce. Senator Cameron was out of the room at the time of the voting. The vote was **seven ayes and one nay**. The motion passed.

**ADJOURN:** The meeting was adjourned at 3 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** March 25, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** Senator Cameron
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.
- MOTION:** **Vice Chairman Bair** said that he had reviewed the minutes of March 16, 2009 and made a **motion** for their approval, as written. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote.
- Chairman Schroeder** then called on Senator Siddoway to present his RS.
- RS 18882:** **Senator Siddoway** said that RS 18882 deals with a problem that we are encountering in the State. He wanted it known that he has a conflict of interest, is a sheep rancher and a potential beneficiary of this legislation if it carries through.
- The purpose of this bill is to make three changes in Section 36-106, Idaho Code, to clarify actions that shall take place before the transplant or relocation may take place. It provides for certain agreements, provides that domestic sheep and livestock operators will be held harmless from adverse impacts by the State of Idaho, provides for control of certain bighorn by the Director, and that the shared veterinarian program between IDA and IDFG be dissolved. This bill also deletes a reference to that veterinarian in Section 36-408.
- Senator Siddoway** said that Section 36-106 talks of transplants. The word "letter" was struck and replaced with "agreement" on page 3. Also on page 3, the Senator talked about paragraphs E and F.
- Paragraph E states that if any domestic sheep or livestock operation is, or has been, adversely impacted from any past, present or future transplant or relocation of bighorn sheep, the domestic sheep or livestock operation

shall be held harmless from adverse impacts by the state of Idaho.

Paragraph F states should any bighorn sheep graze, stray or drift upon, or in close proximity to, any private, state or federal lands that have any domestic sheep use, or have any domestic sheep allotments administered by the Bureau of Land Management, the U.S. Forest Service or the Idaho Department of Lands, the director shall relocate or control the bighorn sheep to ensure that appropriate separation between the bighorn sheep and the domestic sheep is maintained, unless the director certifies that the risk of disease transmission, if any, between the bighorn sheep and the domestic sheep is acceptable. This certification may be based upon: (i) An agreement regarding a separation strategy between the bighorn sheep and the domestic sheep entered into by the owners of the domestic sheep and the director or his designee; or (ii) a finding by the director that the bighorn sheep have already been exposed to certain pathogens that makes separation between the bighorn sheep and the domestic sheep unwarranted.

**Senator Siddoway** then referred to page 5, noting the paragraph referring to the shared veterinarian is to be stricken. A copy of a letter was provided to the Committee from the Department of Agriculture and the Department of Fish and Game indicating that each have their own veterinarians and the work can be done efficiently and responsibly without the employment of a shared veterinarian.

**Senator Werk** inquired about holding domestic operations harmless from adverse impacts by the State of Idaho. He said that he perceived that the bill is asking the State to take on a liability that might otherwise fall on the business. Senator Werk said that he needed to understand why he should be peaceful with transferring liability to the State. **Senator Siddoway** said the intent is so that the State of Idaho won't be able to bring suit or damages against the sheep operator. He stated that he would have liked to have named the Forest Service also because they are the ones that have created this problem.

**Senator Werk** asked if the Forest Service should end the grazing allotments, would the State then be on the hook for making the domestic sheep owners whole? **Senator Siddoway** said that was not the intent and he doesn't read the bill that way.

**Senator Coiner** wanted to know who has the management of the bighorn sheep. **Senator Siddoway** said there is a supremacy clause and no matter what we do in the State of Idaho, the federal government doesn't have to acknowledge it. He said that his hope is that if Fish and Game will work with the domestic sheep owners (and vice versa), as well as the Forest Service, that they will come up with a strategy that will keep the bighorns away from the domestic herds; and that strategy will be enough of a guarantee for the federal government to not kick the domestic sheep off the forest. **Senator Coiner** said that the question he has is that we are dealing with state statute to do something, but it seems to him that the place to act is to get all parties involved and come up with a management plan or a joint memorandum of understanding. **Senator Siddoway** said there is a group working on this - the Idaho Woolgrowers Association, the

Shirts family, the Soulen Family, the Carlson family, the Pickett family and his family. They have hired attorneys who have worked the past three years on this issue. Also, the Governor has a task force that is working on this.

**Senator Siddoway** said that they are hoping that the separation strategy of this bill will buy them enough time to allow them to see how the task force's efforts work out.

**Vice Chairman Bair** inquired if there had ever been a letter or MOU between the Department of Fish and Game, growers of domestic sheep, and the states of Washington or Oregon. **Senator Siddoway** said that in 1997, the Chief of the Wallowa Whitman Forest signed a letter of agreement with the Department of Fish and Game and Idaho, Oregon, and Washington that if they imported those critters, the sheep ranchers would be held harmless. Because it was a letter of agreement and not in statute, the federal government decided the letter would not be upheld.

**MOTION:** **Vice Chairman Bair** made a **motion** to send RS 18882 to the Judiciary and Rules Committee for printing. The motion was **seconded** by **Senator Pearce**.

**Chairman Schroeder** asked Senator Siddoway if he had worked with the people involved in Senate Bill 1124 and the reply was yes.

**SUBSTITUTE MOTION:** **Senator Brackett** said that he would like to visit more with the sponsor of the bill to find out more about it. He then made a **substitute motion** to hold the RS in Committee at this time. The substitute motion was **seconded** by **Senator Coiner**.

**Senator Werk** said that he would like to hear what the Attorney General has to say about paragraph E on page three of the RS. The Chairman indicated that it would be addressed.

**VOTE:** The **substitute motion** was voted on first. A roll call vote was taken. Voting aye were Senators Werk, Thorson, Brackett, Coiner, and Schroeder. Voting nay were Senators Siddoway, Pearce, and Bair. Senator Cameron was absent and excused from the meeting. The substitute motion **passed**, 5-3.

**ADJOURN:** **Chairman Schroeder** adjourned the meeting at 2:15 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** March 30, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** Senator Cameron

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:30 p.m.

**MOTION:** **Vice Chairman Bair** made a **motion** for the approval of the minutes of March 18, 2009, as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

The **Chairman** then asked **Senator Pearce** to present HJM 6.

**HJM 6:** **Senator Pearce** said this House Joint Memorial clarifies Idaho Legislative policy opposing congressional legislation which seeks to expand the federal government's authority to manage and regulate water resources within the State of Idaho. Lines 14 through 19 of the bill states ".....the federal legislation sought to clarify jurisdiction by striking the term "navigable waters" and replacing it with "waters of the United States" defined as "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds and all impoundments of the foregoing...".

**MOTION:** Following a very short discussion, **Vice Chairman Bair** made a **motion** to send HJM 6 to the floor with a **do pass** recommendation. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote. **Senator Pearce** is the **sponsor**.

**ANNOUNCEMENTS:** **Chairman Schroeder** said that on Wednesday, April 1, there would be a Joint meeting with the House Resources & Conservation Committee in the JFAC room (room 316) to hear the water bills, S 1167, S 1168, and S 1169.

On Friday, April 3, S 1125, S 1162, and S 1175 will be heard. House bills

240 and 264 will be heard on Monday, April 6.

**ADJOURN:** The meeting was adjourned at 1:40 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE  
HOUSE RESOURCES & CONSERVATION COMMITTEE  
JOINT MEETING**

**DATE:** April 1, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 316

**SENATE MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT:** None from the Senate or House

**HOUSE MEMBERS PRESENT:** Chairman Stevenson, Vice Chairman Shepherd, Representatives J. Wood, Bell, Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, F. Wood, Boyle, Hagedorn, Harwood, Saylor, Chavez, King, and Pence

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the **Joint meeting** of the Senate Resources and Environment Committee and the House Resources and Conservation Committee to order at 1:30 p.m.

**The minutes of the Joint meeting were transcribed by Nancy Christensen, CSR.**

**CHAIRMAN SENATOR SCHROEDER:** I think that we'll get started. Now, for the committee members who don't normally meet in here, this is live, so if you start talking among yourselves, it will be recorded. Okay?

Pro-Tem, do you want to lead off?

**PRESIDENT PRO-TEM SENATOR GEDDES:** Thank you Mr. Chairman, and Mr. Chairman and members of the Joint Committee. It's my honor to be here. I'm not going to take a lot of your time because I have people -- or I don't have people, but there are people here who truly are qualified to speak to the committee and address the issues.

As is typical, you know, when Clive Strong from the Attorney General's Office is carrying a manila envelope we know that we're getting close to the end of the session. So, hopefully, this is a good indicator that that is the case.

But I think what you're deliberating over today, these three water bills, are monumental and will establish not only the agreements that were made in

the past from a historical standpoint but also have been addressed by our Supreme Court. And this will put, hopefully, a benchmark in place so that we never have to go back and revisit some of those decisions.

And Mr. Chairman, if I may, I'd like to defer the remainder -- or at least the next portion of opening debate, an introduction of these three bills, to David Hensley from the Governor's Office.

**CHAIRMAN SENATOR SCHROEDER:** Yes, you may.

And committee members, just so you know, the Agreement, copies of the bills in your folder. And I'm going to allow you to ask questions as we go. In other words, if you have a question, raise your hand and I'll allow you to ask it.

Welcome.

**MR. HENSLEY:** Thank you, Mr. Chairman, Chairman Stevenson, members of both committees. My name is David Hensley. I'm legal counsel for the Governor. I appreciate the opportunity today to be here.

**UNIDENTIFIED SPEAKER:** Mr. Chairman, (inaudible) could we get Mr. Hensley to put a microphone on his tie so that we can -- up close to the knot, Mr. Hensley, so it's being recorded and broadcasted properly.

**MR. HENSLEY:** Well, that's technology for you.

Mr. Chairman, Chairman Stevenson, members of the committee, again, my name is David Hensley, legal counsel for the Governor. I appreciate the opportunity today to be here on his behalf to share his insight into this historic occasion, his insight on the framework and the legislation that you have before you.

From the Governor's perspective, the framework is really a road map that settles the current litigation between the state and the company. And in addition to that, it is made up of various components that have to be completed in order for us to reach that settlement. One of the components is the legislation that you'll be considering today. And you'll hear more from Mr. Strong from the Attorney General's Office on that point.

I think it's also important to point out that the framework is an opportunity - it's an opportunity to reaffirm the original Swan Falls Agreement and the principles that were set forth in that Agreement.

Moreover, it provides an opportunity for the state and the company to move forward on other aspects of its relationship, our relationship with the company, and other things that we need to work on. It really establishes a new day.

The Governor supports the framework and as a signatory to that, he supports the passage of this legislation. He believes that it's a great

example of what people can do when they sit down and talk to each other, when they recognize the mutual interest that they have, and what can truly benefit everyone involved.

We believe that the framework and its components are the right thing to do, and the Governor believes it is the right time to do it.

With that, Mr. Chairman, I stand for questions or turn the time over to Mr. Tucker from Idaho Power.

**CHAIRMAN SENATOR SCHROEDER:** Any questions from Mr. Hensley?

All right. Mr. Tucker?

**MR. TUCKER:** Mr. Chairman, thank you. Chairman Stevenson, thank you, members of the committee. My name is James Tucker, I'm an attorney with Idaho Power Company. I've been before you before; I think you probably remember a few years ago when I was before you on a very contentious matter that we're going to resolve today.

I'm here to -- please don't be afraid. These are not my remarks. I'm not going to take that long, but I do have a copy of the framework in front of me, and if you have questions, I'll be happy to answer any questions you might have.

I want to start out by just kind of describing what this settlement is and what it is not. What it is not, it is not a change to the Swan Falls Agreement. We reaffirm the Swan Falls Agreement. We've sat down; we've looked at the matters that were in contest over the past several months and few years, and we've clarified those matters under the Agreement and come before you today to clarify, not only the Swan Falls Agreement, but matters that have been in contest.

So, it doesn't change the Swan Falls Agreement. What it does do, it addresses three primary issues that have been in contest, for at least some uncertainty, for a period of time. One relates to the -- what might be called the "Milner Divide." Now, there's been some concern by upstream water users that Idaho Power sought to assert its water rights above Milner Dam.

In my view, that has not been the case, but there has been uncertainty about that. And we clarify in this Agreement that Idaho Power does not intend and, in fact, cannot under 42-203B(6) assert its -- B(2), excuse me, its water rights above Milner Dam.

Now, the exception to that over the past few years has been the contest that we've had about recharge. And we also resolve that issue today.

We confirm that under the Agreement we put before you today that Idaho Power has no right to assert under the Swan Falls Agreement that recharge cannot occur, either above Milner Dam or below Milner Dam.



The other thing it does is it resolves the issues relative to the decrees for Idaho Power's Swan Falls water rights in conformance with the decision that was rendered by the SRBA Court in April of 2008. So, it does those three things, and it resolves those three things.

It also sets the table for continued discussions between Idaho Power and the State of Idaho on other issues that we think, and the state thinks, are critical to continued cooperation on the river and continued water management issues on the river. So, you'll see in this framework in Article III that there is essentially a laundry list of issues that the state and Idaho Power agree that we're going to sit down with other parties, other interested parties, and we're going to try to, at least, discuss those issues. And to the extent there are concerns, matters of uncertainty or matters in dispute, we will seek to resolve them through some type of collaborative process.

Not all of those, we don't believe, are going to be a matter where there is going to be any kind of contest between us. But we found that over the past few years that many of those issues that we've listed there are not really conducive to litigation. They're public policy issues. They're issues that the state water users and Idaho Power should try to sit down and try to resolve in unison, as opposed to taking them before a court. So, they weren't really subject to litigation. They weren't things that could be appropriately litigated.

So, it sets the table, if you will, for description, identification, and, hopefully, resolution of broader issues between Idaho Power and the state and any other water users that might be involved for other interests on the river, frankly.

So, the other thing we think it does is in the context -- or at least Idaho Power thinks it does, is it solidifies relationships and, hopefully, helps to build relationships so that we continue to work on common water management issues on the river. We found that this is important over the years.

Frankly, what I think happened between the Swan Falls Agreement in 1984 and when we came to contest again in the 2000s was really a lack of communication. We really quit communicating with each other. We walked away from issues and found that when issues did come up, we got in a contest about them rather than sit down and try to resolve them.

Now, another thing I just want to briefly touch on is why this Agreement is important to Idaho Power. Why we believe it's important to the state, and why it's important to the citizens of Idaho. Idaho Power is an investor-owned utility, as you well know. It serves over 400,000 customers in the state of Idaho, the largest utility in the State of Idaho.

We rely upon, if you will, for about 60 percent of our hydro-generation -- on our hydropowered projects on the Snake River. So, a large portion of the generation we get to serve the State of Idaho, it relies upon

hydropower. That makes us a partner, if you will, on the river, with a large presence up and down the river.

As you also know through the CAMP process, which has been going through the legislature this year and has been before the Water Board for the last year and a half or so, there are serious water management issues that need to be addressed, not only on the Snake River Plain, but up and down the river as the quality -- as well as, water management and water use.

We have been involved in the CAMP process for the last year-and-a-half. We think it's been a wonderful vehicle for getting parties together in a collaborative way to try to resolve those issues. And in that context, this Agreement allows us to go forward, we think, and be more cooperative and really put contested matters behind us.

Idaho Power is also involved in relicensing up and down the river. We have a relicense pending in the Hells Canyon project. We just finished relicensing in 2004 for our mid-Snake projects. So, we have -- again, our presence on the river, we find -- we have a lot of issues on the river that we need not only to address ourselves, but we need to address in a cooperative manner with other parties. In the context of resolving this litigation, we are hopeful. In fact, we fully expect that this is going to facilitate those relationships up and down the river.

One of the issues we had pending in the Hells Canyon relicensing relates to a 401 certification process. In order to get a license for Hells Canyon, we have to get certification from both Idaho and Oregon that our water quality at Hells Canyon complies with each of those state's water quality standards.

One of the issues that we're dealing with, as far as water quality at Hells Canyon, is temperature. We have what is called a "temperature load allocation" below Hells Canyon Dam. We have two ways to resolve that. One way is to build a structure in Brownlee Reservoir -- which we believe is really not a good idea because of its impact on other water quality parameters, as well as fish and wildlife -- and address the issue of temperature that way. Or, another alternative is to move upstream and see if we can't do watershed measures that address temperature impacts up and down the river.

Now, to do that, we're going to be looking for cooperative relationships with people up and down the river, landowners, the state agencies, federal agencies. And, again, arguing having a wedge, if you will, between Idaho Power and people up and down the river, in that context, simply is not good business. So, this facilitates, we think, that relationship we're going to have to have up and down the river to address some of those other issues.

Our presence on the river, from not only below Milner Dam, but also up through American Falls, also makes us realize that this river system is one system. We, perhaps, better than anyone else know that. We have

obligations, as I say, down in Hells Canyon. We have obligations in American Falls. This is the holistic -- we think we need to address the river problems in a holistic manner. This is something that CAMP realizes, and something, I think, in the coming years, we're going to have to all deal with.

Now, one of the questions that is probably in some people's minds is: How did we get to this process of resolving these issues two years after we had a rather contentious debate over recharge in this body?

Well, I have to say that one of the primary motivators, again, came from this body after that contentious debate with the issuance of Senate Concurrent Resolution 136. This body, in fact, is a motivator for getting more than 50 stakeholders together in that CAMP process through the Idaho Water Resource Board and getting them to sit down. And I would commend this body, as well Governor Otter, and also the Water Resource Board, for doing that, because in my 25 years of dealing with water management issues and water issues, I've not been involved with anything that has been more collaborative, that kept people at the table longer, and had a better interaction of interests than that CAMP process.

And that really brought us to the point where we started to talk about things in a more, again, collaborative manner, in a more -- educating each other with respect to what our interests were and what the needs of the system were and what recharge was and what recharge wasn't.

So, rather than argue about what we argued about in 2006 -- I won't go back to it, but we started to look at things a bit differently. And as you know, in this CAMP process, Idaho Power has been active. We support it. We are engaged in a pilot recharge project with seven canal companies in the Milner Dam area. And we found that there are ways to work together to solve these issues, as opposed to being apart.

So, this communicating, this broad stakeholder involvement, we think, has gone a long ways to bring the interests up and down the river together.

We also found, when we got into litigation, that the Swan Falls framework offered, really, kind of a pathway for us to get together. There was a framework that was done in 1984, about four or five months prior to the Swan Falls Agreement, that had a provision in it that recognized that recharge was a management tool that should be explored and should be considered by the state, should be considered by Idaho Power Company, and there should be communication between those interests as to the effect of recharge not only on the aquifer to benefit those interests up and down the river but also on hydropower. That created somewhat of a bridge between us, to allow us to sit down and start to ask questions as to why we were arguing about things that maybe we could find a pathway and come together on.

So, there is a myriad of things that happened, but after that 2006 debate that we had, the fact that we were essentially forced -- not forced by the standpoint that somebody forced us to be there, but because of the need

to get matters addressed up and down the river, it brought parties together. And I think that was really the primary motivator that brings us here today.

So, I would commend the Governor's Office. I would commend the AG's Office and would thank them for their cooperation in putting this together. And with that, I'm going to defer to Mr. Strong to talk about the legislation, and I would stand for questions.

**CHAIRMAN SENATOR SCHROEDER:** Any questions?

Chairman Stevenson?

**MR. STEVENSON:** Thank you, Mr. Chairman. Mr. Tucker, I personally would like to thank you for your endurance the last two years as you sat through all those CAMP meetings and listened to the rhetoric -- sometimes that was not always complimentary -- but I do thank you for doing that and would appreciate it if you would take to Mr. Keen my personal appreciation for willingness to sit down and bring this document to us in these bills. Thank you very much. We appreciate it.

**MR. TUCKER:** Thank you, Chairman Stevenson. I would say that, really, the CAMP process has been a very worthwhile experience, and I wouldn't have missed it for the world in the context of meeting other people and having the interaction with other people and really establishing relationships up and down the river, as I say. I think it's going to really bring back many, many times to, not only Idaho Power, but also other interests on the river a lot of benefits. Thank you, though, for your comments.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

Mr. Cameron and then Senator Coiner.

**SENATOR CAMERON:** Thank you, Mr. Chairman. And Mr. Tucker, thank you for being here and for your comments, and I want to thank you for Idaho Power's role in helping reach this compromise.

You started your comments with three points that you thought were the major components or you believe are the major components of this framework. And I want to reiterate in my words what I thought I heard you say and have you indicate for us whether that would be the case.

First of all, I thought I heard you say that as part of this Agreement the issue of rights above Milner is resolved and that the company, the Idaho Power Company, recognizes that they no longer have any -- or recognized that they do not have any rights to water above Milner.

Third -- or, secondly -- and I don't know if I have these in the same order that you indicated, that water rights in the State of Idaho are issued decreed on the basis of the Snake River Basin Adjudication and that the water held in Idaho is held in trust by the State of Idaho.

And thirdly, that recharge is and was available under the Swan Falls Agreement -- in the initial Swan Falls Agreement and that nothing in this -- this reaffirms that ability for recharge. That's kind of my interpretation what I heard you say.

Would you clarify that for me?

**CHAIRMAN SENATOR SCHROEDER:** Mr. Tucker?

**MR. TUCKER:** Mr. Chairman, and thank you Senator Cameron. That's essentially it. I think I'll just kind of add a little bit around the edges, if I might.

On the first issue, we do clarify that Idaho Power does not have the right to call out its Swan Falls water rights above Milner Dam. Now, there has been concern by some interests up above Milner Dam that Idaho Power was trying to assert its water rights below Milner Dam -- those associated with the Swan Falls Agreement -- to preclude the use of water above Milner Dam.

We had clarified that we don't have the right to do that. Now, that said, we, obviously, do have certain rights above Milner Dam at American Falls Reservoir. With respect to our storage rights, we have the flow right of American Falls Reservoir and, also, we think we have the right, and I think the state agrees with this, to bring water past Milner Dam in the event that we lease water or acquire water above Milner Dam and bring it downstream. So, subject to those kinds of qualifications, I think you're accurate in your comments.

On the issue of the decrees, the issue of the decrees is that's correct. The judge entered an order in April of 2008 and, essentially, defined how Idaho Power's rights were going to be decreed, how they were going to be held. Idaho Power holds rights up to the minimum flows 39/56 CFS. The flows above the minimum flows are held by the State of Idaho in trust for Idaho Power and the benefit of the people of the State of Idaho.

Idaho Power has the right to use those flows above 39/56 until the state reallocates them, essentially, in accordance with state law. So, that is the confirmation of that issue. And the issue as to recharge, we are confirming that we do not have the right under the Swan Falls Agreement to preclude recharge. Now, we, like anyone else, if recharge affects us in any other way or it's not done in accordance with state law, we have all those other rights, but we are resolving that issue with respect to Swan Falls.

**CHAIRMAN SENATOR SCHROEDER:** Senator Cameron, follow-up?

**SENATOR CAMERON:** Thank you, Mr. Chairman.

Just one follow-up. I also want to make sure that we retain the right as the legislature through this Agreement to be able to adjust state law with regards to issues of recharge, et cetera, and that nothing in this

framework precludes the legislature from that responsibility and/or opportunity.

**CHAIRMAN SENATOR SCHROEDER:** Mr. Tucker?

**MR. TUCKER:** Chairman, again, Senator Cameron, that's correct, Senator. We cannot bind this legislature, obviously, through any agreement that we have with the Governor's Office and the State of Idaho. The legislature retains that authority to change state law with respect to recharge, or anything else.

What we've talked about in the context of this framework is just a realization and an interaction with the state that the recharge, like any other use of water, should be done in the public interest. There should be broad public policy debates. There should be consideration of the public interest. And subject to that, obviously, this body has the ability to legislate and change laws, as necessary.

**CHAIRMAN SENATOR SCHROEDER:** Senator Coiner, and then Representative Chavez.

**SENATOR COINER:** Thank you, Mr. Chairman. My question was partially answered by Senator Cameron's question, so I'll hold for a minute.

**CHAIRMAN SENATOR SCHROEDER:** Thank you.

Representative Chavez, and then Representative Wood.

**REPRESENTATIVE CHAVEZ:** It has a life of its own. Thank you, Mr. Chairs.

And Mr. Tucker, in Article III, on page 5, No. 4 at the bottom, probably everyone in this room understands this, but I do not. "Resolution of water management issues associated with the trust and nontrust water areas."

Could you explain what "trust" and "nontrust water areas" are, please?

**CHAIRMAN SENATOR SCHROEDER:** Mr. Tucker?

**MR. TUCKER:** Mr. Chairman, Representative Chavez, that, obviously, opens up a lot of doors in people's minds. But what it's meant to capture in the context of what we put down, the state and Idaho Power. "Trust water" is that water that flows -- there is a trust water line that's associated with the Swan Falls Agreement where certainly water that is to -- I will say -- the west of that trust water line is considered to be tributary to Idaho Power's rights below Milner Dam. Water that is associated to the east of that trust water line is considered to be nontributary to below Milner Dam.

Now, the reason that we put this particular article in here, this particular number in here, was because what we're finding is that -- in 1984, and let me assure people that we're not intending to redraw a trust water line here, but for the purposes of water management, in 1984 engineers drew

a trust water line that was not necessarily based upon the best science. It was an estimation. We're finding after 25 years that there are modeling results. There are various data that's out there that calls into question exactly what is tributary and what's nontributary. And for the purposes of administration, all we're doing is capturing here what we think -- moving forward, we need to sit down and talk about these issues so we're all on the same page as to what is tributary and what's nontributary and see if we can't work that out. It's probably more complex than that, but that's simply what it's intended to address.

**REPRESENTATIVE CHAVEZ:** Simple is good for me. Thank you.

**CHAIRMAN SENATOR SCHROEDER:**

Representative Wood, Representative (inaudible).

**REPRESENTATIVE WOOD:** Thank you,

Mr. Chairman. I might follow-up on that. The question I'm asking is also on the trust water. You said that Idaho Power has some right to use those trust waters that are not allocated to other uses that you have the same right. I'm asking you: What does that right entail? Is that a continuous right? Is it a rental right or a year or a season or exactly what? Would you tell me what that is?

**CHAIRMAN SENATOR SCHROEDER:** Mr. Tucker?

**MR. TUCKER:** Mr. Chairman, Representative Wood. Yes, the reference there is -- at the time of the Swan Falls Agreement, Idaho Power -- well, even now Idaho Power has water rights associated with the Swan Falls Dam, for instance, of 8400 CFS.

What we agreed to in the Swan Falls Agreement was to subordinate our water rights on the river and at Swan Falls down in the 39/56 -- 3,900 CFS in the irrigation season and 5,600 CFS in the wintertime. Now, that portion of the water that's above those minimum flows was set aside and placed in trust and was available to the State of Idaho to -- essentially, to reallocate to new uses in accordance with state law. In other words, someone would come in and say, "I would like to irrigate 100 acres of land." And they would get a water right, what is called a "Trust Water Right," they would get a water right to irrigate, and it would deplete that trust water amount.

What I'm referring to is that we have the right to use the balance or the overage -- is that until that trust water is used up, if you will, or allocated, we have the right to pass that through to our plants, and it's in perpetuity. I mean, if it's not ever used up, we have the right to pass through to our plants. In other words, we still hold that subordinatable right, what they call a subordinatable right, until the State reallocates it to someone else. I hope I'm being a little clear on that.

So, that's about the extent of it. If I'm not clear, please say so, and I'll be

happy --

**REPRESENTATIVE WOOD:** Mr. Chairman, that answers my question. Thank you.

**CHAIRMAN SENATOR SCHROEDER:** Thank you.

Representative Hagedorn and Representative Raybould.

**REPRESENTATIVE HAGEDORN:** Thank you, Mr. Chairman. It appears that our Murphy gauging station is kind of central to determining our livelihood. Who owns the Murphy -- who owns and operates the Murphy gauging station? Who calibrates that and (inaudible) that calculation?

**MR. TUCKER:** Well, I'm not sure that I can answer that, specifically. Maybe ask that to Mr. Strong.

My -- I want to say it's owned by the USGS, but I'm not sure that is what I'm thinking. And they do the calibrations, but I think Mr. Strong or, perhaps, Director Tuthill could probably address that better.

But, you're right. It is central to these issues because that's where the measurement, the ultimate measurement is made.

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong, do I see your head saying affirmative on the USGS thing? Okay. Thanks.

Okay. Representative Raybould?

**REPRESENTATIVE RAYBOULD:** Mr. Chairman and Jim, I just want to add my thanks to you and your company for the good faith negotiations that have taken place here. This Agreement reflects, I believe, on the same grounds and the same philosophy that we did in the Swan Falls Agreement.

I was involved in that Agreement in putting together -- working with the Attorney General's Office and many of the things that went into that Agreement. And in looking this over, I believe that this does clarify a number of those questions that came up over the past two or three years from the Swan Falls Agreement. And I appreciate the Attorney General's Office, the Governor's Office, and your company in these good faith negotiations, and I believe this document that we have here and these three bills that are going to accomplish this, I think are a great advantage to the State of Idaho. Thank you.

**CHAIRMAN SENATOR SCHROEDER:** Thank you, sir.

Mr. Strong, would you like to --

**MR. STRONG:** Mr. Chairman, Chairman Stevenson, members of the committee, it's a pleasure to be here this afternoon to address you on this framework agreement.



Before I get into my remarks, I would like to acknowledge two of my colleagues that are here in attendance with me today: Michael Orr and Shasta Kilminster-Hadley. They've worked tirelessly on this effort, and I wanted to give them acknowledgment on the work that they've done on that.

Turning to the Agreement, itself, my responsibility is to walk you through the Agreement. There are a lot of attachments to that Agreement, but the bottom line, and the ones that we need to look at are the framework, the memorandum of agreement, and, then, three pieces of legislation, so I'll kind of work through those in that regard.

With regard to the framework, Mr. Tucker has done an excellent job of describing what that is. It is what it's intended to be: A road map for how we would resolve the current and pending litigation over the interpretation of the Swan Falls Agreement. Itself is not a settlement document. The settlement constitutes the acts that are required under the executive and legislative and judicial branches.

With regard to the intent, I would echo Mr. Tucker's comments, as well, that the purpose here is not to change, alter, or affect in any way the original Swan Falls Agreement, but rather to, as noted in the title, to reaffirm those principles. And what we're really reaffirming is the fundamental policy decision that was made back at the time in the Swan Falls Agreement reflecting historic practice that we treat the river as a divided river at Milner. The water above Milner is intended to be administered as one source, and the water below Milner is administered as a separate source.

Now, having said that the river is divided, I would also concur in Mr. Tucker's comments that the river is united because regardless of the fact that whether we administer water rights below Milner to affect waters above Milner, the reality is that water flows past Milner and contributes to the flows that help in providing the generation necessary to provide the low-cost power we get from the company.

And so, in that regard, I think one of the fundamental characteristics of the original Swan Falls Agreement was to get the company and the state on a common footing to talk about how to effectively manage this resource in a way that achieves the many multiple benefits that we need to have as citizens of Idaho from this particular resource, both low-cost power and the opportunity for economic growth and development and protection of the various recreational and aesthetic values that we get from the river, as well.

I would also concur with Mr. Tucker's comments that what likely has happened is the situation with many families where over time you have a common purpose, but as you grow up, your purposes change, and sometimes you don't come back and reconcile those as necessary and instead what happened after the Swan Falls Agreement there was this kind of sense of relief. Anybody that lived through that particular battle

will recall that that was a pretty intense conflict. So, just the relief from having that conflict resolved, I think, led to us moving on to other issues and, unfortunately, not maintaining those relationships that we need to have within our families and within our business structures.

And what we're hopeful this Agreement will do today is restore that conversation we need to continue to have with the company and with our other citizens in the state to make sure that we're managing this resource in an effective way.

In that regard, the issues that were really at play are the three that were discussed. The idea of: Do we administer water above Milner to satisfy needs below Milner? How are the water rights intended to be decreed given the legislative trust that was created? And third, Was it the intent at the time of the Agreement to include aquifer recharge as one of those uses that could have the benefit of the water made available through the Swan Falls Agreement?

And Mr. Tucker accurately represents that, in fact, we have resolved all three of those questions in the affirmative. And affirmative being in the sense that this acknowledges that under 42-203B(2) that the river is divided at Milner and that the company's rights do not extend above Milner for purposes of administration. And that the -- we agreed that the court's decision on summary judgment is the appropriate resolution of the ownership of the rights.

The decrees that are set forth in Exhibit 6, you will see that the initial rights for the Swan Falls facility up to 3,900 CFS -- during the irrigation season and 5,600 CFS during the nonirrigation season are to be held in the name of the company, subject to those subordinations that are contained in the original Swan Falls Agreement and the 1180 contract.

So, for example, water rights with the priority date earlier than 1984 are the ones that enjoyed the benefit of a subordination and would not be subject to call even if the flows fall below 39- and 56-. And, likewise, those water rights that were intended to be protected that were in the process of perfection at the time the Agreement would also enjoy the benefit of subordination.

The other water rights for Swan Falls, plus the water rights for other facilities, other than CJ Strike, upstream to Milner Dam, as you will see in the decrees, will be decreed in the name of the State of Idaho as trustee for the benefit of the citizens of the State of Idaho and for the benefit of the power company. And correctly, Mr. Tucker reflected the fact that the company is entitled to use that water that's available at its facilities but that is a defeasible right. To the extent that we develop new water rights, these new water rights will then enjoy the benefit of the subordination that was provided for under the Swan Falls Agreement.

So, how do we go about reflecting that in the context of the settlement that you have before you? Well, the first place that we do that is in the framework. And there are four parts to the framework that serve distinctly

different functions. The Article I is intended to provide the context of how we related the settlement that we're bringing to you today back to the original Swan Falls Agreement. And the "whereas" clauses that are contained in that article are drawn largely from the original Swan Falls Agreement, the Swan Falls framework, and the state water plan amendments that were adopted, as part of the original Agreement.

By referencing some, but not all, of those provisions, there is no intent to diminish or to suggest that the value of the other provisions that are contained in the original Swan Falls Agreement are no longer valid; rather, the objective here was just to isolate those provisions that are necessary to identify and put in context the resolution that we are reaching. So, for example, the recognition under the original Swan Falls Agreement about the importance of the family farm and the farming traditions continue to remain in Idaho Code and remain unchanged and are not affected by this Agreement.

Likewise, in Article I, we try to make the point that as we move forward, we're reaffirming these principles. We're not changing them. They're to remain unchanged. Now, as having said that, Article II, is actually the framework that will lead to the settlement. And it calls for certain actions to be accomplished by this body, by the judiciary and by the executive branch in order to fully effectuate the Agreement. The framework is that first step that has been signed by the company and the state. The second step is approval of a memorandum of agreement. And the contemplation is that memorandum of agreement will be executed once legislation has passed and decrees are moving towards the court.

That memorandum of agreement I'll talk about a little bit more, later. It would be between the Governor's Office and the Water Resource Board and Idaho Power Company.

Then there are three pieces of legislation that will be the next part of my presentation that are critical to effectuating the intent that we've discussed, and, finally, entry of the decrees. So, that's the road map that we're on and assuming that all of those actions are accomplished in a timely fashion within 90 days, then we will have an effective resolution of the pending litigation and it will provide the pathway forward in terms of implementation of other aspects in the Swan Falls Agreement.

Now, Article III is separate and apart from the Swan Falls Agreement. And it's not intended to identify any or suggest any changes to the original Swan Falls Agreement; rather, what it is is an acknowledgment that there are certain issues that we need to discuss. And one of those was brought up in questioning Mr. Tucker. That is: How do we measure the flows at Murphy gauge? Because it is central to this Agreement that Murphy gauge is the place where we make the decisions on how to administer the water rights.

Presently, the USGS gauge is controlled by the United States Geologic Service, USGS. Other water measuring stations upstream, some of them are under USGS administration, some are under Idaho Power Company Administration. It's kind of a mix. And that's why one of the first issues

we list in this Article III in terms of future discussions is making sure that we have a common understanding on how that administration is to occur. And an example of why we need to have that and why we need to make sure that everyone agrees on the gauging stations that are going to be applicable and how they are calibrated is that in the Swan Falls Agreement -- the original Swan Falls Agreement, it provided that the fluctuations and the operation of the company's facilities are not to be considered as part of the flows and the Murphy gauge.

So, for example, if the company is doing load following for one of its upstream facilities and that would cause the flow to fall below 3,900 CFS or 5,600 CFS, that doesn't constitute a violation of the Agreement. Likewise, if the company, as Mr. Tucker referenced acquires water above Milner, the intent is to make sure that that water is not counted towards those flow conditions that come through the facility. The original Agreement contemplated that those would be supplemental to those particular rights.

Other issues that are of need of immediate attention deal with the American Falls Dam. American Falls, like these facilities, has a long history of relationships between the power company and water users, and certain agreements and commitments were made, and so we need to get those reflected in the SRBA decrees that are coming forward. And so, we're committing ourselves to begin discussions with the water users, the Bureau of Reclamation, and the company to see if we can't amicably resolve those issues consistent with the principles of this Agreement.

The issue about reevaluating term permits -- one of the issues under the Swan Falls Agreement is: How is the state going to be able to effectively ensure or provide that that 39/56 CFS flow at the Murphy gauge? And one way we did that was in issuance of new trust water rights was to impose a term condition on those water rights of 20 years. Those terms are now coming due, so it's now time to evaluate how those water rights affect or play into the overall agreement, so we need have those discussions and the Department has begun its process evaluating those rights.

The water management issues with regard to the trust line -- Mr. Tucker is correct in his representation to you on that, as well. Nothing in this Agreement contemplates change in changing the trust line. The trust line will remain in place where it's at, but the practicalities are the water rights -- some of the water rights outside the trust water could affect the flows in the river, and we need to take that into account in how we do our administration and achieve our particular flow conditions.

The next item, "Effective Water Marketing System." That was proposed as part of the original Swan Falls Agreement that there would be discussion of a water marketing system. I believe at the time of the Swan Falls Agreement that focused primarily on DCMU use. But as history has shown, our water use patterns have changed since the Swan Falls Agreement. We now have flow augmentation. We have water acquisitions to Bell Rapids, and there have been a lot of other factors that

affect how we conduct our water marketing activity above Milner.

And so, the idea is that we need to sit down and have that conversation. But the important point to take away from this provision is that we're not predisposed to a particular outcome. We're not indicating that we're intending to change state law or any other aspect of agreements that exist now presently between the parties, but rather, we need to have a conversation to talk about how we globally take into account all of the various competing demands for water supply.

The next item, "Resolution of Idaho Power Water Rights and American Falls, and the American Falls Reservoir Contract." I've spoken to you about that. Those are issues that are pending, either in the SRBA or in federal district court that we'll need to work through.

And I thought Mr. Tucker did an excellent job of describing to you the importance of the state and the company and water users working together on the relicensing the Hells Canyon Dam. It is the facility that carries the lion's share of the load for us, providing us with dependable low-cost power supply. It's in the state's interest, as well as, the company's interest, to find an opportunity to relicense that facility in the most effective way.

And, we, in looking at some of the proposals that are coming forward from the company, see some opportunities where by enlarging the (inaudible) will have an opportunity to resolve not only the company's needs but some other water supply problems, as well. So, the contemplation would be that we would have water discussions.

This list is not intended to be comprehensive. It's intended to be suggestive on some of the things that we should be talking about. Again, it's not intended to be focused on a particular outcome or disposition, but rather a reaffirmation that is consistent with the Swan Falls Agreement; that we need to dialogue on these issues.

With regards to Article IV, it's what we call in legal parlance, "the general provisions." It's intended to set forth the understanding of the parties, specifically, the first paragraph of Article IV reaffirms all aspects in the Swan Falls Agreement. And I think that is critical because if we get down the road in terms of interpretation issues, we're making it clear that our intent of this Agreement should be interpreted consistent with the original Swan Falls Agreement.

We also set forth recognition -- Senator Cameron asked the question about the legislature's authority. This Agreement fundamentally contemplates that these issues with regard to water management, are public policy decisions that are committed to the Water Resource Board and the legislature. And so, by this Agreement, what we do is resolve the company's water rights and those are fixed and set. But in terms of the legislative policies that are set forth in statutory provisions, those are within your prerogative to leave in place or alter or amend as you see fit in the future. So, that's quickly what the framework does.

Turning to the Memorandum of Agreement, again, the "whereas" clauses are drawn from the original Swan Falls Agreement, Swan Falls framework, and the water plan amendments that were adopted at that time to provide context for this particular memorandum of agreement. The agreement does two things, really. First, it fundamentally acknowledges that the state and this body are in the process of making a decision that the way we're going to manage the Eastern Snake River Plain Aquifer is pursuant to the Comprehensive Aquifer Management Plan. And within that CAMP document is the recognition that recharge up to between 150,000 and 250,000 acre feet is in the public interest, and that we are going to implement that recharge through a phased-in approach, and you're being asked to consider during this session, Phase I.

And what we have set forth is an understanding that that is going to be the template for future recharge in this particular basin, absent an amendment or change by this body as required for any change to the state water plan.

There is language in here that contemplates a phase-in approach, the original contemplation under Phase 1 is that we would do 100,000-acre feet of managed recharge, but there is an acknowledgment that the Board may find it necessary in terms of Phase I to look at some amount of recharge in excess of that, so the idea is to build in flexibility. And so, up to 175,000 acre feet of recharge could go forward under CAMP without coming back to the legislative body. If we go above that within the first 10 years, then the contemplation is that we would come back not as an amendment to the state water plan but rather just to get the concurrence of the legislature that we need to move to a different amount of recharge.

We expect those decisions will be informed by the adaptive management program. We, in talking with the agency, feel that this is an appropriate way both scientifically and from a policy perspective to implement recharge in a way that we can evaluate its effectiveness as one of the tools. And I want to emphasize "one of the tools" for restoring the water balance in the Eastern Snake Plain Aquifer.

The other aspect of the Agreement is an acknowledgment that while the company doesn't have the right to assert the hydropower water rights as a basis for opposition to recharge that they haven't relinquished the rights that any other citizen would have under state law to voice its concerns and work with the Board to take into account the impact of recharge. Frankly, it's good public policy that we have those discussions because where recharge is done can have dramatic effects in terms of the operation of the river, just like a reservoir would. So, from that perspective, we believe it's important that before we move forward that we have that dialogue and try to optimize the tools that are available to us to achieve the broader policy objectives we're after.

There is also a provision in there. And I think it's fundamental to the Agreement is that if we're going to make these decisions, if we, as a state, choose to take on this authority to make decisions about water policy that

we be held accountable for those decisions. So, in the event that we're implementing recharge and we see that there is a direct effect of recharge on hydropower resources that they could be used to generate power. There is an acknowledgment that the Governor and the Water Board would so advise the PUC of those direct effects, but those are determinations made by the Board and the Governor. That's really the effect of the memorandum of agreement.

Now, let's turn quickly to the three pieces of legislation -- the part that we're asking you to handle today. And the --

**CHAIRMAN SENATOR SCHROEDER:** Excuse me.

Senator Coiner?

Before we move on, can we have some questions?

**CHAIRMAN SENATOR SCHROEDER:** Senator Coiner?

**SENATOR COINER:** Thank you, Clive.

Could you explain the zero flow at Milner and what that means and put that in context for us?

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong?

**MR. STRONG:** Chairman, Senator Coiner, I'd be pleased to do so.

There's probably few concepts of water law that are more misunderstood more than the zero flow at Milner. Conceptually, when we think about it, our minds go immediately to the idea that we're going to regulate the river down to no flow.

In reading historical documentation, though, the zero flow policy at Milner really relates back to a decision that was made back in the 1920s, interestingly enough, by the Bureau of Reclamation and the State of Idaho that because as the water enters the canyons below Milner, it wasn't accessible; that the maximum or optimal utilization of the resource would occur by optimizing the amount of water that could be diverted and used above Milner.

So, the intent was, at least from my recollection and review of historical documents, was that we were not necessarily managing the river to zero, but, rather, the intent was to make it clear that we have the ability to divert water if we could make beneficial use above Milner, because there wasn't a contemplation that we would manage the river to zero, per se.

**CHAIRMAN SENATOR SCHROEDER:** Senator Coiner?

**SENATOR COINER:** Yes. And, then, could you address how the Swan Falls Agreement and this settlement has affected other water rights that are in the reach?

**MR. STRONG:** Mr. Chairman, Senator Coiner, the intent of the parties is for this Agreement to effectuate the relationship between the power company and the State of Idaho. It's not intended to affect other issues. So, for example, there is a current controversy over the permit for Milner Dam that is held by Twin Falls and North Side Canal Company, and whether the director appropriately imposed a subordination condition on that permit. That is a separate matter. It is not resolved by this issue.

Likewise, there are other interpretation issues with regard to the Swan Falls Agreement in terms of its effect on spring flows. Those are not intended to be resolved; rather, this Agreement is intended to focus exclusively on that relationship between the state and the power company.

**CHAIRMAN SENATOR SCHROEDER:** Senator Coiner?

**SENATOR COINER:** The other thing you addressed is the water marketing. And I've had concerns about this that you and I have talked about a lot. In looking at that into the future and being a part of this and working more on water marketing, what do you see in the development of adequate and transparent accounting and the prevention of injury to senior water rights by that marketing?

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong?

**MR. STRONG:** Senator Coiner, the reason I took some special time to talk about water marketing is because it is one of those types of lightning rod issues. There are a lot of expectations built around the water supplies in the Upper Snake River Basin. We're having more and more demands placed on us, the flow augmentation, the idea of trying to provide water for recharge, water for soft conversions from groundwater to surface water use, to address the (inaudible) aquifer. The point that I'm making is the demands on that supply are very intense; yet, how we administer that system can have dramatic effects on different people.

If there's more demand placed on the system in terms of storage water rights, it can create a bigger burden for the storage-space holders. On the other hand, if the storage-space holders have too much freedom to move water below Milner it can have impacts on junior users that had come to expect the storage water to be used above Milner.

And so, from that perspective, I think we need to all take a step back, review the history of how we got to where we're at and then figure out how all of these various agreements come together. So, from that perspective, I think there is a need for a very serious dialogue on how we go about water marketing in terms of a particular outcome.

I'm not capable today to tell you what that might be, but I do know that that discussion needs to occur. And I think it needs to occur in the context where there is true transparency. More often than not, when you get into these types of controversies, it's because people are operating



on what they believe to be the facts, as opposed to what somebody else may see as the facts. And oftentimes, neither one of them are quite accurate in terms what that outcome is.

And so, I know that's a long answer, but it's a true answer that we need to have that discussion so that we can get that transparency and that those who rely on those water supplies can have confidence that the water rights are being administered by the Department in a way that provides the opportunity to use the water without creating secondary impacts on other users.

**CHAIRMAN SENATOR SCHROEDER:** Thank you, Mr. Strong. Thank you, Mr. Chairman.

Representative Wood?

**REPRESENTATIVE WOOD:** Thank you, Mr. Chairman. Clive, just so that I'm clear in my mind on the issue that I did talk about on the trust water, and you mentioned that Department -- or that Idaho Power might prescribe to use those waters that are not allocated.

My mind went further to the question if the director were to -- the petition for a water right to use some of that, is Idaho Power able to then, I guess - - I don't know whether they would be in a lawsuit -- that they would be able to protest that in some way or are they bound by any agreement to not interfere with the Department of Transportation -- or Department of Water Resources if they are petitioned for another use for some of that water.

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong?

**MR. STRONG:** Mr. Chairman, Representative Wood. The ground rules for allocation of trust water were spelled out as part of the original Swan Falls Agreement. And it's a two-step process. You've got the normal process for issuance of a water right and then you have what's called 42-203C, Idaho Code 42-203C, that spells out the criteria for how to make the determination whether it's appropriate to issue a trust water right. Nothing in this Agreement changes that standard.

Now, having said that, the company wouldn't be able to come in and make the argument that this is somehow injuring their water right. On the other hand, the company would have a right, as any other citizen, to use the processes that are available to the Department to make their opinion known about the effect of that water right. But it's not based on a water right. It's based upon the public interest standards of the statute that is enacted.

**REPRESENTATIVE WOOD:** Thank you, Mr. Chairman.

**CHAIRMAN SENATOR SCHROEDER:** Any further questions?

Senator Siddoway?

**SENATOR SIDDOWAY:** Thank you, Mr. Chairman. Clive, Mr. Tucker talked about the 3,900 – and, I believe, 5,600 CFS at Milner. And we always talk about 3,900. And when you see the jeopardy that we can have over, say, 4 CFS at one of the fish farms in the state that 56 CFS could be significant.

Could you straighten that out for me?

**MR. STRONG:** Mr. Senator, Mr. Chairman, Senator Siddoway. The way the agreement is set up is that from April -- the original Swan Falls Agreement is from April 1 to November 1. The flow conditions, 3,900 CFS at Murphy gauge. From November 1 to March 31, the number is 5,600 CFS. That is a nonirrigation season. It's the storage season.

Because of the zero flow at Milner, there is nothing that impairs the ability to store water above Milner. That's what that zero flow accomplishes -- or the zero flow policy accomplishes. And so, there really aren't competing uses in which we should have conflict with the 5,600 CFS other than the issue that we have been dealing with which is recharge. And by the resolution today, the ability to continue to do recharge that is found in the public interest pursuant to state law would not be affected by this Agreement. In fact, what it does is it allows that to go forward. You are correct, though, in observing -- and it's a concern that I think that we, as a state, need to address is the 3,900 CFS flow.

The original intent of the Swan Falls Agreement was that in the future as we develop that trust water, we were going to rely principally upon the flows of the Thousand Springs reach to satisfy that 3,900 CFS. And at the time of the Agreement, the thinking of the Department, their understanding was that those spring water rights were not ones that had a right to call against the aquifer. That was a fundamental assumption of the Swan Falls Agreement.

What we know today, though, is that that assumption is incorrect. That those spring flow water rights do have a right to call against the aquifer. And so, as a practical matter, to me, the problem we're going to have is not so much 3,900 CFS at Milner – I mean, at Murphy, but more the issue: How do we manage or deal with those spring flows? So, it's critical from my perspective that we get the CAMP process in place, start addressing the impacts on the spring flows; that way we'll help ameliorate the problems that we're having right now serving those fish farm rights while at the same time it will enhance those spring flows and have the benefit to the power company. I think that is fundamental to why this Agreement makes sense to us today and work forward to try to solve that problem in a way that uses tools that don't require a sledgehammer to get to 2 CFS.

**CHAIRMAN SENATOR SCHROEDER:** Questions? All right. Let's go through the bills.

**MR. STRONG:** Mr. Chairman, the first bill that I would bring your

attention to is Senate Bill 1167. And it's a rather simple bill, but what we're trying to do with 1167 is to acknowledge the fact that incidental -- not incidental, excuse me, managed recharge may have effects on surface flows similar to storage reservoirs.

For instance, as -- ironically, as you look back, one of the first fights that we had on the Upper Snake River was between the storage water holder -- storage space holders and the natural flow water users. We believe that the storage water rights were affecting their diversions of water. And that, ultimately, led to the committee of nine. Well, today we have that same issue coming back, but it's the spring users versus the surface water users and the storage-space holders. So, replaying history again here. But the idea is that since we know they can have those effects that we ought to be looking at these large managed recharge projects in the way that we take account of their effects up-front rather than waiting for the delayed effects.

And so, the idea is that under 42-1737, presently, we require reservoirs -- surface reservoirs of 10,000-acre feet or more to go through a public review process to make sure it's consistent with state law. We're proposing that we add that same requirement here for managed recharge projects that are in excess of 10,000 acre-feet an average annual basis.

And that way -- by doing that, hopefully, we can avoid creating an unintended problem by failure to consider how this private recharge project might affect the state water plan. That's really the only effect of that particular statutory provision.

**CHAIRMAN SENATOR SCHROEDER:** Do we have questions on Senate Bill 1167? Anyone?

Okay. Proceed.

**MR. STRONG:** The second bill that you have before you today is Senate Bill 1169. And Senate Bill 1169 is -- we're skipping 68. Sixty-eight is gone, and I'll come back to a new one in a second. Senate Bill 1169 deals with the PUC jurisdiction. And as part of the original Swan Falls Agreement, this body passed Senate Bill 1005, I think it was -- or 115. And that was codified in Chapter 14 of the 1985 Session Laws. It's an uncodified section that what it was intended to do was to make it clear that the company wouldn't be subject to ratepayer actions for entering into the original Swan Falls Agreement. Why was that necessary? Because the original Swan Falls controversy arose out of a conflict over whether the company had taken adequate actions to protect its water rights at the Swan Falls facility.

By reaffirming the Agreement, what the company is asking for is to make it clear that that same protection that they received back in 1984 continues forward to this 19 -- or 2009 settlement agreement. It's not intended to create any new benefits or any new burdens, nor is it intended to deprive PUC of its jurisdiction to determine whether a petition by the

company for inclusion of its rates of new resources acquired are reasonable and necessary. Those decisions are made. What it simply says is that the PUC will not go behind the framework of the Swan Falls settlement to say that entering into the agreement was a waste of the company's resources. So, that's the purpose for which it's intended.

**CHAIRMAN SENATOR SCHROEDER:** Questions for Clive on Senate Bill 1169? Anyone? Okay.

Do you want to tell them what we did with 1168?

**MR. STRONG:** Yes. Senate Bill 1168, we're withdrawing that and substituting in place of it Senate Bill 1185. And the only difference -- well, let me first describe what the bill is intended to accomplish and then I'll describe the difference between the two bills.

The purpose of Senate Bill 1185 is to confirm that the Swan Falls Agreement did not and does not preclude aquifer recharge. That is the first and primary purpose of that bill. And it does so by removing the reference to Idaho Code Section 42-234, which had the language in it that created the controversy during the House Bill 800 dispute a couple of years ago. It also would repeal Idaho Code Section 42-4201A, which contained similar language in it. But the reason that we're repealing Idaho Code Section 42-4201A is to consolidate all of the state -- or most of the state policies within Idaho -- the new Idaho Code Section 42-234, so there will be an easy reference to see what state policies are with regard to recharge. The legislation would reaffirm that recharge water rights will be issued in accordance with Idaho law and the State water plan, and it will reconfirm that the director has authority to regulate how recharge is implemented in order to avoid or prevent the creation of adverse effects on other beneficial uses.

A prime example of that is we certainly wouldn't want to be doing a recharge project that is causing a water quality problem that would thereby impact a water use that relies on water quality. So, it gives the director the authority to look at a broader basis and to make sure that as we do, as we implement the recharge project, we can avoid those kind of adverse effects.

The only real difference between the original bill that was before you and Senate Bill 1185 occurs in paragraphs 3 and 4.

In the original bill, we, as attorneys, were trying to consolidate and make things more concise, but there was a concern that in the process of doing that that somehow we may have lost some the intent, and that was expressed to us by the Idaho Water Users, some of the intent of the original bill. So, rather that create that kind of unintended consequence, what we agreed to do was to go back and include the express language from the current Idaho Code Section 422 – 4201A, subsections (3) and (4). So, those two sections that you see in the new bill substitute for the original section (3), and by doing so, this gives comfort that we are not changing the current recharge policy.

In addition, you'll see in this bill a couple of additional sections that are being referenced. That's only for the purpose of making it clear that since we're repealing -- we would be repealing 42-4201A and making the cross reference back now to 42-234 it's a way to do some housekeeping to make sure that we don't have inconsistent reference in those statutory provisions, but there are substantive changes by the inclusion of that particular provision.

So, Mr. Chairman, that is a quick summary.

**CHAIRMAN SENATOR SCHROEDER:** Just a note.

Committee, we suspended rules to reprint 1185, so you've probably noticed that the format of this is not like the other bills. 1185 you have in front of you. It's just a copy of the official bill that most of the time just the chairman sees.

So, anyway, question from Representative Wood?

**REPRESENTATIVE WOOD:** Thank you, Mr. Chairman. Just to be clear, Clive. I heard you say that you were now trying to consolidate all of the state policies for recharging into one place. And then if I got that correctly, would that be in the 42-25 or -- I didn't get the code section exactly right, I don't believe.

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong?

**MR. STRONG:** Mr. Chairman, Representative Wood, it would be consolidated in 42-234.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

Senator Hagedorn?

**SENATOR HAGEDORN:** This particular bill, 1185, page 2, paragraphs 3 and 4, was the director of the department (inaudible.) Is there built in somewhere a process where someone may protest that decision?

**CHAIRMAN SENATOR SCHROEDER:** Mr. (inaudible)?

**UNIDENTIFIED SPEAKER:** Mr. Chairman, Representative Hagedorn, yes, there is.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

Representative King?

**REPRESENTATIVE KING:** Thank you.

Mr. Strong, I'm concerned about recharge and how you measure it. And so, if a person that drills down to 100 feet this year and that goes dry into

the aquifer, are we going to try to maintain 100 feet or 50 feet that they have to drill? I'm sure --

**CHAIRMAN SENATOR SCHROEDER:** Mr. Strong?

**MR. STRONG:** Mr. Chairman, Representative King, the question you ask is not so much about recharge. Recharge is a way to try to replenish that water supply; rather, it's a question about how do we maintain an aquifer level.

And there are statutory provisions that give the director the authority to establish what's called "a reasonable pumping level." Without getting too far afield today, let me just suggest to you that establishing a reasonable pumping level is extremely complicated, particularly by the fact that we have an aquifer that extends over an 11,000 square mile area and doesn't have homogeneity in the types of rock formations in which the water is flowing through.

So, that's one of the issues that is front and center right now in the A and B delivery call that Justice Schroeder just issued a decision recommending to the Department that they consider establishing reasonable pumping levels. I'm confident that the department hasn't had a chance to take a position on that yet, but that is an issue that we'll have to deal with because as a practical matter, if we draw the water down too far, it becomes an economic impact, and at some point an economic impact should not be visited on the existing user.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

Now, I understand that Norm (inaudible) from the Idaho Water Users Association has called and said 1185 is acceptable to them. I think it was Senator Coiner that related that to us.

Okay. So, further questions? All right. Thank you.

Anyone else here that wants to --

**UNIDENTIFIED SPEAKER:** I have one question for you, Clive, and that's not on this legislation, but on your Agreement. It's based on the legislature passing House Bill 264. If for some reason that didn't pass, is that null and void there? Because that's the one that puts the CAMP process into the river -- or into the water.

**MR. STRONG:** Mr. Chairman, Representative Stevenson, that would be a potential outcome, not necessarily the outcome, but, certainly -- although we don't incorporate the CAMP legislation into this bill, if that were to change, then it affects some of the fundamental aspects of the Agreement, and we would have to sit down around the table and see if we can resolve that issue.

**CHAIRMAN SENATOR SCHROEDER:** It's scheduled for hearing on Monday.

Further questions? Representative Wood?

**REPRESENTATIVE WOOD:** Mr. Chairman, if I might, just be sure that I'm writing this down correctly, are you saying that House/Senate Bill 1185 replaces Senate Bill 1168?

**CHAIRMAN SENATOR SCHROEDER:** That's correct.

**REPRESENTATIVE WOOD:** Okay. Thank you.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

**UNIDENTIFIED SPEAKER:** Mr. Chairman, I guess the only other question that I would like to ask does not involve Mr. Strong but the director.

**CHAIRMAN SENATOR SCHROEDER:** Absolutely.

Mr. Director, would you answer questions of the Chairman?

**UNIDENTIFIED SPEAKER:** Mr. Tuthill, you have reviewed this. Have you found anything here that you wouldn't be able to administer or to live with?

**MR. TUTHILL:** Mr. Chairman, Representative Stevenson, through the process, there has been good coordination between those that were involved in developing this Agreement and the agency. We've had many opportunities to provide input and weigh in. The Department is very supportive, as is the Governor's Office, of this bill and the various provisions. And these elements are administrable in my view, so I'm very supportive.

Mr. Chairman, if I could add on to that one clarification. There was a question by, I believe, Representative Hagedorn about the entity that conducts the measurements at Swan Falls. And Mr. Strong asked me at the break if it really is USGS. I confirmed "yes." And while on one hand at one time the USGS did for many years conduct a measurement. I might clarify I was told -- we just double checked, and that is one device that has been assigned to Idaho Power Company for measurement as a cost-saving measure.

And as Mr. Strong indicated up and down the Snake River system there are many measuring devices; some are monitored by USGS, others by Idaho Power. That particular one right now is monitored by Idaho Power Company, and it points out that we do want to beef up our measuring capabilities on the Snake River below Milner, as we move forward, and that is one provision of the Agreement.

**CHAIRMAN SENATOR SCHROEDER:** All right. Any questions for the director?

Representative Raybould?

**REPRESENTATIVE RAYBOULD:** Thank you, Mr. Chairman.

Director Tuthill, do you know if the Murphy gauge, if that measurement is by telemetry or if that has to be physically measured?

**MR. TUTHILL:** Mr. Chairman, Representative Raybould. I believe it's on the hydro method. Let me take a look at Mr. Anderson just for a moment to confirm. And he is nodding, "yes, it is."

**UNIDENTIFIED SPEAKER:** Mr. Chairman, just a comment. If that is by the hydro telemetry process, there would be a record of that all of the time then, automatically, wouldn't there?

**UNIDENTIFIED SPEAKER:** Yes, Mr. Chairman, Representative Raybould. For most of us, as we look at the device, it's transparent as to who was actually monitoring that gauge. It's a multi-year gauge measurement, and it's been continuous through many years as it's passed from USGS to Idaho Power Company.

**UNIDENTIFIED SPEAKER:** Thank you.

**CHAIRMAN SENATOR SCHROEDER:** Further questions?

All right. Thank you, Director.

Is there anyone else that wanted to testify on these bills?

Okay. What we're going to do at this time is we're going to allow the house members to leave and the Senate is going to consider the bills, and we can get this moving.

Chairman Stevenson?

**CHAIRMAN STEVENSON:** Mr. Chairman, for the House members of the committee, these will then go through the process in the Senate? And when they're read back across the desk for the House, then we'll have to have a short meeting to vote on each one of these bills as they come back, and that's the intent.

**CHAIRMAN SENATOR SCHROEDER:** All right.

Thank you, everyone, for coming.

(End.)

**ADJOURN:** The Joint meeting was adjourned at 2:45 p.m.



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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

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Representative John Stevenson  
Chairman

MINUTES

**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** April 1, 2009

**TIME:** 2:45 p.m.

**PLACE:** Room 316

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the Senate Resources and Environment Committee meeting to order and said consideration would be given to the three bills that were heard in the Joint meeting.

**MOTION:** **Senator Coiner** made a **motion** to send S 1167 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote. **Pro Tem Geddes** is the **sponsor**.

**MOTION:** **Senator Cameron** made a **motion** to send S 1169 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote. **Pro Tem Geddes** is the **sponsor**.

**MOTION:** **Senator Brackett** made a **motion** to send S 1185 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote. **Pro Tem Geddes** is the **sponsor**.

**ADJOURN:** The **Chairman** adjourned the meeting at 2:50 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** April 3, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** The meeting was called to order at 1:30 p.m. by **Chairman Schroeder**.
- MOTION:** **Vice Chairman Bair** said that he had reviewed the minutes of March 20 and March 23, 2009 and found them to be correct. He made a **motion** for their approval, as written. The motion was **seconded** by **Senator Coiner**. The motion **passed** by unanimous voice vote.
- MOTION:** **Senator Brackett** said that he had reviewed the minutes of March 25 and March 30, 2009 and found them to be correct. He made a **motion** for their approval, as written. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.
- S 1149:** **Chairman Schroeder** said that no one has signed up to testify for or against Senate Bill 1149. This bill would allow the Idaho Department of Fish and Game to adopt rules governing the collection of fees to recover costs for the performance of technical services relating to land and water use that the department, subject to commission approval, may provide upon solicitation, whether by the public or private sector, which services are not required to be performed by the department pursuant to Idaho law.
- When the bill was before the Committee previously, the vote was a 4-4 tie. The Chairman said the bill is now before the Committee and asked for their consideration.
- MOTION:** **Senator Siddoway** made the **motion** to send Senate Bill 1149 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote. **Senator Schroeder** is the **sponsor**.
- S 1162:** **Mr. Ken Harward, Executive Director, Association of Idaho Cities,**

presented Senate Bill 1162. This bill empowers cities to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; and provide for storage, treatment, and transmission of same only to the inhabitants of the city. In practice, many cities provide sewage and water services to Idaho residents who reside outside city limits.

**Mr. Harward** said the only change will be to Idaho Code, Section 50-323, line 11 of the bill, "to the inhabitants of the city" will be stricken. This legislation will align Idaho Code with current practices. Mr. Harward named some of the cities that responded regarding this bill complying with Idaho Code. They were Grangeville, Boise, Weiser, and Pocatello.

**Senator Coiner** inquired if there was another conflict in the Code. **Mr. Harward** replied that Title 42, Section 202B (9), permits cities to extend water beyond the city limits.

There was no one in the audience that wished to testify.

**MOTION:** **Senator Coiner** made the **motion** to send Senate Bill 1162 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. The motion **passed** by unanimous voice vote. **Senator Coiner** is the **sponsor**.

**S 1175:** **Senator Siddoway** is the sponsor of Senate Bill 1175. The purpose of this legislation is to make three changes in Section 36-106, Idaho Code, to clarify actions that shall take place before the transplant or relocation may take place. It provides for certain agreements, provides that domestic sheep and livestock operators will be held harmless from adverse impacts by the State of Idaho, provides for control of certain bighorn by the Director, and that the shared veterinarian program between IDA and IDFG be dissolved. The bill also deletes a reference to that veterinarian in Section 36-408.

He provided the Committee with a copy of the Attorney General's opinion on the "held harmless" language in RS18882 (now S 1175), asked for by Chairman Schroeder. Senator Siddoway said he was not expecting the reply to be what it was. His intent was if there was a transmission of disease on allotments or across private properties, that transmission would be accepted in those areas.

Also provided was a copy of an amendment that Senator Siddoway had prepared. It states: "It is the policy of the state of Idaho that existing sheep or livestock operations in the area of any bighorn sheep transplant or relocation are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted."

**Senator Siddoway** said he would like Senate Bill 1175 be sent to the amending order and he will attach this amendment to it on the Floor of the Senate.

He stated that the other provisions asked for in the Bill is asking the

Department of Fish and Game to be a partner in maintaining separation of the bighorn sheep and the dual employee position (veterinarian) be eliminated. The Department of Agriculture and the Department of Fish and Game each have their own veterinarians and they work closely together.

**Senator Siddoway** said that he thought the last Federal Land Management Policy Act was the 1994 Range Reform Act. Since then, most of the ways that livestock are managed on public lands is done more from court directives than from federal statute or state statute. The intent is to get the agreements in place and everyone will be notified, protocols laid out, and business and recreation interests of the state will know what their responsibilities and opportunities are.

**TESTIMONY:** **Mr. Ron Shirts, Shirts Brothers Sheep, Weiser**, was the first to testify. He is **representing himself**. Mr. Shirts said that he is asking for support of this bill. An agreement was made to him in 1997 and was followed up by Idaho State Code to back this agreement. He said that he has had blind faith and trust in the government to protect him and never once questioned that the agreement could be taken away from him for what he has strived so hard to accomplish.

**TESTIMONY:** **Mr. John Robison, Public Lands Director, Idaho Conservation League**, testified in opposition to Senate Bill 1175. He said that ICL is Idaho's leading voice for conservation and it represents 9,000 members. He said that bighorn sheep are an indispensable piece of Idaho's wild country and an integral part of our wildlife heritage. A highlight in Hells Canyon is watching and/or hunting bighorn sheep. Mr. Robison said that the bighorn sheep population in Hells Canyon is being decimated by an exotic disease carried by domestic sheep. Bighorn sheep have very little resistance for the pneumonia-like disease and entire herds have been eliminated. Idaho was home to tens of thousands of bighorn sheep, but now there are only an estimated 2,000 bighorns living in isolated pockets.

ICL feels that Senate Bill 1175 would hamper Fish and Game's ability to effectively manage bighorn sheep and also hamper state efforts to maintain viable populations of both bighorn and domestic sheep.

Mr. Robison said that ICL would like for the Committee to consider some of the potential negative repercussions of this bill. If the population continues to decline, at some point, the species will be considered for listing under the Endangered Species Act. Another way would be for the Governor's Advisory Group to craft guidelines to avoid future conflicts and ensure healthy populations of bighorn sheep and domestic sheep. The collaborative stakeholder process is a better way to maintain viable populations of the bighorn sheep and domestic sheep.

**Vice Chairman Bair** asked for evidence or proof of herds being decimated. **Mr. Robison** said that the exact mechanism of transmission is unclear. One of the goals of the Bighorn Sheep and Domestic Sheep Advisory Council is to focus more funding and more emphasis on the research of this. The Forest Service has concluded that when the two species are in contact, the Bighorn sheep end up dying. He said the bill

will have some unintended consequences. **Vice Chairman Bair** again asked for evidence if transmission of disease that caused the deaths of Bighorns has happened in the wild. **Mr. Robison** said the Forest Service has concluded that in their estimation it is an unacceptable risk for Bighorn sheep and domestic sheep to share the same occupied range. **Vice Chairman Bair** told Mr. Robison that he did not answer his question. The Vice Chairman then asked, "Has there ever been a documented case that you know of, of a Bighorn sheep in the wild, dying as a result of transmission of disease of a domestic sheep?" **Mr. Robison** stated that he didn't have his resources with him and would get back to the Senator on that.

**Senator Brackett** said the letter/agreement of 1997 has been cast aside and asked what will the difference be between it and the collaborative process you mentioned? **Mr. Robison** said the 1997 agreement did not include all the stakeholders. The Payette National Forest was not included in that, nor was the ICL, so it was not a collaborative process.

**Senator Brackett** said it is fair to assume the folks that participated in that agreement thought it was a collaborative process and they negotiated in good faith. He then asked Mr. Robison if any group that isn't included in this effort, can they come in and undo what has been done? **Mr. Robison** said they want to start their collaborative process with as many groups as possible. The more voices, the better outcome, according to Mr. Robison.

**Senator Werk** asked Mr. Robison if his comments were directed at the original bill or the amendments and **Mr. Robison** replied that his remarks apply to both.

**Senator Siddoway** said that he has a Declaration before the Court in the Western Watershed Project vs. the Forest Service, where Robert M. Richmond was the Forest Supervisor for the Willowa Whitman National Forest, (which is part of the Hells Canyon complex). Senator Siddoway had permission to read from that letter. It stated "I was one of six signatories to the letter, exhibit 1, and the only signatory on behalf of the Forest Service. The letter was copied to the Forest Supervisors of the Payette National Forest and the Nez Perce National Forest. The reason I was the only signatory on behalf of the three national forests was because the Forest Service had decided around 1980, that the Forest Supervisor for the Willowa Whitman National Forest would supervise the Hells Canyon National Recreation Area, regardless of the fact that it covers land within the jurisdictions of other national forests in three different regions of the U.S. Forest Service. I was therefore authorized to sign the letter on behalf of the Nez Perce and the Payette National Forests, and did so knowing that the letter and its hold harmless language was intended to, and in fact, did apply to those three national forests. I declare this under penalty of perjury that the foregoing is true and correct." This document is signed by Robert M. Richmond. Senator Siddoway then asked Mr. Robison why it isn't a valid declaration? **Mr. Robison** said that a federal court determined that the National Forest Management Act has authority, or exceeds, determination of that. The 1997 decision applies to one introduction. The National Forest Management Act tells the Forest Service that they have to maintain

habitat for viable populations of bighorn sheep.

**Senator Siddoway** said that the 1997 letter of agreement that was sent to the Idaho Woolgrowers also had the signatures of the three Fish and Game Departments and the Foundation for North American Wild Sheep. He went on to say that if we are all content with that fact and yet the Western Watershed Project filed suit, and the agreement doesn't hold water in court, then he hopes that Mr. Robison can understand why there is a need for this to be in statute.

**Senator Pearce** said that his concern is protecting people and their rights. He asked Mr. Robison how far this situation should be pushed, with regards to the Shirts Brothers about to be pushed off their land. **Mr. Robison** said that is the reason for the collaborative process group to look at all options on the table. They are also looking at ways to keep people whole, such as land swaps, buy outs and other arrangements. **Senator Pearce** said it is easy to hide behind a word like "collaborative". He was hoping to hear Mr. Robison say that deep in his heart and belief that no one is hurt and everyone is taken care of and that no one's rights are destroyed in order to get our way. **Mr. Robison** stated that their concern with this bill is that it will prevent some flexibility that they will need in the future to resolve this.

**TESTIMONY:** **Mr. Stan Boyd**, with the **Idaho Wool Growers Association**, said that he is in support of Senate Bill 1175, as amended. The three main points of the bill are: )1 To codify the 1997 Agreement; 2) Put in place a separation policy; and )3 Remove the joint veterinarian. He stated that the die-off of bighorn sheep in 1996 was caused by the bighorns themselves, as they carry their own strain of pasturella (which has been proven). Mr. Boyd said that for ten years, they have put their trust in that Agreement – now it has all come loose.

**TESTIMONY:** **Mr. Joe Curry**, a retiree and on the Board for the Idaho Foundation for the North American Wild Sheep, but today he is **representing himself**, testified against the bill. He said that much of what he had to say has already been said and that this bill will only push a wedge between the collaborative efforts of the working groups. He asked that the Committee stop Senate Bill 1175.

**TESTIMONY:** Next to testify was **Dr. Marie Bulgin, University of Idaho scientist**, stationed at the Caine Center in Caldwell, and representing the **Idaho Wool Growers**.

**Dr. Bulgin** said that she wanted to talk about the science that they have so far, conducted over the last 19 years at the Caine Center. They became involved when sheep were put in Hells Canyon and since then, they have looked at every major die-off in the country. They have obtained cultures from the die-offs in the various western states and from sheep from Canada, Alaska, and Mexico. She said that they have a broad idea of the organisms that cause the bighorns to die-off and so far, they have found no evidence of transmission from domestic sheep. There have been instances where they have seen transmission of organisms, not knowing which way, but in those instances, there have been no die-offs or any adverse effects. There has been no scientific evidence that

domestic sheep have caused the die-offs. In a recent experiment done by a researcher at WSU, they found that pasturella would transfer from the domestics to the bighorns; however, when the sheep were fifty feet away, nothing happened. When only a fence separated them, there were two incidents where the disease did transfer, but the sheep didn't die. When the sheep were corralled together, the bighorns died. So that is more evidence that it is unlikely that you would see this transfer of disease on range conditions.

The other thing about these die-offs is that they occur in the winter months, late November through March, and the domestics are not on the range. They know the disease has an incubation period - from the time they are first exposed until they get the disease. Pasturella in domestic sheep, the incubation period is 10 days to two weeks. From the experiments in the pens, the incubation period is about the same.

Because of the fear of the disease, Dr. Bulgin said the real risk is probably low.

Dr. Bulgin was asked to explain how she works for UI, but is representing the Idaho Wool Growers. Dr. Bulgin said that she is a wool grower and is a past president of the Idaho Wool Growers. She said the University of Idaho does not wish to take a stand on this issue.

**Senator Siddoway** asked Dr. Bulgin to talk about the lamb mortality in Hells Canyon and why those lambs are not surviving. She replied that the University of Idaho and Washington State people were the first to look at what is causing the lamb mortality. In the past, it was the belief that the disease that caused the die-offs of the adults also caused the problem with the lambs growing up. In Hells Canyon, it is an organism called micro plasma and WSU has pretty much documented that this is the organism that causes the die-off problem. It might have to do with stress or nutrition. In the domestic sheep, the organism is passed through milk. **Senator Siddoway** asked if the micro plasma, the ultimate death of the lambs is caused by pneumonia also and Dr. Bulgin replied yes.

**TESTIMONY:**

**Lloyd Oldenburg** was next to testify. He is retired and is representing himself. A copy of his testimony is inserted into the minutes.

I strongly oppose the proposal on Page 3, Section F as follows:

1. Holding any domestic sheep or livestock operation harmless from any past, present or future transplant or relocation of bighorn sheep or livestock operation is not acceptable.
2. If domestic sheep or livestock operations on public land cause bighorn adverse impacts, the operators shall have no responsibility. This would transfer liability to the state and the taxpayers. If bighorns are listed as endangered or threatened the operators responsible for that designation would transfer the enormous cost of that program to the state.
3. By requiring that any bighorn on public land which come in close proximity to any domestic sheep operation would require the removal or control (killing) of the wild sheep.



4. To require the removal of public owned wildlife from public land for the benefit of private livestock operators is not acceptable. This action would basically make it illegal for bighorn sheep to use the public lands upon which they have lived for thousands of years.
5. By wording this as livestock it implies the same principle could be applied to the relationship between wild elk and cattle with brucellosis transfer between species as being the reason.

There were no questions for Mr. Oldenburg.

**TESTIMONY:**

**Frank Shirts** offered testimony on his brother's behalf. He said that he runs four bands of sheep in the Payette National Forest and his brother has three bands there. He also has allotments in the Boise National Forest. He stated that if things keep going the way it is going, it will ruin the sheep industry in the Western United States. Mr. Shirts said the Forest Service said there was an emergency, but he doesn't feel that there was an emergency. The men that work for him are with the sheep constantly and have never seen bighorn sheep in their allotments. Mr. Shirts also said that the people who are suing them to take away their rights were instrumental in bringing in the wolves. The wolves have pushed the bighorns down into Hells Canyon and that is causing problems for the bighorns. He also said there is no telemetry that shows that bighorns have been on their range for the last five years.

**TESTIMONY:**

**Dr. Robert DiGrazia**, a semi-retired Boise dentist, charter member of the Idaho Sheep Foundation, and a lifetime member and past president of the National Wild Sheep Foundation, opposes any movement of the bill going to the 14th Order. He said that he feels they are on a slippery-slope and it will be non-productive and divisive.

**Dr. DiGrazia** said the Sheep Foundation has been in a very compromising position ever since the original lottery and auction. The lottery permits provide money to the wildlife laboratory in Caldwell. He also stated that the people who signed the 1997 agreement knew that it was non-binding as it had not been signed by the Forest Service. Ten years later, the Wool Growers seem to think it was a binding agreement.

In the Payette, an offer was made to the Shirts Brothers, but it was turned down. He said that he hates to see the State spend thousands of dollars on legal challenges when things can be worked out.

**Senator Siddoway** said that they have worked in the past and tried some things, but what is done here, he didn't know if it would have an effect on the federal government or not. Also, if a separation strategy was formed, he didn't know if it would be upheld if any group brings a lawsuit. Senator Siddoway asked Dr. DiGrazia how putting in code a separation between the bighorn sheep and the protection of the private property rights, jeopardizes the Shirts Brothers and the State of Idaho? **Dr. DiGrazia** said his concern was the legal progress and also that the Forest Service has a fiduciary responsibility of protecting wildlife.

**Senator Siddoway** said that assuming a collaborative effort goes ahead, what prevents the Forest Service or the Fish and Wildlife Service from

evicting the Shirts Brothers from their land? He feels the Shirts' only option is to stand and fight. **Dr. DiGrazia** said that he understands what the Senator is saying; however, it is a privilege to graze sheep and a privilege to hunt and compromises must be made. Wildlife provides millions and millions of dollars for revenue for the State and he said that he has seen compromises work in other states.

**Senator Siddoway** stated that he appreciated Dr. DiGrazia coming today and also appreciated working with him in the past, but if he wants to compare values of the domestic sheep industry to the bighorn sheep industry in the State of Idaho, the bighorn sheep industry does not make up five percent of the value of the domestic sheep industry in the State of Idaho. **Dr. DiGrazia** said the issue is hunting, not necessarily just bighorn sheep.

**Senator Pearce** directed his question to Dr. DiGrazia. He said that the Doctor said that the government has a responsibility to protect wildlife. "Do they not also have a responsibility to protect people's rights? Which is the first order?" **Dr. DiGrazia** said that is the dilemma – where do you draw the line? He said, "Do you draw the line by codifying a specific way of thought or do you, as in other states, get together and talk. Compromising should be part of government." **Senator Pearce** said that he disagrees with him and as he read the Constitution, it didn't say anything about wildlife. People's rights are first in this country and that is the real issue. In the county where this issue is taking place, the Shirts' infuse four million dollars a year just from one operation into that county's economy. He stated that he doesn't feel that bighorn sheep bring in \$50,000 to that county in a year. For the people that live in Washington County, this issue impacts them and is a hit, economically. We need to look at the people who live and work here and the narrow views are incorrect and very un-American. **Dr. DiGrazia** said that he respectfully disagrees on the economic impact. The city of Lewiston - Chamber of Commerce - stated last summer that they felt the value of bighorn sheep in Hells Canyon was over a million dollar economic viability. The Outfitters that take people down the Middle Fork of the Salmon, their clients want to know when are they going to see wild sheep. The Sheep Foundation wants not only to hunt sheep, but to have watchable wildlife.

**Senator Cameron** asked Dr. DiGrazia if he was a signatory to the 1997 Agreement and he replied that he wasn't - it was Duncan Hill, now deceased, signed as secretary for the Sheep Foundation, but the Board never signed off on it. **Senator Cameron** then asked Dr. DiGrazia if he had ever testified in favor of that Agreement and the reply was no.

**TESTIMONY:**

**Mr. Alan Schroeder, lawyer** for the Shirts Brothers, testified. He said that he deals with public land litigation and has been representing the Shirts, ever since the 2005 Forest Service decision. He stated that he is here today to see what things can be done to reinforce the Agreement and he is learning more about the 1997 Agreement today than he has known since 2005. If it is truly a non-binding Agreement, then there truly is a need to reinforce the '97 Agreement. Mr. Schroeder said that he is helping the Shirts through the legislative process and in doing so, the three of them testified in front of this Committee in January, the House

Committee, and various groups around the valley. He stated that he is here in support of this Bill, even as amended. It seems that in the testimony that you have heard that the testimony is either for or against bighorn sheep. He and the Shirts Brothers are not for or against bighorn sheep, but for reinforcing the commitment made in '97. There wasn't a problem in Idaho until the 2005 decision came down by the Chief and some concern arose as to the viability. In the language of the Bill, sub section E, it is important that there is an opportunity for Idaho Fish and Game to really take advantage of this opportunity to protect both the domestic sheep operators and to protect the bighorn sheep in their habitats because it provides discretion on the part of Idaho Fish and Game's director to use his authority and to certify that the risk of disease transmission, if any, and that gets away from if it is true or not. The certification allows the director of Idaho Fish and Game to create agreements with domestic sheep operators to deal with the separation. It creates opportunities for the director to make findings that the existing pathogens are already in. If the bighorn sheep already have the offending pathogens, what is the necessity for separation? Mr. Schroeder said this Bill gives the authority for that and that's why the Bill is necessary. If the '97 Agreement is not binding, that's all the more reason for the Committee to reinforce the commitment and to give the director the discretion he needs to relocate or control the bighorns away from the domestic sheep operators.

**Mr. Schroeder** asked for the Committee's support for this Bill and its amendment.

**TESTIMONY:** Testifying next was **Ms. Sharon Klefer, Assistant Director of Policy, Idaho Department of Fish and Game.**

She said that her prepared testimony was based on S 1175, as originally drafted. Her testimony does not address the amendments that were made available this afternoon. A copy of her full testimony is on file. Parts of her testimony have been included in the minutes.

**Ms. Kiefer** said that significant change to the Director's duties and powers occurs in Section 5(E), creating a new liability to the State of Idaho. Section 5(F) also represents significant change to current statute, mandating that bighorn sheep must be relocated or controlled when they come in close proximity to lands that have any domestic sheep use or federal or state lands with sheep allotments. There is not a similar mandate for the movement of domestic sheep out of private ground or sheep allotments into areas used by bighorn sheep.

The bill deletes statutory references to a veterinarian shared between the Department of Agriculture and the Department of Fish and Game. The directors of both agencies have agreed that the shared vet is not necessary for effective collaboration and a letter signed by both directors was provided by Ms. Kiefer. The Department of Fish and Game supports this particular component of the bill.

The Idaho Bighorn Sheep/Domestic Sheep Advisory Group, convened by the Governor, is currently working to craft collaborative solutions to

several of the issues addressed in this bill and they believe the committee should be given opportunity for success. (A copy of the Group's Interim Strategy was provided.) Because of this belief and the issues of concern that were previously noted, the Fish and Game Commission does not support Senate Bill 1175.

**TESTIMONY:** Written testimony was submitted by **Lee Flinn, Executive Director** for the **Conservation Voters for Idaho**. It states that they are opposed to S 1175 and asked for the Committee's no vote. A copy is on file.

**QUESTION:** **Senator Pearce** asked Ms. Kiefer if Fish and Game has long-range plans to introduce bighorn sheep in other places in the state? **Ms. Kiefer** said that she is not aware of any plans. She then deferred to Jim Unsworth. **Mr. Unsworth** said that they have no immediate plans; however, in the future, they would look for areas where there wouldn't be a conflict. When asked about long range plans, he stated that if there were opportunities where they could put bighorn sheep where there would be healthy populations, they would entertain those possibilities.

**CONFLICT OF INTEREST:** **Senator Siddoway** declared his conflict of interest under Senate Rule 39H and he said that he intends to vote.

**MOTION:** **Vice Chairman Bair** made the **motion** to send Senate Bill 1175 to the Amending Order. The motion was **seconded** by **Senator Pearce**.

**Senator Werk** said that he appreciated all the education in today's meeting, but it strikes him that if the bill is passed, it won't fix the mess. From what he can tell is that our statutes would run afoul of federal law and then everyone would be yelling that the courts ran us over. It would be a self-inflicted wound, in that case. He sees this legislation as running over the opportunity that they have with the collaborative process and sees it as a step back. Senator Werk said that he cannot support the motion.

A voice vote indicated that the motion **passed** by a majority vote. Senators Werk and Thorson asked to be recorded as voting nay.

**ADJOURN:** The meeting was adjourned at 3:30 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary

## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** April 8, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 204

**MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Cameron, Pearce, Coiner, Siddoway, Brackett, Thorson, and Werk

**MEMBERS ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:35 p.m.

**ANNOUNCEMENT:** The Chairman announced that a copy of a letter from Kathleen Trever, Deputy Attorney General, was in their blue folders. This letter is in response to the Chairman's request for legal analysis regarding liability for depredations caused by elk or other wildlife for which the landowner provided a "safe haven." He said he would provide a copy to anyone in the audience that would like one.

**Chairman Schroeder** welcomed **Representative Andrus** who presented House Bill 240 as amended.

**H 240a:** The purpose of this proposed legislation is to make all depredation claims the same priority regardless if they are claims pertaining to damage to crops, livestock or forage. Currently, Idaho Code states that claims filed for crop damages shall have priority and will be paid prior to claims filed for damage to livestock or forage.

**Representative Andrus** said the amendment takes out wording that is in two different places.

This bill will equalize forage, livestock, and crops so that they will all get an equal share of the money in the depredation fund. The depredation fund was created 18 years ago with the Fish and Game putting in \$1.25 million, the General Fund contributed \$1 million, and the interest on that was put in the fund, as well as Fish and Game putting in \$200,000 annually.

When there is a claim, they go to the Fish and Game Advisory Committee. The Committee is made up of six sportsmen, appointed by Fish and Game, and six farmers/ranchers appointed by the Department of Agriculture. They determine if the claims are legitimate, then pay

accordingly. Half of the claim is paid at the time and the other half is paid at the end of the fiscal year. Recently, there have been more claims than money. This bill will make things more equal.

**Representative Andrus** said the bill is supported by the **Food Producers**.

**TESTIMONY:** **Mr. Dar Olberding, representing the Grain Producers of Idaho**, and also the chairman of the Fish and Game Advisory Committee, testified in support of this bill.

**TESTIMONY:** **Mr. Wally Butler, Range and Livestock Specialist for the Idaho Farm Bureau**, said the Farm Bureau is in support of this bill and they feel it is a fairness issue.

**TESTIMONY:** **Mr. Stan Boyd, Idaho Cattle Association and the Idaho Wool Growers Association**, said the subject has been well covered and they are in favor of the bill.

There was no more testimony from the audience.

**MOTION:** **Senator Brackett** made the **motion** to send H 240a to the floor with a do pass recommendation. The motion was **seconded** by **Senator Pearce**. The motion **passed** by unanimous voice vote. **Senator Brackett** will be the **sponsor**.

**H 264:** **Chairman Stevenson, House Resources and Conservation Committee Chairman**, presented House Bill 264.

The purpose of this legislation is to approve the Eastern Snake Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan (CAMP) as a component of the Comprehensive State Water Plan and to provide that the Idaho Water Resource Board prepare and submit for approval to the legislature a funding mechanism needed to implement Phase One of the CAMP.

This legislation does not constitute an obligation of State Funds but does authorize state agencies to use previously appropriated funds to begin implementation of the CAMP. The Idaho Water Resource Board has a remaining balance in the Water Management Fund of approximately \$100,000 from ESPA CAMP studies and plan development authorized by HB 320 in 2007. The Board intends to use these and other appropriated funds to initiate the CAMP.

**TESTIMONY:** **Mr. Lynn Tominaga, Executive Director, Idaho Ground Water Appropriators, Inc.**, testified in support of House Bill 264.

**TESTIMONY:** **Mr. Kent Lauer**, representing the **Idaho Farm Bureau Federation**, said they are in support of this bill also.

**TESTIMONY:** **Mr. Norm Semanko, Executive Director, Idaho Water Users Association Inc.**, also testified in support of House Bill 264.

**TESTIMONY:** **Mr. Steve West, CENTRA Consulting** for canals, said that he is here to voice their strong support for this bill and that it is a viable means to move forward and address the issues through CAMP.

**TESTIMONY:** **Mr. Craig Evans, Chairman of Bingham Groundwater District**, said originally he was in favor of giving credit/remuneration/recognition to those who have been doing incidental recharge. The problem of giving credit of any kind to a natural flow of water right is outside of the scope of that water right. That water right is very basic, it is not for anything else. To do it for anything else and receive money or credit, then you are selling that part of your water right. He said to not go down that road because if you do, it might set up another water wars situation that would take some time to settle down.

**MOTION:** **Vice Chairman Bair** made a **motion** to send House Bill 264 to the floor with a do pass recommendation. The motion was **seconded** by **Senator Pearce**.

**Senator Werk** inquired as to the dollar figure being contemplated towards the implementation of Phase One. **Mr. Hal Anderson, IDWR**, replied that the total figure for Phase One is between \$70 and \$100 million, over a ten year period. About \$30 million would be the State's contribution. He stated that it is a 40% state and 60% water users breakout. **Senator Werk** said that this bill indicates that by voting for it doesn't obligate any money, but he doesn't see it that way, if instructed to go by the split. **Mr. Anderson** said that his understanding of what is contemplated by passage of this bill, it is important to stay with that 60-40 breakout, but there are still mechanisms that need to be put into place to collect all the monies. That is what the Board will be working on with the Interim Legislative Committee over the next year to put the mechanisms in place to collect the assessments from the water users and also determine where the monies from the state might be coming from.

**Senator Werk** said that he wanted it on record that we are not obligating the State towards paying this off. **Mr. Anderson** stated that was exactly the way Representative Stevenson described it in the House Committee meeting.

**Senator Werk** said there was an exchange about the use of the water right as opposed to being compensated for recharge. The section that talks about the beneficial use of recharge, he said that he wants to make sure that they aren't promising something that they don't have the right to do. **Director Tuthill** said the language that is in the bill is very close to what is already in the Code, recognizing the benefit of incidental recharge. Part of the genesis of this language is that of the nine million acre feet that are annually provided to the Eastern Snake Plain Aquifer, approximately five million acre feet of that amount comes from incidental recharge. That recharge is there, incidental to the irrigation. To recognize the benefits of this is a long standing practice of the Code and the challenge of this is to maintain this in the future. The language in code and what has been put in this bill is a recognition of that. **Senator Werk** said that he is assuming that the Director is not anticipating, at some point in the future, the Legislature would somehow become responsible for compensating the water users for recharge under this agreement. **Director Tuthill** said that how the benefit of incidental recharge is reflected, in his understanding, is the challenge before the Interim Legislative Committee this summer as the funding for CAMP is reviewed and as this process proceeds. One method

of funding recharge efforts is what is happening today and that is to fund managed recharge through the compensation of canal companies, sometimes up to \$3.00 per acre of moving water through the canals for managed recharge. He stated that what they do to reflect the benefits of incidental recharge is yet unstated, but it is his assessment that the language in this bill does not require monetary compensation and the language, as he reads it, does not provide that direction. **Director Tuthill** said there are some who desire to be compensated for incidental recharge, but he does not view this bill as directing that. However, it is an issue that could come up this summer.

**Senator Siddoway** said that we are all water users in this state, some only use it to drink, but everyone has a water right. The citizens of the state should be obligated to pay. It is true that agriculture uses 90+ percent of the water in the state, but those that have private wells or use municipal water, there is no way for them to participate other than through general funding from the state.

**Senator Coiner** said that where he foresees the Implementation Committee going this summer is to provide more input to the Board and to educate them as to the limitations that the Legislature has and what the JFAC Committee can and cannot do in reference to funding that. He feels it will all work out through the process.

**VOTE:** The motion passed by unanimous voice vote. **Vice Chairman Bair** will be the sponsor of House Bill 264.

The **Chairman** announced that there would be no meeting on Friday, April 10.

**ADJOURN:** The meeting was adjourned at 2:20 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary



## MINUTES

### SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** April 15, 2009
- TIME:** 1:00 p.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman Schroeder, Vice Chairman Bair, Senators Coiner, Siddoway, Brackett, Thorson, and Werk
- MEMBERS ABSENT/ EXCUSED:** Senators Cameron and Pearce
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CALL TO ORDER:** **Chairman Schroeder** called the meeting to order at 1:45 p.m. The meeting had originally been set for 1 p.m., but due to the length of the morning legislative session, this meeting was delayed.
- RECOGNITION:** The **Chairman** then presented the Committee Page - **Katrina Clayson** - with a Senate watch and letter of recommendation, signed by all the Committee members, for her assistance during the last half of the session. He invited her to talk to the Committee about her future plans/goals.
- MOTION:** **Vice Chairman Bair** said that he had read the minutes of the Joint meeting with the House Resources Committee, April 1, and also the minutes of the Senate Resources meeting, April 1, 2009 and made a **motion** that they be approved. The motion was **seconded** by **Senator Werk**. The motion **passed** by unanimous voice vote.
- MOTION;** **Senator Siddoway** said that he had read the minutes of April 3, 2009 and made a **motion** that they be approved. The motion was **seconded** by **Senator Bair**. The motion **passed** by unanimous voice vote.
- MOTION:** **Senator Brackett** said that he had read the minutes of April 8, 2009 and made a **motion** that they be approved. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.
- BRIEFING:** **Chairman Schroeder** stated that a report has been prepared by an independent investigation agency in Northern Idaho. An article was published in the Spokesman Review, and excerpts of that article was published in other newspapers around the State, that dealt with allegations of Fish and Game CO's using vehicles for personal use, and the policy that the Department has on the use of the cabins used by Fish and Game personnel. Also included in that report was the issue of children of the officers accompanying them on patrol.

A folder is being passed around to the legislators to read the details of all the allegations. The Chairman thought that it was only fair to the Fish and Game Department that they tell their side of this and also appropriate that the Committee be briefed on this issue before returning home and facing constituents with questions regarding this issue.

**Chairman Schroeder** said it is understood there may be legal matters that cannot be discussed. He then invited **Virgil Moore, Deputy Director, IDFG**, to address the Committee.

A copy of Mr. Moore's testimony is inserted into the minutes.

Chairman Schroeder and Committee:

Mr. Chairman, I am Virgil Moore, Deputy Director of Operations for Idaho Department of Fish and Game. I have been asked to address the concerns and allegations raised by a private investigation business, Confidential Investigation (CI) in North Idaho related to incidents in 2006 and 2008. These concerns have not been brought directly to the Department or the Commission and a formal complaint has never been submitted for our review and response. Instead, allegations and concerns have been detailed on the business website and communicated to the media. The primary target is conservation officers in the Panhandle Region. The Department takes such concerns seriously, even though they have not been expressed directly to us.

Before we go any further, I want the committee to know the Department and Director's commitment to agency ethics. We understand the importance of public confidence in our fish and wildlife professionals in communities of Idaho. The Department has numerous policies to guide the agency and its staff and a specific policy dealing with complaints about agency personnel, Department policy #P.27.00, Personnel Complaint Procedure. I have provided a copy of this policy to the Committee Secretary for your review.

We believe the basis for the website report arose when CI represented the former spouse of a Fish and Game conservation officer, stationed in the Panhandle Region, in a divorce proceeding to determine custody of their children. Pursuant to this civil matter, CI filed a public records request for e-mail generated and received on a department computer issued to the conservation officer. After reviewing the e-mails and subsequent to the divorce proceeding, CI further requested extensive e-mail, time records, and financial transactions related to the 2006 enforcement activity of several officers mentioned in the e-mails provided to CI as part of the divorce case.

The more recent series of records requests from CI were initiated in January 2009 and continued into March 2009. All requests were responded in compliance with Idaho Code 9-339.

Subsequently, media contact to the Department in March made us aware of the report on the CI website that publicized many of the records and raised allegations and concerns based on CI interpretations of the information. In March and early April, the Department was contacted twice by a Spokane TV station and also by a reporter from the St. Maries Gazette about the website report and media interviews by CI and we were asked to respond. The newspaper article was

printed in April and reprinted in the Spokesman Review. Response to the media was handled by Panhandle Regional Supervisor Chip Corsi, Deputy Director Virgil Moore, and Chief of Communications Bureau Mike Keckler.

Our response to the media about this issue focused on the following points about information noted in the CI report:

1.

Some instances were questioned involving officers taking their children with them into the field in 2006. These instances were known to Department supervisors and dealt with at that time as per Department policy #A18.01, Use of State Vehicles. A copy of this policy is provided to the Committee Secretary for your review.

Department guidelines allows volunteers, non-state employees, juveniles, employee family members, and others to travel with staff on duty and be part of work activities, in fact when appropriate, we encourage it. Guidance to all employees is “if it puts people at risk, creates an undue distraction or costs more” then the activity should not be allowed. High risk activities such as serving search warrants, night patrols, aerial census, working in severe weather, etc. are all undue risk activities not allowed. Activities such as ride-alongs, career day activities, mentored youth hunting and fishing activities, field tours, volunteer help, data recorder, etc., are considered acceptable activities that generally present no undue risk or distraction.

2.

A concern raised about use of a state vehicle for personal rock transport in 2008 was also dealt with by the supervisor as per our policy. We have specific policies dealing with use of vehicles. Department policies #A18.01 (noted earlier) and #P-29, Firewood Transportation and Collection Use of State-Owned Vehicles are provided to the Committee Secretary. I believe we have proper and adequate control systems in place, and have addressed the few instances where employee actions have been an issue.

3.

Concern was raised about the cost of development of an honor guard for our participation in activities honoring our slain officers or employees who die in the line of duty. Our view is that such concerns are misplaced and insensitive to the respect and honor we should show to deceased employees and their families.

4.

Operation Snowball was cited as an issue. This is an enforcement response to several years of citizens concerns and hunter complaints regarding party hunting and poaching in north Idaho. This successful 2006 operation netted 17 citations, and after plea bargains, resulted in 6 convictions and one license vendor revocation and elimination of the targeted illegal activity. The Department s management actions and costs were reasonable in light of the scope and duration of the misconduct being investigated, as well as the public concerns involved.

The Department would have been remiss in its duties had it not followed up on these complaints.

5.

Concerns about the Department staff and their family using Department-owned cabins inappropriately were also raised. These concerns are unfounded. Department policy# A 14.02, Use of Patrol Cabins and Other Department Facilities provides the guidelines and justifications for the use of Department facilities. The instances referenced were in compliance with the policy. This policy is provided to the Committee Secretary for your review.

Mr. Chairman, this concludes my briefing. I hope this report assists the Committee in their understanding of these issues.

**Vice Chairman Bair** inquired as to the cost of "Operation Snowball" as referenced in #4. **Mr. Moore** said the approximate cost was between \$20,000 and \$30,000. **Vice Chairman Bair** said he was expecting to hear that the cost was one or two million.

**Chairman Schroeder** asked if the public is permitted in ride-alongs? **Mr. Moore** replied that they are. Often times it is college students or graduates that are interested in a career with the Department. They pair them up with officers or biologists, whichever field they are interested in. They are not put in an undue risk situation.

**Senator Werk** stated that he has read the report that is being circulated and in some instances, the purpose of such a report is to do a "hatchet job". He feels it is very unprofessional the way the facts were presented.

An inquiry was made as to who paid for the report. **Mr. Moore** said he didn't know, but they had received a request from two Representatives that the fee be waived as it would be in the public interest, so the Department waived their fees. **Senator Werk** said that Representatives Hart and Harwood were specifically mentioned in the report.

**Chairman Schroeder** asked about cabin use and hunting by Fish and Game employees. **Mr. Moore** said that benefits derived from cabin use by employees are in maintenance and repair. As far as hunting by personnel on patrol, opening day and a limited type of hunt, is not permitted. After opening day, they are allowed to take time off, particularly if they are away from home and in a remote duty station. The Chairman asked for a written copy of that policy.

**ADJOURN:**

He thanked Mr. Moore for his briefing on these issues, then adjourned the meeting at 2:15 p.m.

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Senator Gary Schroeder  
Chairman

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Juanita Budell  
Secretary