

Subject to the approval of the Natural Resources Interim Committee

**MINUTES
NATURAL RESOURCES INTERIM COMMITTEE
September 27th and 28th, 2012
Capitol Building – East Wing – Room EW42
700 West Jefferson Street
Boise, Idaho**

Cochairman Senator Monty Pearce called the meeting to order at 9:00 a.m.

Members present were: Cochairman Representative Dell Raybould, Senators Steve Bair, Jeff Siddoway, Lee Heider and Michelle Stennett and Representatives Bert Stevenson, Scott Bedke, Mike Moyle and Donna Pence. Ad Hoc members present included Senators Bert Brackett and James Hammond and Representatives Ken Andrus, Paul Shepherd and Grant Burgoyne. Senators Dean Cameron, Shawn Keough and Elliot Werk, and Representative Frank Henderson, Ad Hoc members, were absent and excused. Staff members present were Katharine Gerrity, Ray Houston and Jackie Gunn. Others present included Director Gary Spackman, Brian Patton, Cynthia Bridge Clark, Matt Anders and Garrick Baxter, Idaho Department of Water Resources; Bob Schattin, Jeff Reavis, Gail McGarry, Matt Howard and Lesa Stark, Bureau of Reclamation; Director Curt Fransen and Barry Burnell, Department of Environmental Quality; Ken Harward, Association of Idaho Cities; Paul Steinman and Sue Sullivan, Idaho Transportation Department; John Eaton, Idaho Association of REALTORS®; Alex LaBeau, IACI; Douglas Jones, Idaho Watershed Solutions; Norm Semanko, Idaho Water Users Association; Elizabeth Criner, Simplot; Bryan Ricker, Office of Senator Crapo; Jack Lyman, Idaho Mining Association; Liz Paul, Idaho Rivers United; Courtney Washburn and Marie Kellner, Idaho Conservation League; Pat Barclay, Idaho Council on Industry and the Environment; Brenda Tominaga, Idaho Irrigation Pumpers Association; Jonathan Parker; Mark Pyburn; Spencer Swerin; Beau Lee; Mandy Uker; Sami Pinther; Justin Ruen, Association of Idaho Cities; Lynn Tominaga, Idaho Ground Water Appropriators; Cristina Brischler, Strata, Inc.; Peter Anderson, Trout Unlimited; Scott Rhead and Mark Snider, United Water; John Simpson and Shelly Davis, Barker Rosholt & Simpson; Mark Bransom, CH2M HILL; Richard Roats; Linda Jones, Holland and Hart; Stephen Goodson, Office of the Governor; Charles Honsinger, City of Meridian; Paul Woods, City of Boise; Jim Tucker, Rich Hahn and John Bowling, Idaho Power; Pat Sullivan, Sullivan Reberger Eiguren; Russell Westerberg; Melinda Smyser, Office of Senator Risch; Harriet Hensley, Office of the Attorney General; Randy MacMillan, Clear Springs Foods; Kent Lauer, Idaho Farm Bureau; Dan Davidson, Minidoka Irrigation District; Jeremy Pisca, Risch Pisca; Teresa Molitor, Great Feeder Canal Company; and Neil Colwell, Avista.

NOTE: All copies of presentations, reference materials, and handouts are on file at the Legislative Services Office and are also available online at the Legislative Services Office website, <http://www.legislature.idaho.gov>.

Cochairman Senator Monty Pearce called for a silent roll call. Cochairman **Representative Raybould** moved that the minutes of the committee's last meeting held on January 11, 2012 be approved. The motion was seconded by **Senator Bair** and passed unanimously.

The first speaker to address the committee was **Director Gary Spackman** of the Department of Water Resources. **Director Spackman** updated the committee on the Municipal Water Rights Act of 1996. The act allows municipal providers to obtain water permits to develop within a planning horizon. The

planning horizon must not be inconsistent with comprehensive land use plans of municipalities within the municipal provider's service area. **Director Spackman** stated that there was some litigation that focused on a central issue of who is a "municipal provider" where it was determined that a municipal provider must be a municipality, an entity with a franchise (PUC regulated) to provide water, or a corporation or association providing water through a system regulated by DEQ as a "public water supply."

To qualify as a "municipal provider," **Director Spackman** noted that the applicant must already be supplying water for municipal purposes. The municipality must be an entity that provides water for municipal purposes. The franchisee must be an entity that does supply water for municipal purposes to users within its service area. A corporation or association regulated as a public water supply must be an entity which supplies water for municipal purposes. The person seeking a water right for reasonably anticipated future needs, already must be a purveyor of municipal water.

Director Spackman stated that the reason the department believes it needs legislation on this issue, rather than rulemaking, is that there are significant and irreconcilable differences between the normal process for developing a water right and the time period for development when a water right is issued for reasonably anticipated future needs.

Director Spackman continued to explain that in a normal process for developing a water right, where someone is seeking to appropriate water, they file for a water right and when a permit is issued they are granted up to five years for development. He said that they can also obtain an extension of five years for a maximum of ten years for development. In comparison, the planning horizon for municipal providers who are seeking a water right for reasonably anticipated future needs may be twenty to fifty years or more.

Director Spackman told the committee that Section 42-219, Idaho Code, states that "(a) license may be issued for an amount *up to the full capacity of the system constructed or used* in accordance with the original permit..." (Emphasis added.) He said that this has given the department difficulty in determining how much to allocate given this standard. **The Director** said that he thinks there is uncertainty about whether the municipal provider holding one of these special water rights at the time of licensing could recognize additional development that has not already occurred given this language. The department will be trying to make the development period for these special water rights consistent with the planning horizon that they seek and obtain. **The Director** stated that there has been a small committee put together by the Governor's Office, the department and some water users to review this issue and there will be negotiation that occurs over the next few months.

Cochairman Raybould asked the Director about subdivisions in the country where homeowners drill their own domestic wells. He said that near Rexburg, they had one proposed subdivision that was going to be built on an area that is already served by an irrigation well and they were talking about converting that irrigation water permit over to a municipal permit and using that to supply water for the subdivision. He asked whether that type of situation would fall under the Municipal Water Act.

Cochairman Raybould also asked whether any such development that wanted to provide water to all of the subdivision would have to incorporate into a municipality before they applied for a license, or would the law also apply to an unincorporated subdivision. **Director Spackman** responded that the law defines "municipal use" and also defines who can be considered a municipal provider. He said that he assumes that they would fall under the category of a corporation or association providing water through a system regulated by DEQ as a public water supply. **The Director** stated that they could take that irrigation right

and have the nature of use changed to a municipal right. He added that at the time the subdivision is started, they may not be able to obtain a water right for reasonably anticipated future needs because the other requirement is that they are an existing supplier of water.

Cochairman Raybould followed up by asking the Director whether he sees anything in present statutes that would need to be changed to clarify the type of water use for subdivisions that are not an incorporated municipality. **Director Spackman** responded that he doesn't at the present time unless the legislature wants to expand this special treatment to bare ground subdivisions that don't have a home or a pipe built or placed in them. He said that he believes the reason the special opportunity for appropriating water over a longer period of time was given to existing entities was because they had a system in place, that there was some organized reasonable notion of expansion that would be associated with it.

Cochairman Pearce asked whether what they are proposing will avoid some of the problems California has experienced. **Director Spackman** responded that he knows some battles in California are related to municipal rights but he doesn't see that same sort of turmoil occurring here. However, he said there is concern and tension between municipalities as they look to expand and agricultural users who are trying to protect the water supplies that they have. He said that if we are forward looking, hopefully we can avoid problems seen in other states.

Senator Bair asked if the Director could define the problem in two to three sentences. **Director Spackman** responded that the real concern is that there is a fixed development period that the department has followed, for almost the duration of the existence of the department, for filing an application to appropriate water, developing within a development period not to exceed five years, and then seeking an extension, if necessary, for an additional five years. On the other hand, he stated, when the Municipal Water Rights Act was enacted it contemplated a longer development period of twenty or more years, but that process for filing proof of beneficial use for seeking an extension of time and ultimately for licensing was not changed significantly. They are inconsistent with each other and he said that they need to be consistent.

The next speaker to address the committee was **Mr. Matt Anders** with the Department of Water Resources. **Mr. Anders** told the committee that he works in the Underground Injection Control Program. **Mr. Anders** indicated that he would be giving the committee a brief report on the legislation regarding the program that will be proposed in the upcoming session.

Mr. Anders described how the program regulates all wells that are used to place fluids into the subsurface. The program began in 1971 as a state-run program, and in 1985 Idaho took primacy of the program to run the federal portion of the program. He said that there are approximately 16,000 active injection wells in Idaho. The four major uses are agricultural disposal runoff, street disposal runoff, aquifer recharge and heat exchange return flow.

Mr. Anders said that the proposed changes fall into two general categories – an update to Class V rules and the addition of rules to provide for Idaho's regulation of Class II injection wells. In terms of the Class V rules, the department is proposing to reduce regulation of heat exchange return flow wells, which they believe to be overregulated right now, and to add improved sinkholes as regulated injection wells. **Mr. Anders** noted that this aspect is somewhat unpopular in the agricultural community, but that Idaho has to add this aspect in order to obtain the ability to regulate Class II injection wells for oil and gas.

Mr. Anders told the committee that there are three types of activities for which Class II injection wells would be used. Those activities are the disposal of brines produced with oil and gas, reservoir pressure maintenance and the storage of liquid hydrocarbons. He added that in Idaho we may only see disposal wells and pressure maintenance wells. **Mr. Anders** noted that this is an EPA program and Idaho will have to have rules at least as stringent as the federal regulation. He said that the department took the federal regulations and adapted them to be Idaho specific. Until Idaho regulates these wells, anyone wishing to use such a well would have to get a permit from EPA.

Mr. Anders noted that negotiated rulemaking was conducted with five meetings taking place. Participants included stakeholders from oil and gas, water users, the Idaho Conservation League, various state agencies and the EPA. **Mr. Anders** added that 103 comments were received from four of the entities.

Mr. Anders told the committee that during the upcoming session, they will probably receive proposed changes to Sections 42-3902, 42-3905 and 42-3908, Idaho Code, as well as pending rules in IDAPA 37.03.03. The changes would involve definitions, fees and bonding. He said that the department hopes to submit a primacy revision package to the EPA in the summer of 2013, provided approval by the legislature during the 2013 legislative session.

Senator Stennett asked **Mr. Anders** about the meaning of “Idaho specific,” and how the EPA would work with Idaho that would be different than how these issues are handled now. **Mr. Anders** responded that the federal rules state that they can pass regulation on to a state but the state’s regulation must be at least as stringent as federal regulation. He went on to state that the department took the federal regulations as a base, took out what they thought they didn’t need and strengthened them in some places that they thought would be better for Idaho as a starting point. **Senator Stennett** asked if the rules will have to go back before the EPA to determine if they are as stringent as the federal regulations. **Mr. Anders** responded that they do, and added that they have been showing EPA as they move through the process so there will be no surprises.

Representative Stevenson asked whether recharge wells are considered Class II wells. **Mr. Anders** responded that a recharge well is considered a Class V well and Idaho has the ability to issue permits for those at the present time. He added that any recharge well that is 18 feet deep or more would not be affected by these rules. He said that the rules could apply if aquifer recharge is going to go through an improved sinkhole, which in Idaho is like a crack in a basalt that someone has went in and removed rock from, put casing in or used explosives in, a situation where in some way they have taken that crack and made it take in more water than it naturally did. He said that aquifer recharge in that type of situation would be regulated by the injection well program. He added that if there is a sinkhole that no one has touched, where the only thing that has been done is that something like a berm has been placed around it or we put a ditch up to the crack itself, that would not be regulated under the injection well program because it is not considered improved.

Representative Bedke asked at what point a sinkhole is considered improved. **Mr. Anders** responded that they have had a lot of questions like that. They have provided guidance within the department regarding this issue. He said that it comes down to situations where one goes into a sinkhole or crack and places casing in it, removes rock or uses explosives. He added that it would have to be something like that where one is physically working on the crack to make it take water or maintain taking water. At that point it is considered improved and will always be considered improved. **Representative Bedke**

asked for confirmation that berming, or a ditch leading up to the sinkhole, wouldn't be considered improved. **Mr. Anders** agreed.

Senator Bair asked about unimproved sinkholes that have been used for recharge that get silted in over the course of time. He asked whether one could make it at least as good as it once was by removing the silt without having it be considered an improved sinkhole. **Mr. Anders** said that this is the gray area of interpretation. He said that he thinks if you are just taking out some of the silt that went in, it probably would not be considered improved. However, if you get in and start making it bigger and better it will be considered improved. He said the department will need to work on more guidance for such situations.

Representative Burgoyne noted that **Mr. Anders** indicated one of the proposed statutory changes will be in regard to fees. He asked whether the proposed fee will cover costs or whether the state will be subsidizing applicants. **Mr. Anders** responded that currently, in regard to Class V injection wells, the permit fee is \$100. The department is proposing a \$2,500 fee for Class II injection wells, primarily because they involve a lot more documentation, more technical review and more time for the department. **Mr. Anders** stated that he believes the fee will cover the costs of getting the permit out. He said that the department could potentially end up subsidizing in cases where permits will be for the lifetime of the well. He said that if a well is not modified and no substantial changes are made, the permit will be good for the life of the well. However, every five years a mechanical integrity test has to be done on the well that the department will have to review. In those instances, you could have a period of thirty years go by and he doesn't think the \$2,500 fee would cover the entire life of the well.

With respect to bonding for Class II wells, **Representative Burgoyne** noted that bonding is primarily associated with the proper closure of wells. He asked whether there were any present provisions that protect the public from accidents with wells, structural integrity issues and invasion of other water resources. **Mr. Anders** responded, from a water quality standpoint, those types of issues would primarily be addressed through DEQ's rules.

Senator Pearce then referred back to an earlier comment that the state has probably over-regulated the heat exchange return flow wells. He asked **Mr. Anders** to elaborate. **Mr. Anders** responded that what happens right now is that when someone wants to put a heat pump in their house they have two options. He said that when you run water through a heat pump, you can either put it back in the ground or find someplace else to put it, such as on the ground or in an irrigation ditch. The department would like people to put it back in the ground. However, it is already expensive to dig a well and then, in addition, the department has a two-week comment period for permits for wells that slows down the process. **Mr. Anders** added that these are very low-risk wells. The department would like people to let them know they are putting in such a well so that the department can ask some questions about whether additives are being used, or something out of the ordinary is occurring. If nothing unusual is occurring, the department could just approve it.

Senator Pearce said that we haven't seen the geothermal industry really develop in Idaho in a big way like Utah and some other places. He asked whether there is also a delay problem in terms of these larger projects. **Mr. Anders** said that he doesn't believe they are slowing that development in any way. A developer has to come to the department and get a geothermal permit and an injection well permit for that type of project. He said that those are very large projects with long time frames for development, and the thirty-day comment period easily fits within the larger time frame.

Director Spackman returned to the podium for additional presentation. He noted that one of the subjects discussed a lot in the water community is managed recharge and the manner in which we should be approaching managed recharge to enhance our water supplies and help restore ground water levels, as well as discharges that result from ground water elevations, in the Eastern Snake Plain and other locations. **Director Spackman** showed the committee a slide of a well-known recharge site north of Shoshone. He said that this particular site is a unique one in that it can take between 300 cfs and 450 cfs of water at any given time and it just drops into the aquifer. The water is delivered through the Milner-Gooding system.

Director Spackman said that in 2009, there was 124,536 acre-feet of managed recharge in the Eastern Snake Plain, in 2010, 61,508 acre-feet of managed recharge and in 2012, 118,044 acre-feet of managed recharge. He said that if the numbers are averaged one can see that the Water Resource Board is trying to keep close to the 100,000 acre-feet amount that was identified in the Eastern Snake Plain (ESP) Comprehensive Aquifer Management Plan (CAMP).

Director Spackman showed the committee a bar graph representing the total annual volume of excess natural flow passing Milner since 1980. The amount of water fluctuates wildly depending on the type of water year we have. He said that there is always some water that passes Milner in every year depicted. **The Director** stated that some of the water is from wintertime releases that are being sent down the river as the result of flood control and some are just the result of a large snow pack. **The Director** said that the graph does not show quantities of water that have been delivered for managed recharge. He said that the questions being raised are whether the water going over Milner Dam is essentially unappropriated water and what should be done with it. He went on to say that the water often comes in a short period of time and in large quantities. He added that it is a valuable resource to the state. He asked how we can maximize use of this water and maximize its worth for an economic benefit for the people of the state of Idaho.

The Director continued by saying the other side of the equation is determining how to protect existing senior water right holders and ensure in the process that the reservoirs fill and we get the amount of water needed. **The Director** said that one of the things they have been talking about internally is how these large quantities of water might be utilized, such as managed recharge and additional storage and how that might affect senior water right holders. He said that this is a dynamic that needs a public discussion.

The Director said that over the past year or two there have been additional efforts by the Water Resource Board to divert water for managed recharge. There were some applications filed by the board back in the 1990s for additional water rights for managed recharge. **The Director** said that he reactivated the applications and there is a negotiation process occurring right now. He said that the applications were protested by a number of entities, both water users and other interested groups. He placed the process on hold to give the parties a chance to try to find a solution.

The Director told the committee that there are also some private entities and parties that have filed applications for managed recharge in the last year from the Snake River and the Big Wood River. There are people interested in diverting water out of these unappropriated quantities and they would like to do it privately and perhaps benefit economically from that appropriation and delivery of recharge water. He told the committee that he compliments those that have tried to move forward and enhance our water supply. He said, however, that in response to a recent petition for recharge credit, he reviewed the statutes and didn't feel like he had the authority to grant recharge credits that then could be

marketed for mitigation or other purposes. He denied the petition but suspects there will be an effort afoot to draft legislation and present to the legislature for recognition of these credits.

The Director stated that the question he asks when talking about this subject is what does the legislature and the state want to do to ensure that these remaining quantities of water are used in the best way possible. He added that he thinks it is important to move forward deliberately so that we don't make a mistake in that process. He said that there has been some discussion that perhaps the Idaho Water Resource Board should be the holder of these water rights to exercise an element of public interest in when the rights are diverted and used so that the board could have an eye on the protection of other water right holders. **The Director** said that the other notion out there is the idea of credits. He told the committee that in eastern Idaho from Pocatello to the headwaters there is real concern about the opportunity for economic development and the role that water plays in that development. He said that he has met with the leaders of several cities in that area about the possibilities of finding alternative ways of making water available. He said that one of the ideas is the promotion of activities that will enhance the ground water supplies. He went on to say that through that enhancement, there could be a banking system where people could make use of the enhancements that are in place prior to some economic development happening. A person, city or municipality or an industry that needs water could come in and access the enhancements more easily. He said that there is a dialogue going on right now about managed recharge and who should hold the rights for managed recharge. He reiterated that we must be very careful about what we allow and what occurs so that senior water rights are not injured through this process.

Representative Stevenson commented that he has been impressed over the last few years that the surface water users and the ground water users are really working together, trying to resolve the aquifer problems we have and he finds it very gratifying to see these entities work together.

Director Spackman then addressed the water delivery calls. **Director Spackman** said that he agreed with **Representative Stevenson's** observation about the recent spirit of cooperation and the congenial relationship that is going on right now.

The Director said that there has been a lot of activity related to the calls by the spring users and that property transactions have been executed by the ground water users. He said that the ground water users have purchased a major holding of one of the largest aquaculture producers in the Thousand Springs area and there are negotiations ongoing as to how those facilities will be utilized to both address the obligations of the ground water users to the senior surface right holders and to determine how the property will be used.

Director Spackman told the committee that there is one existing active delivery call in the Thousand Springs area, which is the delivery call that was filed by Rangen, and there is a contested case that is on schedule to be heard in February. He said that one of the subjects for the contested hearing is a rewrite of ground water model version 2.0 that has just been rolled out during the middle of the summer. It is a brand new ground water model. He said that it will probably be the central focus of the contested case hearing and people agree that it is a much better model. He added that the outcomes from the model may be different than the outcomes from the previous model. He noted that one of the concerns they always have is how do they employ the best available science and by doing it, how do they do so without major disruption to both sides. **The Director** told the committee that he is obligated to continue to dynamically look at additional data and improve their ability to predict what is happening. **The Director** also noted, as the Snake River Basin Adjudication (SRBA) is winding down, that 155,000 claims

have been considered by the court with only about 500 remaining in the SRBA, of those 500, about 250 are contested and the remainder are in the process of being decreed. He said that there is not another state in the western United States that has accomplished what Idaho has in this regard. As a result of the rights being decreed there is an expectation to create water districts and to conjunctively manage water. That expectation is not isolated in the ESP.

Director Spackman said that he has been asked to work on a sustainability policy and work with the Water Resource Board relating to the sustainability of water resources in Idaho for economic development in the future. The board will be looking at some of the basins, including those that have had a CAMP process and those that have not.

Director Spackman stated that in 2005 the legislature enacted Section 42-620, Idaho Code, which authorized the department to add assessments to surface and ground water district budgets for costs of monitoring the Eastern Snake Plain Aquifer (ESPA), updating ground water models, updating surface water models and updating water right accounting. The total costs were not to exceed \$1.2 million. **The Director** said he was to request half of the sum in the annual budget request. He said that the department started down that process but the statute was repealed in 2008.

The Director noted that in 2008 they started comprehensive aquifer management planning in the state. There was \$20 million placed in the Aquifer Planning & Management Fund for technical studies, facilitation, measurement, monitoring and plan development. **Director Spackman** noted that in 2009, \$12 million was removed from the account and placed in the General Fund. The effort was focused on the first three tiers of the original plan, the ESPA, the Rathdrum Prairie and the Treasure Valley aquifers.

Director Spackman told the committee that he has also been asked by the Office of the Governor to look at the required qualifications for the Director of the Department of Water Resources. **The Director** believes this issue is worthy of a public dialogue. He went on to say that he has consented to try to promote a discussion, but is not committed to any outcome. At some point in time, he said that he may want someone from each natural resources committee to look at the qualifications that are defined statutorily.

In terms of conjunctive management in the Big Wood, **Director Spackman** stated that the Big Wood was one of the areas intended to be in line right after the first tier of aquifers, in that basins were assigned by priority. He said that basin was pulled off the list, but the department knew it needed to do something in that basin. He added that he has been put on notice for the past three or four years that once the adjudication is complete in the Big Wood, and they have an order from the court for interim administration of the water rights, if there is a water short year the department will receive a petition for a delivery call. The department believes it needs to be prepared. They are in the initial stages of trying to develop a ground water model for the Big Wood Basin. They don't know how far they will get in that process before money runs out.

Representative Bedke asked whether the incorporation of the new model will affect any existing settlements, or whether most of the settlements are just in the nature of an annual calculation. **Director Spackman** responded that in terms of agreements between the parties, his impression is that those agreements would be binding on the parties. He went on to say that if there is an order that was issued by the Director based on past information, and there is better information available now, the courts have said, and he agrees, that the Director has the responsibility to use the best information in determining the rights and obligations of the parties. He said he doesn't want to have a changing

standard every year and that there has to be an element of reasonability built in. **Representative Bedke** asked whether the new model will change the trim lines. **Director Spackman** responded that there were some trim lines in the original decisions and it will be a subject of controversy in the Rangen call. He said that part of the reason for the new model is that the model can predict, in terms of certain target cells, what the impact is of activities on those specific springs or cells. The previous model only predicted as to reaches. He said that the ability of the model to predict outcomes is significantly improved and that may go to the issue of trim lines. In response to a follow-up question by **Representative Bedke**, the **Director** responded that the boundaries for administration are defined by rule so they are established. He said that those boundaries will not change, at least in the near future, as they are defined by rule but as we understand the hydrolic relationships better, there may be some changes that occur. However, he noted, it would have to be through a rulemaking process.

Senator Siddoway asked about conjunctive management in the Big Wood. **The Director** responded they have two to three very good ground water modelers on staff and have been talking with the USGS about assisting them in the Big Wood because they have done some background work that would be very beneficial. He added that they also have an enhanced data gathering network throughout the ESPA. They are monitoring wells and springs that involve staff. He said they do have a modeling committee where interest groups have added value to the model.

Senator Brackett asked what causes aquifers to rise or fall on the priority list. **Director Spackman** said that he doesn't know what went into the original prioritization, but those in the second tier were the Big Wood, Mountain Home and the Palouse. He stated that some controversy in an area might change the priority. **Senator Brackett** asked, in addition to funding, what it would take to start working on some of the other aquifers. **Director Spackman** said they are working on some of them already. They have staff in the I-84 corridor between Boise and Mountain Home. There are a number of applications for proposed use there. He said that they are looking at the availability of water supply in a contested case setting with the department providing data and they are trying to accomplish what they can.

The next speaker to address the committee was **Mr. Brian Patton**, Chief of the Planning Division, Department of Water Resources. **Mr. Patton** initially addressed the status of the Planning and Management Fund. He said that a number of major efforts are funded out of this fund, including the enhanced monitoring on the Eastern Snake Plain, the ongoing real time monitoring of spring flows in the Thousand Springs reach and other areas of the plain, enhanced ground water level monitoring and surface water return flows.

Mr. Patton next addressed the ESPAM V2.0 that was paid for out of the fund. He said that other work that is paid for out of the fund include the Rathdrum Prairie studies, the Treasure Valley CAMP studies, including future water needs, the Treasure Valley aquifer investigations and ground water model, the Boise River storage feasibility study and the Wood River Basin ground water model. The projected cost of the Big Wood River Basin ground water model is projected to be around \$1 million. He said that the department has been talking with the USGS and there are various ways to approach it, such as heavy reliance on their own in-house staff and then assistance and peer review by the USGS, to the other extreme of contracting with the USGS to perform the work with guidance from the department. He said that they are leaning more to the former approach but that will still require a cash outlay in terms of retaining the USGS as well as paying in-house staff. He stated that there is about \$2.5 million of the \$8 million left in the fund with some of that dedicated to ongoing activities like finishing the Eastern Snake Plain monitoring network, completing the Treasure Valley ground water model and trying to fit in the Big Wood Basin ground water model. He said they expect the funds to last about two to two and a half

years. He said that he believes they can finish the Treasure Valley and Big Wood ground water models but their concern is that they have the Eastern Snake Plain monitoring network that they spent a lot of time and effort to put in place that were left without a way to maintain and upkeep that system. He said that the department wanted to bring that to the committee's attention.

Representative Bedke asked whether that was going to make it into the Governor's recommendation. **Mr. Patton** responded that they have not included that in their budget request for this year given the fact there is still \$2.5 million left in the fund at this time and it will be a few years before it is all expended.

Senator Siddoway asked how many acres are at risk in the Big Wood if a call is made. **Mr. Patton** responded that is a little difficult to say right now because the department is just now instituting the ground water measurement district in that basin. He said that the bigger risk in that part of the basin, upstream from Magic Reservoir, may be the urban development in the upper valley. He noted that the irrigation company that owns Magic Reservoir is looking upstream saying that those wells are all junior to Magic Reservoir which has a 1905, plus or minus, priority date. Virtually all the development in the upper part of the basin is junior to Magic Reservoir and that is what is driving the call. He said that he is not sure they can state it in terms of acres, but rather other types of impacts.

The next topic addressed was the current status of the Treasure Valley Comprehensive Aquifer Management Plan. **Mr. Patton** said they have been looking at how we are going to meet future needs going out over the next fifty years. The board convened a large advisory committee that met a number of times over the past two years and put together a plan based on the best available information. **Mr. Patton** said that the board accepted the plan and it is currently out for public comment. He said that the key challenges documented in the plan include the need for new water supplies that will increase by 80,000 to 170,000 acre-feet over the next fifty years, depending on where the development occurs. He stated that the aquifer and surface water system have complex interconnections, future needs cannot be met solely with ground water, wet years are getting wetter and dry years are getting drier and the Treasure Valley water storage capacity is not large enough to hold increased wet year flows to meet needs in dry years.

Mr. Patton stated that key actions in the current draft plan include the promotion of new storage and other water supply solutions. He said that the Corps is incorporating this as a building block to the Boise River Feasibility Study. He noted that we want to promote water conservation measures where they would not impact incidental recharge to the aquifer, maintain irrigation infrastructure in place as land use changes occur to supply outdoor needs, and develop technical tools for management and administrative needs including the ground water model. **Mr. Patton** said that board approval is expected this fall and that it will be submitted to the legislature for approval.

Senator Heider asked about the relationship between ground water and surface water in the Treasure Valley. **Mr. Patton** responded that, in general, agriculture is reliant on surface water at roughly 80/20 percent and that municipal water use is exactly the opposite.

Senator Hammond stated that in terms of maintaining irrigation infrastructure in place, he would caution that as an area urbanizes and you try to maintain that infrastructure, then you get competing and overlapping water purveyors within the same area, which can result in inefficient governance. He added that sometimes it makes sense for a municipality to take over the infrastructure and manage it rather than having two separate entities involved. **Mr. Patton** responded that he appreciates the

comments and that is something that the department has put a lot of thought into. He added that what they are seeing in the Treasure Valley is that while the municipalities supply their patrons with ground water and grow into areas that are supplied by surface water through existing irrigation districts, usually what happens is that same area remains supplied by the irrigation districts and instead of growing crops there, they are watering lawns, gardens, school yards, etc. The municipality provides for the indoor potable water use. He stated that this seems to be an arrangement that is working well for the most part. **Senator Hammond** clarified that he was speaking to a situation where use is based on ground water alone. **Mr. Patton** responded that is not something they are seeing a lot of in the Treasure Valley.

Representative Moyle asked why the department is not forcing the use of more surface water. He said that Micron and United Water make use of it. He said that the ground water tables are starting to move down. He asked what we need to do to force municipalities to use surface water. **Mr. Patton** responded that it has been the topic of a lot of ongoing discussion with the municipalities. He added that there is unappropriated water in the Boise River but it comes in the form of high flood flows. He said that in order to make use of that water it has to be captured somehow and stored so that we can use it over time as we need it. New storage is fairly expensive and is a long-term undertaking. He said that they have also discussed making the rental pool that already exists more accessible to municipalities. He stated that discussion has gotten a lot of traction.

Representative Moyle stated that in the Treasure Valley, the majority of the aquifer is artificially created by flood irrigation. When more houses are added, the water right stays with the ground but the users aren't using as much water as when the land was agricultural. He asked whether the department has looked at what it would take to allow the municipalities to utilize that for culinary water instead of letting it go down the ditch. **Mr. Patton** responded that the question of whether you use more or less after urbanization is an interesting one. What some experts have found is that the consumptive use portion goes down but the delivery requirements do not because of the need to deliver the water down the canal. He added that the timing of when the urban irrigators use that water is different than when the land was agricultural. **Representative Moyle** added that he is concerned that once we take away flood irrigation in the valley we will be in trouble. He said that he believes we will eventually have to force the municipalities to go to surface water.

Cochairman Raybould asked whether there any plans for artificial recharge in the Treasure Valley. He added that you need a place to store the excess water. **Mr. Patton** responded they did consider it as part of the planning. He said that the Idaho Water Resources Research Institute (IWRRI) from the University of Idaho determined there is a potential to store an additional 200,000 acre-feet in the aquifer. It is somewhat problematic because the areas for possible additional storage, such as under Micron and the I-84 corridor, would require construction of some type of conveyance. He said that they are moving forward on a parallel track looking at a new surface water storage project.

Representative Moyle asked whether the department has looked at north Ada County where wells are being redrilled. He said that they have forced developers to put ponds in and have found that the ponds drain very fast. **Mr. Patton** responded that is one of the areas IWRRI identified as a potential for the ability to store water and do recharge.

The next subject addressed by **Mr. Patton** was the State Water Plan. He said that the board is constitutionally required to develop, maintain and update the State Water Plan subject to legislative approval. The current version is from 1996. Over the last several years the Water Resource Board has been working to update the State Water Plan and has prepared a 2012 revision. The plan has seven

policy sections including optimum use, conservation, management of river basins, the Snake River Basin, the Bear River Basin, the Panhandle Basins and the Salmon-Clearwater Basin. The key changes that are in the new plan include a new format with implementation strategies and milestones, which are new to the State Water Plan, enhanced basin sections that are more reflective of basin characteristics and regional issues and policies, and more emphasis on strategies to meet Idaho's future water needs and avoid water conflicts. **Mr. Patton** told the committee that the Snake River section is much more enhanced. He said they expect the Water Resource Board to approve the plan this fall and it will be submitted to the legislature this coming session.

Mr. Patton noted that the proposed revision eliminates one of the policy sections, that being what is currently called the "protection section," spreading the policies contained therein into other sections.

The next subject addressed by **Mr. Patton** was an update relating to the various water storage investigations. He said that there are four storage studies being conducted. He added that in 2008, the legislature directed the Water Resource Board to investigate storage studies across the state.

Mr. Patton stated that the study involving the Minidoka Dam is now complete. The study concluded that the dam could be raised to gain an additional 67,000 acre-feet for about \$215 million. The spillway rebuild doesn't prohibit a raise in the future. The Boise River Feasibility Study is also being conducted. The state is partnering with the Corps of Engineers which has an interest in reducing flood risk on the Boise River. The study is focusing on raising existing Arrowrock Dam to gain an additional 317,000 acre-feet to provide for flood control and future water needs. In the Henry's Fork study, the state is partnering with the Bureau of Reclamation. He added that the Weiser Galloway study has shown a potential for storage of 900,000 acre-feet in a reservoir on the Weiser River. They are doing some core drilling now to verify the adequacy of the site to support a dam and reservoir. **Mr. Patton** extended an offer of a tour of the site for committee members if they so desire. They are looking at whether the flow augmentation water could be supplied by this storage, which would free up storage all throughout the system.

Senator Siddoway, asked if Arrowrock was raised 75 feet, would the plan be to drill into the old dam and build up or build from the bottom up downstream. **Mr. Patton** responded that both options were reviewed. **Mr. Patton** noted that they have determined that it would be better to raise the existing structure due to operational constraints dealing with the Boise River.

Mr. Patton next addressed the committee regarding the Eastern Snake Plain Aquifer CAMP and management efforts. **Mr. Patton** presented a slide depicting the Thousand Springs discharge and Eastern Snake Plain Aquifer cumulative storage change. The discharge at Thousand Springs is directly related to the volume of water in the aquifer. He said that the problem is in the declining aquifer storage. From 1912 to 1952 there was an increase of 17,000,000 acre-feet and from 1952 to 2008 there was a 12,000,000 acre-feet decline. He said that there is an average annual 1952-2008 loss of aquifer storage of 214,000 acre-feet.

Mr. Patton told the committee that this situation led to the ESPA CAMP. The four strategies of the CAMP are managed recharge, conversions from ground water to surface water, demand reduction and weather modification in the form of cloud seeding.

In regard to managed recharge, **Mr. Patton** said that the goal in phase one is 100,000 acre-feet per year of managed recharge. **Mr. Patton** said that since the plan was approved, from 2009-2011 there has been

an average of 101,363 acre-feet per year. In 2012, to date, there has been 85,083 acre-feet of managed recharge.

In terms of conversions, **Mr. Patton** said that they have installed conversions on almost 12,000 acres, including one with 5,400 acres in the Hazelton Butte Project, offsetting ground water use by 15,000 acre-feet per year. In some dry years they may still have to use ground water.

In regard to demand reduction, **Mr. Patton** told the committee that they have reduced demand on 34,000 acre-feet through the Conservation Reserve Enhancement Program. There has been additional demand reduction through structural improvements in the Thousand Springs area and hatchery buy-outs by ground water users.

In regard to weather modification, **Mr. Patton** noted that Idaho Power has installed fifteen remote operated ground generator stations since 2009 to supplement an existing county-led effort. Idaho Power estimates the program will produce about 170,000 acre-feet per year.

Cochairman Raybould commented that in 1902 the springs near Hagerman were discharging about 4,200 cfs. By 1952 they were discharging about 6,500 cfs. In 2008 they were down to about 5,400 cfs, about 1,100 cfs less. This computes into about 800,000 acre-feet per year that the springs themselves are depleting the aquifer. He asked whether there was anything being done by the spring users to facilitate recharge. **Mr. Patton** responded that the springs are still flowing at above what they consider the natural base level. The spring users have participated in recharge through the Lower Snake Aquifer Recharge District that was created in 1980. He stated that the district has never had enough tax base to undertake recharge on its own. During the past year they have started making assessments again. The department is working with them to determine the best place to put those dollars within the recharge program. They are paying for the water quality monitoring at the Shoshone site. He added that the department is also moving forward with the milepost 31 site for recharge with the spring users.

Senator Heider asked whether Idaho Power has any data showing that the cloud seeding is of benefit. **Mr. Patton** responded that they do. He explained a number of methods of scientific analyses that Idaho Power has been using to make that determination.

Senator Stennett commented on the degree of accuracy when you cloud seed, in terms of the benefit going where you want it to and whether you create a lack of moisture in surrounding areas. **Mr. Patton** responded that they considered this question and they determined that it would not create a lack of moisture elsewhere.

Cochairman Pearce asked for additional information on the Hazelton Butte Project. **Mr. Patton** responded that this was a prime area for a conversion project. He said they were able to use federal dollars through the Natural Resources Conservation Service. He said that **Senator Crapo** was able to have it designated as a priority project and it will reduce pumping in that area by a substantial amount.

Mr. Patton next addressed the Henry's Fork study in more detail. In that study, the department is partnering with the Bureau of Reclamation.

Mr. Patton stated that in 2008, HJM 8 directed the Water Resource Board to investigate and pursue new reservoir projects statewide including Teton replacement and that SB 1511 appropriated \$400,000 to the Water Resource Board to study Teton replacement. There was a cost-share agreement entered

into with the Bureau where the Bureau's funds came through its basin study program. That program requires that, even in looking at storage, some other things also have to be evaluated in order to get those dollars. The program also requires an open public process. The Water Resource Board agreed to this approach because it had just completed the ESPA CAMP where other alternatives were evaluated and the board felt that CAMP information would be incorporated into the basin study to meet those requirements.

Mr. Patton told the committee that the list of alternatives was reduced to seven storage alternatives and three non-storage alternatives that were carried into Phase II of the study.

Mr. Patton said that there are numerous hurdles to rebuilding Teton Dam. There are several options emerging as alternatives to rebuilding, including raising Ashton Dam by 20,000 acre-feet, raising Island Park Dam by 8,000 acre-feet and the potential for off-stream storage at Lane Lake, of 68,000 acre-feet.

Mr. Patton addressed the committee in regard to the funding where \$400,000 came from federal funds and \$400,000 from state funds. A total of \$339,401 of federal funds have been expended to date, with \$15,000 of federal funds remaining due for Phase I tasks, and \$154,972 of state funds expended, with \$15,000 of state funds remaining due for Phase I tasks. He said that there is \$45,599 in federal funds remaining and \$230,028 in state funds remaining per the budget.

Mr. Patton concluded his remarks by noting that it has been challenging to manage this study because the state's interests and Reclamation's interests are not completely aligned. He said that the public process has contributed to the challenging aspects of this study. **Mr. Patton** told the committee that they are getting good analysis of storage options in the Henrys Fork and Teton Rivers and that some storage options, including an Island Park raise and an Ashton Dam raise appear to be cost effective and may be easier to accomplish than rebuilding Teton Dam.

Representative Andrus asked about the people that are against rebuilding Teton Dam and whether they are afraid of another breach. **Mr. Patton** responded those thoughts play into some of it but there are also environmental concerns on Teton River that were either not present or not recognized at the time the original dam was constructed. He said, for example, Cutthroat Trout that inhabit the river have been considered for listing. He added that there are also recreational aspects. He added that the Teton River has also been identified as a candidate for federal wild and scenic listing, although it has not been listed at this time.

The next speaker to appear before the committee was **Mr. Bob Schattin**, Activity Manager with the Bureau of Reclamation. **Mr. Schattin** reiterated that the Bureau's funding mechanism for the study has been through the WaterSmart Basin Study. The Bureau and the state entered into a MOA in March of 2011. **Mr. Schattin** told the committee that they are looking at completing the study in approximately October of 2013.

Mr. Schattin stated that the study framework includes water supply, water management and sustaining environmental quality. These are some of the requirements of a basin study program. Another requirement is to work with local stakeholder groups and he said they are doing so and working with the Henry's Fork Watershed Council.

Mr. Schattin noted that one of the first things they are required to do is a needs assessment. He said that they have tended to focus on three major needs, one being the ESPA CAMP with the 600,000 acre-

feet annually, in basin agricultural needs such as the Egin Bench, Lower Watershed, North Fremont and Teton Valley, and environmental and fisheries.

Mr. Schattin told the committee that they began the process by brainstorming ideas that were then narrowed down to about seventeen reconnaissance alternatives that can be grouped into existing and new surface storage, managed ground water recharge, agricultural conservation, municipal and industrial conservation and market-based alternatives.

Mr. Schattin stated that there have been several previous studies on Teton Dam, one in 1991 and one in 1995. He indicated that they compared the Teton Dam alternative with other storage alternatives such as new surface storage, including: Lane Lake Dam, Spring Creek Dam, Moody Creek Dam, Upper Badger Creek Dam and Moose Creek Dam. He told the committee that the locations of dam raise alternatives including dam reconstruction of Ashton Dam, a 1-foot bladder raise of Island Park Dam and an 8-foot embankment raise of Island Park Dam, which would result in flooding some homes so additional study is needed.

Mr. Schattin indicated that further storage study needs are to reconfigure Lane Lake looking at designs and costs, optimize Island Park raise, hydrologic impacts, environmental impacts and water availability including flows past Milner and frequency analysis.

Mr. Schattin next addressed managed recharge alternatives relating to West Egin Lakes, expanding the recharge that already occurs there, and Teton Island. He said that further managed recharge study needs include the pursuit of the current recharge program by the state and the incorporation of state findings into the basin study.

In terms of conservation alternatives, **Mr. Schattin** noted that they have looked at canal automation, demand reduction, lining and piping of canals, recharge using existing canals and conversion from flood to sprinkler, which was not done. He noted that further conservation alternative study needs include automated canals, irrigation pipelines, hydrologic impacts and environmental impacts.

Mr. Schattin stated that they also looked at municipal and industrial conservation alternatives. He added that cities vary in terms of water availability and use and individual cities would pursue conservation on their own.

In terms of market-based alternatives, **Mr. Schattin** stated that in Water District 1, one of the most active in Idaho, 350,000 acre-feet of water was leased in 2012 for flow augmentation, irrigation, mitigation, etc. He added that further water market study needs include the investigation of the use of water markets in conjunction with alternatives evaluated, willingness to pay and demand reduction.

Cochairman Raybould said that he has been to numerous meetings in regard to the study and has listened to the adverse comments made by the environmental community, many having been national organizations. He went on to say that there were many environmental studies done prior to the construction of the original Teton Dam. **Cochairman Raybould** asked, in terms of the costs of these studies, how has that been influenced by the comments and objections of the environmental groups. He added that some irrigators have not returned to meetings after being disgusted by the direction the study has been going, simply because of the environmental community compounding the requirements of the Bureau to solve problems that were never problems before. He asked whether this has become overly prejudiced by the environmentalists that are demanding such stringent requirements. **Mr.**

Schattin responded that he believes the Bureau is most fundamentally influenced by the requirements of the basin study that requires a collaborative approach looking at both storage and non-storage. He said that the collaborative process with this type of involvement would affect costs to a certain extent. He added this has not affected their review of storage alternatives and he thinks that the broad range of alternatives has helped them.

Cochairman Raybould then referred to the 2008 appropriation that was made to find available water sources for recharging the ESPA. He said that this was about coming up with 100,000 to 150,000 acre-feet out of the Teton in order to use that specifically for recharging the ESPA. In terms of proposed alternatives, he said that lining canals is in direct opposition to recharge of the aquifer. He stated that he has lived in that area his entire life and he knows that most of the canals lose 25 to 35 percent of the water diverted from the Snake River. He added that if we start lining the canals, we defeat the purpose of trying to find extra water for recharge. He asked what has happened to the process that has been caused due to objections by the environmental community. **Mr. Schattin** responded that he agreed with the statement regarding lining of the canals for the majority of canals in the area. He said that there is one location, that being the North Fremont, that the lining recommendation applies to.

Cochairman Pearce adjourned the meeting at 12:20 p.m. and told the committee to convene following lunch for a tour of existing natural gas wells and seismic exploration operations underway near Payette, Idaho, as well as a tour of Idaho Power's Langley Gulch Power Plant.

The committee reconvened on Friday, September 28, at 9:00 a.m. **Cochairman Raybould** called the meeting to order.

Director Curt Fransen, Department of Environmental Quality and **Mr. Barry Burnell**, Water Quality Division Administrator, Department of Environmental Quality, were the first presenters of the day, testifying in regard to the regulation of wastewater discharges to surface water in Idaho. **Director Fransen** introduced **Mr. Burnell** to the committee. He stated that Idaho is one of just four states that is not authorized by EPA to implement the NPDES permit program under the Clean Water Act. In Idaho, the program is operated out of Seattle under Region 10 of the EPA.

Director Fransen stated that the benefits and costs of obtaining primacy have been under discussion by the legislature, prior administrations and stakeholders for over a decade. He stated that there is probably consensus among most in the room that primacy to the state can provide benefits to the permittees, to the public and to water quality. He said that DEQ, rather than EPA, would be interpreting and applying Idaho water quality standards in issuing permits. DEQ could coordinate permit issuance with other programs. He noted that DEQ would have the opportunity to work with dischargers by providing variances, extended compliance periods, training opportunities and other cost effective or innovative approaches to protecting water quality. He said that DEQ could focus on obtaining compliance through collaboration, assistance and training and by being present, rather than through what some perceive as draconian enforcement mechanisms.

Director Fransen continued by telling the committee about some cautions he believes are associated with primacy. He said that the cost of the program is currently borne by EPA which would have to shift to the state or to permittees. He added that despite additional flexibility and benefits, NPDES permits issued by DEQ will still continue to present challenges to permittees. The permits must still ensure that compliance with water quality standards and criteria are met in Idaho. He said that EPA would retain an oversight role and will have authority to take enforcement actions, review and reject permits and

impose minimum federal requirements on Idaho's program. He added that if the state program is not fully funded, or is not adequately implemented, EPA oversight could significantly limit the benefits to Idaho and its permittees of the state having primacy. He said that he believes we need to run a robust program or none at all. Finally, he stated that we need to be clear that obtaining primacy and scaling up the program is probably a five to eight year process. He said that we would need to obtain start-up funding, develop and promulgate rules, negotiate an MOA with EPA, obtain legislative approval of both the rules and the MOA and then develop the staffing capability.

Mr. Barry Burnell continued the presentation for the committee. He began with an NPDES primacy overview. NPDES stands for the National Pollutant Discharge Elimination System, which regulates discharges to surface water from municipalities, industry, aquaculture, stormwater (general and specific permits) and confined animal feeding operations (CAFOs). **Mr. Burnell** told the committee that we are only one of four states without primacy, the others being Massachusetts, New Hampshire and New Mexico. Alaska is in the process of completing primacy.

Mr. Burnell continued by explaining the components of primacy from the Clean Water Act (CWA). He stated that components include:

- To issue permits which comply with the CWA that are for fixed terms not exceeding five years; can be terminated or modified for cause; control the disposal of pollutants into wells;
- Inspect, monitor, enter and require reports;
- Public notice of each application for a permit and to provide an opportunity for public hearing;
- Notify EPA of each application;
- To ensure that any state whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting state (and EPA administrator) with respect to any permit applicant and, if any part of such written recommendations are not accepted by the permitting state, that the permitting state will notify such affected state (and the EPA administrator) in writing of its reasons for so doing;
- To ensure that no permit will be issued if it will interfere with Coast Guard operations, anchorage and navigation of any of the navigable waters;
- Enforcement – civil and criminal penalties;
- Permit introducing pollutants subject to pretreatment standards under Section 307(b) of the CWA;
- To ensure that any industrial user of any publicly owned treatment works will comply with user charge guidelines, toxic and pretreatment effluent standards and inspection, monitoring, entry and public records requirements.

Mr. Burnell stated that the department has prepared three decision analysis reports under the direction of the legislature, one in 2001, one in 2002 and one in 2005.

Mr. Burnell told the committee that there are legislative check points. He said that in 2005, HB 176 directed the department to evaluate primacy. There was also stringency direction in that rules may not be more stringent than the CWA and the program may not be broader than that of the EPA. He stated that things that are yet to be prepared would be approval of a pending rule or several rules, one being a

fee-based approach. He said that there would also need to be program approval by the EPA in an MOA, which would have to be approved by the legislature.

Mr. Burnell then addressed the legislation in more detail. Referring to Section 39-175a, Idaho Code, he stated that the legislative findings and purpose include the following:

- Navigable waters are a valuable natural resource;
- It is in the public interest to regulate the discharge of pollutants into navigable waters;
- States can develop and implement an NPDES program;
- The CWA establishes complex and detailed provisions for regulating discharges;
- Flexible permits consistent with the CWA and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems;
- State program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions;
- Decision to accept delegation from the EPA to operate an NPDES program has significant public policy implications that should be made by the legislature.

Mr. Burnell added that the stated legislative intent is to establish requirements that must be satisfied prior to legislative approval of an NPDES permitting program that incorporates flexible permitting procedures and rules to be promulgated by the board.

Mr. Burnell moved on to discuss Section 39-175B, Idaho Code. That section provides, in part, that the legislature cannot conveniently or advantageously set forth in the chapter all the requirements of all of the regulations that have been or will be established under the CWA. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. He stated that the statute also provides that the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the CWA and regulations adopted pursuant thereto. In addition, the department will not require NPDES permits for activities and sources not required to have permits by the EPA.

In conclusion of the initial part of his presentation, **Mr. Burnell** addressed Section 39-175C, Idaho Code. That statute provides the process for approval of a program. The process includes the following:

- The department is authorized to explore NPDES primacy and prepare a report to the legislature. **Mr. Burnell** noted that this portion has been completed;
- The board is authorized to proceed with negotiated rulemaking. **Mr. Burnell** said that they look to funding as a trigger to move this forward;
- Any MOA executed by the Director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute;
- Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a MOA;
- Water rights must be protected;
- Nothing in the statutes is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the CWA.

Mr. Burnell moved on to discuss the benefits of NPDES primacy. **Mr. Burnell** stated that if Idaho had primacy, DEQ would be writing and issuing permits, conducting annual inspections, managing the required date, maintaining compliance and enforcement and administering the program. He continued by listing more specific benefits such as:

- Innovative cost effective solutions to water quality issues such as temperature, nutrients and metals;
- Idaho would be interpreting water quality standards;
- Greater coordination with the REUSE program, total maximum daily load program and the clean water state revolving fund loan program;
- Streamlined Endangered Species Act process;
- Opportunity for variances;
- Opportunity to write site specific criteria or water quality based effluent limits;
- Directed research for program changes or water quality standard development;
- Enforcement. Right now, EPA enforcement penalties are \$27,500/violation/day and administrative penalties are \$10,000/day;
- DEQ focus on compliance before enforcement. We would still have to have the same penalty matrix. However, DEQ could focus on compliance before enforcement.

Mr. Burnell next addressed the schedule if DEQ were to seek primacy. He said that the funding strategy is critical. DEQ has lost staff over the last number of years and staff that worked on primacy in the early 2000s are no longer with DEQ. They would need staff to accomplish primacy.

Mr. Burnell continued by stating that in order to obtain primacy, an application must contain the following five components:

- State legal authority sufficient for state permits to comply with federal rules;
- Legal authority to inspect, monitor, enter and require reports from point sources;
- Public notice of permits and opportunity for a public hearing;
- Notice to EPA of permits;
- Adequate resources to run the program.

Mr. Burnell continued by telling the committee about Alaska's application components and the process Alaska went through in gaining primacy. He said that they decided to move forward in October of 2007. In November of 2008 EPA approved the application. Alaska had phases in which it implemented the program over a five-year period of time.

Mr. Burnell then reminded the committee that even if a state gains primacy, EPA retains oversight over the program. He said that EPA may conduct periodic program reviews, has the discretion to review any permit and has authority to object to permits that are not protective. He went on to note that the EPA retains enforcement authority over all dischargers, NPDES permittees or not, and that the MOA with the EPA would outline guidelines for EPA oversight of the state program.

Mr. Burnell reiterated that DEQ would need to develop a funding strategy. Funding estimates in 2002 were for 21 FTEs at a cost of about \$1.9 million. In 2005, after reevaluating the number of permits and extent of the NPDES program, the estimates were for 23 FTEs at a cost of approximately \$2.2 million. In

working with the cities in 2009, **Mr. Burnell** told the committee that they determined that by the time the state obtained full primacy, the costs would be approximately \$2.6 million. He indicated that they would need startup funding for the first three years, before fees would be coming in, for program development. Those costs are estimated to be approximately \$300,000 per year over the course of two to three years. In terms of how the program would be funded, **Mr. Burnell** stated that there would be no new federal funding, that DEQ assumes there would be no state general funding, so the program would be funded entirely from fees. He said that they have compared the primacy that they have in the drinking water program with what they would expect in an NPDES program. The drinking water program has 42.5 FTEs and in 2009 cost approximately \$4.3 million. It covers roughly 2,100 public water systems in the state of Idaho. For the NPDES program, the estimates are 23 FTEs at a cost of \$2.6 million with a work load of approximately 900 permits. Given these numbers, the programs are comparable. There is a fee associated with the drinking water program as well.

Using estimates from 2005, **Mr. Burnell** reviewed what the costs to the various affected categories would be. The numbers may have to be adjusted given the passage of time. There are 138 cities with a cost of \$982,000. The cities have estimated that the cost could be broken down to about \$3.66 per year per connection. He said that there are 81 industries affected at a cost of about \$356,000, 94 aquaculture facilities at a cost of about \$212,000, 590 stormwater permits at a cost of \$554,000, 1 general permit CAFO at a cost of \$20,000, for a total of 904 at a cost of \$2,124,000.

Representative Bedke asked who is getting the stormwater permits. **Mr. Burnell** responded that there are cities that get them and there are also construction permits, from roads to housing, commercial and industrial. He said that the department has medium and large stormwater permits. **Representative Bedke** then asked how the cost of a permit would be calculated. **Mr. Burnell** responded that when you look at other states, costs range anywhere from \$500 to \$1,000 for a stormwater construction permit. He said that the municipal stormwater permits are more detailed and therefore it probably wouldn't be fair to just divide the costs by the number. It should probably be parsed out based on the amount of work necessary depending on the type of permit.

Cochairman Raybould asked whether the amount they would need for the program is in the department's budget request this year. **Mr. Burnell** responded that they have not included that this year. **Cochairman Raybould** also asked about canal discharges back into the river. He said there was an earlier issue regarding such water not meeting the requirements for a TMDL even though it was two to three times as clean as the water in the river. He asked whether DEQ would have the opportunity to make variances in that type of situation if it had primacy. **Mr. Burnell** responded that the canal diversion returns are exempt from NPDES permitting. TMDLs consider those returns to be a nonpoint source of pollutants and it is a voluntary program for the canal companies.

Cochairman Pearce asked if it was correct to assume that the EPA is not assessing fees for permitting. **Mr. Burnell** responded that was correct. **Cochairman Pearce** asked whether all the entities that would be affected have been contacted and whether they are aware that costs would be involved. **Mr. Burnell** responded that they have had strong dialogue with the cities relating to costs associated with the program and occasional discussion with commercial and industrial. He said that no proposals have been developed for the other segments.

Representative Burgoyne stated that if we are going to take about \$2.1 million out of the Idaho economy through fees to fund primacy, whether DEQ has been able to quantify offsetting financial benefits to Idaho industry. **Mr. Burnell** responded that one of the benefit components is the

development of permit applications, the consultation process and the costs that permittees bear in developing their applications. They think there is a benefit to the permittees in that respect. He said that the dollars would go to state employees in the state that would put the money back in the economy. **Representative Burgoyne** asked whether DEQ has been able to put any numbers to this issue. **Mr. Burnell** responded that they haven't gone to that level of detail in their economic analysis.

In response to an additional question by **Cochairman Raybould**, **Mr. Burnell** responded that the federal government does not charge a fee and that the expense to the permittee comes in the preparation of the application.

Senator Bair confirmed that **Mr. Burnell** stated that the costs are associated with consultants that municipalities and industry are using to prepare their applications. He asked whether he should assume consultants will not be necessary if dealing with the state. **Mr. Burnell** responded that small cities will probably still need consultants, possibly even larger municipalities. However, they will not have to prepare it for an ESA consultation. There would be less information needed for those types of permits. **Senator Bair** commented that for a number of the DEQ programs we receive federal funds. He asked whether there would be any federal funding to help support the additional employees, etc. **Mr. Burnell** responded that right now they get funding to do fifty NPDES inspections and that is roughly about 1 FTEs effort. He said that when you look at the overall cost, they receive about \$100,000 right now.

Cochairman Pearce stated that there are a number of mines that are interested in opening in Idaho and the average time for a mine to open is between seven and ten years. He asked whether primacy would speed that process up. **Mr. Burnell** responded that the NEPA process covers that type of situation which is separate from NPDES. **Mr. Burnell** said that the NPDES permits written by the state would be going on at the same time as the NEPA process and he doesn't think the time would change because the cause of the lengthy time period is the NEPA process.

Senator Hammond asked whether **Mr. Burnell** was familiar with an issue involving three cities in Kootenai County and the state of Washington. **Mr. Burnell** responded that he was. **Senator Hammond** asked whether he would address that issue relative to the facts associated with the cost of the program in that they pale in comparison to the costs the cities are facing. **Mr. Burnell** responded by stating that in this instance, the dischargers to the Spokane River in Idaho are being required to meet a TMDL that was prepared by the Washington Department of Ecology to control dissolved oxygen in Lake Spokane. He said that the dischargers in Idaho will have very low limits for total phosphorous discharge. He said that the result is that the municipalities will need to expend tens of millions of dollars in treatment technology to achieve these low levels of total phosphorous. He went on to say that we know if the state of Idaho was running the program, what it would have to do is to notify Ecology that it was preparing permits and have to meet the downstream beneficial uses of water for the state of Washington. He added that he believes there would be some level of flexibility in the permits that the state of Idaho would have written, rather than EPA.

Representative Bedke said he is concerned about the freshness of the numbers that date back to 2005. He is concerned about the costs being accurate. He also asked how the tribes are going to respond to the primacy issue. **Mr. Burnell** responded that the tribes would continue to have permits written by the EPA. They would be treated as a downstream state and so Idaho would have to provide them with notice of permits. He said that in terms of the numbers, when we look at the cities we are probably within five percent in terms of the number of cities that are permitted. He said that we know CAFOs are

at one and went on to say that the greatest uncertainty would probably be related to stormwater permits because those are general permits based on construction.

Senator Brackett stated that one of the advantages of primacy is flexibility and asked if **Mr. Burnell** could give additional examples of where the state would benefit. **Mr. Burnell** responded that in the permitting process you are evaluating the receiving water quality and looking at whether or not a TMDL has been developed and whether there is a downstream state. He said that when you are looking at the facility that is being permitted, one of the steps is to determine if there is a reasonable potential to exceed a water quality standard. He went on to say that in that analysis there are areas of flexibility in making that determination. It depends on assumptions that you make in modeling a water body.

Senator Brackett asked if there is an example from the past. **Mr. Burnell** responded that a recent example is where Idaho has a disagreement with the EPA is in regard to mercury and how it should be measured.

Senator Siddoway questioned the costs of permits. He asked who the department believes would bear the brunt of the \$2.1 million. **Mr. Burnell** responded by directing the Senator to the Decision Analysis Report 3, page 11, where a pie chart depicts the breakdown between categories if the program was funded entirely by fees. Municipal with stormwater accounts for about 51% of the total. **Senator Siddoway** asked about enforcement. **Mr. Burnell** responded that the EPA houses its permit writers separately from its enforcement personnel. Each group has performance measures they need to achieve and they are somewhat independent of each other. **Mr. Burnell** said that when DEQ does its inspections, if it finds violations the approach is to provide technical guidance to help the permittee get back into compliance. The department provides information and education. After being given opportunities to correct a violation, if not corrected, DEQ would have to conduct enforcement. He said that there is a process of negotiating a settlement with the permittee ahead of time so there is no surprise at the end. **Senator Siddoway** then asked how this process correlates with the provision that if DEQ had primacy, requirements could be no less stringent than that of the EPA. **Mr. Burnell** responded that the place where there is flexibility is in determining whether or not the projected discharge is going to exceed a standard and the modeling and assumptions that go into that.

Senator Bair asked what it would cost DEQ to administer permits for aquatic herbicide. **Mr. Burnell** responded that it is a new general permit that has been issued nationwide so there wouldn't be the development of that permit. He went on to say that as far as administration of it, the applicator must submit a notice of intent to be covered by the general permit. **Mr. Burnell** said that since this is a new permit they did not look at the costs at this time so he couldn't be specific but he doesn't think it would be very expensive.

Mr. Ken Harward, Executive Director, Association of Idaho Cities was the next presenter. He said that they see this as a very important issue and the Association of Idaho Cities does support primacy over the NPDES program. Cities comprise over half of the permittees in the state and they recognize that cities would have to be responsible for their proportionate share of costs of a state administered program.

Mr. Harward went on to say that that the association believes that state administration would result in:

- Better coordination of various CWA programs and responsibilities;
- Protection of water quality while providing additional flexibility and lower implementation costs for permittees;

- Empowering a state agency with a local presence and greater understanding of local water quality and economic issues to administer the NPDES program would allow for more flexibility.

Mr. Harward told the committee that in 2009, the association brought together an ad hoc workgroup including representatives of cities, DEQ, consulting engineers and public works professionals to examine the costs associated with state primacy. In terms of the cities' share of projected costs, the group determined that if costs were allocated on a per connection basis, it would amount to approximately \$3.66 per connection per year. **Mr. Harward** also discussed stormwater programs. That would add another cost which might raise the cost per connection to \$4.00 per year. He said that the association approved a resolution in December, 2009 in support of primacy.

Representative Andrus stated that no one would get a permit that has less regulation than EPA requires. He asked, given that fact, how would primacy help us. **Mr. Harward** responded that they would look for the state to have opportunities for more flexibility.

Representative Burgoyne said, in terms of the benefits that the state, cities and private industry would get, whether he anticipates that there might be a more forgiving penalty structure from the state. **Mr. Harward** responded that they believe that is one of the opportunities because right now the enforcement hand is heavy with penalties. He said that he believes DEQ's approach would be to work with cities in terms of compliance.

The next speakers to address the committee were **Mr. Paul Steinman**, Chief Operations Officer, Idaho Transportation Department, and **Ms. Sue Sullivan**, Environmental Section Manager, Idaho Transportation Department. **Ms. Sullivan** told the committee that the department holds numerous NPDES permits. She indicated that communication with EPA is a significant problem. She said that they have no opportunity to verbally discuss the permit writing with EPA and that it is strictly a formal process through formal rulemaking. The writing of the permit involves environmental, engineering and contractors, all speaking a different language. Permit writers don't understand their business practices, how highways and bridges are built, and so when ITD gets the final permit, they find it is often confusing, they don't understand the requirements or they have difficulty implementing the requirements. **Ms. Sullivan** said that it would be more advantageous to be able to have discussions with the state. **Ms. Sullivan** went on to tell the committee that construction permits are very complex documents. The department has to have multiple days of training for their contractors, inspectors and designers to understand the permit.

Ms. Sullivan indicated that another issue is the time period involved. Permits require a waiting period of two weeks to accommodate consultation with resource agencies on endangered species and historic properties. She said that for ITD this is a redundant procedure and is strictly lost time for the contractor.

Ms. Sullivan told the committee that another issue involves the EPA inspections. She said that they often lack exit interviews so field crews are unclear about deficiencies. Inspection findings are not made by the inspector but by reviewers in Seattle who have not been to the site. She told the committee that this process takes six or more months. At that time they will typically get a letter from the EPA that gives them a report, with a note about the seriousness of any violations and potential monetary penalties. She added that by this time their contractors are long gone and the project is closed.

Ms. Sullivan noted that because of the way the permits are written, it can be very subjective. She gave the committee an example of an argument they had about a violation involving sediment control around a staging area. Workers plowed dirty snow into a wetland area that was permitted to be filled as part of the project. The fine was \$16,000 per day. Fines go to the federal treasury, there is no process for de minimum issues, there is no process for an enforcement-free compliance assistance audit that they would have with DEQ and the appeals process is very difficult.

Ms. Sullivan went on to say that in some instances, such as municipal permits, their authority is at issue. As a transportation agency they don't have the authority to fully implement parts of certain permits.

Ms. Sullivan said that ITD did talk with four other transportation agencies in states that do have primacy. She stated that the benefits cited by the agencies echoed those identified by **Mr. Burnell**. She said that the number one benefit was the dialogue between agencies when the permits are being written. There is a clear benefit when working toward resolution of any problems. In summary, she said that they believe the cooperation between state agencies would be of great benefit and they support the state gaining NPDES primacy.

The next speaker to address the committee was **Mr. John Eaton** with the Idaho Association of REALTORS®. He said that his association has been involved with this issue since it was first raised in 2000.

Mr. Eaton noted that the association has had somewhat of a change in opinion about the issue over the last several years. In their sector the permits are construction general permits and there is no fee associated with the application. They have previously been opposed to a fee but, at this point, they are willing to discuss it. He said that they don't know if EPA has the ability to be flexible with the states and that this could change in another year. He stated that the EPA has been coming into Idaho and conducting enforcement in construction sites. He told the committee that there is no conversation, just a fine. In dealing with DEQ on some of these issues, the approach involves having a conversation to determine how something could be improved. He acknowledged the flexibility but reiterated that they are still under the requirements of the EPA.

Mr. Eaton told the committee that the NPDES permits vary greatly between categories of permit holders and all will have to be involved in the discussion. He also cautioned that, even for states with primacy, EPA comes in and claims the state didn't follow requirements well enough and at that point EPA can take over in what they term "overfilling." He said that if they don't have certainty about maintaining primacy in the state, they would be concerned about moving forward.

Mr. Eaton explained how the permitting process is conducted in the construction field. If you move to state primacy, their concern would be about the costs if the program were funded entirely by fees. He said that for other states around Idaho that do have primacy fees vary widely.

Mr. Eaton said that they are willing to have the discussion about primacy but want to make sure they have all of the information available to them before we move forward. He said that if it is something the state believes would be of value to all the categories of permit holders, perhaps it would be something that the legislature needs to look at funding for the general good of the state out of tax dollars. He added that if implemented in Idaho, they would like to see it in the least stringent manner possible, the most cost-effective way possible and with the least impact on housing costs.

Senator Hammond stated that he appreciates their concern about fees. He noted, however, that since most of our waters used for discharge of wastewater flow into Washington or Oregon, they become to a substantial degree the determiner of our fate and our own DEQ doesn't even have a seat at the table. He added that there is some concern now, particularly in northern Idaho, that the science doesn't allow them to meet Washington and Oregon standards. He commented that this creates a limitation on growth. He asked whether his association and builders would rather pay fees and continue to grow. **Mr. Eaton** responded that he doesn't think that primacy will solve the problem we have in north Idaho. **Senator Hammond** said that the problem will work its way to southern Idaho as well and Idaho won't have a seat at the table. It will just be the individual dischargers working with EPA and the other state and that gives him grave concern. He added that he would rather spend a little money on his own and at least have a seat at the table where we have an opportunity to come up with other solutions. **Mr. Eaton** responded that he agrees it would be better to have a seat at the table but he isn't quite sure this is the vehicle to get us that seat.

The next speaker to address the committee was **Mr. Alex LaBeau** from the Idaho Association of Commerce and Industry. **Mr. LaBeau** commented that the association represents virtually every category of permit holder with the exception of municipalities.

Mr. LaBeau said the association, in general, supports state primacy on virtually every federal issue where the state has the opportunity to take state primacy. He added that working with people closer to home is generally a lot easier to deal with than dealing with the federal government.

Mr. LaBeau also stated that the association has a great deal of confidence in DEQ. He said the department has done a tremendous job of improving the process regarding air quality permits and hazardous waste areas, areas where we do have primacy.

Mr. LaBeau told the committee that the association does have concerns due to its experience in dealing with Region 10 of the EPA. He added that Region 10 is fairly aggressive in the areas where we do have primacy. **Mr. LaBeau** went on to say that as we go through this discussion we have to look at whether it is good policy or not, but understand that the amount of aggressiveness coming out of Region 10 will vary depending on how much latitude they are given from Washington, D.C.

Mr. LaBeau addressed the benefits to industry including speed. He indicated that specific economic analysis has not yet been done and he believes it will vary dramatically from one industry to the next. Another advantage would be having DEQ in our own back yard with an understanding of the Idaho economy and the diversity of issues with which it would be dealing. In addition, he believes DEQ would attempt to help permit holders comply.

Mr. LaBeau said that he believes updating the numbers is an important consideration so we can know what the real world impacts are going to be. He thinks discussions need to occur. He believes that we will find that working with the state is beneficial but there are some associated offsets, and that is the real world cost of the permits. He noted that there are a variety of options, including the possibility of taking over a portion of primacy only.

The next speaker before the committee was **Mr. Paul Klatt** with J-U-B Engineers, Inc. in Coeur d'Alene, Idaho. **Mr. Klatt** participated by telephone conference call. **Mr. Klatt** told the committee that they are consulting engineers representing numerous municipal clients across the state of Idaho. **Mr. Klatt** said that they have had a lot of interaction with DEQ and with EPA over the years.

Mr. Klatt told the committee that two other individuals were unable to be personally present due to a national conference, providing their comments through **Mr. Klatt**. **Mr. Sid Frederickson** with the city of Coeur d'Alene, has expressed support for Idaho pursuing primacy as currently proposed. **Mr. Ken Windram**, Hayden region sewer board administrator, also supports primacy.

Mr. Klatt indicated that they recognize that this is not a panacea, that there are difficulties that we have heard of in today's testimony. He said the difficulties are not just in the costs, but also in the application of all the rules that are involved for all these programs.

Mr. Klatt said that one thing they face in north Idaho that **Mr. Burnell** discussed was the necessity of an upstream state notifying a downstream state relative to permits and having to provide an opportunity for comment. He said that the reverse is not required. What they are finding out is that the downstream state's rules have every bit as much, and perhaps more, impact on permitting. He said that while there would not be a direct requirement for a downstream state to work with an upstream state, it has been their experience that the EPA has ultimate authority over approval of TMDLs and water quality standards. He said that the state of Idaho's seat at the table is marginalized in these downstream state discussions. We don't have the ability to work on a one-to-one level and work out solutions that will benefit everybody involved. He believes this is one area that primacy would improve.

Mr. Klatt continued regarding multijurisdictional regulations. He said that he believes we are seeing closure of the loop between surface and ground water and between water quality and water quantity. Multijurisdictional issues are going to become more and more important and common and will probably have the largest impact on our economic activity relative to water quality and quantity over the years to come. He reiterated that there is no panacea and it would be naïve at best to say we can pay a few more dollars a year and have some silver bullet to take care of the challenges that we are going to face. He said that they don't always agree with DEQ, but they have appreciated all the times DEQ has sat with them at the table.

Mr. Klatt said that he believes the responsibility will be quite large if we proceed with primacy. He said that the financial responsibility will probably be the smallest. It is the responsibility to have competent people who are able to interpret the CWA that will allow us to proceed in a reasonable way.

Mr. Terry Warner, city of Post Falls, was the next speaker to address the committee via telephone conference call. He said that the city of Post Falls has two discharge permits, one for stormwater and one for their water reclamation facility. He said that it would be a lot easier for them to drive fifteen minutes to Coeur d'Alene to the DEQ office than it is to try to converse with people on the west side of the state of Washington. He said that they would be more than willing to continue to work with the Association of Idaho Cities to try to get through this process and thinks that it is important that they do continue to move this process forward and try to get this issue solved.

Cochairman Raybould asked **Mr. Warner** if it was his testimony to the committee that he would approve of Idaho having primacy. **Mr. Warner** responded that was correct.

Mr. Steve James, with J-U-B Engineers, Inc., representing the South Fork Sewer District, was the next speaker to address the committee via telephone conference call. The district serves the Silver Valley and Shoshone County. He said that they are currently involved in a difficult permit renewal. He said that the

district believes that working only with DEQ would be easier. He said that the district will continue working with the Association of Idaho Cities to help resolve the details.

The next speaker before the committee was **Mr. Norm Semanko**, Idaho Water Users Association. He said that his association has been watching this issue very closely for over ten years. He said that ten years ago, the question was whether DEQ had the capacity to take over primacy. More recently, costs have become the obvious issue and there is no doubt that DEQ could handle primacy. He said that the last time the legislature looked at this issue the association didn't have that many members that operated under NPDES permits whereas today, almost all of the members operate or will soon operate under an NPDES permit because of the pesticide general permit that became effective early this year. He said that anyone who wants to use aquatic herbicides or pesticides in canals to control weeds and moss and allow the water to continue to flow without flooding has to operate under the pesticide general permit. The permit is very confusing and everything that it requires them to do, they already have to do under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). FIFRA and the CWA were passed at virtually the same time in the 1970s. He said that one was to regulate pesticides, the other was not. He added that pesticides are not a pollutant but are registered, beneficial products that have gone through EPA review under FIFRA.

Mr. Semanko spoke of a court case that held that while the product that enters the water is not a pollutant, when it breaks down, whatever residual is left is a pollutant and that is the discharge to the waters of the United States. He told the committee that they would appreciate the support of SB3605, the federal legislation cosponsored by Senator Crapo and Senator Risch clarifying that we don't need double permitting. He said that we have FIFRA and labeling, and that having another permit on top of that is nonsensical. He added that the bill is a bipartisan bill and that the control of mosquitoes, delivery of irrigation water and taking care of weeds in lakes for recreation is not a partisan issue.

Mr. Semanko stated that the association sees the benefits of working directly with DEQ. He said that DEQ has access and accountability to the legislature and to the citizens of the state in a way that EPA does not. He added that the EPA's hooks will still be out there but one of the things that should be considered is the nexus with the Endangered Species Act (ESA). If you have a federal action, it will need to go through an ESA consultation, but if it is a state action it doesn't. So the initial acquisition of primacy would have to undergo consultation because it is a federal action. He said that once the state has the program, it's in a different box because permit issuance will be state action.

Mr. Semanko said that they are concerned about costs. He said that he doesn't believe DEQ has been directed or funded by the legislature to update the 2005 study that needs to be updated. He told the committee that the association will want to know what the cost of the program would be. He also stated that limitations would have to be included. If EPA doesn't require a permit, then the state should not require a permit. If EPA doesn't require certain stringent restrictions, then neither should the state.

Mr. Semanko concluded by saying that they are actively discussing the issue and looking at the pros and cons of primacy. He reiterated that they would need to know what the costs are going to be.

Former Representative Doug Jones was the next speaker to address the committee. **Mr. Jones** of Idaho Watershed Solutions, said that as a non-profit they are working on some creative solutions for water issues.

Mr. Jones told the committee that basin-wide nutrient trading is their goal. **Mr. Jones** said that his personal experience is that it is better to deal with a state agency than a federal agency. The solutions are better, faster and often less expensive and they understand the local problems. He said that was not to denigrate the state EPA people where their experience with them to this point has been very good.

Mr. Jones said that he believes primacy would be a step forward. He stated that they are trying to do some creative things to save municipalities a great deal of money relating to wastewater as they get their permits from EPA with tighter phosphate numbers. He said that they have had meetings with Region 10 in Seattle and Boise and have also been to the EPA in Washington, D.C. He said they have been supportive but won't agree to anything at this point. Their goal would be a lot easier to do if Idaho had state primacy.

Ms. Liz Paul, Boise River Campaign Coordinator for Idaho Rivers United (IRU), was the next speaker to address the committee. She told the committee that she was not in a position at this time to convey IRU's position on primacy. She said it is an issue that they are very concerned about and applaud the committee for taking such a close look at it.

Ms. Paul said that the health of Idaho's rivers is the group's mission. She said that she wanted to remind the committee that this year we are celebrating the 40th anniversary of the CWA. She said that the act made a dramatic difference in the quality of water here in the Boise River and it is one of the reasons why the Boise River is today the most recreated river in the state.

Ms. Paul continued by saying the importance of clean water to our quality of life, the economy and industry cannot be overstated. She said that as a state, we rely on clean water and the CWA has been a magnificent tool to help us improve the quality of water of the state.

Ms. Paul said that the EPA is stretched too thin. She said she shares the concerns and frustrations already expressed today. She said that IRU enjoys the relationship they have with DEQ and the accessibility of their staff, not to say that EPA hasn't treated them well. She noted that it is good to have people locally, especially on the permitting issues. They are not sure EPA has done the best job possible in protecting Idaho's rivers. She said that IRU was present to watchdog the issue. She told the committee that she wanted to remind them that clean water is a very contentious issue, meaning legally contentious and Idaho needs to consider that fact in terms of costs as well.

Director Fransen made some concluding remarks to the committee. **Director Fransen** noted **Representative Burgoyne's** question about cost savings. He said that there are two areas of cost savings, one being in the process to obtain the permit and the second being in the permit program itself due to the flexibility afforded to the state under the CWA to implement the permit program through a variety of different tools. There is the possibility of waivers, including or not including certain pollutants, depending on reasonable potential to exceed, or including or not including monitoring requirements for some kinds of pollutants. He said that there is also the possibility to use compliance schedules to get a facility into compliance. **Director Fransen** said that DEQ would be timely in the issuance of permits whereas EPA currently runs a fairly significant backlog. He said that quantification is difficult to do but that he believes it would vary considerably permitting group to permitting group. He added that one way to approach this may be to have a discussion about the costs or funding and see if the different groups can agree that the proposed costs to them would equal the benefits.

Director Fransen also addressed one of the earlier questions about the staleness of numbers. He said that in terms of the costs of the program, dividing the FTEs into the projected costs of \$2.6 million, and coming up with \$92,000 per FTE, he said that he wanted to point out that those costs aren't just personnel, but even if they were personnel, he would suggest that in the last seven years the state personnel costs have not changed that much. They are probably in the range of four to seven percent higher now. He said that on top of the salary you have 30% benefits, operating costs, etc. He said he agrees that it is time to update the numbers.

Director Fransen concluded by telling the committee that he thinks if we look back, the state had a very serious discussion about primacy until about 2006. He said that the economic situation we have faced in the last four years has somewhat tabled that discussion. He added that with the slow recovery of the economy, he would agree with many of the people that have testified, it is appropriate to once again look at this issue. He said that he believes it is in the benefit of the state in the long term and would caution that we need to go forward very carefully and try to obtain buy-in and support from all the groups that will have to pay for this process if we go to a fee-based system. He added that if the legislature would go with a different system the dynamic of the conversation would change. He said he believes this would also structure how the program would be developed.

Representative Burgoyne asked about potential litigation and whether that was included in the cost analysis as well as how they assess any potential risk of litigation for the state. **Director Fransen** responded by pointing out that it would be very important to run a robust program, that permits be issued based on good science and that permits be defensible. He said that the kind of litigation that we would experience would be different. Right now, he said, if an environmental group is unhappy with what EPA is doing they look for mandatory duties under the CWA and bring an action against the EPA. If the state had primacy, the first avenue would be through the DEQ Board. He said that the decision of the board could then be appealed to the courts. He added that the opportunity for attorney fees is much different under federal law than state law. He stated that there would be some cost.

Representative Burgoyne stated that he thinks that the term "flexibility," being some kind of code word for lax enforcement, is very unlikely and asked the Director under what circumstances the federal government could come in and take the program back. **Director Fransen** stated that EPA does have the ability to take the program back if the state doesn't meet minimum federal requirements. He said that he believes there is also a legal avenue for citizen suits to go after EPA to better review a state program. **Director Fransen** said that it is extremely rare across the country for the EPA to take a program back. EPA has little incentive to do so. He said that usually when deficiencies are noted there is a compliance schedule between the state and federal government to bring the program up to the standards required.

Cochairman Raybould adjourned the meeting at approximately 12:20 p.m.