

**MINUTES**  
**(Subject to approval by the Committee)**  
**Federal Lands Interim Committee**  
**Tuesday, December 09, 2014**  
**1:30 P.M.**  
**EW42**  
**Boise, Idaho**

The meeting was called to order by the Co-chair Senator Winder at 1:35 p.m. Other members in attendance were Senator Davis, Senator Tippets, Senator Nuxoll, Senator Stennett, Representative Moyle, Representative Hartgen, Representative Gestrin and Representative Erpelding. Also in attendance was Secretary of State elect Lawrence Denney and former Co-chair of the Committee. Staff present was Mike Nugent and Ray Houston of the Legislative Services Office.

Other persons present were William Myers, Holland and Hart; Bob Brammer, Chief Operations Officer and Patrick Hodges, Deputy Director. Idaho Department of Lands; Andy Brunelle, US Forest Service; Jonathan Oppenheimer, Idaho Conservation League; Dan Blocksom, Idaho Association of Counties; Nathan Brown, Twin Falls Times News; Kimberlee Kruesi, Associated Press; Melissa Davlin, Idaho Public Television.

Senator Winder said the purpose of this meeting was to have the Committee express what they had heard at the public hearings around the state and to begin to formulate a final report that Senator Winder said he intended to present to the full Legislature by January 31, 2015. Senator Winder asked unanimous consent to allow Secretary of State elect Lawrence Denney to sit at the front tables but under the understanding that he could not vote as he is no longer a member of the Legislature or this Committee. There was no objection. Senator Winder then called on Mr. Myers as Counsel to the Committee. Mr. Myers presented an outline for a final report to the Committee. Mr. Myers said this was a skeleton of what a final report might look like and that in some instances he has question marks by some of the topics because he did not to presuppose what stand the Committee would take on certain issues. The outline is as follows:

I. Introduction

II. Executive Summary

III. Background

A. Brief History of the issues

1. History of Federal Lands
2. Current federal land ownership
3. Current federal disposal authorities
4. Previous Idaho efforts
  - a. Idaho Federal Lands Task Force (1996-2000)
5. Other western state activities
  - a. Utah
  - b. Etc.

House Concurrent Resolutions

1. HCR 21
2. HCR 22

IV. The Committee's Work

A. Charge

1. re-authorization
2. staff appreciation
  - a. Katharine Gerrity, Toni Hobbs, Ray Houston, Mike Nugent

B. Co-chairs

- C. Meetings and hearings.
- D. Summary of key public testimony

V. Key issues

- A. Legal
- B. Economics
  - 1. Cost Analysis
  - 2. (heading)
  - 3. Current Federal Revenue Sharing
    - a. Payments in Lieu of Taxes
    - b. Secure Rural Schools and Community Self-Determination Act
    - c. 25% Fund
- C. Political
  - 114th Congress
    - a. Key members
    - b. Key committees
  - 2. 2016 POTUS

VI. Issues needing more development

- A. Implementation Strategies
  - 1. (needs caption)
  - 2. Partnership with other states.
    - a. Interstate Compact
    - b. Uniform State Laws
    - c. Joint State Litigation

VII. Preliminary key findings

- A. Big problems with current federal management.
- B. Idahoans want to be able to maintain access to the lands regardless of who owns them.
- C. Major Pros/Cons of transfer of lands to Idaho
  - 1. Pros
  - 2. Cons

VIII. Committee Recommendations

- A. Policy Recommendations
- B. (needs caption)
- C. Continuity of Efforts
- D. Compact with other states?
- E. Litigation?
- F. Petition Congress?
- G. Pilot Projects

IX. Dissenting views of Committee members

X. Conclusion

Senator Davis said that when we get into the meat of the report he would like to see SJM 7 of the 1947 Legislature discussed which petitioned the Congress and the President to preserve public lands in Idaho in their present ownership status, the various pieces of legislation introduced regarding the Sagebrush Rebellion in the late 1970s or early 1980's and Section 7 of the Idaho Admission Bill that provided that five percent of the proceeds of the sales of public lands which are sold by the United States after Idaho was admitted to the Union would be expended for the support of the common schools in Idaho.

Senator Winder asked if there was any sense of the Committee as to what lands under federal control should be excluded. Senator Davis said that tribal lands definitely ought to be as well as

probably Department of Energy, Department of Defense, National Parks, Wilderness, Wild and Scenic Rivers and roadless areas.

Representative Erpelding said that the report needs to include a brief history as to the issues regarding the public lands and also regarding tribal lands he said it his understanding that the Duck Valley Indians never really signed a treaty with the United States so do they have a claim to a great deal of some of the lands in southern Idaho. He said there is more to this issue than the public testimony presents.

Senator Nuxoll said she would like the Committee to recommend that Idaho band together with the other 14 western states regarding public lands and that in addition to the O'Laughlin report the Committee reference the report from Utah universities about the positive economic impact of Utah owning and controlling the public lands as well as the report of the Congressional Research Service about the positive economic impact that Nevada owning the public lands would be along with the other western states controlling the public lands.

Senator Stennett said if most legal scholars say it is unconstitutional, how would the State of Idaho gain control of the public lands? Senator Winder said if we are going to consider a different approach than Utah, it is a political question that will have to be answered by Congress and that by necessity will take some time.

Senator Stennett said that she agrees there needs to be a different tract than litigation, but also it appears that if something is established within the Department of Lands that it will need funding and it appears to be growing government. She questioned whether the state could afford this when there are other demands for public funds.

Senator Tippetts said he agrees with the futility of making demands for takeover of the public lands. He said we perhaps need to determine if we go forward from here.

Representative Gestrin said we need to look to the future to proceed. He said there was a bill before Congress to put 200,000 acres of the Clearwater National Forest in Trust.

Senator Davis said that it is always lawful to have a political conversation and that is what he sees as the future of this issue not only in Idaho but in the Western States.

Representative Erpelding said that in the history of the issue there may be many sovereigns that want to lay claim to the lands. In addition to the State, the tribal governments may want all or a piece of these lands and there is still the spector of federal environmental laws that the state may not be able to override even if it had control of the lands.

Senator Winder said if the state were to gain control today of the federal lands there would be management problems because the state does not have the infrastructure or employees to take that over right now. However, the state taking control of the federal lands is not going to be happening now. It might be a decade before this could occur. The federal government will not cede responsibility over the federal lands absent a court order to do so or an act of Congress to do so.

Senator Davis said that now is not the time nor the place to have a debate on the Supremacy Clause. He said we need to keep focused on what we want to do as a state and attempt to accomplish those goals. He said we do not need a legal treatise or law review article on the Supremacy Clause. Some may remain opposed to the concept and that is fine.

Senator Nuxoll said that the Committee needs to take notice of the example that occurred in Canada where the national government transferred land to the Northwest Territories and allowed the royalties to be transferred as well to the Northwest Territories. She said our counties need help and support in jurisdiction, particularly if they have big chunks of federal land in the county. She said this might be a good use of the Constitutional Defense Fund to provide counties a means to provide necessary and proper law enforcement and other emergency services within their borders.

Representative Hartgen said at the Committee's March meeting that some of the people who had been both federal and state officials gave that message that we need to make incremental progress in dealing with this issue with the USFS, BLM, IDL and IDEQ. He said perhaps we need to allow the Idaho Department of Lands to open up discussion regarding pilot projects and collaborative programs that can occur jointly between the Feds and the State. He agreed that we can lose the law review article approach.

Senator Davis said that whatever motion the Committee adopts today that it should not preclude any Committee members to augment the final report if they feel there is a need.

Senator Stennett said that final report should not necessarily mean outright state ownership of the public lands but that collaboratives ought to be a part of the solution.

Senator Nuxoll said that County Commissioner Skip Brandt is a member of the Clearwater collaborative and that they are at a stalling point because of protests to timber sales by environmentalists and some of the federal laws relating to timber harvest and environmental protection. She said the Committee needs to look at the economic reports of the State taking over the federal lands in both Utah and Nevada and what a positive economic boon it would be to both states. She said a Nevada Congressman commissioned a report by the Congressional Research Service that opined that state management of the public lands is superior to federal management.

Senator Winder said Governor Otter has been working with the US Forest Service on fuel loads and insect management in certain areas of the National Forest. He asked if that was something the Committee could get support.

Senator Stennett asked if this was an example of collaboration.

Patrick Hodges of the State Department of Lands said this is part of the healthy forests restoration act and includes 1.8 million acres in fifty locations. The purpose of this is insect and disease control and fuel thinning. He said it is a cooperative effort with the US Forest Service and is pursuant to the US 2014 Farm Bill.

Senator Tippetts said that this effort and other joint efforts with the federal government ought to be encouraged by this committee in the near term as we move forward in this process.

Senator Davis said this appears to be an invitation to what we are considering. It's healthy to include this as we make recommendations.

Mr. Hodges said he would submit to the Committee the areas and projects where this is occurring.

Senator Tippetts said that seems reasonable that the Committee recommend this go forward. He said as the Committee took testimony from around the state that people who were frustrated with federal ownership of the federal lands by and large did not want that land sold off. He heard that if the state acquired the lands that public access to those lands needed to be maintained and preserved for various activities such as hunting, fishing, off road vehicles, camping, hiking, wood gathering and rock hounding to name a few activities. He said this access needs to be maintained even if we approach cooperative endeavors.

Representative Hartgen said as we get further down the road the language of Article 9 Section 8 of the Idaho Constitution may need to be modified to address some of these concerns in the event the State acquires a large tract or tracts of federal land.

Senator Davis said the Idaho Admission Bill is not a model of clarity particularly Section 7. He said he is not sure that will answer anyone's question on this issue.

Senator Winder said he like the ideas we heard from testimony around the state and their concerns about the State selling off large tracts of public lands should we acquire them. He said there is strong support to maintaining the Idaho lifestyle which includes access to the public lands regardless of who owns them.

Senator Nuxoll said she supports Senator Tippetts comments about access.

Senator Tippetts said he sensed a great angst everywhere the Committee took public testimony about the State selling the lands. He said he thought a lot of people who testified didn't care who owned or controlled the lands as long as access was maintained and that if management was lacking of the lands that it be improved.

Senator Winder asked if the Committee was comfortable at this point that they not make demands of the federal government to turn over the lands and the answer was in the affirmative.

Senator Davis said the point on entering into an interstate compact with other states on this issue held great promise. He asked what kind of points or items would we like to see included in a compact? He said these are essentially contracts between states and if approved by Congress does make it a part of federal law. He said the Council of State Governments has been very helpful to the states in the past in setting up interstate compacts. He said this could be part of a long-term political solution for not only Idaho but the other western states who are desirous of gaining a greater share of the public lands. He said we need to have a dynamic section in the compact of what our goals are and that we support Governor Otter's compact with other western lands states regarding management of the federal lands. Senator Davis said this is a path that could put pressure on the federal government to enter into a partnership with the west on public lands issues.

Senator Winder asked how would we start this process.

Senator Davis said a compact has to be drawn up by state elected officials. He said that the Idaho Legislature would be an active participant in developing the compact. Then other states need to put very similar, if not identical language in place, to have it be effective.

Senator Stennett said this is an area where private non-profit organizations such as the National Forest Foundation could be a good resource for cooperation. She said that in many areas, the NFF convened a collaborative group that has for the first time brought together local landowners, private boating businesses, recreationists, conservation interests, and the many government agencies that have a role in managing a national forest. Senator Stennett said we need to know what various efforts from collaboration to outright ownership are going to cost the State.

Senator Tippetts said that if the State acquires federal lands, that activities that are currently engaged upon those lands would be protected that the State would protect current uses on the federal lands. He said this would mean on those lands acquired that the maximum long term financial return is not required, such as endowment lands, could be managed in some other manner. He said this would require amending Article 9, Section 8 of the Idaho Constitution.

Senator Davis said we do need to look at potential economic benefits to the state should the state acquire those lands. He said we would see additional moneys coming to the state for educational funding, savings and deposits for programs that are in the public interest.

Senator Stennett said we need to see what, if anything, the state would save on administration of these lands and then ascertain if it is realistic or is it just too costly an endeavor.

Senator Winder said some counties with a large federal land mass in them have been hurting in recent years by reductions in Federal Payments in Lieu of Taxes dollars and the old Craig/Wyden dollars. He said if the state does acquire title to the federal lands that we need to make sure that counties are not hurt economically by the State rather than the federal government owning the lands.

Representative Gestrin said in our calculations we have not included the economies of local communities in the National Forest areas and how they have been disrupted greatly when the timber harvest started to diminish. This would include loggers out in the woods but also mills and lumber yards in the towns and the resultant businesses that were dependent on the loggers and mill workers making a decent wage.

Representative Erpelding said that the federal Secure and Rural Schools Act provided that the States needed to assist rural communities to adjust to the modern economy. He said that State government's effort in this has been lacking. Rather than hoping for the return of the old life style the State should be assisting these people to acquire new skills to try and lure new and different businesses to help those local communities get back on their feet.

Senator Winder asked if the Committee should recommend that the State of Idaho providing funding and encourage smaller communities to generate jobs. He said should we try and find ways to help these communities and to try and not gain control of the public lands?

Senator Stennett asked if we are going to make local communities whole if the lands were to change from federal ownership to state ownership as the federal payments to local units of governments would needed to be recouped by the State.

Senator Winder said some counties and regions within counties are different regarding this issue because of the density of federal lands and the amount of payments that accrue to the local units of government because of the federal lands.

Senator Nuxoll said that people who live on the lands are having a difficult time making a living because of not being able to harvest timber and the resulting jobs that are associated with that. She said that the public schools in these areas are suffering as well because of the federal policies.

Former Co-chair and Secretary of State elect Denney said in putting together HCR 21 and 22 that a thought was put into into the economics currently in rural Idaho. Particularly today as timber harvesting has been curtailed on USFS lands, there has been a loss of jobs from the logging itself, to the mills, to the log trucks and to other lumber related industries. He said current federal policies are adding to federal lands increasing fuel loads for fire risks. Also ESA issues and insect control are making federal lands a tinder box. He said it was never his intent to make public lands not open to the public. He said that currently even environmentalists will says that management of federal lands is lacking and needs to be improved. He said the state could help the lands be better for resources for wildlife and watersheds. He agreed that public access to these lands is important.

Senator Nuxoll said that the current management of the federal lands is unintentionally creating water supply issues and evapotranspiration issues with some of the trees such as juniper trees that are being allowed to grow and it also creates ESA issues as it provides cover for predators of the Sage Grouse.

Senator Winder said the federal government was asked to give back lands at statehood for watershed areas at least in southern Idaho. He said EPA is attempting to enhance federal control of state waters.

Senator Davis asked that the Committee be allowed to submit additional requests for the final report when or if they come to mind. Senator Winder said that was acceptable. Senator Winder said it was his intention that each member of the Committee be able to look at the first draft of the report and revise as they deem necessary. He said it was his intention that a final report be submitted to the Legislature by the end of January.

Senator Nuxoll said another issue she would like to discuss is air quality in Shoshone County. She said they are being assessed and fined by EPA for emissions from wood stoves because a lot of them are not newer stoves and do not meet emission requirements but that one of the big contributors to air pollution there is forest fires.

Senator Winder said in Ada County a lot of air quality violations occurred during wildfire season in the summer and there was some thought of filing a class action lawsuit against the federal government for wildfires on federal lands but that never got out of the conceptual state.

The meeting adjourned at 3:30 p.m.