

MINUTES  
JOINT MEETING

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

**DATE:** Friday, January 17, 2014

**TIME:** 1:30 P.M.

**PLACE:** WW02

**MEMBERS PRESENT:** Chairman Pearce, Senators Siddoway, Brackett, Heider, Tippetts, Stennett, and Lacey

Chairman Denney, Vice Chairman Gibbs, Representatives Wood, Eskridge, Raybould, Andrus, Shepherd, Wood, Boyle, Gestrin, Miller, Pence, Erpelding, and Rubel

**ABSENT/ EXCUSED:** Vice Chairman Bair, Senator Cameron, Representatives Barrett, Moyle, Vander Woude, and Anderson

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

**CALL TO ORDER:** **Chairman Pearce** called the Joint Meeting of the Senate Resources and Environment Committee (Committee) and the House Resources and Conservation Committee to order at 1:30 p.m. in the Lincoln Auditorium. He welcomed the Committee members and members of the audience.

**Chairman Pearce** introduced Mr. Clive Strong, Division Chief, Natural Resources, Attorney General's Office, who coordinated the presentation, "Information Regarding Grays Lake Real Estate Issues".

**SPEAKERS:** **Mr. Strong** provided a brief background regarding Grays Lake and said that he would provide more information following presentations by John Sandy, Chief of Staff for U.S. Senator James Risch, and two owners, Mike Sibbett and Ernest Lombard.

**Mr. Sandy** stated that shortly after Senator Risch arrived in the U.S. Senate, it came to his attention that a group of ranchers in SE Idaho had suffered a taking of their property by the U.S. Government; the ranchers believed that the Government had promised to compensate them for the loss of use of their land.

Senator Risch began investigating the situation which has led to many hours of research. As an historical bit of information, when Jim McClure became a U.S. Senator, he ask his regional director in SE Idaho to resolve the Grays Lake dispute. (Mr. McClure served in the U.S. Senate from January 1973 to January 1991.)

Following is an introduction to the history and present status of Grays Lake as presented by Mr. Sandy.

Grays Lake is a large flat spot north of Soda Springs in SE Idaho. Cattle ranchers settled the area in the 1800s. The elevation of the valley floor is over 6,500 feet, so you will understand that it is a great place to spend summers, but only the tough can survive the snow and cold during winters.

Caribou Mountain is on the east side of the valley and spring runoff covered the valley floor which drained to the north during the spring runoff flood. During the summer, the ranchers cut and stacked hay on the valley floor, and that is where they wintered their cows by using horses and sleighs to feed their cows.

In the early 1900s, Barzillia Clark filed on the water from Grays Lake and in 1908 he sold the water to the U.S. for development of the Fort Hall Indian Irrigation Project, which, in 1924, led to a low dam being built on the north end of the valley. This raised the water level and diverted the water to run south instead of north. From then on, pasture and hay ground was flooded for most of the year. The fight then began over who owned the land and who had what rights. The ranchers claimed that Grays Lake was non-navigable and that they, in fact, owned what is now the lake bed. At some point in time the county stopped collecting property taxes.

On November 23, 1931, a special assistant to the U.S. Attorney General wrote: "Actually the question of who gets the hay does not amount to much and when considered in connection with the larger reservoir use and purpose, the hay question becomes rather immaterial. There is a good chance to lose this lawsuit if the United States goes into court and submits the question of its right to use this lake bed."

From the U.S. Record: "On August 15, 1935, the Secretary authorized negotiations with the landowners for the purpose of determining whether the long-standing controversy with the landowners could be settled without resorting to litigation." To further complicate the situation, conversations were taking place with the Feds to establish the Grays Lake National Wildlife Refuge. On August 31, 1955, a memorandum from the Chief Branch of Wildlife Refuges to the Regional Director in Portland stated: "It is established that the United States has no title to the bed of Grays Lake." It goes on to say –"therefore, we must acquire title to the bed of the lake from adjoining landowners, or by other means, since permanent improvement could not be constructed and are not legal."

In 1964, a cooperative agreement was signed with the Bureau of Indian Affairs (BIA) to establish the Grays Lake National Wildlife Refuge. Between 1965 and 1970, in trying to have a storage reservoir, a wildlife refuge, and making the ranchers whole, the agencies agreed to build dikes to contain the water to the center of the lake and allow the ranchers to reclaim use of the rest of the area. The dikes did not work, as among other things, the ground under them was porous and the water just ran under the dikes.

As part of the Fort Hall Indian Rights Settlement, five million dollars was appropriated through BIA and put in an interest-bearing trust account in 1992 to settle the purchases of land at Grays Lake. Moving forward to the summer of 2010, Senator Risch sent several people to tour Grays Lake and to meet with a number of landowners and federal stakeholders. Also, as the story unfolded, it became clear that water was a major player in this ongoing dispute, so they engaged in conversations with Idaho Attorney General, Clive Strong.

With the blessing of the landowners and requests from Senator Risch and the Idaho Attorney General, in 2010, the Feds agreed to contract for a navigability study. The conclusion of the study was that Grays Lake was not navigable.

Through the 100 years of struggle, several opportunities had been presented to settle the Grays Lake dispute, but because of many obstacles, talks had always broken down into a stalemate. During that time, for various reasons, about half of the landowners at Grays Lake had sold their properties to the federal agencies involved. However, there are still families who are trying to maintain their family ranches.

**Mr. Sandy** stated in December 2010, Senator Risch and Mr. Strong organized a meeting which was held in Salt Lake City. It was attended by all of the Grays Lake landowners or their representatives, about a dozen officials from involved federal agencies, Mr. Strong and himself.

By the end of the day, an outline of an agreement had been reached by all the parties for a path forward to settle the various needs. Also, by day's end, a tentative hopeful time line was agreed upon. Through the years, generations of ranchers have suffered through this ordeal and we are before you today to tell you that the end is near in settling this dispute.

**TESTIMONY:** **Mr. Ernest Lombard** testified as a landowner about the 100 year battle regarding Grays Lake. He stated that his father was a French immigrant and he herded sheep in the valley in 1921. The valley was formerly called "the valley of the haystacks" because of the many stacks. He stated that it has been a long, hard process, but his family plans to retain ownership and farm their ground.

**TESTIMONY:** **Mr. Mike Sibbett** is a fourth generation owner of property at Grays Lake. He said that his uncle was hired to police the dam and to protect it, as the authorities thought someone might blow it up. He talked about the hardships the families endured.

**SPEAKER:** **Mr. Clive Strong** was next to speak. He provided copies of his PowerPoint presentation, "A Pragmatic Solution to A Century Old Question: Who Owns Grays Lake?" (see attachment 1). An overview of the presentation includes:

- Legal Principles
- Title if Navigable
- Title if Non-Navigable
- Legislative and Executive Consent to Federal Acquisition of Lands
- Proposed Solution

**Mr. Strong** stated that in 2000, ranchers were trying to find a resolution for this issue and the U.S. took the position that it could not settle with the ranchers until the issue of whether the State owned the beds of Grays Lake was resolved. Ownership of the lake bed turned on whether the lake was navigable or non-navigable. **Mr. Strong** said that a body of water is navigable if the water in its natural and ordinary condition was usable by the customary modes of trade or travel on the date of statehood. Evidence of actual use for commerce is not required; the body of water only needs to be susceptible to use in commerce. If a body of water was not navigable at statehood, owners of the adjoining uplands own to the center of the body of water. In the case of a lake the ownership is divided up like a pie. **Mr. Strong** said the rules are fairly simple, but are very hard to apply. If the State owns the lake bed there are restrictions in how submerged lands are managed.

Under the public trust doctrine, the State has the right to regulate, control and utilize navigable waters for the protection of public uses, such as navigation, commerce and fisheries. Public trust resources may only be alienated or impaired through open and visible actions. Whether an alienation or impairment of a public trust resource violates the public trust doctrine is made by the judiciary. Applying those principles to Grays Lake, the Attorney General's Office determined that there was evidence the lake was navigable at statehood. The lake was meandered in 1887 and historical documents showed boats on the lake.

If Grays Lake is non-navigable, then the adjoining landowners own to the center of the lake. Roughly, 66 percent would be owned by the federal government and 33 percent owned by private landowners.

Through research, **Mr. Strong** said that they came across a statute, Idaho Code §36-1806, enacted in 1935 by the Idaho Legislature. It states: FEDERAL MIGRATORY BIRD RESERVATIONS - ACQUISITION CONSENTED TO. "Consent of the state of Idaho is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the state of Idaho, as the United States may deem necessary for the establishment of migratory bird reservations..." This statute remained in place until 1997 when it was amended to require legislative consent by concurrent resolution.

In 1967, Governor Samuelson issued a document consenting to acquisition of lands around Grays Lake, and in 1972, Governor Andrus gave similar consent to the acquisition of lands.

During the investigation of Grays Lake and the Fort Hall Indian Water Rights Settlement, there was an ongoing conflict that had to be resolved. Based on consultation with legislative leadership and the Land Board, it was decided that it wasn't in the State's interest to spend a great deal of money to try to resolve the title issue. What needed to happen was for the United States to move forward with its original plan to work out a resolution with the private ranchers. By doing that, ranchers would be extracted from the conflict.

There was already an agreement that Grays Lake would be partly used for the Fort Hall Indian Irrigation project as a reservoir. There was also consent already given for the use of Grays Lake as a fish and wildlife refuge.

**Mr. Strong** stated that the solution is to send a letter to the United States confirming the prior consent of the Legislature in 1935 and the consent by Governor Andrus in 1972 to the United States acquisition of the ranchers interest, if any, in the bed of Grays Lake. Idaho would retain its claim of ownership of the beds and banks of Grays Lake.

Some of the ranchers would like to be bought out; some ranchers would like to continue to ranch or do exchanges. The letter would provide the necessary consent to allow the acquisition of the ranchers interest. This solution provides fundamental fairness, and at the same time, preserves the status quo in terms of the operation of the Fort Hall Indian Irrigation Project.

Mr. Strong told the Committee that if there was no objection from the Legislature, he would send a letter to the United States, on behalf of the state of Idaho, advising that the State has consented to the acquisition of the ranchers' interest and at the same time, advising the United States that the State retains its claim to ownership of beds and banks.

A short discussion followed the presentation.

**ADJOURNED:** **Chairman Pearce** thanked the presenters, then adjourned the meeting at 2:22 p.m.

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Senator Pearce  
Chair

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Juanita Budell  
Secretary