

MINUTES
(Subject to approval by the Committee)
Natural Resources Interim Committee
Friday, October 16, 2015
9:00 A.M.
EW 42
Boise, Idaho

Co-chair Senator Steve Bair called the meeting to order at 9:00 a.m. Members present were: Co-chair Representative Dell Raybould, Senators Jeff Siddoway, Lee Heider, Bert Brackett, Jim Patrick, Roy Lacey, Speaker Scott Bedke, and Representatives Marc Gibbs, Donna Pence, Ken Andrus, and Paul Shepherd. Senators Michelle Stennett and Representative Mike Moyle, and Ad Hoc member Senator Shawn Keough were absent and excused.

Others present were: Lisa Smith, Ron Miller, and Tark Meyer, Rocky Mountain Mining Rights; Cleve Smith and Don Smith, Mining; Bill Gardunia, Independent Miner; Sharon Kiefer and Virgil Moore, Idaho Fish & Game; Douglas Rutan, Owyhee RFP; John J. Williams, Bonneville Power Administration; Andy Brunelle, U.S. Forest Service; Peter Anderson, Trout Unlimited; Jerry Deckard, Associated Logging Contractors of Idaho; David Claiborne and Sandra Mitchell, Idaho Recreation Council; David Groeschl and Emily Callihan, Idaho Department of Lands; Neil Colwell, Avista Corporation; Jane Wittmeyer, Wittmeyer and Associates; Dennis Becker, University of Idaho Policy Analysis Group; Mitch Silvers, U.S. Senator Mike Crapo's Office; Skip Smyser, Lobby Idaho; Brent Olmstead, My Political Idaho; David Miles, City of Meridian; Jen Visser, Idaho Power; Teresa Molitor, Great Feeder Canal Company; Roger Chase, Pete Van Der Meulen, Bert Stevenson, Vince Alberdi, and Jeff Raybould, Idaho Water Resource Board; Albert Barker, Barker, Rosholt & Simpson; Emily Patchin, Risch Pisca; Colby Cameron, Sullivan and Reberger; Lynn Tominaga, Idaho Ground Water Association; Suzanne Budge, SBS Associates; Stephen Goodson, Governor's Office; Gail McGarry, Bureau of Reclamation; Norm Semanko, Idaho Water Users Association; and Alma Hasse.

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://legislature.idaho.gov/>.

Co-chair Senator Bair asked for a silent roll call, recognized the Idaho Water Resource Board members in the audience, and introduced Mr. Matt Weaver, Deputy Director, Idaho Department of Water Resources. Mr. Weaver began his presentation [Addressing a History of ESPA Declines: Aquifer History, Delivery Calls, & Settlement](#) with a review of several facts regarding the Eastern Snake Plain Aquifer (ESPA). He noted there are 2.1 million irrigated acres on the ESPA, which is 60 percent of Idaho's total. The irrigated acres are fairly evenly split between surface water and ground water. He emphasized that in 2012, 33 percent of goods and services, or roughly \$14.2 billion, were produced on the ESPA. Referring to the "Cumulative Change in Volume" slide, he pointed to the steady decline of the cumulative storage amounts since 1952. Looking at the combined spring discharges data, he noted the decrease of 2,000 cfs over the past six decades. This reflects that the strategic resource has been in decline and has affected the spring flows, which he stated has led to a lot of the tension and conflict with the water users on the plain today. The loss is totaled at 13 million acre-feet of decline from 1952 to present, which translates to 215,000 acre-feet a year. He observed that every time ground was gained on the aquifer, it was followed by a series of years where storage content would be lost in the aquifer.

Mr. Weaver stated that the three major factors responsible for the decline are: 1) increase in ground water diversions; 2) changing climate (drought cycles and declining precipitation); and 3) increase in surface water irrigation efficiencies. He reviewed various data charts that provide a view of the aquifer storage situation over various spans of time. Mr. Weaver answered a regularly-asked

question of whether a delivery call is a good mechanism for responding to drought by explaining that though it is not a good mechanism, droughts do probably cause the timing of those delivery calls. He emphasized that the reason for the delivery calls is the many-decades decline of the resource. He provided an update on the status of the active conjunctive administrative delivery calls on the ESPA, including:

- Rangen DC (he discussed the concept of a trim line and the implications of the filed appeal to the Supreme Court);
- Misc. Hagerman Areas DCs (these court cases have been settled);
- Big Wood and Little Wood River Water Users DCs (the lack of common ground water supply issue to be considered by SRBA); and
- Surface Water Coalition DC.

Mr. Weaver stated that the Surface Water Coalition is made up of seven irrigation entities that divert surface water, both natural flow and storage, from the Snake River between American Falls Reservoir and Milner Dam. Combined, the seven entities irrigate about 25 percent of the total irrigated ground on the Eastern Snake Plain, or about 555,000 acres. They are the senior surface water users that have filed a delivery call against the ground water users. He stated that the junior ground water users are organized by nine ground water districts on the Eastern Snake Plain. He explained that, in addition, there is an umbrella entity that sits over the ground water districts that is referred to as Idaho Ground Water Association (IGWA), who organize and coordinate the efforts of the districts and the junior ground water users. Primarily it is IGWA that is responding to the delivery call, both in the Thousand Springs area and the Surface Water Coalition.

Mr. Weaver said that the Surface Water Coalition focused on the decline of reach gain in the North Blackfoot to Minidoka stretch between 1980 and 2014 of approximately 500,000 acre-feet annually. He stated that IGWA relies on these natural water flow gains. After the delivery call was filed in 2005, it took three years for the final order to be issued by the department. The methodology order was filed two years later, establishing the rules and guidelines by which the department will determine if there was injury to the senior water user in any given year. He noted that with a Surface Water Coalition delivery call it is difficult to determine injury because IGWA is reliant on a determination of surface water supply for every year. Because water supply is a function of snow pack and water in the reservoirs, it varies from one year to the next. He observed that it is this uncertainty from year-to-year that makes it difficult on both parties. He added that another aspect of this delivery call that is unique is that injury can be determined during the irrigation season and that would affect a curtailment during the season; however, he stated that at the end of the year the court determined that the coalition is entitled to a reasonable carryover of their storage water from one year to the next. Mr. Weaver went on to say that injury to their carryover can be found at the end of the year, and that can lead to a curtailment from one year to the next year.

He explained that despite the challenges associated with determining in-season injury, the courts have stated that the department must make a projection of what the water supply will be in April and what the senior water users demand will be to water their crops. If the demand is going to be more than the supply, then a determination of injury is made. At this point the junior water users need to go forth and acquire water. Mr. Weaver explained the methodology for determining in-season injury, as well as the carryover injury at the end of the season. The challenge, he stated, is that by the August/September time frame, when it is clear what the water supply is, crops are already planted. This makes it difficult for curtailment. Last winter and early spring the department began to modify the methodology based on the instructions that were remanded to them from the court and the department then issued the Third Amendment methodology order in April of last year. He emphasized that the biggest change with the order is that there is no finality for the "Junior" until the time of need (August/September time frame). The cumulative effect of the methodology order is that it provides more assurance to the "Senior" and the methodology determines a larger and a more frequent injury early in the year (April time frame), prior to final reservoir fill.

He explained that when the injury is determined by the department in April, IGWA has to go out and mitigate for that. IGWA relied primarily on the surface storage water system to mitigate, so they acquired the water and delivered it to the senior users to mitigate for their injury. However, after five years of implementation of this methodology, Mr. Weaver stated it has become more difficult for IGWA to get surface water prior to the day of allocation. The day of allocation is defined as when those storage water owners know with certainty what the water storage allocation will be from Water District 1 and the Bureau of Reclamation. He opined that timing is the critical issue, given that the day of allocation often can be in mid-June to late-July. The court mandated that IGWA mitigate in that April time frame but the people holding the storage water will not provide the water until June or July, and he noted this has been a big conflict over the past couple of years. He explained that under the new methodology, the department identified the April 2015 injury determination would have been 89,000 acre-feet, so would have led to a curtailment of all water rights junior to 1982 and it would have affected approximately 86,000 acres. He emphasized that if not for the stipulation worked out in the beginning of May, there would be curtailment right now.

Mr. Weaver said that these facts brought the parties together in the beginning of May, at which point they decided to set aside the methodologies, and agreed that if they implemented set practices from one year to the next, they would not need to worry about the implementation of the delivery call. Additionally, IGWA was willing to consider a voluntary reduction in their consumptive use of the aquifer. However, when the parties met in May, after a record low level in April, the senior surface water users believed the injury would increase. Speaker Bedke oversaw the settlement and tasked the department with working up scenarios so the parties could have an understanding of what the injury would look like through the season. The task completed, Mr. Weaver reviewed the department's projection results for demand shortfall as of May 3, 2015.

He discussed the timeline for the settlement agreement, ending in October with all participating irrigation districts, canal companies, and ground water districts signing the agreement unconditionally. He stated that in September IGWA started working on how to implement the settlement. He noted that they are engaged in earnest in working to implement the term sheet. He identified the components of the settlement agreement as:

1. Objectives:

- Mitigate for material injury to senior water users in the Surface Water Coalition (SWC) Delivery Call;
- Provide safe harbor to participating ground water users in participating Ground Water Districts (GWD);
- Minimize economic impact to water users and the state economy;
- Increase reliability and enforcement of use, measurement, and reporting across the Eastern Snake Plain;
- Develop an adaptive management plan to stabilize and enhance the Eastern Snake Plain Aquifer ground levels to meet existing conversion rights.

2. Near Term Practices (2015 Water Year):

- Delivery of 110,000 acre-feet storage water to SWC by Idaho Ground Water Appropriators (IGWA);
- Dedication of \$1.1 Million to provide water to existing conversion projects.

3. Long Term Practices (Commencing 2016):

- Consumptive use reduction of ground water by 240,000 acre-feet annually;
- Annual storage water delivery of 50,000 acre-feet;
- Irrigation season reduction: April 1 – October 31 (benefit to Swan Falls minimum flows);
- Mandatory installation of approved measurement devices by 2018;
- Support state sponsored recharge program of 250,000 acre-feet annually;
- Additional support for the following: NRCS conservation programs; new conversion projects; management of trust water rights; and participation in review and possible recommendations of changes to IDWR administrative processes on the ESPA.

4. Term Sheet Benchmarks and Ground Water Level Goal:

- Goal: stabilize and ultimately reverse the trend of declining ground water levels and return ground water levels to levels equal to the average ground water levels from 1991-2001;
- Benchmarks: (1) by 2020 ground water levels will equal ground water levels in 2015; (2) by 2023 ground water levels will be halfway between 2015 ground water levels and goal; and (3) by 2026 goal is reached and ground water levels equal or exceed 1991-2001 average; and
- Metrics: ground water levels as measured in 19 mutually agreed to sentinel wells.

5. Adaptive Water Management Measures:

If any of the benchmarks or the ground water level goal is not met, additional recharge, consumptive use reduction, or other measures shall be implemented by the participating ground water parties to meet the goal.

Mr. Weaver identified three hot spots with respect to the Eastern Snake Plain: 1) the Surface Water Coalition that ties into the physical reach of the river between near Blackfoot and Milner Dam; 2) the Thousand Springs area where the aquifer discharges to the springs into the Snake River (the source of a dozen or more delivery calls); 3) the minimum stream flows at the Murphy Gage-Swan Falls Dam. He observed that the implementation of those settlement practices will have positive effects on all of the hot spots. Referring to the increased ground water levels bar chart, Co-chair Senator Bair asked if the actual well measurement combined from the 19 sentinel wells into the one line represented on the chart is the historic data and the model part continues on from the line's low point. Mr. Weaver stated that was correct.

Mr. Weaver reviewed the effects on the implementation of this term sheet on the Snake River at Swan Falls. By 2026, there will be between 200 and 250 cfs of additional water in the Snake River. This may not appear to be a lot of water, he stated, but this amount could have made the difference between meeting or not meeting the minimum stream flow requirements. Co-chair Representative Raybould asked if a curtailment takes place, are there actual measurement records collected that reflect an increase in flows to the river in a period of time during that irrigation season, and the coinciding reduction in underground water usage actually made to the surface water. Mr. Weaver stated that it would be very difficult to see that signal in the stream gauging data that they have.

Representative Gibbs asked if the court case involving the trim line issue has any bearing on the impact of the agreement. Mr. Weaver answered that the parties have not felt that a certain outcome would prohibit them from participating in the agreement. Referencing Co-chair Representative Raybould's questions, Speaker Bedke observed that if everything is deemed futile, then we are no better than Texas and California, two states that don't have the type of water law Idaho has. He agreed that it takes a long time to feel the effects in the river, but it is counter-intuitive to declare it all futile and just keep pumping. Senator Brackett stated that the settlement is based on confidence in the model and application of the model and he asked, if after the settlement is implemented and everyone fulfills their obligations, what happens if we find it is not meeting the projections. Mr. Weaver stated that both parties have agreed that if they don't meet the benchmark, they are committed to doing more. Referring to the benchmark slide, Representative Andrus asked if there are fines or penalties in place if the 2026 levels are not achieved. Mr. Weaver answered that the parties have agreed that they are committed to do more recharge, if necessary, to reach the goal. They understand that the agreement is forever. He explained that they understand that only after they have met the goal may they back off these practices. Speaker Bedke explained that the settlement is not superimposed upon both parties, it is a negotiated settlement; if it is not working, IGWA and the Surface Water Coalition will change what they are doing to make it work. Co-chair Representative Raybould asked if there has been planning done to build large recharge facilities down in the Lower Valley, where the water accumulates before it goes past Milner. Mr. Weaver explained that Mr. Patton will answer that question in his presentation.

Co-chair Senator Bair introduced Mr. Brian Patton, Chief of Planning Division, Department of Water Resources. Mr. Patton's presented on the topic [ESPA Managed Recharge Program Update](#). Mr. Patton stated we are at the point where the bubble in the aquifer is gone and we must manage it and

recharge is part of that management. He emphasized the strong relationship between stabilization of the ESPA and the Swan Falls agreement - the water rights settlement agreement between the state of Idaho and the Idaho Power Company, over the extent of their unsubordinated hydropower rights in the Snake River. From the agreement came a state responsibility to ensure minimum flows at the Murphy Gage, which is immediately below Swan Falls Dam. If the flows are not maintained, the state's obligation is to start curtailing trust water rights in order to maintain those flows. However, he explained that if one goes 200 miles up river to Milner Dam there is zero flow. The spring flows that have been in decline these past sixty years are the flows the state relies on to maintain the minimum flows on the river at Swan Falls Dam. He pointed to stabilizing the spring flows as the fix to this problem. He stated that though the ESPA problem is often viewed as a Magic Valley and Eastern Idaho problem, in actuality: 1) the ESPA region produces around one-third of Idaho's total economic output; and 2) spring flows coming from the Thousand Springs are what feeds the Snake River below Milner Dam down to the Swan Falls Dam, and the spring flows provide an adequate flow for hydropower generation, so everyone who uses power from Idaho Power has a direct stake in the success of the aquifer stabilization effort. He explained the implications of the aquifer situation:

- ESPA can no longer meet all the uses that have been assigned to it - delivery calls determine what water uses come off the system;
- ESPA must be managed to sustain spring flows sufficient to meet the Swan Falls minimum flows;
- If economic damage is to be minimized, ESPA must be managed to sustain spring flows sufficient to reduce need for conjunctive water delivery calls;
- Current situation is due partly to "deferred maintenance" of the ESPA;
- Need to "re-build" ESPA.

He then outlined the recharge goal to stabilize and rebuild the ESPA:

- HB 547 passed by 2014 Legislature allocates \$5 million annually from cigarette tax to Water Resource Board for "statewide aquifer stabilization";
- ESPA is first priority;
- HB 479 (2014) allocated \$4 million (one-time) to the Water Resource Board for ESPA recharge infrastructure;
- 2015 Legislature allocated additional one-time funds;
- State Water Plan goal of 250,000 acre-feet/year;
- Component of SWC Settlement Term Sheet;
- Component of draft Hagerman Valley/Thousand Springs Term Sheet;
- Needed to maintain Swan Falls Minimum Flows;
- Needed to maintain Idaho's economic viability.

Mr. Patton next addressed the factors that define how ESPA recharge is accomplished, stating that it is a tale of two different water supply patterns: 1) Lower Valley at Milner where recharge water is available all winter; and 2) Upper Valley upstream of American Falls where recharge water is available when flood control releases from reservoirs occur. Co-chair Senator Bair asked why flood control water released to anticipate heavy runoff be diverted into the canal system. Mr. Patton answered that they are looking at increased coordination with the Bureau of Reclamation, with the aim of timing and shaping their flood releases to help facilitate more recharge.

Mr. Patton continued his discussion regarding the factors that define recharge, including water rights. He opined that the department wants to put the water where it stays around a long time in the aquifer. He pointed to the emerging patterns: in the Lower Valley there is recharge water every year, all winter long and decent aquifer retention and becomes the base-load operation of sustainable recharge. It is used to build a long-term program around that. At the upper part of the system the water availability is less but he said we must put the systems in place to take advantage of that water in the Upper Basin, when it occurs. He also reviewed the manner in which water gets into the ground; through: unlined canals, contracts with canal companies and irrigation districts to carry water to recharge, spreading/spill basins and, in one case, an injection well.

Mr. Patton tracked the winter recharge data from when the recharge water right was turned on at Milner Dam October 27 through when it was turned off above American Falls and shut down March 24th. He stated that the Water Resource Board is working with canal company partners to address the capacity issue related to the spilling of 200,000 acre-feet past Milner Dam. He highlighted the constraint on the Upper Basin recharge, where they are required to maintain 2,700 cfs passing Minidoka Dam for recharge to occur upstream of American Falls. He summarized the winter recharge 2014-2015 totals:

- Total ESPA recharge: 75,234 acre-feet;
- Amount below Minidoka: 61,068 acre-feet;
- Amount above American Falls: 14,166 acre-feet;
- Total spill past Milner Oct-Mar: ~300,000 acre-feet.

Mr. Patton highlighted the 300,000 acre-feet that went past Milner and was not used for recharge because there weren't enough places to put it. Also, he pointed out that some of the Lower Valley canal companies carried water for a very long time. For example, the Milner-Gooding Canal Company carried water for 118 days and the Twin Falls Canal Company for 148 days. Speaker Bedke asked if we look back thirty years to the Teton Dam era, was that water being caught by the dam then and how was the river managed. Mr. Patton stated that if Teton Dam was still there, with its active capacity of around 250,000 acre-feet, much of the water reflected in the chart "Total Water Board Recharge Rates During 2014-2015 Season" would have been stored in Teton Dam. Moving forward he discussed projects underway with canal companies to improve systems for recharge. He said that the Milner-Gooding Canal construction has already started and it should increase the capacity for recharge from around 200 cfs to 600 cfs. If they can divert for 100 days on average, the increase will be from 40,000 to 120,000 acre-feet a year. This amount represents a huge increase in capacity in the Lower Basin, where water is available every year. He also discussed recharge improvements at the Northside Canal Company, the Twin Falls Canal Company, the Southwest Irrigation District, the Upper Basin Fremont Madison Irrigation District, the Great Feeder Canal Company and the Aberdeen-Springfield Canal Company. He also provided details regarding the installation of an extensive flow measurement device, working cooperatively with Water District 1, canal companies, Idaho Power, and IDWR staff. The monitoring program will also include water level monitoring, dye testing, and water quality monitoring around the recharge sites.

He discussed next winter's operation projections:

- Lower Valley: projected total recharge ~ 100,000 acre-feet; projected delivery costs ~ \$700,000;
- Upper Valley: for both total recharge and projected delivery costs: it depends on the water supply conditions.

He stated the costs and timeline for the overall ESPA recharge for aquifer stabilization and recovery:

- 200,000 acre-feet/year average in 2019 (+/-);
- 250,000 acre-feet/year average full build-out in 2025 (+/-);
- \$30 million for capital cost;
- \$2 to \$3 million/year ongoing, for operations, maintenance, and replacements;
- Schedule contingent on adequate resources (Cigarette Tax funds).

Senator Siddoway asked what mechanisms are in place to ensure there is still going to be enough water when we start recharge efforts early. Mr. Patton stated that they are trying to better coordinate their flood control releases so we are in a better position to capture the water and use it for recharge. He explained that recharge rides on top of reservoir operations and uses whatever reservoir operations turns loose out of the system; in this manner, we are in a position to capture as much of that as we can and use it for recharge. Senator Lacey asked how the work done a few years ago to raise the dams at Island Park and Anderson Ranch and do recharge in the Weiser area (\$15 million allocation) figures into the plan and noted how reservoirs are great places to store water for irrigation. Mr. Patton responded that \$15 million was allocated for a series of different projects. Addressing the reservoir projects, he stated they are moving forward with the Island Park

project, that it can be achieved in a reasonable number of years, and that it would translate to 30,000 new acre/feet of storage. He opined that the Galloway project could have a significant impact on aquifer management by offsetting the Salmon release flows and could free up water in the Boise River system but he stated that the Galloway project is decade-long undertaking, to build a 700,000 acre-foot reservoir. Referring to the "Costs and Timeline" slide, Speaker Bedke stated that their efforts are all contingent on the cigarette tax funds, which sunsets in 2018. He encouraged taking strategic action this next session, shifting funding from the cigarette tax to a dedicated funding source within the General Fund. He commented that \$5.5 million will not service all that is required and it is time to address the issue and provide a stable funding structure to accomplish the goals for the diversion and the capital improvements.

Co-chair Senator Bair introduced Mr. Clive Strong, Division Chief, Natural Resources Division, Office of the Attorney General. Mr. Strong began by taking a step back to look at where we have been with this issue. He advised that every action we take with this common resource has a consequence or an unintended effect. When we look at water planning, he advised not to look at it as a single item but look at it in its entirety, anticipating the consequences moving forward. For example, the Swan Falls Agreement at its heart was a reaffirmation of a policy established in the 1920s, dividing the river in two at Milner Dam. All the water captured above Milner Dam would be used for development above the basin, anticipating that water as it was diverted across the plain would sink back into the aquifer and become available for spring flows and would sustain the hydropower base below the Milner Dam. Though this process worked well for many years, Mr. Strong stated that we didn't anticipate ground water development. When it came in, it started taking away the water that was building the reservoir and sustaining the hydropower base. We also did not anticipate the change in cropping patterns that has led in part to the delivery calls in the Upper Basin. He explained that with water planning, we tend to plan for those water-rich years and forget about the cyclical nature of our water supplies. He emphasized that what we are seeing now is the consequence of all those things coming together. He expressed that we now have a foundation to move forward and get into proactive management of the resource in a way not done in the past. For instance, with the surface water delivery call, we are beginning to look at the entirety of the aquifer, what the impacts of those diversions are on the spring flows and what the consequences of those might be for the water users.

Mr. Strong continued, providing details on the [Thousand Springs Water Supply Restoration Framework](#). He discussed the second hot spot, the Hagerman Valley area. He noted that with the Swan Falls agreement, differences were resolved between Idaho Power and the state but what was left unanswered was the question about the spring flows. With the implementation of policy reflected in the state water plan, we were going to rely on these spring flows to sustain minimum flows down through the lower part of the Snake River, but we failed to take into account the corresponding development of the aquiculture interests and how pumping would impact those spring flows and the water rights in the Hagerman Valley. He said that because of this, we were setting the stage for the second battle that began in the late 1990s and continued into the 2000s; as the spring flows began to decline spring users in the valley began to complain about those decreasing spring flows. Going into adjudication, some of our well-understood rules began to change. He explained that the futile call doctrine, which is a surface water doctrine, cannot be applied because the hydrogeology of the aquifer doesn't work, as the impacts of pumping are attenuated over time. So in adjudication, we have been grappling with how to deal with this attenuated effect and who bears the responsibility for that. He stated that the delivery calls are just symptomatic of trying to address that particular issue. He recalled that in 2001, he and the director tried to work with the water users to find a solution without litigation and attempts were made for four years but because of the uncertainty of the law we could not get the parties to agree. This led to the 2005 delivery call, the Rangen call, and the others that have followed that have forced us to deal with this issue in the courtroom. He opined that the outcomes pursued in the courtroom will not be as favorable as those you can get if you can find common ground to work upon. He noted, however, that given the uncertainty of the law we were simply not able to get there.

Mr. Strong went on to say that In 2014, Governor Otter brought the parties together to work on a solution that led to a series of conversations with stakeholders in the Hagerman Valley. He explained that Speaker Bedke and Mr. Strong's department representatives have met with water users who are experiencing significant declines in their water supply to create a framework to address their concerns. He then reviewed the objectives they developed:

- Proactively mitigate for material injury to senior spring water rights caused by diversions under junior ground water rights so that delivery calls will not be necessary;
- Develop an adaptive management plan to stabilize and enhance the ESPA spring flows to meet existing water rights and future needs.

He noted the similarity of these goals to the surface ground water goals. While we have a plentiful water supply, the way we manage it is becoming overtaxed and we need to find a way to manage it more effectively so we can maximize the opportunity for everyone's use. He stated the framework for use in the Hagerman Valley consists of four components:

- Billingsley Creek Component: delivery of 10 cfs to Billingsley Creek; delivery of Magic Springs tail water; and capture North Side tail water;
- Spring Component: direct delivery of substitute water supply; lease agreement; and subordination agreement (4 delivery calls);
- Above the Rim Component: recharge program; and conservation program;
- Adaptive Management Component: spring flow monitoring program; steering committee to oversee program implementation and to address changed circumstances; and measurable goals and targets.

Mr. Strong commented that the surface water settlement has become a big driver; with the reduction of the diversions above the rim we are anticipating that over time an increase in the spring flows in Billingsley Creek will be in the neighborhood of 20 cfs. Based upon analysis the department has done and conversations with the water master in that area, if we can get to that level, we will be meeting the supply needs in the Hagerman Valley in that Billingsley Creek drainage. Likewise, he continued, the recharge program Mr. Patton discussed will become an important component, and will help move along the resolution of the problems in the valley. Regarding the adaptive management component, he stated we need to know how the spring flows change over time based upon changing practices. The Swan Falls policy implementation group is working toward trying to design some programs and methodologies to better estimate the spring flows and to discern what those trends might be in the spring flows. By doing this, we can anticipate and take actions that would head off some of these problems, rather than waiting for the delivery call to occur. He emphasized they are looking at the measurable goals and targets coming out of the surface water settlement because it gives them a good target to work from.

Mr. Strong pointed to the next steps in the Hagerman Valley:

- Continue discussions with Hagerman Valley water users;
- Evaluate benefits of current and proposed activities;
- Create a working group to assist in the development of a spring monitoring program to better predict spring flow trends;
- Coordinate ESPA management with implementation of the Swan Falls Settlement.

He stated the bottom line is seen in the "ESPA and the Snake River - A Combined System" slide; even though we have a divided river, we have to think of it as a combined river, in the sense that we have to manage it in a way that we can achieve these many multiple demands upon the resource and optimize that outcome. He stated that though significant progress has been made this past year, there is work left to do.

Mr. Strong provided an update on the [Northern Idaho Adjudication](#). He observed that the status of the adjudication is quite substantially different from the adjudications we have down here. Different in the sense of the type of claims we are dealing with, most of them being domestic. We are adjudicating five basins with a total of a little over 11,000 claims. He stated they are nearly completed with Basins 91, 92, and 93. He explained that though the chart reflects a higher objection

rate in North Idaho than in the SRBA, it really just reflects an error that was made in some of the reporting in the forest practices claims, where one element was not reported, forcing us to object in order to get them cleaned up. The real objection rate will only be in the one to two percent range, substantially lower than in the SRBA. He highlighted an important issue that will come up on October 20th, in front of the CSRBA District Court. It deals with what information must be included in de minimis domestic and stock water decrees. The practice has been to decree de minimis domestic and stock water rights at the statutory limit of 2,500 or 13,000 gallons per day, but not to exceed actual historic beneficial use. He explained that the reason for this is that if they had to go out and investigate all these claims it would take a huge amount of manpower and in Southern Idaho we don't typically regulate those de minimis stock water claims, unless there is some sort of neighborhood interference issue. As we moved forward with the CSRBA, the Coeur d'Alene Tribe objected to the process of treating them as de minimis and not going in and determining the actual historic use. He stated this is the reason we asked the court for a determination. He emphasized that this is important because nearly 90 percent of the claims in the North Idaho adjudication are de minimis domestic and stock water claims. He predicted that the court will sustain the process because there is some precedent for it.

Mr. Strong briefly touched on the status of the Forest Service federal reserved water right claims: the St. Joe Wild and Scenic River Settlement agreement is pending and should come through in the next month; settlement of two administrative claims is pending; and continuing settlement discussions are proceeding on six Organic Act claims (in January there may be re-judgment on claims if agreement is not reached). He also provided an update on the Coeur d'Alene tribal negotiations. He stated that a memorandum of agreement establishing a framework for negotiations was adopted by all parties and he highlighted the progression of settlement meetings scheduled through January 6, 2016. He stated his appreciation for the North Idaho legislative committee and specifically Representative Barbieri and Senator Nonini, who serve on the scheduling committee.

Senator Brackett noted that in the SRBA the federal government granted hundreds of stock water claims and partial decrees and asked if the state has been accepting stock water claims in the Northern Idaho adjudication. Mr. Strong stated there were claims for stock water in the CSRBA but does not know how they are moving forward and he offered to investigate. Following up, Senator Brackett asked if the Forest Service or BLM has been accepting stock water claims. Mr. Strong responded that he did not know but he would investigate and report back to the committee.

Co-chair Senator Bair introduced Ms. Emily Callihan, Communications Officer, Idaho Department of Land (IDL), who provided an overview for the committee on the topic: [Policy Alternatives Relating to Public Access to Endowment Lands](#). Ms. Callihan stated that Idahoans value access to Idaho lands, highlighting that approximately 70 percent of Idaho's 2.4 million acres of endowment lands are legally accessible and used by the public for recreation. She explained that on endowment land there is no formal policy in place for dispersed recreation. Because of this, she explained that IDL land managers have been faced with questions about when to exclude the public from using endowment lands for dispersed recreation. For example, she mentioned proposals for exclusive use leases for recreation purposes, such as exclusive hunting operations. She continued that in the absence of formal Land Board policy on dispersed recreation, IDL land managers find guidance for dealing with dispersed recreation elsewhere, including: Land Board policies, the Idaho Constitution, Idaho statutes, and IDL policies, instruments, and administrative processes. She stated that they do allow exclusive use, most normally for solar wind and thermal leases, where the leasee wants to protect their investment and also for the public safety. She addressed situations that require closures for public safety; closures put in place on a limited, short-term, case-by-case basis for public safety. She detailed the reasons why the department does not typically put in place large-scale closures for fire prevention. She said that they are difficult to enforce, the public likes access, and fire prevention measures are already in place.

She reviewed the recent history of exclusive use leases. She stated that the department has not offered exclusive use leases for recreation purposes, such as exclusive hunting operations. She noted the department does have lease language authorizing limitations on public use and exclusive use. She also stated that there are operational considerations that restrict surface use for safety reasons. She mentioned that the department has been approached in the past twenty years to lease endowment lands for exclusive use for hunting; for example, there were two applications denied from land owners in Eastern Idaho who wished to exclusively lease endowment lands that were intermingled with private ownership for fenced Elk shooter operations. She explained that recently the department has been in discussions with a company seeking an exclusive use lease in Eastern Idaho for a bird hunting operation. This request, she explained, prompted the department to review what they have done in the past relating to exclusive use.

She detailed policies that have been developed and applied in other western states (Colorado, Montana, Utah Washington, and Wyoming), as well as the policies of the federal government and Potlatch, that address the issue of exclusive use access on trust lands.

She emphasized that there is a need for the Land Board to adopt a formal policy for dispersed recreation on endowment lands. She presented the following options for consideration:

- Option #1-A: Retain the current approach;
- Option #1-B: Retain most of current approach, but consider exclusive use leasing for recreational purposes; and
- Option #2: Keep lands open but charge for recreational use.

She closed, explaining that she expects that the Land Board will soon address the application from the bird shooter operation and that it will coincide with the board making a policy decision related to recreation. If the new policy is bolstered by additional funding it would make more funds available for public schools, it would provide the public long-term assurance for access and funds could be used to enhance recreational opportunities on endowment lands.

Senator Siddoway asked Ms. Callihan to explain what the down side would be to taking money from the bird shooting operation. Ms. Callihan stated that it is necessary for their operation to be exclusive use and they would need fencing from August to December. Also, it would overlap with hunting season. Because their application asks for more than has been asked for before, she stated she is seeking direction from the Land Board on how to proceed.

Co-chair Senator Bair introduced Mr. John Peiserich, Alta Mesa Holdings Idaho, who provided an [Update on Oil and Gas Activities in Payette County](#). He explained that Alta Mesa is a private company, founded in 1987 by Mike and Mickey Ellis. The company applies cutting-edge technology to find and prudently develop resources others have left behind or overlooked. He described the company mission: to find and produce natural gas and oil in a safe, environmentally responsible, and profitable manner. He also briefly discussed the company's project history, including:

- Snake River/Alta Mesa focus began in 2010;
- 2D seismic evaluation supported initial leasing;
- 2012-2015: 300 sq. mi. 3-D seismic, 6 wells;
- Northwest Gas Processing built initial backbone infrastructure;
- First production - 3/7/2015 - Kauffman 1-9 wells.

He reviewed the recent operational developments in Idaho:

- Highway 30 treating facility (Alta Mesa provides 40 percent of the gas Langley Gulch requires to operate);
- Little Willow gathering facility;
- Partnered with Campo & Poole in Ontario/Energy transport rail loading facility;
- Highway 30 facility & Energy transport rail site.

Mr. Peiserich listed some of the positive economic impacts Alta Mesa Company has had on Idaho, including: 1) Idaho received more than \$2,100,000 for leases in 2014; 2) had the first BLM lease

sale in a decade in 2015, where Idaho receives one-half of the proceeds that total \$3.8 million; 3) royalties and severance tax payments (the Highway 30 facility with its first significant production coming in the fourth quarter of this year); and the sale of gas to Idaho Power (supplying gas directly to Langley Gulch).

Moving forward, Mr. Peiserich highlighted three challenges his company faces:

1. Regulatory - He expressed concern for the loss of IDL's program manager and other employees over the past months, as it reflects a significant loss of institutional knowledge. He opined that knowledgeable and dedicated legal staff are needed there. He commented that their process of integration hearings is taking four or five times longer than the same process takes in neighbor states. He stated that he needs more outreach on the part of the state. Continuing, he explained why it is important for the state to talk about the opportunities that Alta Mesa can provide. Referring to DEQ, he stated that their air permitting is well-defined but it is slow, so it is not competitive. He explained they are working with DEQ to get some permits by rule, but that will take a year or two, given the rulemaking process. Again, he observed that surrounding states have these provisions and suggested Idaho should consider them.
2. Financial – He observed that the inability to predict time and outcome will naturally result in his company choosing to deploy capital to more stable jurisdictions. So, we need the more defined terms.
3. Competition – He stated that Idaho is not creating the incentives necessary to get industry here to help develop the resources. There isn't the infrastructure needed and there is the substantial sage-grouse risk, with 3.8 million acres of Idaho being proposed to be taken out of action. He emphasized that this is a huge problem if Idaho wants to draw industry here, because the easiest way to accumulate acreage to drill on is to lease it from the state and the federal government. He encouraged the legislators to keep fighting on this issue.

Co-chair Representative Raybould introduced Mr. David Claiborne, who represents the Idaho Recreation Council. He stated that he is here following up on HB 255, a bill from the 2015 legislative session that was held in the Senate. Since then, the parties involved have been working through the concerns expressed in committee. Mr. Claiborne's presentation on [Suction Dredge Mining](#) began with a video recording to illustrate what recreational mining and small scale dredge mining is all about. He discussed new draft legislation, which made small amendments to HB 255. He noted they clarified the language relating to the crime of interference with mining activities so that it could not be interpreted to prohibit public access within the waterways where the mining is taking place. He also reviewed the language providing an exemption for this activity from the Stream Channel Protection Act, the Idaho Comprehensive Water Plan, and the Placer and Dredge Mining Act. He explained that it would only exempt the hand-panning and the hand-slucing without the use of motorized equipment, as well as the small-scale dredge mining, which uses small equipment moving a small amount of mineral. He pointed to the area they hope satisfies the concern relating to primacy relative to Section 404 permitting; it is the addition of a sentence at the end of the proposed new code sections. The sentence indicates these state exemptions should not be interpreted to prohibit or restrict a state agency from enforcing or implementing federal laws or regulations that relate to these activities. He stated he is working with Senator Crapo's staff and he anticipates some federal legislation will be coming forward that will be similar to the amendments just discussed. It will extend a categorical exclusion for this activity from the federal Pollution Control Act, as well as from Forest Service regulations on surface operations.

Co-chair Representative Raybould asked if the addition of the sentence in the code section solves the concern expressed by the Attorney General's opinion and he asked if the language has been cleared by the Attorney General's office. Mr. Claiborne replied that though the additional sentence is intended to alleviate that concern, he has not yet spoken to Mr. Strack from the Attorney General's office. Mr. Claiborne introduced Mr. Don Smith, who presented public testimony to the committee, which can be accessed at: [Public Testimony - Mr. Don Smith](#). Senator Siddoway asked Mr. Claiborne

to clarify why his draft states "8 inches or less," while the HB 255 language refers to "2-10 inches." Mr. Claiborne explained there is no nozzle size that is less than 10 inches until you get to 8 inches.

Co-chair Representative Raybould introduced Mr. Dustin Miller, Administrator, Governor's Office of Species Conservation, who presented an [Update on Sage-Grouse](#). He began by stating that for decades the Fish & Game Department has been involved in management of this species. Sage-grouse have been subject to a lot of federal agency actions, culminating in a 2010 finding by the U.S. Fish and Wildlife Service that determined that sage-grouse is warranted for listing under the Endangered Species Act but precluded because of other higher priorities and that placed sage-grouse on a candidate's species list, by which the Fish and Wildlife Service had until September to make a final decision as to whether or not to move forward with listing. In response to the 2010 finding, the Secretary of the Interior asked for the states to partner with them, developing regulatory mechanisms and plans for incorporation into a larger federal plan. Governor Otter set up a task force that included a diverse group of stakeholders and in June 2012 they developed recommendations for a Governor's alternative for the federal planning effort. The recommendations were submitted to the Bureau of Land Management and the U.S. Forest Service in September 2012 for incorporation into the larger planning effort. Mr. Miller emphasized that it was a collaborative effort, using the best available science; it balances the needs of greater sage-grouse, addresses the primary and some secondary threats, and balances it with the economic vitality of Idaho. He explained that this effort was accomplished in partnership with the Bureau of Land Management officials, the regional forester's office, and local Fish and Wildlife officials. He noted that their plan received endorsement by the U.S. Fish and Wildlife Service, both locally and regionally, and was included as a co-preferred alternative in the federal planning effort.

Mr. Miller stated that in December of last year the Interior Department changed their approach. The Interior Department developed a suite of new management actions for a handful of secondary threats in Idaho and created a whole new management zone. He explained that one of the problems with the Department of Interior acting in this manner is that they went behind closed doors without the involvement of the state or the public. The department came up with sagebrush focal areas. He went on to say that there are more restrictive rules set for hard rock mining, a no surface occupancy standard for oil and gas development and a new livestock grazing permit renewal process. He emphasized that these elements were not vetted with the state or the public and he stated that they didn't consult our scientists on the development of the focal areas. Over the past several months the Governor's office, the Department of Fish & Game, and the Office of Species Conservation have been trying to work something out with the Interior Department, in order to find a mutually agreeable solution to these last minute elements. Yet these same elements and restrictions were included in the final Environmental Impact Study (EIS) for the land use amendments that came out in May.

Mr. Miller stated that they filed protest points to the final EIS. The Governor filed a consistency review, which was submitted in late July. He went on to say that these efforts had no effect, as the consistency review from BLM was not adopted. He stated that at this point the Governor filed an appeal, which elicited a negative response from the Director of Interior. He stated that on September 23rd, the Fish and Wildlife Service announced the sage-grouse "not warranted" for listing across the eleven-state range of the species, largely because the collaborative effort that went into the planning of the longtime preservation of the species. Mr. Miller remarked that this resulted in allowing Idaho to move forward on the ground management of the species pursuant to our management plan. However, he emphasized that the problem is the way the Interior Department went about deriving the "not warranted" determination with the last minute land use restrictions. He stated that the Governor and the Legislature filed a complaint against the implementation of the land use plan amendments and the record of decision for the Great Basin. He stated that the goal is for the Interior Department to work with the state, and to explain why they disregarded the scientifically-driven local collaborative process. He remarked that they'd like to see the agencies

complete a supplemental EIS, in order to have an open discussion and properly vet these last minute restriction across 3.5 million acres for secondary threats.

Co-chair Representative Raybould introduced Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish & Game, who reported on the [Sage-Grouse Status and Raven Control](#). She reported that statewide sage-grouse lek counts in 2015 were up three percent from 2014 and up nine percent from the lows in 2013, with 1,245 leks counted in 2015. She remarked that the department initiated a more strategic and statistical approach to support trigger analysis. Additionally, of all leks counted, 597 were active in 2015, 511 were inactive, 115 had an unknown status, and 22 were newly discovered leks. She explained that the department spent just under \$50,000 of the \$75,000 of General Fund money passed through the Office of Species Conservation on lek monitoring in 2015. Regarding the sage-grouse season, Ms. Kiefer stated there was a 7-day season in area 2, and the department checked 321 sage-grouse at standard check stations on opening weekend 2015, compared to 313 birds in 2014. Additionally, she noted that the Soda Fire was the only major wildfire that impacted sage-grouse in 2015; the fire burned about 37,500 acres of priority habitat and 191,000 acres of important habitat. She explained that burned acres are only three percent of the priority sage-grouse habitat in the West Owyhee Conservation Area. Additionally, IDFG, IDL, and OSC are working together on fire rehabilitation on the 12,896 acres of state endowment land.

Ms. Kiefer provided a raven control update. She reported that in 2015, the department received permission to use DRC-1339 from the Department of Agriculture. Three department staff are certified to use DRC-1339, but are only able to work on private and state lands. Focused control work proceeds on two study areas: in the Greater Curlew Valley (where 530 ravens were removed) and in West Central (where 102 ravens were removed). She detailed the process, adding that 44 raven eggs were destroyed in Curlew and 13 in West Central. She reported that the department conducted raven surveys statewide in association with sage-grouse lek routes. Continuing, she explained that in 2016, the department will evaluate the potential benefits to sage-grouse by comparing lek trends in the treatment and nontreatment areas in the two study areas. They also plan to conduct raven surveys in the Greater Curlew Valley and West Central in 2016, in order to evaluate the potential change in raven densities. Additionally, she stated that Wildlife Services is reviewing and responding to public comments on their predator control Environmental Assessment, which includes raven control to benefit sage-grouse. They expect to decide in December if they can issue a finding of "no significant impact" or whether additional National Environmental Policy Act (NEPA) process is required.

Representative Gibbs asked how much funding the department will need moving forward. Ms. Kiefer responded that the department integrated some new approaches so we could have a better statistical approach relative to trigger analysis. She added that there were some logistical hiccups in the first year but she believes department efficiency will increase and they are currently working with OSC to determine what the funding needs will be moving forward. Senator Patrick stated that he notes a similarity between the decline in the sage-grouse leks and the increase of the West Nile Virus, and asked if this is the case, is anything being done to control the mosquitoes. Ms. Kiefer agreed that one can see several trends. She stated there is a weather element involved, explaining that the lek count to some extent is a representation of the counters being able to get out in the field. She added that in recent times there is no significant, overt evidence of West Nile Virus and the department continues to monitor for it. Mr. Miller observed that the sage-grouse dip in the mid-2000s did coincide with a West Nile epidemic in the West Owyhee as well as the 2007 Murphy Complex Burn that burned 650,000 acres plus in Owyhee County. Speaker Bedke stated that the federal government changed the game unilaterally. They withdrew 10 million acres to hard rock mining exploration, as well for oil and gas. He asked how many of those acres were in Idaho. Mr. Miller responded that 3.8 million acres were designated as focal areas in Idaho, roughly about 300,000 of those acres are non-habitat areas, and of habitat areas, there is roughly 3.5 million acres.

Senator Siddoway asked how different are the state sage-grouse population maps from the federal maps and has the Fish & Game Department had time to look at the acreage and what they

represent. Mr. Miller stated that the focal areas are largely a carve-out of the state's core habitat areas that were developed via the task force and incorporated into the Governor's plan. The core habitat areas represent 5 million acres, and about 3.5 million acres of that are carved out as focal areas. He explained that his office is analyzing the maps from the Interior Department. He said their focal areas for the most part align with our core habitat areas; but he emphasized it is the management restrictions for secondary threats that is the problem. Following up, Senator Siddoway asked if, overall, their lines are congruent with the lines the state has drawn, and he also asked Mr. Miller to talk about how the management piece differs between the two proposals. Mr. Miller explained that there is a lot of overlap between core habitat and sagebrush focal areas. He added that he will work with the Idaho Geospatial Office (GIS) specialists and provide the committee with more details. He stated that with management actions, the state aligned with the federal government with the need to address the primary threats of wildfire and to protect habitat from invasive species and we must be aggressive in dealing with the primary threats. He stated that Idaho and the federal government differ on the approach to secondary threats; for example, the livestock grazing component. He emphasized that it is improperly managed livestock grazing across the range that is considered a secondary threat, not livestock grazing as a whole. He stated we already have range and health standards as a regulatory mechanism in place and through the Governor's task force and agreement of the industry, the plan incorporates the sage-grouse habitat objectives into the permit. So, he explained, it would only be with a downward trend in the sage-grouse population or habitat that a causal factor analysis would be completed, in order to make a determination if livestock grazing is the cause. If this is the case, the Governor's plan provides for a suite of actions to address the situation. He opined that with the federal focal area scheme, the livestock grazing would have to change; the language is vague on how they would approach permit renewals. Additionally, he stated, that based on the language, he anticipates that 3.5 million acres will be off limits for any new hard rock mineral development. He explained that the task force would have taken this on if it had been an issue presented to them by the federal government in 2012.

Senator Brackett asked if the additional restrictions apply only to federal land and Mr. Miller said they do. Senator Brackett asked if he knew about details regarding whether the split estate land will be managed like the federal focal areas. Mr. Miller stated there likely will be impacts to non-federal properties that are adjacent to federal land with the focal area designation. Senator Brackett asked if there will be additional restrictions imposed on grazing. Mr. Miller responded that the grazing language is vague, and suggested there could be changes in "seasons of use," stocking rates, and the process of renewing permits. Also, the federal requirement prescribes that the lek buffers be applied equally across all habitat zones. He stated his concern is that the agencies will stretch themselves thin trying to implement these actions in habitat that includes only five percent of the population.

Speaker Bedke stated that the ruling "not warranted for listing" came down because of the new management plan, not because of the practices we have done to date. He asked if this has been a practice used with other threatened or "close-to-being-listed" species. Mr. Miller responded that this is not the first time that his office has had issues with agencies moving the goal posts. He stated that he hasn't experienced the breaking of commitments by the federal government at this magnitude as he's had with other ESA matters. Speaker Bedke asked Mr. Miller if he thought it would have been better to have the sage-grouse listed or not have it listed. Mr. Miller responded that we would have earned the "not warranted" because the primary threats were addressed. He agreed that many people are asking what the restrictions cost will be to the states. With a listing, he stated that there are strictures like "no take" and ESA consultations, as well as major economic harm being done to the state. His office is still trying to analyze the impacts of the new management plan. He emphasized that though "not warranted" is the right outcome, his office still wants the Department of the Interior to do things properly. Ms. Kiefer added that recent decisions regarding the Southern Idaho ground squirrel, Columbia spotted frog, and the Goose Creek milk-vetch are excellent examples of how species are not listed because of the work accomplished.

Speaker Bedke stated his frustration with the Department of Interior's dangling this new management plan over their heads and using it as a leveraging point in order to accomplish some undefined concerns where previously, non-warranted decisions were always based upon us developing and executing a plan that is observably successful in protecting the named species. Senator Siddoway observed that what is happening here is the same thing that happens to the big horn sheep, where the state is going to be charged with the management of the species and held accountable; and our land management agencies are charged with the habitat, which leaves the state stuck with trying to truly revive the species.

Co-chair Representative Raybould introduced Mr. Doug Conde, Deputy Attorney General, Department of Environmental Quality. Mr. Conde presented an update on the "Waters of the United States." Idaho is presently involved in challenging the EPA and the Corps of Engineers' new rule of the Waters of the United States under the Clean Water Act. He explained that this definition is important for Idaho for two reasons: 1) it defines the scope of the federal permitting requirements under the Clean Water Act. He added that Idaho is in the process of getting authority to be the agency that issues the discharge permit; and 2) it defines the scope of our state water quality regulation because the state has incorporated by reference the federal Clean Water Act definition. He stated that it was a product of the Legislature's directive to fully implement the Clean Water Act, but to be no more stringent than the federal law.

Mr. Conde provided background on the new rule. He addressed the U.S. Supreme Court case of *Rapanos v. United States*. He noted that the gist of the opinion is that the Clean Water Act regulates traditionally navigable waters, waters that are used or could be used for interstate commerce. He went on to say that Justice Kennedy, in his concurring opinion, also said the Clean Water Act regulates those other waters that have a "significant nexus" to traditional navigable waters. Mr. Conde stated that as a result of U.S. Supreme Court opinions, the EPA and the Corps of Engineers proceeded to draft a new rule in order to implement the decisions and to clarify to the regulating community what waters are regulated, those that meet the "significant nexus" test. He added that the rule was published in June and took effect in August. He stated that the EPA and the Corps created categories of waters that are automatically under the jurisdiction of the Clean Water Act, whereas the current framework applies a case-by-case analysis process. Mr. Conde continued, explaining that, in practice, this new process means the federal agencies list out a number of water bodies that then are automatically within jurisdiction. One of the most significant categories is that all tributaries to traditional navigable waters will be included under the jurisdiction of the act.

Mr. Conde stated that soon after the new rule was published, Idaho joined 12 other states in challenging the rule, by filing a lawsuit in federal district court in North Dakota. The states have challenged the rule, claiming it violates the authority granted the agencies under the Clean Water Act and that it also violates the Commerce Clause of the U.S. Constitution and the Administrative Procedures Act. He stated there are nine other federal district cases filed, and 18 other states are involved in those lawsuits. He added that seven states joined lawsuits to support the federal agencies. He discussed the EPA's claim that jurisdiction lies in the federal court of appeals and for that reason Idaho also filed a lawsuit in the 8th Circuit Court of Appeals. The circuit court appeals are now being handled by the Sixth Circuit Court of Appeals. He stated that on August 27th, the court in North Dakota granted the state's motion for preliminary injunction, so the new rule of the Waters of the U.S. is not effective in Idaho. At the 6th Circuit Court level, we filed motions arguing that the 6th Circuit Court does not have jurisdiction and the case should be argued in the North Dakota court. Additionally, the court granted the motion to stay, so at present the new rule is not effective anywhere in the United States. Mr. Conde concluded his remarks by stating that the 6th Circuit Court will most probably determine the jurisdictional question in the next few weeks, which may determine where this case will be litigated. He added that he believes the case will end up back in front of the U.S. Supreme Court.

Co-chair Representative Raybould introduced Mr. Norm Semanko, Executive Director, Idaho Water Users Association (IWUA). Mr. Semanko provided an update on the Columbia River Treaty. He stated that it was entered into by the United States and Canada in the 1960s with a primary aim being to provide additional capacity for flood control. Three large projects were built in Canada, and Libby Dam was built as a result of the treaty. He explained that the treaty has a lot to do with the allocation of the power revenues and the benefits that come from those projects. He noted that one provision of the treaty is that, beginning in 2024, certain portions of the treaty may be terminated. He went on to say that for this to occur, the country has to give ten years' notice that they intend to terminate. Because of this, the earliest that either country could give notice was in 2014. With that date approaching, both countries completed an extensive review process. He explained that U.S. entity in charge of that operation is the EPA and the Corps of Engineers. He stated that Idaho has had an opportunity to talk with the U.S. entity and IWUA agreed with some of their regional recommendations. All of the entity's recommendations went to the State Department at the end of last year. He continued that early this year, IWUA has had several discussions with the State Department and various agencies about their two concerns, reflected in House Joint Memorial No. 10, adopted by the Legislature in 2014:

1. Flood control - The treaty provides Idaho with flood control protection; for instance, there is a guaranteed space of 10 million acre-feet that provides flood control for Portland and other places, but starting in 2024, Idaho will have to call upon Canada to provide it. He emphasized that before we can call upon Canada, under the terms of the treaty, Idaho must show that we have made effective use of U.S. projects. Canada interprets this as all of our projects throughout the entire Columbia River Basin have to be used to the full extent possible before we can ask them to do anything. Mr. Semanko stated that IWUA agrees with the U.S. perspective, which is that only those projects that were congressionally authorized for systemwide flood control are the reservoirs that are required to show effective use for being called upon. He stated that if all projects have to be used for systemwide flood control, it could fundamentally change how our projects are operated.
2. Ecosystem function - A recommendation from the regional entity was that there should be a third primary purpose of the treaty going forward. He said the IWUA's perspective is that although all of the ecosystem function laws that apply are key considerations in the operation of the Columbia River system, so too are navigation and water supply laws. Recognizing that this treaty was for flood control and power, the IWUA feels that, though these ecosystem issues should be addressed, one should not be elevated above all the others. The regional entity's recommendation was to include ecosystem function and just after Memorial Day, the State Department indicated that they were going to include ecosystem function as a third primary purpose in the treaty negotiations. He continued, stating that it is unclear what ecosystem function fully entails and he listed some components of ecosystem function that have been suggested. Mr. Semanko stated that some of these suggestions make the IWUA nervous; for example, challenges could ensue if these undefined components conflict with present agreements, such as with the Nez Perce Water Rights Agreement. He concluded by highlighting that the IWUA's intends to make sure that the State Department understands that the Nez Perce Water Rights Agreement is among the litany of domestic laws that should be held inviolate during any negotiations on the future of the Columbia River Treaty.

Co-chair Representative Raybould introduced Mr. David Groeschl, State Forester and Deputy Director, Forestry & Fire Division, Idaho Department of Lands (IDL), who presented an [Overview of Fires in Idaho and Associated Costs](#). Mr. Groeschl reviewed the 2015 fire season, and commented that it has been a fire season of firsts. He began his remarks noting that in Idaho there are 10 IDL forest protection districts, two timber protective associations, and 6.3 million acres of mostly privately-owned and state-owned forests, as well as 800,000 acres of federal land. He said the division has agreements with over 200 local/rural fire districts that provide structure and wild land protection in non-urban parts of the state. Mr. Groeschl reviewed 2015 statewide fire statistics.

He stated that there were approximately 739,000 acres burned, but this total does not include the Walker Fire. He provided a breakdown of acres burned, by owner: USFS – 348,000 ac.; BLM – 230,000 ac.; private – 119,000 ac.; IDL – 28,000 ac.; BIA – 11,000 ac.; and other – 3,000 ac. He noted that within the 10 forest protection districts, there has been close to 75,000 acres burned, which represents 617 percent of the 20-year average. There were 291 fire starts in IDL protection, which is 90 percent of the 20-year average (split 50-50 between human-caused and lightning strike-caused).

Mr. Groeschl explained that one of his agency's goals is to catch 94 percent of the fires within ten acres or less. He said that in order to accomplish this they have implemented rapid initial attacks on fire starts. When a fire is reported, their goal is to get resources on that fire as quickly as possible, in order to catch it while it is small and before they have to bring in a team and call upon resources like engines, aircraft, and boots on the ground, stationed in each of the forest protection districts. He stated that when a fire goes beyond that first 24-hours and it appears there won't be containment, and when there are values at risk, he stated they deploy an incident management team. He detailed the makeup, purpose and cost of the teams. The teams request resources to suppress the fire and the division responds with direction as to how they will operate in order to put the fire out as safely and as quickly as possible. He went on to say that In this fire season, 14 IDL incidents required use of 27 incident management teams. The Clearwater Complex Fire was the largest and most expensive (\$25.2 million and 68,100 acres burned/48 residences, 70 other outbuildings lost).

Mr. Groeschl said that 2015 was the most expensive fire year they have faced. Year-to-date the total cost to the suppression account is \$72,350,000, with reimbursables at \$17,902,000 and the net obligation to the General Fund calculated at \$54,448,000 (not including the Walker Fire). Their budget is split between two categories, preparedness and suppression. Preparedness funding covers the cost of having resources ready before fire season, and is funded through a combination of General Fund, federal funds, and forest land assessment. Suppression funding covers costs incurred when personnel and equipment are dispatched to a fire. He noted that deficiency warrant authority allows IDL to spend money to promptly suppress wildfires. Additionally, he said the Legislature usually appropriates funding equal to the negative balance in the deficiency fund on June 30th of the previous year.

He expressed special thanks to Idaho Fish and Game, Parks and Recreation, and the Idaho Transportation Department for their concerted effort to get the word out to the public about the high fire danger and fire restrictions this season. He added that the forest industry (mills, forest land owners, and operators) went above and beyond the Phase II levels, which further restricted their operations and cost the owners even more financially. In addition he noted the help of the citizens of Idaho and particularly pointed out the support from the Kamiah community, where he said residents came together to support firefighters in all sorts of ways, from collecting donations to opening up community centers.

In response to a question from Speaker Bedke, Mr. Groeschl stated that a total 75,000 acres within IDL protection burned, across all ownerships. He said that most of the 28,000 acres was probably rangeland in the Soda Fire. He stated he'd have to get the breakdown of how much of that land was in our protection and how much was in BLM protection, because the 28,000 figure is statewide, with a good chunk of that from the Soda Fire.

Noting that the costs were three times as great as any previous year for forest fire suppression, Speaker Bedke asked for more details regarding the process for determining when and how many other resource assets need to be deployed. Mr. Groeschl stated that when a management team is brought in, the team commander is given a delegation of authority with objectives. As the fire suppression effort proceeds, a line officer from his agency is on the site working with the incident management team and they are looking at assets and resources. He said that the line officer and the incident commander have a discussion before they order up the resources daily. Also, when

they move to the mop-up stage, he stated that they release the resources in play as quickly as possible in order to minimize expense.

Speaker Bedke asked whether fire management can be pointed to as a reason why the fire year was so extraordinarily large - or whether we are protecting acres that don't necessarily have our standard of management. Mr. Groeschl stated that one of the drivers for this season was the lightning that moved through the Clearwater country around August 10th. He explained there were also some fairly expensive fires early on, like the Cape Horn Fire. He suggested that where management made a difference this year was during extreme weather conditions. He stated that especially during a wind aided event, they had to get out of its way because it was going to burn in managed and unmanaged forests alike. He said that during a more normal range of weather conditions, on unmanaged lands the fires burn hotter and it is more difficult to get boots on the ground because there is less access. Speaker Bedke noted that in the past it has been Idaho's fire management that has set it apart. He asked Mr. Groeschl to provide data to the committee that will support his presentation regarding the difference between fire spreading in managed versus unmanaged forests under these extreme conditions.

Senator Brackett asked about the difference in fire suppression management on managed versus not-so-managed rangeland. Mr. Groeschl acknowledged there may be similar fire suppression realities (managed versus unmanaged fire spread) on rangelands as there are evidenced on forest lands. He stated that fire behavior is driven by climate, typography and fuels. Referring to page five of the handout, Senator Brackett asked for more details regarding the preparedness funding dollar amounts. Mr. Groeschl stated that the total is in the neighborhood of \$4.5 million and he offered to provide a more explicit breakdown. He added that roughly a little over \$2.5 million of General Fund monies go into his department's fiscal year 2016 budget allocation for preparedness.

Co-chair Raybould introduced Ms. Julia Sullens, South Idaho Fire Program Liaison, who presented on the topic of [Rangeland Fire Protection Associations](#) (RFPAs). She began by providing a brief background on the RFPA's start in Idaho. In December 2010, a group of private ranchers got together and determined they needed a better way to organize themselves and protect their natural resources from fire. She said that with the support of Governor Otter, the Idaho Legislature, and federal and state fire managers, ranchers now have an avenue to form RFPAs. She stated that the creation of RFPAs is a collaborative effort between the local ranchers, the Bureau of Land Management and the Idaho Department of Lands. She described the process for getting approval to be an authorized RFPA. Once an RFPA is approved, its members take part in training so that they can be ready for fire season. She detailed benefits the RFPAs can provide, including:

- Satisfying the ranchers' interest to be active participants in protecting the forage needed for their livelihood;
- Satisfying fire managers' safety concerns by ensuring all firefighters are trained and have necessary equipment and communication;
- Supporting the IDL effort to provide a complete and coordinated approach to fire suppression in Idaho;
- Enhancing efforts to protect sage-grouse habitat to the benefit of all parties.

Ms. Sullens noted that the bulk of the funding for RFPAs comes from appropriation from the Idaho Legislature. She added that RFPAs are nonprofit organizations, governed and directed by the members. The associations are also funded by fees set by the local board and grant dollars. She stated that equipment and training are provided through IDL and BLM. She reiterated that the purpose of the RFPAs is to protect the landowner's investments, assist adjoining cooperators if asked, and keep fires small through safe, aggressive initial attack. She stated there were a total of six RFPAs operational this fire season and the department has trained over 150 members. She went on to say that these six RFPAs combine to protect 951,000 acres of private rangeland that was previously unprotected, as well as providing secondary protection on 4.8 million acres of federal and state ground. She remarked that four additional areas are considering forming RFPAs, and she anticipates that two or three will be ready by next year.

Senator Heider asked Ms. Sullens to discuss the success of the RFPAs this season. Ms. Sullens stated that her office is gathering statistics at this moment and five of the six RFPAs have submitted reports. These five RFPAs attacked twenty-six fires, one of which was the Soda Fire. She added that she will provide a summary report to the committee. Speaker Bedke asked if any of the RFPAs have agreements with the Forest Service and Ms. Sullens answered that the Shoshone Basin RFPA does have an agreement with the Sawtooth National Forest, south of Twin Falls. She added that another RFPA is interested in forming in Clark County, and they would likely be entering into an agreement with the Caribou-Targhee National Forest.

Co-chair Representative Raybould introduced Mr. Doug Rutan, Chair of the Owyhee RFPA. Mr. Rutan stated that he lives in southwest corner of Owyhee County. Their RFPA started up in 2012. In their first year they trained 45 members and now in their third year they have 60 trained members. He stated that communication is the hardest part, but indicated that the members are getting better at using the radios. He noted that there are 1.3 million acres in their protection district so the 60 members get scattered thin and they have a lot of volunteer equipment provided for by the ranchers. He summarized the various pieces of equipment they were able to use, adding that some of the equipment was funded by the Office of Species Conservation.

He reported that in 2015, they dispatched to three different fires earlier in the year, one of which was the Soda Fire. He recounted that they got to the fire fairly quickly but the fire could not be contained. At one point burning roughly 10,000 acres/hour for four hours; the fire burned roughly 275,000 acres with a lot of habitat lost and some rangeland and livestock lost but there was no human life lost or injured and less than five structures lost. He summarized his remarks, stating his RFPA needs equipment so they can have a better attack. Representative Gibbs asked what type of equipment is needed and Mr. Rutan responded by stating his RFPA needs an engine that packs 1,000 gallons and a pump.

Co-chair Representative Raybould introduced Mr. Charlie Lyons, owner of a family ranch in Mountain Home and a member of one of the first RFPAs that started in 2012. Mr. Lyons stated his RFPA keeps its membership to ranchers with public lands permits, explaining that this helps them focus on their intent and goals. He stated he is a rancher but takes an active role as a firefighter on the side in order to help protect the resources. He emphasized that he appreciates the help of the Legislature. He stated that his RFPA took part and played a critical role on initial attack in 12 fires, where the largest was 1,800 acres. Mr. Lyons also reviewed several projects his association worked on this past year. Looking to the future, he stated that his association is looking to promote prescribed burns. He commented that they are looking to grow from strictly initial attack responders into supporting efforts throughout the entirety of the fire. Senator Brackett stated that the RFPAs are a real success story and he applauded their efforts.

Co-chair Representative Raybould adjourned the meeting at 4:30 p.m.