

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 04, 2015

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll, Stennett and Buckner-Webb

**ABSENT/
EXCUSED:** None

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

CONVENED: **Chairman Bair** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

WELCOME: **Chairman Bair** welcomed the Director and Board Members of the Idaho Department of Water Resources (IDWR) to the meeting. Attending were: Director Gary Spackman, Chairman Roger Chase, Charles Cuddy, Jeffery Raybould, Peter Van Der Meulen, Dale Van Stone, Bert Stevenson, Albert Barker, and Vince Alberti. Also in attendance was Brian Patton, Bureau Chief, IDWR.

MINUTES: **Senator Siddoway** moved to approve the Minutes of January 23, 2015. **Senator Heider** seconded the motion. The motion passed by **voice vote**.

MINUTES: **Senator Nuxoll** moved to approve the Minutes of January 26, 2015. **Vice Chairman Vick** seconded the motion. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Mr. Charles Cuddy**, Orofino, Idaho, spoke first. He has been a member of the Board for the past eight years. Through his involvement, he is very familiar with the Spokane River issues and other water issues particular to North Idaho. **Mr. Cuddy** said that he maintains a continued interest in making more water storage for Idaho.

Organizations that Mr. Cuddy is a member of consists of:

- Orofino Chamber of Commerce
- Idaho Society of Professional Surveyors
- American Congress of Surveying and Mapping
- License with the State of Idaho Professional Land Surveyors

Past board memberships are:

- Clearwater Valley Hospital
- Riverside Water and Sewer
- Orofino Chamber of Commerce
- Idaho Water Resources

Mr. Cuddy was appointed and elected to the House of Representatives for District 7 and 8, 1991-2004, and he served on the following committees:

- Resource and Conservation Committee
- Revenue and Taxation Committee
- Sub-Committee Chairman
- Transportation and Defense
- Legislative Council
- Rivers Governance Committee
- Federal Lands Pilot Project Committee
- Co-chairman Federal Lands Task Force
- Western States Forestry Task Force
- Joint Resource Committee

Mr. Cuddy's education was gained at Kendrick High School and Lewis-Clark State College in Lewiston.

Senator Heider inquired about Mr. Cuddy's interest in the Galloway Dam. **Mr. Cuddy** said that it has been an issue with him since he served in the House. With the amount of water that has to be provided for down river fish, the Galloway Dam gives the opportunity to supply some of that water without it coming all the way from Rigby. That would make quite a difference with what could be done with the 400,000 acre-feet that could be used elsewhere in the State. **Mr. Cuddy** stated that was his primary reason for supporting it all these years.

Senator Siddoway asked about the adjudication process in North Idaho. **Mr. Cuddy** said that he is familiar with the Spokane, St. Maries, and St. Joe Rivers, the Sandpoint area, and Lake Pend Oreille. Some Washington people want to obtain water from the lake. His sole interest is to protect Idaho's water. **Mr. Cuddy** said the biggest share of adjudication is "down the road" and budgeting is a concern.

Chairman Bair thanked Mr. Cuddy for his participation, then called on Mr. Jeffery Raybould.

GUBERNATORIAL APPOINTMENT:

Mr. Raybould provided some background information, stating that he farms 2,300 irrigated acres in the St. Anthony and Rexburg area with his father and son. They raise potatoes, grain, and alfalfa.

Current organizations that Mr. Raybould is a member of:

- Idaho Water Resource Board, board member
- United Potato Growers of Idaho, board member
- IdaGro Inc., board chairman
- Idaho Water Users Association, Fremont-Madison Irrigation, district director
- ESPA CAMP Implementation, committee member

Past organizations consisted of:

- Eastern Idaho Water Rights Coalition
- Henry's Fork Watershed, council member
- Idaho Potato Commission, chairman and commissioner
- ESPA CAMP Advisory Committee

Mr. Raybould currently holds a license as a private applicator with the Idaho Department of Agriculture.

Mr. Raybould's professional accomplishments in Water Management include:

- Idaho Water Resource Board
- Fremont Madison Irrigation District
- Egin Bench Canal Company
- Henry's Fork Watershed Council, Co-Facilitation Team
- ESPA Camp Advisory Committee
- Committee of Nine
- Independent Canal Company

Mr. Raybould's professional accomplishments in the Potato Industry include:

- IdaGro Inc
- United Potato Growers of Idaho
- Idaho Potato Commission
- National Potato Council
- Potato Growers of Idaho

Mr. Raybould stated that the Governor has asked the Water Board to come up with a policy on sustainability. He feels the State Water Plan is the framework for the sustainability policy and all the work that preceded has given them a blueprint on how to manage the water resources in the State. The aquifers are also of interest to Mr. Raybould, and he said they need to be managed and taken care of.

Chairman Bair asked about the number of homes that would be affected by raising the Island Park Reservoir/Dam by three feet. **Mr. Raybould** replied that they are doing a study and working with the Bureau of Reclamation. He said preliminary information indicates there might be a couple of homes that could be impacted, but the rest of the homes are above the elevation that they will go to. Some homes have basements and the owners are concerned that seepage might occur. **Mr. Raybould** said that they are hoping to get extra water storage without causing any undue hardships on the private property owners.

Senator Heider said that aquifer management sometimes comes into conflict with some of the folks that live on the eastern Idaho Plain and want new development. He asked Mr. Raybould for his thoughts on that subject. **Mr. Raybould** said that on average, one million acre-feet of water flows past Milner every year, and that is water he feels needs to be better managed. It could be stored in surface storage or stored in the aquifer. **Mr. Raybould** stated that what needs to be done is to figure out ways to capture the additional water supply in a combination of ways, then get it stored in the aquifer, so that new development could happen. This has to be done without impacting those with senior water rights.

Senator Stennett inquired about water problems in Mr. Raybould's area and how they are being addressed. **Mr. Raybould** responded by saying every part of the State has its own unique set of problems. They held a refill in Water District 1 in eastern Idaho, by going in and looking at what had historically taken place with regard to flood control releases out of federal facilities. They then developed water rights that reflected that. In the Boise area, it's a different set of circumstances and something different may need to be done. He feels that consistency is needed from one area to another, so that in the future there will not be conflicts.

Senator Brackett wanted to know how close stabilization is with the Snake River Aquifer and if it will be stabilized before the Swan Falls Agreement is in effect. **Mr. Raybould** said that is his hope. He thinks they have demonstrated the ability to be creative about how they do recharge and utilize the winter flows. They have also discussed how to increase the flows in the Shoshone area to help. **Mr. Raybould** stated that they need an intensive program, as close to the Thousand Springs Reach as possible, to stimulate the additional spring flow there. When there is available water in the Upper Valley, that system needs to be charged up also. Regarding the Swan Falls issue, **Mr. Raybould** feels that it will be okay, as it is a little higher than in the past.

Senator Brackett said that infrastructures need to be in place so that the big flushes could be captured and put into the aquifer. He asked Mr. Raybould for his comments. **Mr. Raybould** said that he agrees whole-heartedly. It will take a lot of additional infrastructure and it will be necessary to have some sites specifically dedicated for recharge.

GUBERNATORIAL APPOINTMENT:

Mr. Peter Van Der Meulen, Hailey, Idaho, said that he has served four years on the IDWR Board and is applying for consideration for another four years. He is a licensed professional engineer and worked in that profession for 25 years. He currently is a cattleman and farmer, with a cow/calf operation, and he also raises hay and grain.

Mr. Van Der Meulen served in the U.S. Marine Corps from 1961-1966, receiving an honorable discharge. He then went to Stanford University and received a B.S. in Engineering and became a licensed professional engineer. He was previously employed by Idaho Power, MK, and Alpha Engineers before starting his own company, Power Engineers, Inc. The company currently has 2,300 employees, with 32 offices worldwide.

Mr. Van Der Meulen's past board affiliations were with the following:

- The Idaho Company
- Sun Valley Ski Education Foundation
- The Community School
- Laidlaw Park Grazing Association
- First Bank of Idaho, (Founding)
- Croy Canyon Ranch Foundation
- Blaine County Soil Conservation District
- Water District 37, 37 M

Mr. Van Der Meulen's present Board affiliations are:

- Board of Trustees Blaine Manor
- Webb Landscaping, Inc.
- Idaho State Water Board

Senator Stennett asked Mr. Van Der Meulen for his opinion on how the water is being managed in the Wood River Valley and also on other water issues in Blaine County. **Mr. Van Der Meulen** responded by saying the problem in Wood River Valley is two-fold. They have adjudicated out more water than what they have and there is no storage to draw on. The water call will most likely come from the folks down on the lower Little Wood River, and they are fairly well organized. The agricultural component, at the end of the valley, is in the final phase of getting their ground water district approved through the County Commissioners. **Mr. Van Der Meulen** said that once that is in place, those two entities (the water call and the agricultural component) will work together to try to come up with a solution.

GUBERNATORIAL APPOINTMENT:

Mr. Dale Van Stone was next to come before the Committee. He is from Hope, Idaho and is replacing former Board member, Bob Graham. **Mr. Van Stone** stated that he has lived near Lake Pend Oreille his whole life and is very familiar with issues revolving around lake water quality and quantity, lake level decisions, and the North Idaho Adjudication.

Current organizations Mr. Van Stone belongs to:

- Bonner Soil & Water Conservation District
- Local Co-op Gas and Supply
- Bonner County Weed Board

Past memberships on boards include:

- Co-op Board of Directors
- Bonner Soil and Water Conservation District
- Land O'Lakes Regional Board
- Idaho State Board for Conservation Districts
- Basin Advisory Group (gubernatorial appointment)
- State Magistrate Commission
- Planning and Zoning Commission
- Panhandle Health

Mr. Van Stone served in the U.S. Air Force from 1965 - 1969. He is currently a beef farm operator and works part-time in the Bonner County Sheriff's Office, running the Sheriff's Labor Program on the weekends.

Senator Cameron said a question arose in another Committee from a north Idaho Representative regarding spending General Fund tax dollars to support recharge and other mitigation efforts in southern Idaho and asked Mr. Van Stone for his feelings regarding that issue. **Mr. Van Stone** replied that as far as the water issue, everyone is in this together. Water is the most precious commodity in the State and everyone needs to work together to protect it and take care of it. He also feels there will always be water issues and the Board needs to do a better job of managing it so that everyone gets a fair deal.

Senator Nuxoll's question to Mr. Van Stone was regarding the lake level of Lake Pend Oreille. **Mr. Van Stone** said that is an on-going issue caused by spring run-off, fish issues, and recreational activities. It should not be lowered too soon.

GUBERNATORIAL APPOINTMENT:

Director Gary Spackman, IDWR, was the final person to be interviewed by the Committee. **Director Spackman** said the most important things he has accomplished in life he learned on the family farm while growing up. He said that setting canvas dams and night sets was always difficult, but he learned to appreciate water and agriculture.

Director Spackman said that before talking about being the Director of IDWR, he would like to compliment the Water Board members. The present Water Board has taken on more assignments and weightier responsibilities than he has ever seen the Water Board engaged in and they are earnestly trying to address the issues that they have talked about today. **Director Spackman** said they have discussed stewardship and the responsibilities that he and they have to ensure that the expectations of the Legislature, the Governor, and the people of the State of Idaho are fulfilled.

Director Spackman has served as Interim Director and Director of IDWR for five and one-half years. He directly oversees the activities of approximately 150 employees of the Department. Some of his accomplishments include the completion of the Snake River Basin Adjudication and completion of first round filing of approximately 11,000 water right claims in the Coeur d'Alene River/Spokane River Adjudication. Also, he supervised staff that coordinated the purchase of the Snake River surface water rights to secure a reliable water supply for Mountain Home Air Force Base. The Director also executed business plans for the near elimination of backlogs of transfer and water supply bank applications.

Director Spackman attended Utah State University, receiving a B.S. in agricultural engineering and he received his J.D. from J. Reuben Clark Law School. He was licensed with the Idaho State Bar and the Utah State Bar and worked in Soda Springs, Idaho and American Fork and Salt Lake City, Utah. He is also a registered professional civil engineer.

Director Spackman stated that when he started as Director, IDWR was starting into a cycle of recession. During that time, he oversaw an agency budget that was reduced by 28 percent from the General Fund. IDWR prioritized the work they had to do by moving some of the resources around. During that time, and up to the present, the number of pending transfers have been reduced from 500 to about 100 per month. The water right licenses pending were reduced from 2,500 to about 1,000 and they are continuing to reduce that number.

IDWR has also reduced the pending backlog of water supply bank rentals and leases. **Director Spackman** spoke about the water right acquisition for Mountain Home Air Force Base and how pleased he is with the results. The staff of IDWR has finished the work involving the Snake River Basin Adjudication. **Director Spackman** said the State should be very proud of their work.

The fill and refill issues have been a difficult process; however, the settlement for the Upper Snake River is in place and has been filed with the District Court with Judge Wildman in Twin Falls. All significant parties have signed off on that stipulation and they are waiting now for publication.

With regard to the Boise River Basin, **Director Spackman** said they are having some earnest discussions but are unsure of the outcome.

Director Spackman said that a new version of the ground water model has been developed for the Eastern Snake Plain Aquifer, and they are in the process of developing another ground water model for the Wood River Basin. That model should be up and running and ready to start using in about a year. **Director Spackman** said they are anticipating, by developing the model, that there will be delivery calls in the Wood River Basin. They are trying to develop the technical tools necessary to address any of the delivery calls.

IDWR has established a ground water management area in Lewiston at the request of the County Commissioners. **Director Spackman** said there were two sides to the issue there; one side whose wells were going dry and the other side wanting to develop more land. Hopefully, a balance has been struck, as well as identifying a long term water supply for future development in the Lewiston area.

Accounting programs have been rewritten that were in place for years in Water District 1 in the Upper Snake. Also, in northern Idaho at Priest Lake, they have contracted with current and backup operators for the outlet structure and have been working with the northern Legislators to assure them of continued maintenance of lake levels.

Director Spackman said the things he has talked about are things that have been done during his tenure. He has a few things that he would like to take care of as the Director, include addressing delivery calls and as the Court issues decisions. One of the clearer statements that is coming out of the court is that prior appropriation means something. First in time, first in right also means something. **Director Spackman** said he needs to be earnest in protecting those senior water rights. Sometimes assignments are conflicting that promote economic development and administer the resource and it is difficult to implement both at the same time.

With regard to water calls, **Director Spackman** said he is sending decisions to Judge Wildman, then the Court writes it decision. He is being constantly apprised of the progress of the Rangen delivery call. **Director Spackman** feels that consistency is important and he applauds the work that the Legislators are trying to address. He stated that there is an on-going delivery call from the Surface Water Coalition and he has a remand from the Court where he has to issue another order that addresses how they determine the water supply of the members of the Surface Water Coalition in determining any shortfall and then determine the obligation on the part of ground water users.

Director Spackman would like to finish the fill/refill issue in the Boise Basin and other accounting issues for the delivery of water. Another item he is working on is increasing water availability and flexibility of water for various uses. They have made runs at a recharge credit system to increase water availability for domestic, municipal, commercial, and industrial supplies. **Director Spackman** said that so far, those efforts have been thwarted.

Senator Cameron asked the Director about the last curtailment order, saying that it seemed to defy logic. **Director Spackman** responded by saying they developed ground water model ESPAM Version 2.1 and it changed the results as to how the results were computed. In the development of the model, they had a modeling committee, comprised of representatives of ground water users and surface water users. Those parties all knew what the outcome and results of that model would be. Rangen reinitiated its call - they wanted to move forward. **Director Spackman** said he suggested they wait until the model was adopted. It took more than a year while they went through some analysis and errors were found and corrected. Ultimately, the committee said that was what should be used by the Department. Everyone knew the interaction between the springs and Billingsly Creek and ground water were more direct than they were in the earlier model. Some of that was error that was found in the earlier model; some was just the result of changing of parameters that defined attributes on each cell; and some of it was just because of better data.

They held a hearing for the delivery call and the decision was issued on January 29, 2014. There were discussions that there would be some obligations, followed by a series of mitigation plans. **Director Spackman** said he issued orders related to them. The two components were for enhancement activities and they have to be done on a yearly basis. He was then faced with the difficulty of recognizing mitigation for irrigation water offered over an irrigation season, where they were seeking mitigation for an entire year. **Director Spackman** said he wondered if he should give credit during the irrigation season, then the Irrigators get full credit and are not curtailed, but in October, everyone else is curtailed for the entire year. He wondered if he should spread it out over the entire period of time for the year, then there is a shortfall in the mitigation, and then he needs a component of curtailment. **Director Spackman** said he then wondered if he should just reject the whole thing.

He gave credit for an eight or nine month period of time by spreading that out even though no water was being provided from October until January to Rangen from those mitigation efforts. The Court decisions said he erred and should not have recognized any credit after the irrigation because there was no water.

Based on the Court's decision, the ground water users received a grace period of about eight or nine months, and as Director Spackman read the decision, probably should not have been approved because the Court is saying - Director, you need to recognize the principles of the prior appropriation. Now, they are at January 19 and the Director was told by the Court he needs to either curtail or the juniors need to be mitigated. **Director Spackman** said when he got to that point, he was relying on promises that the pipeline would be done. On Friday afternoon at 4 p.m. (the Friday before the 19th), he learned that they had not complied with the conditions of the order. At that point, **Director Spackman** said he didn't have any choice, and he denied the motion for a stay.

Director Spackman said that was a long explanation to the question posed by Senator Cameron, but that is what happened. **Senator Cameron** said that some day he would like further dialogue with the Director regarding this issue. **Senator Cameron** stated there is a feeling that some believe curtailment is absolutely necessary, almost at any cost, that needs to take place (which he doesn't agree with). He then asked the Director: 1) if he felt that way, and 2) does curtailment need to take place even if the curtailment cannot deliver water within a reasonable period of time?

Director Spackman said that first of all, he is not predisposed to curtailment. It is a very sobering exercise he engages in when he issues an order or when he denies a stay. He stated that when the Court says that he has an obligation to enforce the prior appropriation doctrine, then he has the responsibility to curtail or require mitigation in the time of need to the senior water right holders. **Senator Cameron** then asked the Director what the time frame is when a curtailment becomes a futile call. **Director Spackman** responded by saying that he is struggling with that issue. The judge issued a decision that discussed the issue of futile call. **Director Spackman** said he asked the parties to brief him on whether he should be addressing the issue of futile call in remand from the Court. Right now, he said he is struggling with the curtailment order.

Senator Brackett asked about the model, if it was a new one or had the old one been updated. **Director Spackman** replied that he would characterize it as an update, but there are components in it that change the old model in ways that the results cannot be compared.

Chairman Bair said that concluded the interview for Director Spackman. He announced that there would be a meeting on Friday, February 6th, at which time voting would be held on the appointees.

Senator Heider said he wanted to recognize the Water Board and to thank them for finding a resolution to the water call. He also applauded the efforts of Director Spackman.

ADJOURNED: With no further business to come before the Committee, **Chairman Bair** adjourned the meeting at 2:50 p.m.

Senator Bair
Chair

Juanita Budell
Secretary