

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 11, 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 1:40 p.m.

MOTION: **Senator Heider** moved to send the gubernatorial appointment of Gary Spackman to the Idaho Department of Water Resources to the floor with recommendation that he be confirmed by the Senate. **Senator Brackett** seconded the motion.

SUBSTITUTE MOTION: **Senator Nuxoll** moved to hold the gubernatorial appointment of Gary Spackman to the Idaho Department of Water Resources in Committee subject to the call of the chair. **Vice Chairman Vick** seconded the motion.

ROLL CALL VOTE: **Chairman Bair** called for a roll call vote. **Senators Nuxoll, Siddoway, and Vice Chairman Vick** voted aye. **Senators Buckner-Webb, Stennett, Heider, Brackett, Cameron and Chairman Bair** voted nay. The substitute motion failed.

VOICE VOTE: The original motion passed by **voice vote**. Senator Heider will be the floor sponsor.

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Vick.

DOCKET NO. 37-0311-1101 **Director Gary Spackman**, Idaho Department of Water Resources (IDWR), reported on this rule. He stated that the rule is a proposed repeal of a portion of IDWR's conjunctive management rules. The rule is number 50 in the conjunctive management rules, and it defines the boundary as the area of common groundwater supply for the Eastern Snake Plain Aquifer (ESPA).

The boundary was established in 1995 when there was not a lot of technical information about the ESPA. The drafters of the rule were looking for some kind of definition anticipating controversies that have been encountered over the past 20 years. A definition of the boundary was found that had been put together by the USGS. They attempted to identify the edge of the basalt in which the water of the aquifer is located. Without any additional information, the boundary was adopted in rules, and they have been operating with the boundary since that time.

In 2010, Clear Springs Foods petitioned IDWR to initiate rulemaking to change the boundary of the ESPA. What they suggested was for IDWR to adopt a boundary that was equal to a model boundary that was in place. At that time, a second groundwater model was being developed, and the boundaries changed in that model, so the consideration of the petition was delayed until the most recent model was adopted and used by IDWR.

The first use of the that model was in the Rangen delivery call. When they started using that model, they felt it was important to reinstate the consideration that was filed by Clear Springs Foods. **Director Spackman** said that with all the ongoing duties, he wondered what process should be followed. He said that he was fortunate enough to have Rich Rigby, who had spent years with the Bureau of Reclamation, come to IDWR for the last two years of his employment and offer to take on the process for Rule 50.

Mr. Rigby and other staff members went out on the road and presented information. **Director Spackman** stated that what came out of that process was a number of alternatives, none of which were very good for him. However, he also knew that the definition of the boundary was not technically defensible. **Director Spackman** said that they felt the fairest approach was to repeal the rule, and in every delivery call, he would be responsible for taking evidence from all parties, then determining what the individual area of common groundwater supply was for each delivery. He asked to defer the rest of the time to Mr. Rigby.

Mr. Rigby said that he is an employee of IDWR, and what they want to offer people is a listening ear and to try to be as sensitive as they can. The conjunctive management rules were adopted in 1994 and the area of common groundwater supply is defined in Rule 50 and is consistent with a map of the U.S. Geological Survey that was developed in a 1992 report.

Mr. Rigby referenced a map (see attachment 1) that identified:

- ESPA tributary basins (purple)
- ESPA area of common groundwater supply (yellow)
- ESPAM 2.1 boundary (white)
- Stream gauges (black dots)
- Irrigated acres inside the area of common ground water - 1,806,407 acres
- Irrigated acres inside ESPAM 2.1 - 2,061,790 acres
- Groundwater irrigated acres in Basins beyond ESPAM 2.1 - 272,935 acres

A model was made about ten years ago in anticipation of water calls, which was version 1.1, and in 2014, IDWR formally adopted version 2.1 of the model. As imperfect as it is, this model is the best available tool that they have to work with.

Clear Springs Foods filed a petition in 2010 to change the Rule 50 boundary to match the model boundary. **Mr. Rigby** said they held several public meetings, and at that time they were in the process of finishing the new version of the model. The decision was made to delay further consideration until 2014, when a second round of comments was held. They received more than 200 comments.

IDWR made the decision to repeal Rule 50, as the current model boundary does not fit the definition. **Mr. Rigby** said they had three choices: 1) to leave the model boundary intact; 2) adopt the model boundary as the new area of common groundwater supply; and 3) go from mountain top to mountain top to include the colored areas on the map.

There were two active calls on the aquifer for water. One was the Rangen call for spring water near Hagerman and the other was a call from the Surface Water Coalition. Differences from surface water versus spring water are spring flows are pretty well known from one to two years in the future and ground water pumping in the areas that have been modeled will affect those flows. Surface water supplies are different in many respects, one being no reservoir storage. **Mr. Rigby** said they are hoping that this year's water supply will be adequate.

TESTIMONY: **Mr. Marx Hintze** said he is from the Big Lost River area and is a professional engineer with the State of Idaho. His father and uncle put in some of the first supplemental wells in the valley in the early 1950s. He stated that he doesn't understand the timing of the models as talked about by Mr. Rigby. In his work as an engineer, Mr. Hintze has worked with models, and he feels the model in the Big Lost River is hard to understand. **Mr. Hintze** said that the Big Lost River Aquifer is poorly defined, and he suspects the Snake River Plain Aquifer is the same way. If the supplementary wells are curtailed on a dry year when they can't get their storage water delivered, it will devastate the agriculture in the Big Lost area. He feels the basis for curtailment is poorly understood and it is a serious situation for the irrigators in the Big Lost River.

TESTIMONY: **Mr. Bevam Jeppesen** said he is with the Madison County Ground Pumpers. They have holes that have very different water levels and some of the water is lukewarm, not cold at all. They don't understand the differences and feel it is not fair to be included in with the area of common groundwater. **Mr. Jeppesen** said he wanted to point out that if the Rexburg Bench is curtailed, the economic impact would be devastating to them. The Madison County Ground Pumpers have been assessed a rate of \$2.00 per acre per year for the last 15 years.

TESTIMONY: **Mr. Joel Ashton** stated that he is from the Rexburg Bench and wanted to support what Mr. Jeppesen just testified to.

TESTIMONY: **Mr. Gary Wight** said he is from the Big Lost River area. He stated that each basin gets different snow level packs, and the Big Lost Basin has a high elevation and recovers very quickly. **Mr. Wight** feels that it is a quick decision to throw out Rule 50 just because of the data being used from a model with its imperfections.

TESTIMONY: **Mr. Lynn Tominaga**, Executive Director, Idaho Ground Water Appropriators (IGWA), said that they represent one million acres on the Eastern Snake Plain and its tributaries. His Ground Water Districts are mixed on this rule because most of the Ground Water Districts are within the yellow area on the map. He is representing Madison Ground Water District and the Fremont-Madison Irrigation District today, and they wanted him to express some concerns about Rule 50. **Mr. Tominaga** said the Eastern Snake Plain Aquifer model is often called an imperfect approximation of a complex physical system. He stated that it means the information that comes from the model is just that - an approximation. When you get an approximation that is one percent or less, that doesn't take into account the factor of uncertainty, that is one of the issues his Ground Water Districts have.

Mr. Tominaga said he was glad to see representatives from the Big Lost area here today. In this State, there is a futile call for the surface to surface water users, with the prime example being the Big Lost where 10,000 inches (200 cfs) are released during drought periods. The water only goes down four or five miles, then disappears into the river bed. Seniors are six miles down the river, so they don't get any of the water released from that. If the water doesn't get down to the Seniors, then that is called a futile call. **Mr. Tominaga** said the question is if the State should develop a policy of groundwater to surface water futile call. If there is no more than a five percent impact on a Senior, should you not be involved with a water delivery call? **Mr. Tominaga** said that is a policy question and it needs people who have a stake in the outcome to have a say what that future policy should be.

Mr. Tominaga stated that IGWA recommends that the docket that is before the Committee be repealed.

Director Spackman thanked the Vice Chairman and the Committee for their indulgence regarding this docket. He said that the proposal to repeal Rule 50 does not establish a different boundary. It does not establish a boundary that follows the model boundary, and it does not establish a boundary that goes ridge top to ridge top. It eliminates an artificial boundary that is not defensible technically and is perhaps not legal. Because they did not think it was defensible, they could not keep it in place. **Director Spackman** said he has instructed the staff to start exploring and evaluating what IDWR needs to do.

MOTION: **Senator Brackett** moved to approve **Docket No. 37-0311-1101**. **Senator Cameron** seconded the motion.

DISCUSSION: **Senator Stennett** said she is not comfortable with the degree of uncertainty and terminology and therefore cannot support the motion. **Senator Siddoway** stated that he concurs with Senator Stennett and is not comfortable with moving forward on this issue.

SUBSTITUTE MOTION: **Senator Siddoway** moved to reject **Docket No. 37-0311-1101**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Vick passed the gavel back to Chairman Bair.

ADJOURNED: With no further business to come before the Committee, **Chairman Bair** adjourned the meeting at 3:05 p.m.

Senator Bair
Chair

Juanita Budell
Secretary