

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, February 20, 2015

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll and Stennett

**ABSENT/ EXCUSED:** Chairman Bair and a vacancy

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

**RECOGNITION:** **Vice Chairman Vick** announced that today is the last day for the Pages. He asked Mariem Mastouri, Page for the Committee, to talk about her experience here at the Capitol during the first half of the Legislative session.

She is from Tunisia, North Africa and is here as an exchange student, going to school in Payette. Ms. Mastouri related that her experience was exciting and challenging. Her hope is to go to college, then pursue a career in politics or as an ambassador. **Vice Chairman Vick** presented her with a letter signed by the Committee members and an Idaho State flag that was flown over the Capitol on February 18, along with a certificate of authenticity signed by Governor Otter and Chairman Bair.

**CONSIDER- ATION OF GUBER- NATORIAL APPOINTMENT:** **Senator Siddoway** moved to send the gubernatorial appointment of Bob Barowsky to the Idaho Outfitters and Guides Licensing Board to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Lee will be the floor sponsor.

**CONSIDER- ATION OF GUBER- NATORIAL APPOINTMENT:** **Senator Heider** moved to send the gubernatorial appointment of George McQuiston, Jr. to the Idaho Outfitters and Guides Licensing Board to the floor with recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Thayne will be the floor sponsor.

**CONSIDER ATION OF GUBER- NATORIAL APPOINTMENT:** **Senator Nuxoll** moved to send the gubernatorial appointment of Randy Doman to the Idaho Parks and Recreation Board to the floor with recommendation that he be confirmed by the Senate. **Senator Brackett** seconded the motion. The motion carried by **voice vote**. Senator Nuxoll will be the floor sponsor.

**PRESENTATION:** **House Speaker Bedke** gave the opening remarks prior to hearing about the Hagerman Valley water supply issues. He stated that many in the audience participated in a tour last spring when the water call was made by the Rangan Company on the senior water right holders in the Eastern Snake Plain Aquifer (ESPA). **Speaker Bedke** said their overarching goal in the area has been to achieve peace.

After the Rangan call, everyone was getting weary through the years of having a water call and scrambling for water. **Speaker Bedke** said there was a collective will to address the entire area and to address all the water issues so that they are not running from call-to-call. He indicated that the State is in a unique position to accomplish this as they finish the Snake River Basin Adjudication. They now know who has the rights, the dates, and the relationship of the other rights. Nearly everything has been litigated on this subject and it has been to establish where and how and under what circumstances all these questions that surround water and its appropriation and as to how it works on the interrelationship between where his water stops and your water starts.

As a result of all this, the groundwater community and the junior water appropriators stepped up and shouldered the responsibility. **Speaker Bedke** said what is at stake here is when the water call was made and the water had not been delivered to Rangan, curtailment orders went out and it would have dried up 157,000 acres of prime irrigated Idaho agriculture and also taken water rights away from 14 cities. In addition, it would have shut down wells at Jerome Cheese, Kings Food, and others that would have been affected by that.

Meetings have been held since early summer to come up with a settlement in a way that touches three major points. They are: 1) actions below the rim; 2) actions above the rim; and 3) an adaptive management system to monitor progress.

**TESTIMONY:** **Mr. Dean Stevenson**, Chairman of Magic Valley Groundwater District, said his district lies within five counties, and it is one of three districts that was successful in the completion of litigation to Rangan. The pipeline was completed in 90 days, and the water is flowing. They also plan to put extra water into the Billingsly Creek drainage. **Mr. Stevenson** said as pumpers, they realize they can't continue business as usual and that they can't do everything or guarantee there will be water every spring.

**TESTIMONY:** **Mr. Craig Searle** stated that he represents the Southwest Irrigation District Groundwater Pumpers from Declo to Kimberly, which encompasses 90,000 acres. He thanked the landowners and producers that have put in, at their own expense, hundreds of miles of pipelines and shortened their irrigation season to accommodate less groundwater pumping. They pumped 60,000 acres of surface water last year replacing that amount of groundwater, and they also worked with several irrigation districts. **Mr. Searle** thanked the Committee, Water Resources, Speaker Bedke and Clive Strong for their support.

**TESTIMONY:** **Mr. Butch Morris** said he has lived in the Hagerman Valley since the mid 70s and has watched the water decline to this critical point. He stated that the pumpers have built a pipeline and have provided him with water for his farms. **Mr. Morris** said he appreciates the \$5 million that the State invested last year and hopes another investment is made for the aquifer recharge, which is a small part to fixing the aquifer. He is also a pumper and feels that he can reduce the usage on his groundwater pumps, as well as accepting part of the problem.

**TESTIMONY:** **Mr. Gary Marguardt** is the General Manager for SeaPac of Idaho, which produces and processes fish. He has been involved with fish production in the Hagerman area for over 25 years and during that time he has watched the spring flows continually decline. He said that he can see first hand from comments in the past that this is a troubling issue. **Mr. Marguardt** said that he has been in meetings where it had been stated that the problem is with the pumpers and the fish farmers and that they need to come up with a solution. He has also heard that the aquifer is in balance; what is pumped out is pumped back in. With these kinds of comments, it is hard to build up confidence that the State is willing to recognize that there is a problem or be a partner in solving it.

**Mr. Marguardt** closed by saying there are some positive things going on. There needs to be more ways to reduce the amount of extraction of water coming out and find more ways to recharge more water in, and either strategy will not be easy.

**TESTIMONY:**

**Mr. Brian Patton**, IDWR, said his role is to update the Committee on the progress for managed recharge over this past winter. As the Committee heard from Chairman Chase of the Water Resource Board (Board) about two weeks ago, the Water Board is moving forward as fast as possible to put in place a managed aquifer recharge program designed to first stabilize and then increase water levels in the ESPA and spring flows from the aquifer. The Board anticipates this will require an effort to recharge an average of 250,000 acre-feet annually as laid out in the State Water Plan. The aquifer is losing about 200,000 acre-feet annually from aquifer storage.

**Mr. Patton** said recharge deliveries began on October 27, 2014 and have occurred every day since then. This is a good start; keeping recharge going straight through the winter. Much of the credit belongs to the canal company partners. Despite record level winter recharge volumes, they still have much more work to do.

Between October 27, 2014 and February 15, 2014, the recharge water right was "on" only below Minidoka Dam. During this same period of time they were able to successfully recharge about 37,000 acre-feet; however, during the same period of time, 200,000 acre-feet was spilled past Milner Dam due to lack of diversion and infiltration capacity in this part of the river. The Board is working with its canal company partners in this area to address this capacity issue. **Mr. Patton** said they anticipate this will require a substantial amount of infrastructure modification. The canal company partners downstream of Minidoka Dam include the Twin Falls Canal Company, the North Side Canal Company, the American Falls Reservoir District No. 2 which owns the Milner-Gooding Canal, and the Southwest Irrigation District through its West Cassia Pipeline.

Beginning on February 16, 2015 the recharge water right was turned "on" upstream of American Falls Reservoir as well. Recharge deliveries began shortly thereafter in the Aberdeen-Springfield Canal, the Great Feeder Canal, and the Fremont-Madison Irrigation District. Other canals in this area may also deliver recharge water depending on water supplies, canal availability, and interest. Since February 16, 2015 about 4,000 acre-feet of recharge has been accomplished in the upstream part of the basin. In both parts of the river, the Board will be evaluating the effectiveness of delivery contract incentives and the need for additional capacity development.

Since recharge began on October 27 a total of approximately 43,000 acre-feet has been diverted for recharge across the entire basin and a total of approximately 212,000 acre-feet has been spilled past Milner Dam. Of note, in this year of near normal snowpack for the Upper Snake River Basin, the amount recharged plus the amount spilled equals 255,000 acre-feet, which is slightly more than the annual recharge goal. As can be seen, the water is available, but a substantial amount of recharge infrastructure modification and construction is needed if the Board to capture all available water for managed recharge and aquifer stabilization. Once the infrastructure is in place, continued year in and year out deliveries of water for recharge will be necessary to stabilize, recover, and increase aquifer levels.

Stabilizing the ESPA is necessary to maintain groundwater levels in the aquifer and spring flows from the aquifer. Maintaining and improving spring flows is necessary to resolve conjunctive management water use conflicts such as those in the Hagerman Valley and with the Surface Water Coalition. Maintaining and improving spring flows is also critical to maintaining the Snake River minimum flows at the Murphy Gaging Station, also sometimes known as the Swan Falls minimum flows.

In conclusion, **Mr. Patton** said that with support from the Legislature and the Governor and with cooperation of partners in the water user community, the Board is committed to establishing a managed aquifer recharge program sufficient to stabilize and rebuild the ESPA.

**TESTIMONY:**

**Mr. Randy Budge** said that he is an attorney for the Idaho Ground Water Appropriators, Inc., an Idaho non-profit corporation which provides an umbrella organization that represents the nine groundwater districts that have been formed throughout the ESPA. All the districts have members who pump from the aquifer. There are several thousand irrigators, and they irrigate roughly one million acres, which is about half of the irrigated land in the State.

Big Wood district members also represent most of the dairies in the dairy industry. The common interest is that they have all pumped water from ESPA, and they all have water rights that are junior to most of the senior surface water rights in the Snake River and are also junior to a good number of the other aquaculture and spring rights throughout the area.

**Mr. Budge** stated that as a result of adjudication, the implementation of the conductive management rules have required the administration of both groundwater and surface water to work together. A number of court decisions and decisions by the director can be summed up as a long period of litigation over the last decade on how water can be allocated. **Mr. Budge** said that the junior ground water users have faced curtailment of their water rights, which would be disastrous not only to them, but also to the economic agriculture economy.

**Mr. Budge** said the good news is that the ground water users have a long history of developing and implementing various types of mitigation plans to deliver and satisfy those delivery call obligations and avoid curtailment. Some folks have the impression that ground water users have caused all the problems. **Mr. Budge** stated that they acknowledge that they are one of several factors that have caused problems.

An example of how the ground water users have stepped up and helped is that they provided the State's share of the funding for the federal program know as CREP (Conservation Reserve and Enhancement Program). It puts about 20,000 acres out of production and reduces the demand on the aquifer. They also have a continuing program known as "Conversions", which involves land that is historically irrigated with pumps, which are shut off, that has been converted to surface water irrigation.

**Mr. Budge** said the ground water users want to thank the people who have guided this process and brought all the parties together, especially Speaker Bedke and Clive Strong, Chief of the Natural Resources Division for the State of Idaho.

**TESTIMONY:**

**Mr. John Simpson** said that he is a Boise attorney and represents Buckeye Farms who is a water user in the Hagerman Valley. They have been there for many years and their water rights date back to the early 1890s. Those water rights are very similar in nature to other spring users. As the springs have declined, they have self-imposed some curtailment of the water. **Mr. Simpson** stated that Buckeye Farms support the efforts that are going forward. He also sees the need to create certainty so that their livelihood stays in place. **Mr. Simpson** also said that he applauds the Board in their efforts for recharge.

**Vice Chairman Vick** thanked all the people that participated in this discussion. He then called on Mr. Ragan to present the last rule that needs to be heard by the Committee.

**DOCKET NO.  
37-0303-1401**

Mr. Brian Ragan, Idaho Department of Water Resources (IDWR), UIC Program Coordinator, presented **Docket No. 37-0303-1401**, Rules and Minimum Standards for the Construction and Use of Injection Wells. **Mr. Ragan** said as an overview of this rule, the Underground Injection Control (UIC) regulates wells used to place fluids underground for storage or disposal. The 2014 Legislature approved the initial, identical revision to the parent statute found in Idaho Code § 42-3902. **Mr. Ragan** stated that the reason for this revision was to avoid conflict between the statute and the rule.

The proposed revision to **Docket No. 37-0303-1401** is that "injection well" means any feature that is operated to allow injection, which also meets at least one of the following criteria:

- a bored, drilled or driven shaft whose depth is greater than the largest surface dimension;
- a dug hole whose depth is greater than the largest surface dimension;
- an improved sinkhole; or
- a subsurface fluid distribution system.
- Provided however, that "injection well" does not mean or include any well (drilled) used for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

**Mr. Ragan** said these revisions are supported by the Idaho Water Resource Board, the Idaho Water Users Association, the Idaho Ground Water Association, and the Oil and Gas Industry.

**MOTION:** **Senator Siddoway** moved to approve **Docket No. 37-0303-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** **Vice Chairman Vick** adjourned the meeting at 3 p.m.

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Senator Vick  
Vice Chair

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Juanita Budell  
Secretary