

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, February 27, 2017

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, Stennett, and Jordan

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 Senate Resources and Environment Committee (Committee) meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Bayer** moved to approve the Minutes of February 13, 2017. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Chairman Bair** welcomed **Brian Patton**, Idaho Department of Water Resources (IDWR) who gave an update on the managed recharge efforts for the Eastern Snake Plain Aquifer (ESPA). **Mr. Patton** said he was asked to present on behalf of the Idaho Water Resource Board (IWRB).

Mr. Patton provided information on the aquifer storage and the Thousand Springs discharge. From 1912 to 1952, 17 million acre feet of water was added for storage to the aquifer. This was done primarily through the construction and operation of irrigation canals. From 1952 to 2015, there was a loss of 13 million acre feet of water in the aquifer. The average annual storage loss was about 200,000 acre feet. That figure equates to the contents of Arrowrock Reservoir.

Mr. Patton said the second important piece is the total flow from the Thousand Springs. The other main spring discharge point from the aquifer is the American Falls region. People who have water rights that are fed by the springs have seen their water supply decline and that has led to conjunctive administration water delivery calls that the State has been embroiled in for the past two decades. At the Thousand Springs, there have been between 11 and 13 delivery calls, plus a Surface Water Coalition delivery call. The calls are very challenging and complex.

Mr. Patton said the other key piece as to why those spring flows decline has to do with the Swan Falls Agreement. The reason for the Agreement was because of a conflict between how much water should be left in the Snake River to turn hydro power turbines and provide for recreation versus how much water could be taken out upstream for farms and all the other things we need water to do. It became the State's responsibility to insure minimum flows below Swan Falls Dam of 3,900 cfs during the irrigation season and 5,600 cfs during the non irrigation season. There is a State policy of zero flow at Milner Dam which is 180 miles upriver. The question is, where does the water come from? The answer is, it comes from the Thousand Springs.

Mr. Patton said the combined aquifer Snake River system stretches from the Wyoming border to the Oregon border and the problem affects everyone in Southern Idaho that either uses water or power. It all starts with the ESPA discharge to the Snake River at American Falls. The American Falls area springs partly supply river flows that feed Surface Water Coalition canals, then Milner Dam. The Thousand Springs discharge goes down river and meets the minimum flow requirements at the Swan Falls Dam and passes through the hydropower system, then goes through the Hells Canyon Complex. **Mr. Patton** said this is a very intricate system that they are trying to manage.

Mr. Patton then talked about the Surface Water Coalition Settlement Agreement, which is another key piece to managing the aquifer. The Groundwater Users have agreed to reduce their consumptive use by 240,000 acre feet and that correlates with the State's sponsored recharge program of 250,000 acre feet annually. **Mr. Patton** said with these combined amounts, they should be able to stabilize the aquifer, and over time, recover the aquifer.

Mr. Patton reviewed the 2016 legislative actions. They were:

- SCR 136 - Supports Surface Water Coalition Delivery Call Settlement;
- SCR 137 - Directs IWRB to undertake aquifer stabilization and sustainability projects in other areas of the State;
- SCR 138 - Directs IWRB to develop capability to accomplish average of 250,000 acre feet of managed recharge annually by 2024 in ESPA; and
- S 1402 - Firmed up funding for managed recharge.

Mr. Patton then talked about managed recharge. The winter of 2014 and 2015, the total ESPA recharge was 75,234 acre feet. The amount below Minidoka was 61,068 acre feet; the amount above American Falls was 14,166 acre feet; and the total spill past Milner from October through March was 305,920 acre feet. The winter of 2015 and 2016, there was a much smaller water supply to deal with. The IWRB's water right for recharge did not turn on at all upstream from Minidoka Dam.

Mr. Patton said the key take-aways from two years of winter recharge, there were 17 days of water available upstream of Minidoka Dam and 314 days of water available downstream of Minidoka Dam. The total winter water spilled past Milner Dam in 2014-2015 was 304,920 acre feet. In 2015-2016, the total was 111,326 acre feet. **Mr. Patton** said the conclusion was that they needed to get better at catching water before it goes over Milner Dam and in order to do that, they are building the capacity to make it happen.

Some of the projects that are being built for recharge capacity are the Milner-Gooding Canal Mile 28 Hydro Plant bypass; the Milner-Gooding Canal Shoshone concrete channel rehabilitation; and the Egin recharge site near St. Anthony.

Mr. Patton addressed the projections for winter 2016-2017 of IWRB's recharge plan. **Mr. Patton** stated that given large amounts of empty space in the reservoir system, it was expected that the water would be stored in the reservoirs and about 500 cfs available for recharge diversions. **Mr. Patton** said with the good snowpack reports, they are hopeful that they can recharge significant amounts upstream of American Falls Reservoir. Canal maintenance and construction of future recharge capacity, which is ongoing, has affected recharge this year.

Mr. Patton reviewed IWRB's budget for aquifer stabilization for fiscal year 2017. The budget included ESPA's managed recharge operations; ESPA's managed recharge infrastructure; capacity improvements; projects in Wood River Valley, Weiser River Valley, Northern Idaho aquifers, cloud seeding and other statewide efforts; and a reserve for other projects that may come up. The total budgeted funds are \$14,444,273. ESPA's recharge share is \$10.4 million.

Mr. Patton discussed the projects that IWRB is working on in the current year. The largest is the Mile Post 31 managed recharge site expansion on the Milner-Gooding Canal. Another major project under construction is a partnership with the Southwest Irrigation District that is building a new pipeline. The primary purpose of the pipeline is to move storage water out to offset groundwater pumping. **Mr. Patton** said another large project is with the North Side Canal Company, with hydro plan bypasses, so that there can be recharge in Wilson Lake.

Mr. Patton said as far as IWRB meeting their goals, the lower valley recharge capacity is taking shape. There will be 50 cfs going to the Southwest Irrigation District; 30 cfs going to Murtaugh Lake on the Twin Falls Canal; 130 cfs to the Wilson Lake project; 400 cfs to Mile Post 31 recharge site; and 320 cfs to the Shoshone recharge site. IWRB still needs to figure out about the Dietrich Drop bypass. This is the part of the river where there is water for 150 days during the winter. The projected winter capacity would be about 930 cfs. If each of the locations can run for 120 days out of the 150 day window, that gives them 220,000 acre feet of capacity. IWRB is about to reach the goal of 250,000 acre feet in the lower valley. The minimum water availability at 500 cfs is 150,000 acre feet annually. The median water availability at 1,000 cfs is 300,000 acre feet annually. IWRB wants to build capacity of at least the median water availability.

Mr. Patton stated that the upper valley basin, which is the Blackfoot-Idaho Falls-Rexburg corridor, is a different story. There are only two recharge sites of any significant capacity. One is the Hilton Spill on the Aberdeen-Springfield Canal and the other is at the Egin Lakes recharge site. The average water available in this basin is only available every other year. When it does occur, it is a 30-day window between April and June. Looking at the median water availability since 1980, there is 150,000 acre feet. The median water availability since 2000 was only 7,000 acre feet.

Mr. Patton said that building the infrastructure, there are a number of engineering investigations going on in partnership with some canals, including Egin Lakes, Butte Market Lake Canal Company, New Sweden Irrigation District, Idaho Irrigation District, South Fork Canal, and others. **Mr. Patton** said in looking at the capital project costs versus IWRB recharge is interesting. IWRB should accomplish the goal of reaching the 250,000 acre feet goal around 2020-2021. The Legislature had indicated that the goal be reached by 2024.

Senator Stennett inquired as to what the snow pack looks like around the State now. **Mr. Patton** replied that for the Basins around the Snake River Plain, it is looking good at 130 to 150 percent of normal. The Wood River Basin is at about 180 percent of normal. Moving north, out of the Snake River Plain, the snow pack starts to drop. The Weiser Basin is at 110-115 percent of normal; the Salmon River region is at 120; and the Panhandle region is at 88 percent.

Senator Johnson asked what the IWRB pays or gets out of the lease with Mile Post 31. **Mr. Patton** said that IWRB does not pay anything for that lease. They issued the State the right-of-way to conduct recharge. It is for 600 acres on a 30 year term at no cost to the State.

Senator Brackett asked when IWRB expected full implementation of the projects of the State's goal of 250,000 acre feet. **Mr. Patton** said he thought it would be around 2021 as their best projection. **Senator Brackett** asked if anything on the monitoring is different, and if so, when do they expect results. **Mr. Patton** replied that they have not seen anything yet. The way they monitor that is by synoptic measurements and the process is to go out once a year, usually in the spring, doing mass measurements across the aquifer, measuring as many monitoring wells as they can within a short period of time. It was done last spring, but before the implementation of surface water settlement provision agreements. This coming spring when the synoptic is done, it will include a full year of implementation of surface water settlement, plus two years of the State's managed recharge. **Mr. Patton** said they hope to see something this year, but can't guarantee that.

HCR 5

Chairman Bair thanked Mr. Patton for his presentation and welcomed **Representative Gestrin** who presented **HCR 5**. **Chairman Bair** announced that **HCR 5** was not heard in this Committee due to two things: the rule was rejected by the House Resources and Conservation Committee and at the request of the Director of Lands, the decision was made for this Committee to not hear the rule.

Representative Gestrin said the purpose of this resolution is to remove rules governing oil and gas.

MOTION:

Senator Siddoway moved that **HCR 5** be sent to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. Vice Chairman Vick will be the floor sponsor.

HJM 2

Norm Semanko, Executive Director of the Idaho Water Users Association (IWUA), presented **HJM 2**. **Mr. Semanko** provided some background information relating to the Hells Canyon Complex. The issue of the introduction of salmon above Hells Canyon is not a new issue. The IWUA has had a resolution on this issue since 2001 opposing the introduction.

Idaho Power Company's Hells Canyon project is in the process of relicensing by the Federal Energy Regulatory Commission. The State of Oregon has attempted to require Idaho Power Company to implement fish passage and reintroduction of anadromous fish above the Hells Canyon Project into Idaho waters. Introduction or reintroduction of aquatic species into Idaho waters without the consent of the State of Idaho violates Idaho law, policy, and the sovereignty of the State of Idaho. The Governor of Idaho has advised the Governor of Oregon that Idaho opposes Oregon's efforts to impose reintroduction into Idaho waters because of the significant adverse biological, regulatory, social, and economic impacts, but the State of Oregon has insisted on its passage and reintroduction measures. This legislation provides that the Legislature opposes such introduction or reintroduction efforts and authorizes and directs the Governor and the Attorney General to take all necessary measures to oppose and prevent Oregon's unilateral introduction or reintroduction efforts.

Mr. Semanko said this legislation is supported by IWUA, Food Producers, Idaho Farm Bureau, ICIE, IACI, and Idaho Irrigation Pumpers Association.

Senator Stennett inquired about the dialogue between Oregon and Idaho. **Mr. Semanko** said that leadership on this issue has to come from the State. Governor Otter has sent letters to Governor Brown.

Senator Brackett inquired as to what percent of water above Hells Canyon comes from Oregon and what percent comes from Idaho. **Mr. Semanko** said he did not know the percentages, but would find out. Idaho has six million acre feet of storage and 95 percent of Idaho Power's customers are in Idaho.

Senator Jordan asked about fish passages. **Mr. Semanko** said in the past, fish passages were colossal failures. Also, the water quality is very poor.

TESTIMONY:

Marie Kellner, Idaho Conservation League's (ICL) Water Associate, said she is representing ICL's approximately 25,000 supporters from across the State. **Ms. Kellner** said part of ICL's mission is advocate on behalf of Idaho's rivers and native fisheries and in keeping with that mission, she is asking for a no vote on **HJM 2**.

Part of Ms. Kellner's testimony included the following: "The Hells Canyon Complex meant the end of those native fisheries on the Boise, Payette, Owyhee and Weiser, among other rivers. These fish sustained native people long before Statehood and they are part of the classic Idaho lifestyle. Fishing is so integral to Idaho that Idahoans overwhelmingly passed a constitutional amendment for the right to fish only a handful of years ago.

And while it may seem impossible that those fish would ever inhabit those rivers again, this does not have to be an either/or decision. Instead of writing salmon and steelhead reintroduction off forever, and giving up on this amazing aspect of Idaho's heritage, ICL asks you to do the much harder work of engaging in the conversation of restoring Idaho's salmon and steelhead in their native rivers above Hells Canyon while also maintaining our agricultural heritage, hydropower and other aspects of our economy. It will be difficult work but it is not impossible. In sum, the Hells Canyon Complex can be relicensed without such a divisive memorial as the one before, and I ask you to vote no on it."

TESTIMONY:

Lynn Tominaga, Executive Director, Idaho Irrigation Pumpers Association, stated that the Association is in favor of **HJM 2**. **Mr. Tominaga** said the Association has about 1,200 pumpers across Southern Idaho. **Mr. Tominaga** stated that if salmon were to be reintroduced above Hells Canyon, it would cost about \$400 million in additional costs to the ratepayers. Two years ago, Idaho Power said the relicensing mitigation costs of Hells Canyon would be about a ten percent increase to the ratepayer.

Mr. Tominaga said that until the water quality is improved above Hells Canyon, it doesn't make too much sense to reintroduce salmon, as they couldn't survive. Efforts were made at Brownlee Dam to catch the fish and truck them around the dam, as well as stretching nets across to catch the fish. Neither of those efforts were successful. **Mr. Tominaga** said that Idaho Power has paid millions of dollars in litigation and have built a salmon hatchery along the Salmon River and in the Hagerman area.

Senator Stennett inquired as to why Oregon cannot be held to the 1984 agreement, which confirmed the State's primacy over the flows of the Snake River. **Mr. Tominaga** responded by saying his understanding is that Oregon has a state law that they have to reintroduce or provide fish ladders for migratory fish and that is what they are relying on. The Oregon Fish and Game has always been in favor of breaching the dams, the lower four Snake dams. **Mr. Tominaga** said this is not something new coming from the State of Oregon, as the Oregon Fish and Game have advocated breaching the dams for the last 25 to 30 years.

Mr. Semanko said he appreciated the testimony and asked for the passage of **HJM 2**.

MOTION:

Senator Heider moved that **HJM 2** be sent to the floor with a **do pass** recommendation. **Senator Brackett** seconded the motion. During the discussion, **Senator Stennett** said that Oregon should be held accountable. The motion carried by **voice vote**. **Senators Stennett** and **Jordan** requested to be recorded as having voted nay. Chairman Bair will be the floor sponsor.

RS 25349 **Senator Siddoway** asked for unanimous consent to send **RS 25349** to the State Affairs Committee, a privileged committee, for a print hearing. There were no objections.

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

S 1098 **Chairman Bair** presented **S 1098** and said this legislation clarifies what information is to be included on Tax Commission forms for the submission of Gas and Oil Severance Tax. The severance tax will be submitted to the Tax Commission monthly. The form shall include the name, description and location of every well or wells, and every field in which the wells are located. Additionally, the Tax Commission is authorized to conduct audits at least every three years.

Chairman Bair said the biggest issue starts on line 13, which reads "production of oil or gas from any well or wells in the State shall each month file with the Idaho State Tax Commission." **Chairman Bair** said that currently, State law requires that severance taxes be paid on a quarterly basis. The production records are submitted to the Department of Lands on a monthly basis. **Chairman Bair** stated that when it comes time to perform audits, there is a discrepancy between the quarterly reports the Tax Commission gets and the monthly reports that the Department of Lands gets, making it difficult to reconcile those audits.

Senator Siddoway asked about the process to arrive at this solution and what parties were involved. **Chairman Bair** said involvement with the actual drafting of this language was the Department of Lands, Clive Strong from the Attorney General's Office, as well as a number of legislators, and the Deputy Attorney General from the Tax Commission. **Senator Siddoway** inquired if the industry was involved and what was their position. **Chairman Bair** said that he didn't know.

Senator Johnson stated the fiscal note says there is no impact to the General Fund and inquired who will pay for the administration of the Gas and Oil Program. **Chairman Bair** replied that the costs will be paid out of the severance tax.

MOTION: **Senator Heider** moved that **S 1098** be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**. Chairman Bair will be the floor sponsor.

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

ADJOURNED: There being no further business at this time, **Chairman Bair** adjourned the meeting at 2:55 p.m.

Senator Bair
Chair

Juanita Budell
Secretary