

MINUTES
Approved by the Committee
Natural Resources Interim Committee
Friday, October 12, 2018
8:45 A.M.
Room EW42
Boise, Idaho

Co-chair Senator Bair called the meeting to order at 8:48 a.m.; a silent roll call was requested.

Members present: Senators Jeff Siddoway, Lee Heider, Bert Brackett, Michelle Stennett, Jim Patrick [ad hoc], and Maryanne Jordan [ad hoc]; Co-chair Representative Marc Gibbs and Representatives Scott Bedke (Speaker of the House), Mike Moyle, Terry Gestrin, Ilana Rubel, and Paul Shepherd [ad hoc]. Absent and excused: Senator Shawn Keough [ad hoc]. Legislative Services Office staff present: Katharine Gerrity and Jennifer Kish.

Other Attendees: Bert Stevenson, Garrick Baxter, Gary Spackman, Mat Weaver, Brian Patton - Idaho Department of Water Resources (IDWR); Kent Fletcher - Minidoka Irrigation District & American Falls Reservoir District #2; John Simpson - Barker Rosholt & Simpson, LLP; Roger Chase - Idaho Water Resource Board (IWRB); Lynn Tominaga; T.J. Budge - Racine Olson law offices/representing Idaho Ground Water Association (IGWA); Chris Bromley - McHugh Bromley; Peter Anderson, Kira Finkler - Trout Unlimited; John J. Williams - Bonneville Power Assoc.; Teresa Molitor Harper - Great Feeder Canal Co.; Rialin Flores - Conservation Voters for Idaho; Matt Drake - LSO; Paul Kline, Ed Schriever, Sharon Kiefer, Virgil Moore - Idaho Fish and Game (IDFG); Donna Caldwell, James Thum, Bill Haagenson - Idaho Dept. of Lands (IDL); Paul Arrington - Idaho Water Users Association (IWUA); Kathleen Turner - Idaho Office of the Attorney General; Jonathan Oppenheimer - Idaho Conservation League.

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2018/interim/>; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Bair requested a **motion to approve the minutes of the June 6, 2018 meeting; Rep. Gibbs made such motion; Sen. Siddoway seconded; motion was approved by voice vote.**

At 8:51 a.m., Co-chair Bair called Mr. Paul Arrington, Executive Director of the Idaho Water Users Association (IWUA), to the podium for his presentation. Mr. Arrington explained that the IWUA was a non-profit association comprised of irrigation districts, canal companies, groundwater districts, municipalities, and other water professional organizations. Mr. Arrington reported that since the June 6, 2018 meeting of the Natural Resources Interim Committee - called to discuss a disagreement between the Treasure Valley water users, the State of Idaho, and other water users regarding the process of filling the reservoir system following a flood control event - legislative leaders had facilitated an agreement among all interested parties. It was agreed to suspend pending litigation if legislation to resolve the water rights ([DRKAG217](#)) would be introduced during the 2019 legislative session, thereby preventing a special session.

- Sen. Heider asked whether the date of allocation referenced in DRKAG217 was determined individually by districts or was it determined for the entire state. Mr. Arrington explained that the date was determined by the need within the Boise River Basin; similarly, dates were established independently in the other Basins.

At 8:58 a.m., the Co-chair called upon Mr. Gary Spackman, Director of the Idaho Department of Water Resources (IDWR). Mr. Spackman reported on the past and current status of federal stockwater rights in regard to the 2018 legislation (*Joyce Livestock Company v. United States of America*; *LU Ranching Company v. United States of America*) in his [presentation](#) (slides 2-6).

- Co-chair Bair requested Rep. Bedke provide a brief summary on the issue per his involvement as the Speaker of the House with the federal entities. Rep. Bedke shared that there were communications with the U.S. Department of Agriculture and, since negotiations/discussion were still occurring, that he would prefer not to speak on the issue.
- Rep. Gestrin commented that he had related to his constituents the need to file for the rights but, upon contacting the IDWR, his constituents were told it was not necessary to do so at this time. He asked why there was such conflicting information. Director Spackman said he would determine why that was occurring and wanted to correct that message. Rep. Bedke requested to be involved in the discussion as he had the same experiences related to him by constituents.
- Sen. Siddoway commented that it seemed quite onerous for a land owner to map and identify every water source and then apply for the right to each one; he personally identified approximately 400 items for his property. Mr. Spackman noted that it was not an easy process but it was very important to define the specifics of each water source for legal reasons. He did not support a "one and done" identification by land mass, fearing it would be too easy to challenge in the courts. He was willing to discuss options if a better solution existed. Mr. Spackman expressed his sympathy to the land owners about the extensive details needed to claim the water rights; but, per the settlements, the extensive detail was needed to establish the connection between the land owner rights and the allotment rights.
- Sen. Brackett asked for a status report on the 60 claims that had been filed. Director Spackman noted that he was not aware of the status of each but that he would provide that information at a later date.

Director Spackman then reported on efforts to install water measuring devices (required per the 2015 SWC-IGWA Settlement Agreement) and the compliance of water users along with the curtailment/enforcement process (slides 7-9).

At 9:10 a.m., Mr. Mat Weaver, Deputy Director of the IDWR, began his presentation on the [National Flood Insurance Program](#). Mr. Weaver explained that local NFIP efforts are adopted, implemented, and enforced by local entities at the county and city level. Following a brief history of flood plain management guidelines, Mr. Weaver reported that there is currently a conflict between the Federal Emergency Management Association (FEMA) and the State of Idaho over the definition of "Development" within the guidelines. He noted that an MOU was implemented in August 2018 to "...reduce confusion and conflict between irrigation and drainage entities and Floodplain Administrators over the permit requirements..." related to the difference in the definition. Mr. Weaver reported that FEMA had proposed methods to correct the conflict between Idaho's statute and the code of federal regulations, threatening to suspend Idaho's NFIP program if the conflict is not resolved within FEMA's approval. An additional MOU had been drafted between FEMA and IDWR (slides 9-10). To date, FEMA is still strongly suggesting that Idaho amend its statutes to be in line with the federal regulations.

At 9:37 a.m., Mr. Weaver initiated the presentation on the report of the [Cities-IGWA-SWC Settlement Agreement and Eastern Snake Plain Aquifer \(ESPA\)](#)(slides 1-18). Mr. Weaver gave a brief history of the ESPA with previously presented materials on the aquifer's declining level and the water needs of the communities. He then explained the need for delivery calls, how the surface water supply index (SWSI) - the amount of natural flow and storage water available - is used, and the ESPA management goals.

- Sen. Patrick asked why the level continues to drop in spite of efforts to use less water by the agricultural community. Mr. Weaver explained that the level depended on whether the diversion of water was ground water or surface water. He noted that even though less water was being used by agriculture, the remaining water was escaping in other methods, such as natural run-off that flows down river and out-of-state faster than it can be reabsorbed.

- Sen. Siddoway asked whether the low flow of the Snake River recorded at the Murphy Gaging Station in 2015 wasn't more of a management issue than a water shortage issue. Mr. Weaver responded that the Snake River flow could be taken to zero at the Milner Dam, and hence the Murphy gage - being downstream - could only register what water flowed into the aquifer from other means. He noted that if irrigation was diverted at the traditional levels, as permitted, in spite of the lower aquifer readings, then that could be considered a management issue; but the fact that the water level was low is what that reading concludes. Sen. Siddoway asked why more water was not released from the upper storage in realization of that reading. Mr. Weaver explained that the Board does hold water for the purpose of mitigating low levels in the river and water was released at that time in recognition of the reading, but perhaps the amount available was not enough to compensate.

Mr. T.J. Budge, attorney with Racine Olson representing the Idaho Ground Waters Appropriations (IGWA), reported on the update of the IGWA/SWC settlement agreement of 2015 (slides 19-32). IGWA is comprised of the ten ground water districts of the ESP who are essentially the ground water irrigators. He reviewed the history of the irrigators' responsibilities to provide the necessary water requirements and how the association was proactive in curtailing water use and recharging the aquifer. He noted that there existed "sentinel wells" to measure benchmarks for maintaining aquifer levels and that the IGWA and SWC created a steering committee to meet and review data on these efforts. Mr. Budge reported on attempts to enforce the mitigation and alluded to a need for further legislation to assist with enforcement efforts.

- Sen. Brackett asked whether there was any use of the "safe harbor" concept to attain compliance. Mr. Budge agreed that it was a tool for gaining compliance but some "gray areas" existed. He noted that districts were able to assess fines for excess use, but the districts were unable to shut off wells; the director had the authority to shut off wells, but it was still unclear how it could be enforced.

Mr. Weaver then reported on the current ESPA conditions (slides 33-42). He reported that IDWR had 400 monitoring wells within the ESPA and its tributary basins; these wells were recorded monthly or semi-annually and the reports were available on the department's website. He also noted that data showed the efforts to recharge the aquifer were meeting the prognosticated goals.

At 10:25 a.m., Mr. Chris Bromley, Coalition of Idaho Cities, began the presentation relating to municipalities' efforts in recharging the aquifer and curtailing water use (slides 43-55), commonly referred to as the "Cities Settlement Agreement." Mr. Bromley shared that he represented 14 cities within the ESP, including Pocatello and Idaho Falls. He explained that cities are operating well below their allocated pumping rate; however, an agreement was needed to bring cities and municipalities into parity with other users per the IGWA/SWC 2015 agreement. Mr. Bromley requested legislative support in the manner of another concurrent resolution such as with SCR138 in 2016.

Mr. Kent Fletcher, Surface Water Coalition, continued the portion of the presentation related to municipalities. Mr. Fletcher represents both the Minidoka and American Falls Res. #2 Irrigation Districts. After a brief history of the cities proactive efforts to reduce water use, he noted that there were still some water users that were not participants of the agreements and were subject to curtailment. He also noted that there were many cities not aware of their surface water rights or had not developed ways to corral their surface water, which could replace their reliance on ground water.

- Sen. Stennett asked what tactics cities employed to encourage residents and businesses to minimize water usage. Mr. Bromley cited the requirements established by building codes (e.g., low-flow shower heads and toilets) and efforts to reduce irrigation at city parks and for residents with the use of reclaimed surface water. Sen. Stennett questioned whether meters to limit home owner usage were employed by any of the cities. Mr. Bromley explained that there were actually quite a few; and - while some people disliked the idea of metering - the data from such meters was helpful in proving the usage.

- Rep. Bedke commented that data showed that water use did not increase in tandem with population growth, which testified to the efforts of water usage reductions.
- Co-chair Bair queried the total percentage of water use by the cities. Mr. Fletcher reported that the cities use 3% or 70,000-80,000af of the total ESPA pumping.
- Co-chair Bair asked how to encourage other cities to participate in the water management. Mr. Bromley cited three options: to join IGWA, to join the "Cities" agreement, or to face curtailment.

At 11:05 a.m., Mr. Weaver reported on the ESPA water administration update (slides 56-62). He shared the department's outline to attain and secure water level goals with the cooperation of all parties involved.

- Co-chair Bair asked whether the department had scheduled meetings with people in the expansion areas (specifically the McAmmon and Portneuf River areas) to share information about the process and the reasons why it was necessary. Mr. Weaver reported that was done by the department.

At 11:15 a.m., Mr. Brian Patton, Chief of Planning Division for IDWR, provided an update on the [Eastern Snake Plain Aquifer Recharge Program](#). He discussed recent capitol projects within the aquifer to improve canals/dams to deal with winter temperatures and running water, to create access roads, and to install new pumps and pipelines. He identified upcoming capitol projects and attempts to identify new recharge sites. Mr. Patton shared data that supported the department's efforts of the recharge and updated the committee on financial support for the process. Additionally, Mr. Patton updated the committee on recent issues that the department has experienced with federal guidelines, federal court cases, and territorial/access rights in trying to expand recharge efforts to the aquifer.

- Rep. Bedke asked whether the current budget was enough to reach the established recharge goals. Mr. Patton responded that the current completed and planned projects would sufficiently provide the 250,000af goal - on average.

At 12:00 p.m., Mr. Roger Chase, Chairman of the Idaho Water Resource Board (IWRB), provided comments to the committee regarding Idaho's efforts on water use and retention. He noted that Idaho was way ahead of most states in the planning for such water issues and that the state was doing it more efficiently, e.g., ID spent \$40/af while CA spent \$800/af.

At 12:03 p.m., the committee recessed for lunch.

At 1:22 p.m., the committee reconvened and called upon Mr. Dustin Miller, recently named Director for Idaho Department of Lands (IDL), for his introduction to the committee.

- Sen. Siddoway asked what Mr. Miller's direction, as the new director, would be for IDL to address wildfire prevention management. Mr. Miller responded that the IDL would continue its efforts to work with home owners and other agencies to promote good management and effective strategies to prevent future catastrophic wildfires.
- Sen. Siddoway queried whether Mr. Miller's previous employment with other Idaho agencies afforded him knowledge of federal funds that could be used for habitat protection necessary for the sage grouse. Mr. Miller reported that efforts of the Sage Grouse Action Team would certainly be a benefit for that purpose; and that coordinating efforts with other departments would multiply financial resources to attack those issues.

At 1:38 p.m., Mr. Mick Thomas, Oil and Gas Division Administrator for IDL, provided an update on [oil and gas activity within the state](#) (slides 1-8).

- Sen. Heider asked about the atmosphere since Alta Mesa's exodus from Idaho's program. Mr. Thomas explained that Alta Mesa was not leaving the program but had been absorbed into/reorganized under Alta Mesa Idaho. He felt that the company was on the up-and-up with the community and was not intending to leave the Idaho program.

- Sen. Stennett queried whether other companies were operating in Idaho and where those companies were looking to drill. Mr. Thomas reported that he had conversations with one company from Asia and was aware of two or three others that had expressed interest in Idaho drilling. He noted that all the interest was for the Willow Field area in western Idaho, where productive drilling is occurring. He also noted that data showed there was quite an increase in the "hits" on the department's website, possibly due to increased interest in drilling per the economy.
- Sen. Stennett questioned whether there was any potential production outside the Willow Field area. Mr. Thomas explained that no viable wells outside of the Payette area had been identified; there was one attempt in the Bonneville area but it failed.
- Rep. Rubel asked how the federal ruling regarding forced integration would impact Idaho's oil and gas exploration. Mr. Thomas reported that there was one federal case against the State of Idaho contesting one of the integration orders; the federal judge ruled a due process violation and asked the commission to rehear the integration order. The last known action, according to Mr. Thomas, was that Idaho's attorney general asked the federal judge to reconsider. Mr. Thomas noted that he did not see any impact other than that case, though he noted that drilling operators were monitoring the issue. Rep. Rubel asked whether the current Idaho case was a limited issue or would it impact the program on a more broad platform. Mr. Thomas expressed that the issue seemed limited to the individual case.

At 1:56 p.m., Ms. Diane French, Land and Waterways Division Administrator for IDL, provided an update on the [oil and gas leasing program within the state](#) (slides 9-15). More in-depth details of her presentation may be found in the handout related to the [audit performed on the leasing program](#).

- Co-chair Bair asked about the principal players of ARM. Ms. French referred the committee to the flowcharts within the audit handout (page 26 and 27 - Attachment 5).
- Co-chair Bair questioned whether Idaho had the authority - either by statute or administrative rule - to compel the companies to produce the requested documents. Ms. French commented that the agency had the authority to request an audit; the agency is entitled to reports and can request information per administrative rules.
- Co-chair Bair asked whether the audits were for state-leased wells or private wells. Ms. French explained that the requested audit was only for the two state-leased-land wells, which was based on the amount of production from those wells.
- Sen. Patrick inquired how other states performed their audits. Ms. French shared that the division consulted other states' processes but, since this was Idaho's first audit of its program, it was decided to use a third party's expertise to perform the audit.
- Rep. Gestrin asked whether the agency was able to perform audits on the private wells to ensure that those individuals were being treated fairly in dealing with ARM/AEM. Mr. Thomas explained that most states - with the exception of Utah - did not have the authority to request audits on privately owned wells. He noted that the commission was very interested in protecting its members' interests to accurately market and sell the resources, which is why this initial audit was launched.
- Co-chair Bair commented that it seemed in the state's best interest to protect not only its wells but those of the private owners as well. Mr. Thomas shared that the entanglement that could occur if the commission took up an issue for one owner - per experience in other states' programs - would not be in the state's best interest. He explained how the commission had the authority to fine an operator but it did not have the authority to request payment be made to an owner in lieu of wrongful operation.
- Co-chair Gibbs solicited an opinion on whether Alta Mesa had treated the well owners fairly in marketing/selling the resources or whether further and extensive investigations were necessary. Mr. Thomas noted that the progress of the audit and the investigations that had

occurred, to this point, seemed to be reasonable. He agreed that additional requests and investigations were necessary to further understand the extent of the issue.

- Rep. Bedke commented that the agency might look into the severance taxes paid to the state and evaluate whether more aggressive action needed to be taken.

At 2:26 p.m., Mr. Paul Arrington, Executive Director for IWUA, returned to complete the latter portion of his presentation. He discussed the proposed list of expansion projects for water retention ([Idaho Large Water Infrastructure Projects](#)). He noted that funding for such projects came from a triad of funding sources: private, state, and federal; and gave more detail to the federal program known as the Water Infrastructure Improvements for our Nation (WIIN) Act.

- Rep. Rubel asked whether incentives to reduce water use were also being studied by the work group. Mr. Arrington responded that the work group's focus was infrastructure and worked with the WIIN funds, but he applauded other entities' efforts to study and encourage water reduction methods and projects. Mr. Arrington also noted that there were efficiency projects - not using WIIN funds - such as pumps that pushed water through the canal system more efficiently, eliminating the need to fill it to capacity. Sen. Stennett supported the concept of combining water retention projects and water use habits.

Mr. Patton, Chief of Planning Division for the IDWR, returned to compliment Mr. Arrington's presentation on the topic of infrastructure projects. He noted that the top priority projects, once funds were available, would be the Anderson Ranch Dam Raise and the Mountain Home Air Force Base pipeline.

- Sen. Stennett asked for clarification on the cost split agreement between the state and the U.S. Air Force for the pipeline project in Mountain Home. Mr. Patton responded that the state would build, own, and operate the pipeline, the pumps, and the maintenance of those items, but could charge the USAF a delivery fee that would cover the o&m; the Air Force would cover the cost of the operation and maintenance of the water treatment plant and anything downstream of the plant.
- Sen. Stennett clarified that the winter flow from the Anderson Ranch Dam into the Boise River was not actually a water right but rather an agreement between the IDFG and the Bureau of Reclamation; and, if Anderson Ranch Dam is augmented, how would that impact that predetermined flow. Mr. Patton did not predict any impact to that flow due to the project.
- Mr. Roger Chase, Chairman of the WRB, commented that all entities and individuals needed to come together to support projects and conservation efforts that looked to the future of Idaho's growth. He encouraged people to look at the need for these projects to be completed in anticipation of growth rather than in hindsight when shortages occurred.

Mr. Arrington then introduced the [Columbia Basin Partnership Task Force](#) and discussed its goals and to-date accomplishments to improve salmon and steelhead numbers. Mr. Paul Kline, Assistant Chief of Fisheries for the Idaho Department of Fish and Game (IDFG), elaborated on the technical details of the task force.

- Rep. Bedke inquired what management practices would be adopted to get, as an example, the current 212 sockeye reported within the Snake River up to the numbers needed for it to be delisted and to reach the highest percentage of the historical numbers (see slide 18). Mr. Kline responded that the department had constructed a new hatchery dedicated to producing Snake River sockeye salmon. Along with other increased production efforts, the projection would release approximately 5,000 adults back to the basin within a few years; thereby, increasing the release number substantially from the current 212. Rep. Bedke summarized that the department's current efforts were only focused on increasing the release numbers. Mr. Kline stated that studies identified no other improvements were necessary to

the environment and the belief was vested in the numbers available to reproduce to buoy the population.

- Rep. Rubel questioned whether the data reflected the *actual* number of fish that survived; and if the next stage in the plan would not be in place for another 2-3 years, would there still be natural fish in the river system to take advantage of the introduced fish at that time. Mr. Kline responded that while the initial effort was to begin increasing the available populations, the task force stakeholders would then attack the problem from the four main pillars to ensure success: hatchery, harvest, hydro, and habitat. He also noted that data indicated that environmental conditions would improve and ocean productivity would increase by 2020, thereby multiplying the task force's efforts.
- Sen. Jordan asked what the Idaho Legislature could do to assist the task force's efforts. Mr. Kline responded that he hoped for continued cooperation from the Legislature but that the task force had no specific requests at this time.

At 3:30 p.m., Mr. Yost, Chairman for the Northwest Power and Conservation Council, updated the committee on the [Columbia River Treaty](#). He reported that the USA and Canada were currently meeting approximately every two months to hear and discuss data for the purpose of renegotiating the treaty, which could expire in 2024.

- Sen. Stennett, citing her knowledge that the State of Washington and State of Oregon have met with tribes, water user groups, and power companies about the upcoming treaty negotiations, asked about the efforts of the conservation council to do the same within Idaho. Mr. Yost replied that several work sessions had occurred in northern Idaho with tribal members and power companies. Sen. Stennett inquired whether meetings had been held with the various water user groups to discuss how the treaty would impact them. Mr. Yost reported that there have been such meetings with those individuals.

At 3:40 p.m., Ms. Sharon Kiefer, Deputy Director for the Idaho Department of Fish and Game (IDFG), gave updates on data regarding [chronic wasting disease](#) prevention strategies and the [depredation compensation](#) program.

- Co-chair Gibbs asked how to explain the administrative rules that prohibit the possession of certain animals and animal body parts - due to a possible infection of chronic wasting disease - to hunters/individuals who live/hunt on the state borders. Ms. Kiefer explained that the rule depends on: 1) where the animal was harvested, and 2) where the individual is transporting it to. She stated these examples: if the animal is harvested within Idaho, the prohibition does not apply; alternatively, if the animal is harvested within the state lines of a state who has been identified with CWD, it is subject to the Idaho prohibition.

At 3:50 p.m., Mr. Ed Schriever, Deputy Director for the Idaho Department of Fish and Game, provided updates on the access enhancement program and information regarding the [grizzly bear delisting status](#).

- Co-chair Bair inquired whether the department had approached the Wilks brothers (recently in the news for placing a lockable gate across a previously public road to prevent passage through their large tract of land.) Mr. Schriever reported that those individuals, as well as many other large tract owners within the state, were invited to participate in the department's Large Tract Access Program.
- Sen. Siddoway asked whether the department had received any feedback from individuals or groups since the enactment of recent legislation, which addressed trespassing on private land. Mr. Schriever reported that he was not aware of any complaints, but was aware that the department had fielded many questions from the public to clarify the statute.

Having no other business before the committee, the meeting was adjourned at 4:03 p.m.