

FINAL REPORT

Natural Resources Interim Committee SCR 114 (2017)

Members of the Committee:

Senator Bair, Co-Chair
Senator Siddoway
Senator Heider
Senator Brackett
Senator Stennett
Senator Keough – Ad Hoc
Senator Patrick – Ad Hoc
Senator Jordan – Ad Hoc

Representative Gibbs, Co-Chair
Representative Bedke
Representative Moyle
Representative Gestrin
Representative Rubel
Representative Shepherd – Ad Hoc

Staff: Katharine Gerrity, Rob Sepich, Jennifer Kish

NATURAL RESOURCES INTERIM COMMITTEE

2018

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Charge

The Natural Resources Interim Committee is a two-year committee formed in 2017 pursuant to the authority of SCR 114. The resolution authorized the Committee to undertake and complete a study of various natural resource issues of importance to the state of Idaho. The Committee was directed to make a progress report to the Second Regular Session of the Sixty-fourth Idaho Legislature and a final report to the First Regular Session of the Sixty-fifth Idaho Legislature.

Meetings

The Committee met in Boise November 8, 2017, June 6, 2018 and October 12, 2018.

Scope of Study and Recommendations

November 8, 2017:

The Idaho Water Users Association presented in regard to Hells Canyon relicensing which has been in progress over the last decade. A dispute between Oregon and Idaho occurred last year prior to the 2017 session regarding the introduction of salmon and steelhead above the Hells Canyon complex. Legislation was passed in 2017, reaffirming Idaho's sovereignty over its water, wildlife and resources.

The Columbia River Treaty modernization process was also addressed. The Columbia River Treaty (CRT) was ratified in 1964 for the purpose of regulating the Columbia River's flow for flood control and hydropower generation. The treaty requires a ten-year notice to terminate, with the original term expiring in 2024. Modernization of the treaty (regarding hydropower, flood control, and ecosystems) has not been fulfilled in any formal manner. Due to requests to terminate and reevaluate the hydropower usage on the river by public organizations, political and caretaker entities have developed a Statement, generally known as the Idaho position on the CRT. This Statement is composed of four points of focus: I - Hydropower; II - Flood Control; III - Ecosystem Function; and IV - Negotiation Process & Potential Termination. Mr. Arrington commented that his biggest concern was the "call upon" designation regarding flood control, which would occur in 2024.

David Groeschl, Deputy Director and State Forester for the Idaho Department of Lands (IDL) reported on the 2017 fire season. Mr. Groeschl noted that the department protects approximately 6.3 million acres of state and private forest lands in Idaho, which includes the ten IDL districts and the two timber protective associations, the Clearwater-Potlatch Timber Protective Assoc. (CPTPA) and the Southern Idaho Timber Protective Assoc. (SITPA.) Within those districts, IDL also protects approximately 800,000 acres of federal land under conditions of an off-set agreement with the US Forest Service (USFS) and the Bureau of Land Management (BLM) in an attempt to efficiently respond to proximity acreage. The USFS and BLM in turn responds to 800,000 acres of IDL land within their districts. As of October 1, 2017, fire suppression costs tallied \$22 million dollars for the state of Idaho, with \$5.6 million of that cost being reimbursable.

A presentation was also made on the Idaho Good Neighbor Authority (GNA) program. Mr. Groeschl noted how the program was founded with the passage of the 2014 Farm Bill. The program allows the states to enter into cooperative relationships with federal agencies to complete work across ownership boundaries. He reported that Idaho focuses mainly on working with the USFS on federal national forest lands to mitigate the growth/harvest/mortality rates that are occurring. Funds from the sale of timber

is returned to the program. Mr. Groeschl said the program effectively results in healthier forests, benefits local economies, and is self-sustaining in a financial manner.

Mick Thomas, Oil and Gas Division Administrator for the Idaho Department of Lands, detailed the staff positions that now comprise the structure of the Oil and Gas Division; provided a basic description of the geology of the areas where horizontal drilling and testing were occurring in Idaho; reported on the current revenue from drilling efforts; and outlined future goals and projects.

Sharon Kiefer, Deputy Director of Programs/Policy for the Idaho Department of Fish and Game, reported regarding depredation compensation claims and efforts to prevent depredation; attempts for price lock advertising and results of other license sales; outlined the scope of focus for the newly hired web-vendor for the department; provided comparative sales of licenses from the last three years; submitted a report on the wolf population and related control efforts; reported on the health and herd populations of mule deer, elk, and bighorn sheep and techniques to prevent depredation of pastures and stored forage related to those species; and provided salmon and steelhead data as collected by the department

Brian Patton, Chief of Planning Division for the Idaho Department of Water Resources, presented regarding the 2017 water supply conditions and the Eastern Snake Plain Aquifer recharge efforts.

Mr. Patton noted that recharge had exceeded over 90,000af to date for the year. He stated that the program was in a very good position and was well on its way to attaining the required annual average of 250,000af.

Matthew Weaver, Deputy Director of the Idaho Department of Water Resources, addressed the committee regarding the Eastern Snake Plain Aquifer settlement agreement between the members of the Surface Water Coalition (SWC) and the Idaho Ground Water Users Association (IGWA), the aquifer's condition to date, and the Class II Underground Injection Well (UIC) program.

The committee was also briefed on flood management of the Boise River. In 2017 the river was in flood stage for 101 days from to March to mid-June.

June 6, 2018:

The purpose of the meeting in June was to review some proposed legislation regarding storage water issues and to determine whether a request should be made to the Governor to consider calling a special session to further proceedings on the proposed legislation.

Various presentations were made beginning with an overview of the Snake River system and the use of its nine reservoirs for water collection, release for flood control and irrigation needs as a backdrop to reviewing the Boise River system, with its three

reservoirs, given the increasing needs and demands in the Boise River system. The priority of whose water is released and refilled from the Boise River system when control is necessary was the primary focus of discussion.

Three major uses that would influence available water in the future for refill rights include: the removal of water from the Boise system for the purpose of putting it in another basin; increasing designated recharge projects, both of which are already addressed in the Idaho Code; and creating new storage or increasing the volume of existing storage. Those involved in litigation and discussions about refill and the Boise River reached a consensus that the Idaho Code does not set forth clear language to provide a carve-out for new storage in the face of refill water rights. The intent of the draft legislation was to provide that large new storage projects will not come ahead of the refilling of the existing reservoir system.

A motion was made and seconded that the committee vote, in a nonbinding manner in the event of a special session, to support the concepts set forth in the draft legislation and support the Co-chairs submitting a letter to the Governor requesting a special session. Subsequently, an agreement was reached between water users and water managers on prioritizing water rights from the Boise River reservoirs, eliminating the need for a special session.

October 12, 2018:

During the October meeting, the committee received a summary review of the Basin 63 fill/refill matter, which was the subject of the June meeting, from Mr. Paul Arrington, Executive Director and General Counsel, Idaho Water Users Association.

Director Gary Spackman, Idaho Department of Water Resources, addressed federal stockwater rights activities in response to legislation enacted in 2018 (SB 1101 and HB 718). In 2007 the Supreme Court, in *Joyce Livestock Company v. United States*, held that the federal government could not perfect a water right for watering stock unless it owned the livestock. Stockwater rights acquired in a manner contrary to the decision are subject to forfeiture. The director noted that the legislation provided that he compile a list of all rights held by federal agencies. The department completed the list and submitted it to the Governor's office for further direction associated with submission of orders to show cause to the various federal agencies. The director also updated the members on 2018 irrigation season curtailments of ground water diversions from the ESPA for failure to install measuring devices.

Various personnel from the Department of Water Resources and Water Resource Board also provided updates on the National Flood Insurance Program, ESPA recharge efforts and aquifer conditions.

Representatives from the Idaho Ground Water Appropriators, Surface Water Coalition, Coalition of Idaho Cities, and the Department of Water Resources reported on the settlement agreement between ESPA cities, the Surface Water Coalition, and the Groundwater Users.

Representatives from the Idaho Department of Lands provided updates on oil and gas matters in the state as well as findings of a Land Board audit.

The committee also heard from the Department of Water Resources, Water Resource Board, and Idaho Water Users Association regarding the Idaho large water infrastructure work group and water project funding.

Remarks associated with the Columbia River Treaty were provided by Mr. Jim Yost, Chairman of the Northwest Power and Conservation Council. The Idaho Water Users Association and Idaho Department of Fish and Game addressed the committee in regard to the Columbia Basin Partnership.

The final presentation of the day came from Idaho Fish and Game, addressing rulemaking associated with chronic wasting disease, financial outcomes stemming from HB 230 (2017) relating to fee revisions, and access enhancement. The department also provided a Grizzly Bear status update.

The Committee has no specific recommendations at this time.

Speakers - The following is a list of people, groups or agencies that testified or provided comments during the Committee meeting:

Chairman Roger Chase, Idaho Water Resource Board

Director Gary Spackman, Idaho Department of Water Resources

Mr. Brian Patton, Chief of Planning Division, Idaho Department of Water Resources

Mr. Mathew Weaver, Deputy Director, Idaho Department of Water Resources

Mr. Darrell Early, Division Chief, Natural Resources Division, Office of the Attorney General

Mr. Paul Arrington, Executive Director, Idaho Water Users Association

Ms. Sharon Kiefer, Deputy Director, Idaho Fish and Game

Mr. Ed Schriever, Deputy Director, Idaho Fish and Game

Mr. Paul Kline, Assistant Chief of Fisheries, Idaho Department of Fish and Game

Mr. Bill Clayton, Chairman, Flood Control District No. 10

Director Dustin Miller, Idaho Department of Lands

Mr. David Groeschl, Deputy Director, State Forester, Idaho Department of Lands

Mr. Mick Thomas, Division Administrator, Oil and Gas, Idaho Department of Lands

Ms. Diane French, Division Administrator, Lands and Waterways, Idaho Department of Lands

Mr. Jim Yost, Chairman, Northwest Power and Conservation Council

Mr. T.J. Budge, Idaho Ground Water Appropriators

Mr. Kent Fletcher, Surface Water Coalition

Mr. Chris Bromley, Coalition of Idaho Cities

Mr. Albert Barker, Boise Project Board of Control

Mr. Dan Steenson, Various Boise Valley Irrigation Districts/Canal Companies