

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 31, 2018

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Siddoway, Senators Brackett, Heider, Vick, 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.

Chairman Bair welcomed the Idaho Water Resource Board (IWRB) members and the Director of the Idaho Department of Water Resources (IDWR), Gary Spackman.

PRESENTATION: **Mr. Spackman** said he wanted to discuss diversion works and measuring devices, as IDWR is assisting with a three-year effort to install measuring devices across the Eastern Snake Plain Aquifer (ESPA). There are also ongoing measurements in the Snake River, Water District 02, which is from Milner to the Oregon-Idaho state line. **Mr. Spackman** began his presentation by showing three unique slides pertaining to water diversion. The first slide was a washing machine used with rocks as rip-rap. The second slide showed a car motor mounted in a pickup bed that provided energy to pump water. The third slide contained a picture that resembled bed springs of a mattress, but in actuality, was a flume to measure water flow in the stream. **Mr. Spackman** thought the Committee might appreciate what IDWR encounters.

Mr. Spackman continued his slide presentation by discussing pending transfer applications, which have been reduced from 500 to 100. **Chairman Bair** inquired as to the length of time taken for an application to work through the channels before being granted. **Mr. Spackman** replied that it usually takes three-to-four months for review, publication, and a period of protest. He has delegated authority to the regional offices to expedite the applications.

Other graphs that were referred to were resolved transfer applications, active water appropriation permits with proof submitted, pending water right ownership change notices, and pending water supply bank rental applications. These rental applications are accumulated the first of the year as people anticipate the need for water for the upcoming year. **Mr. Spackman** said they reassign staff for a few months to review these applications; he noted that hiring one additional person has helped significantly.

Mr. Spackman stated another matter that will come before the Committee will include Priest Lake and the outlet structure. In 1950, the Legislature granted the Director of IDWR authority to oversee the regulation of lake levels in Priest Lake and also assigned the Director oversight regarding the outlet structure of Priest Lake. A slide of the down-stream side of the outlet structure showed 11 gates that can be raised or lowered. The operator of these gates, Carl Duncan, has been working there since the early 1960s. Mr. Duncan is now 80 years old, and is retiring.

Mr. Spackman said there is also a need for work on the thoroughfare, which is a connecting channel between Upper Priest Lake and Lower Priest Lake. One of the needs is reducing the sedimentation that restricts navigation. **Chairman Bair** asked for further clarification regarding the sedimentation and what might be done. **Mr. Spackman** said a study funded by the IWRB in 2015 analyzed if there was flexibility in operations to keep the lake level elevation at three feet during the recreational season. After the study, there was an agreement that those water levels could be held at three-and-one-quarter to three-and-one-half feet to create a reserve, in case the lake level declined.

Mr. Spackman said there are two components regarding this proposed project. One is to reconstruct the outlet structure, which is a State responsibility. The total cost for the project was \$5 million. The Governor recommended \$2.4 million to be paid by the State and asked that other sources contribute to the project. In addition to granting the additional water levels, the transfer of the ownership and responsibility for regulation was transferred to the IWRB. The reason for the change of responsibility is the transfer of ownership of this facility.

Mr. Spackman stated that IDWR is involved in "other notables." They are:

1. Implementation of Surface Water Coalition (SWC) Delivery Call Settlement Agreement;
2. Negotiations to end objections to ESPA groundwater management area;
3. Fall reset for reservoir rights;
4. METRIC expertise internalized into IDWR;
5. Stockwater legislation;
6. Class II injection wells;
7. National Flood Insurance Program discussions.

Mr. Spackman said he would discuss these seven "notables."

1.) IDWR is engaged in the implementation of the SWC delivery call and to verify that the terms of the agreement are being addressed and to identify deficiencies.

2.) IDWR is in negotiations with the ESPA groundwater management area, and if not challenged, will litigate the impasse for senior waterright holders.

3.) **Mr. Spackman** said IDWR is in the midst of controversy regarding resetting the fill of reservoirs in the fall. Conflicts between natural flow water right holders and reservoir space holders have come to a head. **Mr. Spackman** hopes the conflict will be settled soon, so that he will not have to determine the outcome.

4.) A recommendation was made to bring expertise into IDWR relating to GIS in order to analyze satellite data. This analysis will help to determine how much water is used statewide. The information was previously compiled by satellite imagery, relying on the University of Idaho. However, it has been determined that the analysis needs to be internalized.

5.) **Mr. Spackman** said two pieces of legislation regarding stockwater will come before the Committee. One of the issues pertains to the tens of thousands of stockwater rights that have been issued to the federal government and addresses the current status of them. Last year's legislation recognized the *Joyce* decision and put in place a process where the stockholder on the allotment could file a claim in the Snake River Adjudication which would eliminate some fees.

6.) **Mr. Spackman** stated there is an issue pending regarding injection wells with the disposal of fluids into the ground. These have been classified as Class II Injection Wells. IDWR has, for a long time, administered what are classified as Class V Injection Wells, which is a "catch-all" category. Because of the oil and gas activity in the State, IDWR has been criticized because they have attempted to obtain primacy over the Class II wells. The Environmental Protection Agency (EPA) told IDWR they needed to look at both Class V and Class II jurisdictions. Even though IDWR's regulations were identical to EPA's, EPA said IDWR needed to adopt interpretations that were identical to EPA's. One of those interpretations is that in the recharge site - Milepost 31 in particular - water is diverted through an existing canal system that the construction of the outlet of the canal and the delivery of that water resulted in what EPA called an improved sinkhole. IDWR said nothing was improved by placing a release out into the recharge basins. EPA said it was an improvement. IDWR has come to an impasse with EPA. **Mr. Spackman** said he has promised the water users that he would not capitulate on that subject. As a result, the best way the oil and gas industry can obtain an injection well program, and possible approval for the reinjection, is to return it to the EPA.

7.) **Mr. Spackman** said the final issue is related to the National Flood Insurance Program. It is in regards to the revocation because of cleaning issues of ditches and canals in the flood plain.

That concluded Mr. Spackman's presentation. **Chairman Bair** called on Roger Chase, Chairman of IWRB, to continue the slide presentation.

Mr. Chase said he has been on IWRB for ten years and enjoys his position. IWRB was founded in 1963 when California wanted to take Idaho's water and transfer it from Twin Falls to Lake Mead. Idaho has aggressively protected its water since.

Mr. Chase stated that the next slide is of the workhorse of the recharge system, Mile Post 31 on the Milner Gooding Canal. Another managed recharge site is the Frandson Site on the Snake River Valley Canal. **Mr. Chase** said the recharge season for 2014-2015 was 75,234 acre feet; 2015-2016 was 66,536 acre feet; and 2016-2017 was 317,714 acre feet. The current season-to-date is 224,151 acre feet. The key is to have an average of 250,000 acre feet a year; if that can be done, they can sustain the ESPA. Several goals have been met regarding the aquifer.

The next slide addressed Priest Lake in north Idaho. It provides recreational opportunities and the economic activity. IWRB is working to help provide money, along with the Governor's request for \$2.4 million.

Mr. Chase said there is a large study being conducted regarding the Treasure Valley. IWRB does not want to have the problems in the Treasure Valley that they had in the Snake River Plain. They want to prevent the aquifer from dropping. Storage sites are another area that IWRB is analyzing in the Treasure Valley. Little progress has been made with the United States Army Corps of Engineers, so IWRB is working with the Bureau of Reclamation to see if the three dams can be raised for additional storage.

Mr. Chase indicated that IWRB does many small projects. Generally, the projects involve loans from IWRB. One project is located on the Bear River and is the Last Chance Canal diversion dam. A loan was made for \$2.5 million. Another successful program is the salmon recovery in the Upper Salmon Basin on the Lemhi River.

IWRB plans to start construction on the Mountain Home Air Force Base Sustainable Water Project this fall. The air base is a billion dollar industry in the State of Idaho and IWRB needs to make sure they have water. The project is moving forward with the help of the Simplot Foundation. Other projects are in Lewiston, Twin Falls, Idaho Falls, and Elmore County.

In closing the presentation, **Mr. Chase** mentioned cloud seeding. IWRB works with Idaho Power on this program. Since the project commenced, there has been an increase in moisture of 10 to 14 percent. **Mr. Chase** said water sustainability happens for one reason - a great team and a Legislature that understands the goal.

Chairman Bair thanked Mr. Chase for the update regarding IWRB's activities. He then asked Dr. Rusche to address the Committee.

GUBERNATORIAL APPOINTMENT: Dr. John Rusche, Lewiston, Idaho, was appointed to the Idaho Water Resource Board to serve a term commencing August 31, 2017 and expiring January 1, 2019.

Dr. Rusche served in the Idaho House of Representatives from 2004 to 2016. He was Minority Caucus Chairman in 2006 and the Minority Leader from 2008 to 2016. Some of the committees he served on are: Revenue and Taxation; State Affairs; Health and Welfare; Energy, Environment and Technology; Business; and Ways and Means. Dr. Rusche continues to be involved in the medical and health industry. He received his M.D. degree from Washington University School of Medicine in St. Louis, Missouri and holds an active license with the Idaho Board of Medicine. In 1983, Dr. Rusche received certification from the American Board of Pediatrics and served at the Valley Medical Center, Lewiston, Idaho as a general pediatrician.

Dr. Rusche said he has always been involved in the community regarding health care. As a legislator, he has observed water activities in the State. **Dr. Rusche** stated that last summer, Chuck Cuddy, a member of IWRB, asked him to finish out his term, to which he agreed. **Dr. Rusche** admitted that he doesn't know a lot about water law or hydrology, but he brings a broad view of the importance of this resource to the State of Idaho, its people, and the cities. **Dr. Rusche** stated that he feels he has the skills and abilities to understand the issues facing IDWR.

Senator Johnson inquired as to what motivated Dr. Rusche to want to serve on the IWRB. **Dr. Rusche** said Mr. Cuddy was concerned about preserving access to the Snake River for transportation and was also involved in trying to identify ways to increase the water supply. **Dr. Rusche** said these are also important to him.

Dr. Rusche said he has been involved with the Lewiston Orchards Irrigation District project for the last seven years. He has worked with the tribes and the Bureau of Reclamation. **Dr. Rusche** stated that some people in his area think that water issues are southern Idaho issues, but there are significant problems in north Idaho. He asserted there needs to be a plan for the aquifer.

Senator Johnson said he wanted to recognize Chuck Cuddy for his long-time service on IWRB. He expressed sadness that Mr. Cuddy was unable to finish his term.

Senator Siddoway stated that he respected and appreciated Dr. Rusche's time in the Legislature. He noted that Dr. Rusche oftentimes was in the middle of tough issues. **Senator Siddoway** expressed some anxiety about the presence of Dr. Rusche serving on IWRB. He stated he knows Dr. Rusche has the ability, but he wanted to make sure he has the willingness to represent all of Idaho's interests. **Dr. Rusche** replied that all he can do is to commit his best effort; he stated that he is a quick learner and has an understanding of the terminology and some basic hydrology. He feels he brings a broad view of how the State of Idaho plays together, not just in terms of agriculture. **Dr. Rusche** said he also has the ability to build relationships and coalitions.

Chairman Bair thanked Dr. Rusche for appearing before the Committee and said voting on the appointment would occur next Monday.

Mr. Chase said he inadvertently forgot to introduce two IWRB members when he spoke earlier. He introduced Vince Alberti and Bert Stevenson of the IWRB.

GUBERNATORIAL APPOINTMENT: **Chairman Bair** stated that the next item on the agenda was the consideration of the Governor's reappointment of Brad Corkill to the Idaho Fish and Game Commission to serve a term commencing July 1, 2017 and expiring June 30, 2021.

MOTION: **Senator Brackett** moved to send the gubernatorial reappointment of Brad Corkill to the Idaho Fish and Game Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Vick will be the floor sponsor.

RS 25868 **Senator Keough** presented **RS 25868** and said it updates Idaho Code § 39-8503 which is the enabling statute for Lake Pend Oreille, Pend Oreille River, Priest Lake and the Priest River Commission. The updates would allow the Commission to participate in proceedings related to the Columbia River Basin.

MOTION: **Senator Siddoway** moved to print **RS 25868**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

RS 25894 **Senator Keough** presented **RS 25894** and stated this RS updates Idaho Code § 70-507 to clarify that management of the state-owned dam on Priest Lake at Outlet Bay is under the jurisdiction of the Idaho Water Resource Board.

MOTION: **Senator Siddoway** moved to print **RS 25894**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Chairman Bair said there will be a full hearing on each RS at a later date. He also thanked all participants in today's meeting.

ADJOURN: There being no further business at this time, **Chairman Bair** adjourned the meeting at 2:40 p.m.

Senator Bair
Chair

Juanita Budell
Secretary