

MINUTES
Approved by the Committee
Committee on Federalism
Friday, August 30, 2019
8:30 A.M.
Room EW41
Boise, Idaho

Co-chair Monks called the meeting to order at 8:33 a.m.; a silent roll call was taken.

Committee members in attendance: Co-chair Jason Monks and Co-chair Steve Vick; Senators Dan Johnson, Mark Harris, Carl Crabtree, and Grant Burgoyne; and Representatives Judy Boyle, Megan Blanksma, Wendy Horman, and Jake Ellis. Legislative Services Office (LSO) staff present: Kristin Ford, Katharine Gerrity, Jill Randolph, and Ana Lara.

Other attendees: Jon Songster and Craig Foss - Idaho Dept. of Lands; Jeanne Higgins, Cecilia Seesholtz, and Venetta Gempler - United States Forest Service; Bill Villers - IBR Inc.; Jose Claudio, Jr., Ron Nielsen, and Jeff Wright - self; Bill Myers - Holland & Hart; Liz Hatter - Veritas Advisors, LLP; Fred Birnbaum - Idaho Freedom Foundation; Shevawn Von Tobel - Conservation Voters; Becca Aceto - Idaho Wildlife Federation; Russell Westerberg - Rocky Mountain Power; Representatives Paul Shepherd and Tammy Nichols - Idaho House of Representatives.

Note: presentations and handouts provided by the presenters/speakers are posted on the Idaho Legislature website: legislature.idaho.gov; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Opening Remarks

Co-chair Vick hoped that the committee meetings would be beneficial to the state of Idaho as the committee looks for ways to exercise the constitutional powers provided to the states in a way that benefits the citizens of Idaho. Co-chair Monks explained that federalism is a sharing of powers over the same area such as land in the case of the upcoming presentation. He hoped that the committee could come up with ideas and suggestions on how to improve the federalism process.

Good Neighbor Authority (GNA) - Director Dustin Miller and Craig Foss - Idaho Dept. of Lands; and Jeanne Higgins, Cheryl Probert, and Cecilia Seesholtz - United States Forest Service (USFS)

Director Miller stated that the [Good Neighbor Authority Bureau](#) was established in 2014 and is a great partnership with the federal government. He said that this partnership has allowed the state to achieve some impressive outcomes on the landscape. He explained that the GNA was authorized by the 2014 Farm Bill in Congress and the accompanying Healthy Forest Restoration Act amendment that allowed governors of states with national forest system lands within their state boundaries to designate priority treatment areas. He further explained that treatment areas include lands that are at high-risk of insect and disease mortality in the forests as well as wildfire.

Director Miller provided some context regarding the Idaho Dept. of Lands and its work. He noted that there is a constitutional mandate to maximize revenue on state endowment lands. He stated that they enforce the Lake Protection Act, provide regulatory oversight for various forestry programs, for mining, and for oil and gas. He added that the department offers private forest land assistance. The IDL also provides fire protection on over six million acres of state, federal, and private land.

Director Miller directed the council to [slide 3](#) of the presentation and stated that roughly 20.4 million acres of national forest lands are in Idaho; roughly 75% of the forested landscape. He said that the map on the left was created during the original assessment in 2014 after the Farm Bill passed. The analysis shows the number of acres on national forest system lands that are suitable for some level of management. He stated that the department examined roaded front country, and

non-wilderness areas or certain classification of roadless areas. He explained that they chose areas where they believed they could work actively with the USFS to participate in projects, perform restoration actions, and harvest timber.

Director Miller stated that, of the 20.4 million acres, 12.6 million acres were suitable for that level of management; about 8.8 million acres were determined to be high-risk for insect and disease mortality as well as wildfires. He referred to the map on the right on slide 3 and stated that the areas in blue represented 1.8 million acres of the Healthy Forest Restoration Act (HFRA) insect and disease priority treatment areas that were designated by Governor Otter in 2014. He added that, over the next few years, additional acres were designated as priority treatment areas; Idaho now has a cumulative total of 6.1 million acres designated as HFRA priority areas.

Director Miller said that the USFS has a variety of tools available to address the threats on this landscape. He explained that, through the GNA partnership, the USFS has worked closely with and relied on IDL for expertise predominantly within the timber program as well as restoration activities (i.e., fish & wildlife habitats, road maintenance, trail maintenance, etc.).

Mr. Foss, Division Administrator for IDL, explained that GNA is a cooperative partnership agreement to provide the ability to leverage federal, state, and partner resources to increase capacity to achieve federal outcomes. He stated that one of the components that IDL has focused on is the ability to generate revenue. He commented that IDL manages sale revenue on behalf of USFS and that the reinvestment of program revenue back into forests is fundamental to GNA. He noted that the model is intended to be self-sustaining.

Mr. Foss stated that IDL signed a statewide agreement with the USFS that would cover both regions of the state. IDL also signed four supplemental project agreements with four of Idaho's seven national forests. He explained that IDL selected the forests that had better markets in order to move towards a self-sustaining program. He further explained that revenue is used to reimburse IDL for program expenses, fire hazard abatement, forest replanting, and road maintenance. He stated that the remaining funds are invested in two ways: some of the funds go into noncommercial restoration programs and some of the funds cover service project costs.

Mr. Foss commented that the four supplemental project agreements (slide 5) were with:

- Panhandle;
- Nez Perce/Clearwater;
- Payette; and
- Boise National Forest.

He stated that, due to the budget complexities and number of staff needed to achieve the benchmarks for this statewide program, IDL decided to create a new bureau (GNA).

Mr. Foss directed the committee to slide 6 and noted the growth of GNA timber sale contracts over the last four years. He proceeded to slide 7 and briefly summarized the contracts awarded to IDL for restoration and service works. He noted that the services listed in white are services provided at the beginning of the program and the services listed in yellow are new services offered this year.

Mr. Foss stated that President Trump had signed an executive order promoting the active management of America's forests, rangelands, and other federal lands to improve conditions and reduce wildfire risks. In December 2018, the USDA attended Idaho's land board meeting and signed the nation's first stewardship agreement between the federal government and state. He explained that the primary premise for the shared stewardship is working with states to co-manage risks across broad landscapes. He clarified that while GNA focuses on management work on federal lands, shared stewardship recognizes the importance of treating the broad landscape in order to protect communities from wildfires.

Mr. Foss stated that IDL had designated two priority landscapes for pilot programs at the request of Governor Little. The priority landscape in north Idaho in region one comprises 2 million acres. The priority landscape in region four comprises 2.2 million acres. He stated that the next steps are to identify focus areas, projects, and five-year work plans. He emphasized that shared stewardship and GNA are vital to Idaho in order to:

- Reduce fuels and risks to communities;
- Improve forest and watershed health; and
- Sustain and create jobs.

Co-chair Monks invited Andy Brunelle, State Liaison for the USFS, to introduce the USFS presenters.

Ms. Higgins, Forest Supervisor for the Idaho Panhandle National Forest (IPNF), stated that the supplemental project agreement provided sideboards and defined the scope of work between the USFS and IDL. The agreement expanded the opportunity to achieve their work on national forest system lands and also provided an opportunity to learn together. The USFS has a series of contracts to sell timber and accomplish restoration work on federal lands; this state does as well. She noted that there's an opportunity to work together to determine which contract clauses work best to accomplish their shared goals.

Ms. Higgins stated that by the end of this fiscal year (end of September), the IDL will have held five timber sales on IPNF on behalf of the USFS. She stated that these sales total about 31 million board feet of timber, 3,000 acres treated, and approximately \$7 million of value. She commented that the north Idaho forests have a fair amount of value that can be reinvested in national forest systems lands. She noted the number of activities post-timber harvest to improve forest conditions (i.e., road maintenance, aquatic organism passages, etc.). She said that the IPNF five-year action plan was developed in conjunction with the five northern counties. She explained that the commissioners from those five counties created criteria for prioritizing the landscape for the areas treated the most to improve forest health, create jobs, and reduce wildland fire risks. She emphasized that, over the last ten years, the IPNF has tripled its outputs with both board feet as well as acres treated and attributed this largely to the expansion of the GNA.

Ms. Higgins directed the committee to [slide 4](#) that listed some examples of IDL and USFS working together. She informed the committee that the Hanna Flats project was the first project in which USFS utilized state resources to assist in conducting the environmental analysis process.

Ms. Seesholtz, Forest Supervisor for the Boise National Forest (BNF), reminded the committee of the Pioneer Fire in 2016 that burned over 200 thousand acres. She stated that in 2017, the BNF spent considerable time working on restoration and putting together salvage timber sales. She said that BNF looked to the IDL to determine how they could help expand their capacity since BNF was primarily focused on restoration efforts. She stated that BNF was able to work with IDL on the High Forks GNA project near Emmett that focused on wild land urban interface areas. She explained that the IDL marked, cruised and appraised the timber sale and awarded and administered the contract. She noted that the Tussock Moth outbreak affected some of their timber sales. She directed the committee to [slide 7](#) that provided details regarding the Bogus Basin GNA project. She emphasized that USFS and IDL had developed strong working relationships and their goals are very well aligned. She believed that the strength of this partnership was evident in the work accomplished since then.

Ms. Probert, Forest Supervisor for the Nez Perce-Clearwater National Forest (NPCNF), stated that they signed the first supplemental project agreement in May 2017. She noted that they won the regional foresters honor award for excelling as a high-performing agency with their partners at IDL. She believed that this showed the understanding that GNA is a way to demonstrate and practice good government, regardless of federal or state boundaries. She stated that, in general, the NPCNF aims for about 5-10 million board feet in timber sales a year under the GNA. She explained that this provides for about 500 acres treated and represents about 100-200 jobs, either created or sustained, every year.

Ms. Probert emphasized that GNA provides opportunities to build and expand working relationships to accomplish shared goals. She noted that north-central Idaho provides high-volume per acre and good value for timber. She explained that NPCNF wanted to focus on creating a self-sustaining program, so their first GNA action was a sale ([slide 11](#)). She referenced some future timber sale projects on slide 12. She emphasized the benefit of flexibility that GNA provides to address emerging issues. She referenced the Western Hemlock Looper epidemic and the discussions regarding how they could use GNA program revenue to react much more quickly to this concern.

Ms. Probert directed the committee to slide 16 that provided a list of what current and future timber sales had done for the communities, including \$282 million in revenue to local communities through sales of goods and services. She also noted some intrinsic benefits, such as reduced wildfire suppression costs, restoration on private lands, road maintenance, etc. She proceeded to slide 17 and stated that they would like to accelerate GNA to about 10-20 million board feet annually.

Discussion:

Co-chair Vick inquired whether the program, at this time, is self-sustaining and whether the bureau was completely self-funded by the program. Mr. Foss responded that while the program was designed to be self-sustaining, it was not at this time. He explained that IDL's ability to generate revenue varies across the state as well as by markets. He further explained that IDL had estimated that it would be three to five years before they could be entirely self-funded. He noted that the program was in its fourth year, but IDL hoped that this goal would still fall into that timeline.

Senator Harris asked why some timber sales were not selling. Ms. Seesholtz responded that most timber companies have full lots and timber prices have decreased. She explained that the interest in timber sales has decreased and buyers have become very selective regarding timber sales.

Co-chair Vick inquired about direct sales versus bidding. Ms. Seesholtz explained that, given the lack of bidding, IDL worked directly with a purchaser and contract for a certain amount for a specified time frame to accomplish the specific tasks.

Senator Johnson inquired about the National Environmental Policy Act (NEPA) process and what changes would assist the GNA program. Ms. Probert responded that, nationally, they closed a comment period on new NEPA regulations. She explained that some of the proposals are additional categorical exclusions which allow them to exclude a project from consideration, environmental assessment, or environmental impact statement. She noted that there could be an opportunity to do vegetation restoration as long as there is an aquatic restoration component. She emphasized that several current categorical exclusions are very narrowly focused and this would provide them with the ability to do more integrated projects.

Representative Blanksma inquired about the revenue source for the aquatic organism process. Ms. Probert responded that they used GNA revenue for the project.

Senator Crabtree inquired about the total percentage of sales. Ms. Probert responded that the goal was to hold one sale under GNA per year; they would like to increase it to two sales per year. She explained that they are selling about 5% of their volume and would like to increase it to 10%. Ms. Higgins responded that the IPNF sold about 32% of their volume last year, but the year before that it was 16%. She stressed that the most important thing was the sustainability of the program.

Senator Burgoyne inquired why timber sales were lagging when the price for timber is quite high. Ms. Foss responded that there was a lag between timber costs and the market cost for timber. Mr. Tom Schultz, Vice President for the Idaho Forest Group, responded that it's an issue of price for lumber. He explained that the price of lumber had decreased about 40% since last year and this directly correlates to sales by landowners. He commented that, when the state contract is overlaid with federal requirements, it's going to be more burdensome to sell stumpage. He noted that the price of lumber is at a five-year average; the price last year was at a historical high.

Representative Boyle inquired about the Windy Shingle lawsuit. Ms. Probert responded that the lawsuit was filed by Friends of the Clearwater and a group of homeowners in the Whitewater Ranch subdivision against the entire Windy Shingle project in which they used Farm Bill authority categorical exclusion. She commented that they had sued the USFS, but not the state; the state has not held the sale. She explained that the challenge has been working through the investment the state has in terms of marking the sale, and whether they should award the sale while it's still under litigation.

Senator Vick asked what allows the state to process the sales more quickly and whether IDL has problems with staff vacancies. Mr. Foss responded that IDL does not have problems with staff vacancies, unlike the USFS. He explained that, while he is not well versed in the federal process to explain why the state process is more efficient, IDL has heard repeatedly that the state process is much more efficient and allows for the process to advance much more quickly.

Senator Harris inquired about how the rest of Idaho can be incorporated into the GNA program. Director Miller responded that it comes down to capacity and priorities across the state, but they are continuing to engage with other national forests in Idaho to generate interest and find ways to partner and utilize the GNA.

Representative Ellis asked what in the 2018 Farm Bill either restricts or enhances the GNA and the program's sustainability. Mr. Foss explained that the bill requires that agreements expire after ten years and all revenues return to the treasury. He emphasized how vital it is that the revenue does not sunset in five years and that they retain their ability to spend the revenue generated. Ms. Higgins responded that they aren't quite sure yet how the ability for counties and tribes to enter into GNA agreements will manifest. She stated that counties and tribes are interested in improving forest health conditions and ensuring that the USFS has the right resources to accomplish this.

National Conference of State Legislatures (NCSL) Sessions on Federalism: Briefing - Representative Horman, Idaho State House of Representatives

Representative Horman stated that she had participated in a focus group led by The Pew Charitable Trust at the NCSL conference in August on the federal fiscalism initiative on federal/state/fiscal relationships. She explained that the purpose of the initiative is to provide information on federal spending and assist states in understanding federal trends. She noted that the main concern of states across the country, regardless of location or political party, was Medicaid. She commented that there is significant worry regarding potential federal match changes which can have a significant impact on state budgets. She stated that another concern was that the federal/state fiscal relationship sometimes has reimbursement structures that can be difficult for states to manage in terms of cash flow. She emphasized the concern of potential stimulus related to any future recessions. She added that there are concerns regarding obstacles the state experiences in obtaining information from the federal government. She noted that a request was made for better communication between the federal government and the states, and greater consideration of state needs during the rule-setting process. She commented that, in regards to budget reserves, state legislators discussed how they are managing reserves to prepare for future recessions.

Representative Horman directed the committee to the [handout](#) regarding the Fiscal Federalism Initiative and stated that \$1 out of every \$3 in state revenue is provided by the federal government; it's the second-largest revenue for most states after taxes. She noted that, regarding higher education spending, state funding has declined over the last ten years, but federal funding through the Pell Grant Program increased sharply and the public is now seeing extraordinary levels of student debt. She also noted that conversations regarding the cost of higher education are not taking place.

Representative Horman referred to the [handout](#) regarding federal spending on health care and stated that Medicaid spending increased 73% since 2008 and is the main driver between the 42% growth in federal grants over the past two years. She commented that it was a question of whether these types of significant increases on the federal level are sustainable over time. She stated that she would personally work to shine light on federal spending in Idaho. She stated that federal

spending in the public school's budget is a line item and does not offer much transparency. She suggested removing this line item from the public school's budget to the State Department of Education, which has exclusive control of its receipt, expenditures, and distributions, and then divide it by program for the legislative budget book.

Representative Horman stated that the second federalism event that she participated in was a roundtable discussion led by the Government Accounting Office which is seeking to understand how federal agencies engage and work with states. The participants were asked to share effective partnerships between the federal and state governments that are working well and to also share suggestions for improvement.

The committee recessed for a break at 10:10 a.m.

The committee reconvened at 10:33 a.m.

Public Testimony: What Successful Examples of Federalism Have You Observed in Idaho or Elsewhere?

Co-chair Monks reminded the public that the committee was looking for examples of how federalism has worked well in Idaho or elsewhere. He stated that, while he did not want to limit the public's testimony, the public testimony portion of this meeting should not be used as a time to air grievances against government.

Co-chair Monks called upon Mr. Bill Villers to testify. Mr. Villers began by stating his occupation as a rare metal miner. He stated that regulation is negatively affecting the mining industry and noted the high unemployment rate in mining. He opined that the mining industry is overburdened with both federal and state regulation.

Senator Johnson asked Mr. Villers whether he had any successful examples of working with the people who regulate mining laws to share with the committee. Mr. Villers responded in the negative.

Co-chair Monks called upon Mr. Ron Nielsen to testify. Mr. Nielsen stated that the USFS does not want to allow miners to work on their surface, which is their right, but noted that miners have secured a legislative right [to work in the area]. He believed this conflict would only be resolved by cooperation from the committee and the federal agencies. He stated that there was another conflict. He explained that the state of Idaho has primacy over its water and that the Environmental Protection Agency (EPA) initiated a 402 permit to regulate dredging discharges in rivers and streams in Idaho. He commented that, in 2013, the Idaho legislature passed a water plan for the entire state that provided dredgers an exemption from the 402 permit. He noted that the EPA is threatening to sue dredgers who have this exemption.

Representative Boyle inquired about the name of the lawsuit. Mr. Nielsen responded *EPA v. Erlanson*.

Representative Boyle referred to President Ronald Reagan's Executive Order 12612 regarding federalism and suggested that it would be beneficial for the committee to study the executive order. She commented that the executive order is still in effect.

Co-chair Monks called upon Mr. Jeff Wright to testify. Mr. Wright inquired about the charge of the Committee on Federalism. He explained that he had read HB 169, the bill that authorized the committee, and still did not understand the committee's charge and scope. He stated that he was confused by some of the GNA presentations and the figures provided by the IDL and the USFS. He provided some historical perspective and opined that the state was logging significantly below historical levels. He suggested that outlining the committee's scope would be beneficial to the public to provide proper input.

Co-chair Monks stated that the committee would discuss and clarify its charge at the end of the meeting.

Co-chair Monks called upon Mr. Fred Birnbaum to testify. Mr. Birnbaum, Vice President for the Idaho Freedom Foundation, stated that Section 67-1917, Idaho Code, requires a federal funds inventory. He said that the inventory is currently posted on the Division of Financial Management's website. He explained that the document details the federal moneys appropriated to Idaho. He commented that, for fiscal year 2020, Idaho received 36.3% of its total funds from the federal government. He suggested that, due to Medicaid expansion, the number could grow to 40%. He noted that the funds used to pay some federal employees in Idaho are not considered appropriated dollars and suggested that Idaho was even more dependent on federal moneys than the numbers suggest. He opined that this was problematic because the federal government is \$22 trillion in debt and noted that reductions to federal spending would impact the states. Mr. Birnbaum suggested that the state of Idaho could review the federal funds inventory and determine what funding is not needed.

Co-chair Monks called upon Representative Nichols to testify. Representative Nichols stated her difficulty in producing any successful examples of federalism in Idaho. She hoped that the committee could begin resolving some of these issues and that Idaho could take a lead in reigning in government control and returning the government back to the people. She believed that dual federalism, and not cooperative federalism, provides clearly defined boundaries and checks and balances. She noted that other states had exercised federalism in a dual manner regarding marijuana, sanctuary cities, etc.

Committee Discussion

Co-chair Monks directed the committee to [HB 169](#) and the handouts provided to the committee members regarding federalism. He stated that the purpose for inviting the IDL and the USFS was to provide the committee with a successful example of federalism.

Senator Burgoyne took up Representative Nichols' invitation to comment on both cooperative federalism and dual federalism. He stated that when it comes to national defense, when the country is at war for example, federalism would be cooperative. He said that in other circumstances federalism could be dual. He emphasized that as both an American and Idaho state legislator he has a strong sense of duty, commitment, and loyalty to both the cities he represents and his country and does not feel the need to divide his loyalty among either. He suggested that as citizens we should recognize that the things we demand of our federal government we should also demand from our state, counties, and cities. He also suggested that there are things that we owe as citizens to each of them and it lies within us to get the balance right.

Senator Burgoyne commented that people tend to turn their politics into an all-or-nothing context (e.g., the federal government should control everything versus the federal government should control nothing). He opined that the problem with federalism was correlated more to a social problem rather than an actual governmental problem. He suggested that, with regards to federal/state issues, we as communities and individuals should analyze what we are really demanding and asking from our government. He suggested that the most effective way to fix the federal government is when we vote for federal officers. He believes that the state has a role to play in how we deal with the federal government, but believes it is misplaced to think that the Idaho state legislature's job is to fix the federal government.

Co-chair Monks stated that while there had been different ideas of what role the committee should play, his vision was that the committee could serve to see where the relationship with the federal government could be improved - not made worse. He acknowledged that there are many issues with respect to natural resources, transportation, education, etc. and that the committee would be unable to tackle each issue.

The co-chairs announced three subcommittee topics: Health and Welfare, Education, and Federal Lands. Co-chair Monks noted that this was not an all-encompassing list and that subcommittees could be added in the future or dissolved fairly quickly when no longer necessary. Co-chair Vick directed the committee to HB 169 and referenced the committee's charge and the guidelines for the makeup of the subcommittees.

The co-chairs announced the subcommittee co-chairs:

- Education Subcommittee: Co-chairs Crabtree and Horman;
- Health and Welfare Subcommittee: Co-chairs Harris and Blanksma; and
- Federal Lands Subcommittee: Co-chairs Johnson and Boyle.

Co-chair Monks asked that the subcommittee co-chairs submit their proposed subcommittee membership to the co-chairs for approval. He suggested that the committee should meet in October to allow the subcommittees enough time to formally meet and provide an update to the Committee on Federalism regarding their work or progress. The committee discussed potential meeting dates. Co-chair Monks asked LSO to survey the committee members for potential meeting dates.

Co-chair Monks thanked everyone for their attendance and asked that the committee members take time to read the additional materials provided.

The committee meeting adjourned at 11:30 a.m.