

MINUTES
Approved by the Committee
Committee on Federalism
Wednesday, August 21, 2024
10:00 A.M.
Room EW42
Boise, Idaho

Members in attendance: Cochair Representative Boyle and Representatives Horman and Monks; Cochair Senator Burtenshaw and Senators Lakey, Harris, Carlson, and Just; Legislative Services Office staff Ryan Bush, Janet Jessup, and Jennifer Kish. Absent and excused: Representative Dixon (1) and Mathias.

Others in attendance: Robert Anderst - Risch Pisca, PLLC; Jack Johnson - Twin Falls County Commissioner; A. Ben Crouch - Jerome County Commissioner.

NOTE: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature's website <https://legislature.idaho.gov/sessioninfo/2024/interim> and copies of those items are on file at the Legislative Services Office in the State Capitol. Recordings of the meeting may be available under the committee's listing on the website.

Welcome / Approval of Minutes

Cochair Burtenshaw called the meeting to order at 10:05 a.m.; a silent roll call was taken. Cochair Burtenshaw asked for a motion on the minutes. **Senator Harris moved to approve the minutes of the August 24, 2023, and October 25, 2023, meetings; Senator Carlson seconded the motion. The motion was approved unanimously.**

ESG Updates

Cochair Burtenshaw called Julie Ellsworth, Idaho State Treasurer, to the podium for her updates to the committee on Environmental, Social, and Governance (ESG) issues. Ms. Ellsworth explained how the issues she would discuss may be found on the State Treasurer's website (STO.idaho.gov), where staff continually provide updates. Ms. Ellsworth provided the committee a list of her talking points, which included URL links to each item [see [Treasurer's Presentation](#) under Meeting Materials for Committee on Federalism at <https://legislature.idaho.gov>]. Ms. Ellsworth's topics included letters and articles regarding ESG issues as related to finance, Natural Asset Companies (NACs), and foreign investment.

- Sen. Lakey inquired whether the SEC had withdrawn their rule. Ms. Ellsworth reported that the item regarding NACs had been removed. Sen. Lakey asked whether others were still pending but not yet adopted. Ms. Ellsworth responded that they were.
- Rep. Horman asked whether the treasurer recommended additional legislation for the upcoming session. Ms. Ellsworth commented that she was still evaluating items and would know better by November; possibly more on foreign investments and ESG.
- Cochair Boyle inquired whether the Legislature could assist with any requirements of H665. Ms. Ellsworth responded that her office was receiving good feedback but needed actual numbers for the report; she would continue to collect data as the report was not due until January.

Lava Ridge 101

At 10:28 a.m., Cochair Burtenshaw called upon Jack Johnson, Twin Falls County Commissioner, for his comments to the committee on the Lava Ridge wind project. Mr. Johnson explained the impact of the proposed project on his county. He noted that the county had recently been designated as

a "non-cooperative agency" and as such did not have the most recent information available. He reported he had been part of the initial sub-committee that submitted a "no build" recommendation. Mr. Johnson provided the executive summary of the finalized Environmental Impact Study (EIS), noting that the project decreased its overall acreage, shortened the overall height of the windmills, and addressed the environmental impact due to road building, dynamite blasting, and water impact. Mr. Johnson submitted that the county was overwhelmed trying to fight the implementation of the project, a project that the majority seemed to be against.

- Sen. Lakey asked Mr. Johnson to explain the "non-cooperating agency" identification. Mr. Johnson proposed that his county was labeled such possibly because the final build would not occur in his county. Sen. Lakey asked about the next steps for the project. Mr. Johnson deferred that question to Ben Crouch, Jerome County Commissioner.
- Sen. Lakey asked whether any environmental groups had brought legal action to prevent the project. Mr. Johnson was aware of neighboring counties discussing whether there existed any legal grounds for the counties to file litigation.
- Sen. Harris asked whether the BLM intended to reduce the allotted animal unit month (AUM) for grazing in the build area. Mr. Johnson was aware of discussions between the proposed construction company and grazing permittees to offset costs but was not aware of any discussion to reduce the AUMs.

At 10:47 a.m., Ben Crouch, Jerome County Commissioner, began his comments to the committee. Mr. Crouch emphasized the issue that the project was being built on public land and that even though the community expressed its opinion against the project, it continued to go forward. He noted that the community was not against alternative energy; in fact, a solar farm had met all the requirements of the building process and was being built on private land. He hoped the weight of state representatives' opinions would be helpful. Mr. Crouch noted that the project would affect the air traffic approach, which would have to be rerouted or extended. He also expressed concern on the aquifer in the manner of blasting, drilling, and water use; the affect on the hunting camps and wildlife migration; and the disrespect to the Minidoka memorial. Mr. Crouch reported that Jerome county was in talks with an attorney.

- Sen. Harris inquired how many families would be displaced for grazing due to the project. Mr. Crouch reported 10-12 families would be affected and would need to relocate for 2-3 years. Mr. Harris asked about easements for the power line towers. Mr. Crouch reported that easements were being sought from previously owned easements for that purpose and noted that the power was reportedly going out of state. (At the conclusion of the presentation, Mr. Johnson reported that easements acquired in the early 1900's by Idaho Power through eminent domain had been acquired from Idaho Power for this project and hence were not owned by an Idaho public utility anymore; he questioned the legality of that procedure.)
- Cochair Boyle inquired whether the study reported how the blasting would affect the aquifer. Mr. Crouch noted that the studies reported that it would not affect the aquifer in a negative manner.
- Sen. Lakey asked about the next steps. Mr. Crouch noted that the final EIS had been submitted and was close to a decision where it would either be approved or rejected, upon which time the county was ready to move forward with litigation.
- Sen. Harris inquired how Congressman Risch's efforts had affected the process. Mr. Crouch responded that it had limited the funding for a time - maybe a year - which allowed folks to catch up and/or get ahead of the process to better understand it and to have time to organize against it.

Update on Stibnite Mine and Critical Mineral Antimony

At 11:00 a.m., Cochair Burtenshaw called upon McKinsey Miller, VP of External Affairs for *Perpetua Resources*, for her presentation [Perpetua Resources: Responsible Mining. Critical Resources. Clean Future.](#) to the committee. Ms. Miller noted that she had been presenting to legislative groups for

over a decade, since 2010 when Perpetua Resources began to redevelop the historical Stibnite mining district in Valley County. Her presentation explained the positive and negative history of the Stibnite Mine, the environmental impact/cleanup, and the process to reopen the mine to reclaim gold and antimony, especially Stibnite antimony.

- Sen. Harris asked whether enough antimony existed to fulfill the current deficiency. Ms. Miller responded that there was enough to meet current needs of the Department of Defense and approximately 33% of the public's need, though she could not say how quickly the deficiency would be fulfilled once the mine was active.
- Sen. Harris inquired whether anyone still opposed the mine. Ms. Miller responded that there were many generations of individuals that didn't understand the improvements in mining; many still held the belief of destruction to the landscape and contamination of communities. She noted that there was a duty to drive the social awareness, the pride and need to mine in Idaho, and the ethical responsibility of the mine.
- Sen. Just asked how to shorten the process to establish a mine. Ms. Miller responded that entities needed more staff/more qualified staff to review and process applications and permits at both the state and federal level and to have better coordination and communication among the entities involved.
- Sen. Carlson asked whether *Perpetua Resources* was requesting any legislation or policy changes to assist with the process. Ms. Miller responded that it was not; rather it wanted the Legislature to be aware of the hurdles that exist. In truth, these hurdles negatively impact Idaho's effectiveness to produce critical metals.
- Cochair Burtenshaw noted that he had visited the Stibnite mine in 2015 for a tour and learned of the arsenic that naturally existed in the soil. He asked about the process to remove the arsenic so that it did not leach into the ground water system. Ms. Miller acknowledged that approximately one ton of arsenic left the Stibnite mine into the river and ground water. She explained how waste from the mine would be processed chemically and the arsenic would no longer be water soluble; it is then placed in lined and buttressed tailing beds.
- Sen. Lakey inquired about other antimony sources. Ms. Miller responded that there were other antimony sites under investigation but this site was the only *identified* reserve in the United States, was the only known site to meet military specifications, and was the site nearest production status.
- Sen. Lakey inquired about other practical efforts to reduce the time frame to launch a mine. Ms. Miller recognized legislative efforts in Congress and emphasized the need for the coordination of agencies in the approval process. She noted that the Canadian and Australian processes were more efficient - sometimes taking only 2-3 years - and did not sacrifice standards.
- Cochair Boyle asked whether there were any outstanding permits yet to be approved. Ms. Miller reported that there were approximately 50 permits and approvals a mine had to work through at the state and federal level. She reported that there were approximately four more yet to be approved. Ms. Miller believed those would be approved within the necessary timeline for the build to begin within the first or second quarter of 2025.
- Cochair Boyle inquired whether there were any law suits related to the opening of the mine. Ms. Miller noted that there were, as expected, some litigation; some had been resolved already.
- Cochair Burtenshaw asked whether the antimony would be processed on site or whether it would be shipped elsewhere to be processed. Ms. Miller noted that the Stibnite mine was both an antimony and a gold operation. In fact, to access the antimony, the gold had to be separated from the ore; recovering the gold would allow the antimony process to be less expensive. She noted that the gold would be processed on site but the antimony would be shipped elsewhere for processing based on the end-consumer's needs; however, all of those antimony processing facilities were within the United States.

The committee took a break for lunch from 11:35 a.m. to 1:35 p.m.

At 1:35 p.m., Cochair Boyle called the meeting back into order. She commented that the state of Utah had recently filed a legal brief questioning whether the federal government could hold unappropriated (national parks, wilderness, tribal land, e.g.) land indefinitely.

Updates on Federal Court Cases

At 1:39 p.m., Raúl Labrador, Idaho Attorney General, presented his comments to the committee. Mr. Labrador spoke to issues and current litigation regarding the state of Idaho and federal entities. He used the term "regulatory smurfing," which meant that small changes would occur across the board, hence changing overall policy; this occurred through regulatory changes without Congress' authority. He reported on enjoined litigation with other states: Nebraska's petition to the U.S. Environmental Protection Agency (EPA) to enact a rule that would create uniform labeling requirements across the country; Kentucky's petition to negate federal electric vehicle mandates; Kentucky and West Virginia litigation challenging new federal fuel economy rules affecting corporate average fuel economy (CAFE) requirements; Ohio v. EPA regarding greenhouse gas emissions standards for vehicles. He spoke to Idaho's legislation upholding gender rights and preserving definitions of gender. As such, his office was involved in litigation on: Idaho's SB 1100 (2023) requiring public schools to provide separate bathrooms and changing facilities by biological sex; Poe v. Labrador regarding access to gender-affirming health care for transgender youth as a result of HB 71 (2023); HB 668 (2024) regarding public funds being used for transgender transition; and Louisiana v. Dept. of Education regarding Title IX regulations changing the definitions of gender. Additionally, there were the cases involving Idaho's abortion laws: Moyle v. United States regarding the enforcement of the Emergency Medical Treatment and Labor Act (EMTALA) conflicting with Idaho's abortion ban and the law regarding Idaho's abortion trafficking law. He spoke to accusations that the World Professional Association for Transgender Health (WPATH) was more political than scientific and its opinion influenced many of the transgender cases. And finally, he revisited the Waters of the United State (WOTUS) litigation where the U.S. District Court for the Southern District of Texas issued a ruling blocking the U.S. Environmental Protection Agency and the Army Corps of Engineers from enforcing a final rule that revises the definition of WOTUS, but only in the states of Texas and Idaho.

- Rep. Horman inquired about resources available to the state to support the counties regarding the Lava Ridge wind farm. Mr. Labrador noted that his office filed opposition to the project at the very beginning of the comment period and appealed the initial findings. He commented that his office would join any litigation filed on the issue.
- Rep. Horman commented that maybe a fund to defend Idaho's sovereignty should be contemplated. Mr. Labrador noted that the [Constitutional Defense Fund](#) existed and submitted that it was being misinterpreted and possibly could be used more toward that purpose.
- Rep. Horman inquired about the Title IX ruling timeline and whether any action could be taken to prepare for a ruling. Mr. Labrador could not speak to the timeline but was preparing documents for education districts and interested parties to explain how the current ruling affects districts and staff. Rep. Horman requested that legislative members be issued that document also.
- Rep. Lakey asked about future court action on Idaho's defense of life and abortion trafficking laws. Mr. Labrador responded that the Labrador v. Poe was argued that morning and the 9th Circuit Court would probably wait for a case from Tennessee to be heard by the Supreme Court before issuing judgement; and the EMTALA case was also back to the 9th Circuit Court and would issue judgement.
- Sen. Just asked about the recent filing by the state of Utah against the federal government seeking control of BLM land and whether the Idaho Attorney General would sign onto that suit. Mr. Labrador responded that his office was reviewing the suit. Cochair Boyle commented that the committee hoped to have someone present on the issue at the next meeting.

Committee Discussion / Adjournment

Cochair Boyle called Katharine Gerrity, Deputy Director and Legislative Drafting Attorney for LSO's Research and Legislative Division, to the podium to thank her for her of years of dedication and recognize her retirement.

With no further business, the committee adjourned at 2:35 p.m.