

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Thursday, March 17, 2016

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room EW40

MEMBERS: Chairman Raybould, Vice Chairman Gestrin, Representatives Moyle, Andrus, Shepherd, Wood, Boyle, Vander Woude, Gibbs, Miller, Bateman, Burtenshaw, Mendive, VanOrden, Youngblood, Pence, Erpelding, Rubel

**ABSENT/
EXCUSED:** Rep. Moyle

GUESTS: Dennis Radocha, Laurel Sayer, ICOLT; Fred Birnbaum, Idaho Freedom Foundation; Jerry Hoagland; Jim Williams; Kirk Chandler; Allis Chandler; Larry and Mary Lundin; Steve Rector, Nez Perce; Mary Huff; Rich Curtis, Curtis Farms LLC; Dave Holton, Dave Holton Ranch; Brian Brooks, Idaho Wildlife Federation; John Carver, ICOA; Charles Lyons; Jonathan Oppenheimer, ICL; Helo Hancock, Coeur d'Alene Tribe; Vicki Purdy; Russ Hendricks, Farm Bureau; Ian Malepeai, Backcountry Hunters

Chairman Raybould called the meeting to order at 2:20 p.m.

MOTION: **Rep. Pence** made a motion to approve the minutes of the March 3, 2016 meeting.
Motion carried by voice vote.

MOTION: **Rep. Pence** made a motion to approve the minutes of the March 9, 2016 meeting.
Motion carried by voice vote.

H 586: **Rep. Judy Boyle** stated **H 586** is a constitutional issue, and Article 1, Section 8, Clause 17 of the Constitution allows state legislators to consent anytime the federal government buys property within their state boundaries. Idaho land is 67% controlled by the federal government, as shown by the map of the United States with red highlighting federal ground. (See Attachment 1.) Many times it is not known that the federal government is acquiring Idaho real property until later. Sometimes land is not willingly sold to the federal government; i.e., a landowner's grazing permit is cut by a federal agency for a minor offence, and without a grazing permit, the landowner's property becomes valueless and must be sold to any willing buyer. Fire also causes loss of habitat for grazing and property no longer supports the landowner and is ripe to be sold. The Legislative Services Office could not even discover how much Idaho land is being sold to the federal government. Therefore, **H 586** reverts back to the Constitution and requires the federal government to come before the Idaho Legislature for approval to buy Idaho land, which might cause a pause in an unwilling sale.

The committee discussed concerns it had regarding whether **H 586** language would retroactively withdraw past federal land sales, restrict property rights, affect federal leases, licenses and grants or allow other countries such as China to purchase Idaho land when the United States could not. Committee concerns were also discussed regarding ambiguous language in **H 586** where consent for purchase is both revoked and also given for any purchase already made.

Helo Hancock, Legislative Director, Coeur d'Alene Tribe, said **H 586's** amendment to the language of Idaho Code Section 58-709, could impact future fee to trust acquisitions on Idaho Reservation land. Director Hancock gave a brief history of the establishment of Reservations by treaties or executive orders and the subsequent land ownership problems that eventually resulted in Tribal Reservation land being put into trust with the federal government to keep it from being taken from the Tribes. Some of the Tribes have been able to restore some of their lands through purchase utilizing federal processes contained in the Code of Federal Regulations. **H 586** could affect this procedure, so Director Hancock asked that **H 586** be amended as he has proposed so that the concerns of the Tribes will be addressed.

Speaking **in opposition** to **H 586** were **Dennis Radocha**, Boise real estate attorney, **Laurel Sayer**, Idaho Coalition of Land Trusts; and **Ian Malepeai**, Backcountry Hunters, who opined that **H 586** was exceptionally unclear, raising a lot of Constitutional and other private property ownership questions, including questions regarding: gifting, land exchange, quit claim deeds for small boundary adjustments, leases, water rights, timber rights and other conveyances; construction of federal projects on state land such as interstate expansion; establishment of legislative approval of private real estate transactions by a third-party (Idaho Legislature) who is not a party to the business transaction; and the failure of **H 586** to address land management issues of fire prevention or grazing permits.

Speaking **in support** of **H 586** were **Fred Birnbaum**, Idaho Freedom Foundation, **Larry Lundin**, and **Russ Hendricks**, Idaho Farm Bureau for the reason that the federal government owns a disproportionate amount of federal land in Idaho; **Jerry Hoagland**, Owyhee County Commissioner, **Jim Williams**, and **Viki Purdy** for the reason that ownership of federal land causes a tax base loss to the county; and **Jim Williams**, **Mary Huff** and **Charles Lyons** because they prefer state management of Idaho lands.

Rep. Boyle closed saying the reason for **H 586** is because we are losing very valuable pieces of our constitution. The federalism part that our founding fathers gave us is far off balance today. The reason they put consent in there was to maintain that balance of power between the federal government and the state government. Our founding fathers believed private property is vital to maintaining our unique form of government. Idaho is 33% private property and everyday we lose more and more of that. This bill shines the light of day on the situation for the public to see.

MOTION: **Rep. Andrus** made a motion to send **H 586** to General Orders.

SUBSTITUTE MOTION: **Rep. Wood** made a substitute motion to **HOLD H 586** in committee.

VOTE ON SUBSTITUTE MOTION: **Rep. Wood** requested a roll call vote on **H 586**. **Substitute Motion carried by a vote of 9 AYE, 7 NAY, 2 Absent/Excused. Voting in favor of the motion: Chairman Raybould, Reps. Wood, Gibbs, Miller, Burtenshaw, Youngblood, Pence, Erpelding and Rubel. Voting in opposition to the motion: Reps. Gestrin, Andrus, Shepherd, Boyle, Vander Woude, Bateman and Mendive. Reps. Moyle and VanOrden were absent/excused.**

Mat Weaver, Idaho Department of Water Resources, presented on aquifer conditions throughout Idaho, stating the amount of precipitation in Idaho will not change year after year, but how and when Idaho gets the water will change. Aquifers are in a state of decline around Idaho. Tools to help are establishment of Critical Ground Water areas and Ground Water Management Areas (GWMA). When it is bad, IDWR can manage delivery calls to senior priority users and potentially force curtailment from junior users. Senior and junior users have also brokered settlements, and they are being done around the state. IDWR monitors over 900 wells, including instrumented wells. Transducer monitoring schedules vary from monthly to semi-annually. The data is stored at IDWR.

- The Rathdrum Prairie Aquifer GWMA has existed since 2002 and is an interstate aquifer system with primary aquifer use for domestic, commercial, municipal and industrial (DCMI) users with some irrigation and in-stream flow concerns in Washington.
- The Palouse Basin Aquifer is a bi-state resource with a basalt aquifer with DCMI use and no irrigation.
- The Lewiston Basin Aquifer has had a GWMA since 2013 with multiple basalt aquifers and whose primary use is DCMI.
- The Treasure Valley Aquifer has complex hydrogeology and two GWMA's, the Boise Front and Southeast. IDWR has done extensive investigation and model development, but it is limited. Treasure Valley has a 1 million acre feet reservoir and provides water for flood irrigation, and between the reservoir and the canal system, it has a very good incidental recharge system in place. There has been a water supply moratorium in place since 1977 above Star Bridge.
- The Mountain Home Aquifer has had a critical GWMA since 1981. It is a sedimentary aquifer basin, with primary DCMI use and some irrigation. There is little natural recharge for this aquifer, and there have been significant declines of as much as 3 1/2 feet per year over the last 40 years in places.
- The Big Wood River Valley Aquifer GWMA began in 1991. IDWR has done some model development that could be used for planning and scenario testing in the area, and it is hoped to be ready in May 2016. The aquifer discharges into Silver Creek and into the Big Wood River and supplies downstream irrigation. A whole host of users in the Big Wood area have made a delivery call on the Big Wood and Camas Prairie senior water users. Do have declining ground water levels.
- The Big Lost River Valley Aquifer ground water flows down the valley from north to south, is a tributary of the ESPA, and its uses are primarily DCMI and irrigation. There are declining water levels in the lower portion of the valley tributary. The Big Lost disappears before reaching the snake, and that point gets higher and higher which affects southern senior water rights users
- The Malad Valley Aquifer GWMA was designated in 2015. It has a sedimentary aquifer flowing north to south and into Utah with confined flowing conditions and some flowing springs. Surface water is fully appropriated but ground water is over appropriated. This system requires additional investigation.
- The Raft River Valley Aquifer has been in a critical designation since 1963 and has GWMA. It is a tributary basin and ground water pumping is primarily used for irrigation. Both surface and ground water are over appropriated. Declines have been 2 feet per year for 40 years.
- The Eastern Snake Plain Aquifer (ESPA) is composed primarily of basalt, perched as aquifers in sediments, generally unconfined with some confining sediments. Its primary uses are DCMI and irrigation. The combined system irrigates 2 million acres, there is a moratorium in place and there are multiple

ongoing regional delivery calls. The ESPA is the primary source of water for the Snake River just below Milner Dam, and for the first time, it fell below minimum stream flow requirements, which may happen this year. Last year, IDWR did not curtail because storage water was available, but there will come a day when the water is not there or adequate to meet a day.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 4:34 p.m.

Representative Raybould
Chair

Lorrie Byerly
Secretary