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New Legislative Approaches

Laird Noh

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NEW LEGISLATIVE APPROACHES

**Laird Noh
Chairman
Resources and the Environment Committee
Idaho State Senate**

Water Organizations in a Changing West

**Natural Resources Law Center
University of Colorado School of Law
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I. INTRODUCTION

A. Summary

Success in "innovative" water legislation is greatly assisted when interest groups, legislative committees and the executive branch are well organized and well informed. Finding the elusive combinations of vital interests which can be brought together in a manner which is acceptable to enough parties to get the bill passed is always difficult. Sometimes the perception of a larger threat to water interests from outside the state causes interest groups to think more seriously about compromise. A well informed press and strong media coverage of water issues is vital to gaining constituency support for leaders of water interest group. Idaho, like other western states, is deep into the process of shifting from the politics of perceived abundance of water to perceived scarcity.

II. THE POLITICAL CLIMATE IN IDAHO

A. Who has strength?

1. Agriculture still dominates.
2. The Boise, area, with 20 per cent of the legislative seats, represents swing votes.
3. Natural Resource Committee seats are highly desired.
4. Idaho Power is the dominant public utility in water conflicts.

B. Idaho has strong administrative leadership.

1. Governor Andrus has served 4 terms, and as U.S. Interior Sec.

2. Keith Higginson, Director of the Department of Water Resources has served four Idaho governors, from both political parties, and was head of the U.S. Bureau of Reclamation when Andrus was Interior Secretary. The Director must be a licensed engineer.

3. Governor's appointments to Water Resources Board have generally been strong, capable individuals, representing a good balance of interests.

B. Idaho has strong leadership in irrigation politics.

1. A single water district, #1, serves the entire upper two-thirds of the Snake River basin. It has a strong advisory committee, called the Committee of Nine, which has been delegated important responsibilities by the legislature and by the Director.

2. The Idaho Water Users Association represents virtually all agricultural water interests in the state. The Association has strong legal and legislative committees. It hosts two high-level water issue seminars each year.

3. Agricultural water users are divided on how to best deal with growing demands for water for other uses. Some would accommodate limited private party, voluntary transfers of water to instream and other "environmental" uses to show good faith. Others advocate a "hard line", precluding any opening of the door to such transfers.

C. The shift from abundance to scarcity.

1. For the first time, some water conflicts pit irrigator against irrigator. Agriculture is no longer united on every issue.
2. Six years of drought have accentuated scarcity and concern over it.
3. The hydrology of Idaho results in very strong interrelationships between surface and ground water.
4. There are growing "outside" demands for Idaho water.
 - a. Endangered species act: salmon, snails.
 - b. Federal reserved rights; tribal rights.
 - c. Historical interest from other basins in west and southwest.

III. HOW DOES THIS TRANSLATE INTO LEGISLATION?

- A. United agricultural interests can block legislation.
- B. If agricultural interests are divided, other interest groups can be successful.
- C. "Outside" threats to water use can make it easier to bring differing interests together in the legislative process.

IV. AN EXAMPLE: 1988 COMPREHENSIVE PLANNING-RIVER PROTECTION ACT.

(Session Laws, Idaho, 1988, pp. 1090)

- A. Key factors which allowed for compromises.

1. Small hydro development was very active, with many proposals on rivers with high recreational interest. Idaho Power opposed these developments.
2. Environmental interests had proposed river protection bills unsuccessfully for three years.
3. Agricultural interests were very concerned over the Rock Creek Case which granted the Federal Energy Regulatory Commission control over state water rights.
4. Congress had passed the Electrical Consumer Protection Act which required FERC to give every consideration to state comprehensive water plans.
5. The Northwest Power Planning Council was in the process of designating many river reaches as off limits to hydro production.

B. What various interest groups obtained.

1. Agriculture
 - a. Maximum state leverage over FERC.
 - b. Legislative approval of any permanently protected river reaches recommended by the Water Resources Board.
 - c. State protected reaches are off limits for federal protection.
 - d. Protection does not extend beyond the river bank.
2. Environmental interests.
 - a. Key river reaches protected from hydro.
 - b. Immediate protection during the planning process.
3. Idaho Power

- a. Removal of some pressure from small hydro development.
- b. Exemptions for some expansions of existing hydro facilities and for relicensure.

4. Small hydro

- a. Very little.
- b. Water Resources Board can grant exemption during the the planning process.

C. Implementation of the act.

1. Four of five river reaches designated in the legislation for priority in planning and for interim protection have been permanently approved by the legislature.
2. Four of the five have been hotly contested during the planning process, and two of the four resulted in very intense legislative battles for permanent protection.
3. FERC authority to ignore a state designation is untested.

