

MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

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.

CALL TO ORDER: **Chairman Pearce** called the meeting to order at 1:30 P. M. He reminded the Committee that this day was oil and gas day. He said they were trying to fit in a lot of bills at this meeting.

H464: **Chairman Pearce** introduced **Suzanne Budge** from the Idaho Petroleum Council, as **Representative Stevenson** was unable to be there. This legislation updates Idaho's statutes for oil and gas exploration and production. This legislation amends Chapter 3 of Title 47 (Mines and Mining) governing Oil and Gas Wells, and Chapters 2 and 40 of Title 42 (Irrigation and Drainage - Water Rights and Reclamation). The following changes update this section of the law to align Idaho law with current regulatory standards, protect the citizens of Idaho, and clarify the authority of the Oil and Gas Conservation Commission.

This legislation clarifies existing law as follows: Provides uniformity and consistency in the regulation of oil and gas production throughout the State of Idaho; clarifies the scope of the Idaho Oil and Gas Conservation Commission's authority over oil and gas exploration and production; clarifies the role of local governments in the oversight of the oil and gas industry; provides for mitigation of negative impacts to existing water rights or usable water resources; aligns the definition of injection wells with the federal 2006 Energy Policy Act.

TESTIMONY: **Ms. Budge** said this bill was one of six pieces of the puzzle that were involved in updating Idaho's existing oil and gas statute and code as part of bringing Idaho into the best practices of the oil and gas industry.

Senator Werk asked if this was an agency bill. **Ms. Budge** said no and she continued with her testimony. She gave a brief overview of the process this bill went through and the background. She said this legislation updated two areas of the statutes, including Chapter 3 of Title 47, which was the mines and mining section of the code governing oil and gas wells and Chapter 2 and Chapter 40 of Title 42, which was the irrigation and drainage section related to water rights and reclamation. She said she felt a compromise was reached that everyone supports. Additionally, the Idaho Department of Water resources worked to clarify the definitions of geothermal. **Ms. Budge** said there was confusion about injection wells. Injection well language that is included in this bill is simply a restatement of what is already in Federal law.

Senator Cameron apologized he had not had time to spend with the bill beforehand and he had some questions and concerns. His first question was on the issue of local control. He asked why not utilize the local units of government more in the public hearing process and have a formal role that they might play. He said he had a concern about language on lines 39 and 40 in the bill that removes the Conditional Use Permit (CUP). The CUP, in his opinion, is a very useful tool. He asked why isn't that an appropriate tool that we would want to use here?

Ms. Budge said that in the broadest view, she thought we were talking about two different levels of interaction. **Ms. Budge** said at the technical level, if one gets a permit to drill a groundwater well or a geothermal well or contemplate a project such as a mine, one would go to the State level. The reason for that is the State is the proper place to hold that technical expertise on an issue that is that specific in engineering. It would be an undue burden to think every county would be able to have the mining engineer, the petroleum engineer, the kind of technical expertise that the State is able to provide through the Department of Water Resources, the Department of Environmental Quality, and the Department of Lands. She stated IDL is gearing up as part of this process in order to oversee the engineering components.

Senator Cameron said he recognized that not all units of government have that kind of expertise. He said that the concern is protecting the public. He asked why wasn't there some middle ground for a public hearing, to utilize the local planning and zoning, to utilize Conditional Use Permits and then still have the State provide that level of expertise and that granting authority.

Ms. Budge answered she thought they had actually done what **Senator Cameron** had talked about. She stated this bill provided for a considerable amount of local input through the ordinance process and the public notification process which is provided for in the rules. She also said that when a well is drilled and when the underground resource is known, the option is to drill where the resource is located. An oil and gas well cannot be moved. She said the other components that **Senator Cameron** was talking about have been left in the bill. In general, **Ms. Budge** said that captures the picture.

Senator Cameron said he had a couple more questions. **Chairman Pearce** said **Senator Cameron** could go ahead and ask his other two questions. He had a question on page 5 of the bill, Section 47-320, which talked about the use of low temperature geothermal resources for the development of oil and gas wells, shall not be subject to the provisions of this chapter and provisions of that chapter are water rights. Why is it necessary to exempt drilling and what is the justification behind this and to exempt them from obtaining the water right?

Ms. Budge said the larger issue in the production of an oil and gas well is they are not looking for a beneficial use from water. They are looking to likely be bringing water out of a zone that may also be producing oil and gas that is warm and, therefore, would qualify under the definition of both low temperature and high temperature geothermal. We are not producing water, so we cannot fall under the definition of geothermal, because that is not what we are doing. Essentially, the water that is coming out of an oil and gas well is waste water and it is not something that would be put to beneficial use.

Senator Cameron asked why not draft the bill in such a way that says an "incidental encounter" of that water would be exempt? He said that if someone was drilling a well and they encountered water and they decided they didn't have to apply for a permit, they could use it for beneficial use and they could sell it to someone else. He said he didn't see anywhere this would be prohibited.

Ms. Budge said that is not what they are going to be doing and having written this in cooperation with the lawyers and leadership of the Idaho Department of Water and Resources, we got to a point where they agreed as well.

TESTIMONY:

Mike Christian, Law firm of Martin, Christian, & Davies, said one of his clients is Snake River Oil and Gas and he has also worked with **Ms. Budge** with the Idaho Petroleum Council business. The quick answer to **Senator Cameron's** question is that if somebody incidentally encounters a geothermal resource and tries to make beneficial use of it, the law already covers it. He referred to page 10 of the bill, which had some of the existing language, subsection 10. He stated waste water would not be considered a geothermal resource. If someone who is drilling and comes upon hot water and decides to make some use of the geothermal resource, they would have to go through the permit process.

Senator Cameron asked where this was located in the bill. He said that Subsection 2, page 5, exempts them from the water right process. He said he felt the bill was in conflict and this was a huge issue for him.

Mr. Christian pointed out the language on page 10 was attempting to cover that situation and this is in the existing code. **Senator Cameron** asked **Mr. Christian** why not make the wording clear in Subsection 2? **Mr. Christian** said that it is already in the statute and they didn't feel the bill needed to say anything more about it.

Senator Werk interjected and said he wanted to clarify geothermal resources. He gave an example of encountering water and instead of using it as a geothermal resource, which requires permitting, one decides to extract that water so they could use that water for a fracking process. If there was substantial water, it could be used for a beneficial use for an operation and it does not have anything to do with geothermal whatsoever.

TESTIMONY:

Derrick Baxter, attorney with the Idaho Department of Water and Resources, said he was there to answer any questions the Committee may have with regards to the legislation. The Oil and Gas Commission came to the department and said they had these concerns. Early on in the process they said they were willing to discuss the concerns and they brought in the Idaho Water User's Association and the Ground Water Pumpers to participate in those discussions and this was the compromise from those discussions.

Senator Cameron said it appeared the Water Users and the Ground Water Pumpers were wanting more restrictive language and the oil and gas folks wanted less restrictions and this was the compromise. He asked **Mr. Baxter** if this was a fair assertion. **Mr. Baxter** said this issue went back-and-forth and they decided upon this method to solve the problem. **Senator Cameron** asked **Mr. Baxter**, in his professional legal opinion, are we not putting at risk Idaho water rights by exempting oil and gas from having to apply for a water right if they intend to use the water differently other than an incidental encounter. **Mr. Baxter** said that was correct. We have a process in place to investigate if abuse is suspected.

Senator Cameron asked **Mr. Baxter** if he believed that given this language, should an oil and gas company find low temperature geothermal resources and attempt to use them other than incidental encounters, they would have to file a permit or file for a water right, or are they exempt even if they want to use it as wastewater or they want to use it as a replenishing source of water? **Mr. Baxter** said that if they decide to use the water for geothermal then they are no longer using that for oil and gas drilling and they would have to get a permit.

Senator Cameron asked **Mr. Baxter** if he felt his department had to investigate and why not make this clear right from the beginning? **Mr. Baxter** said there was adequate protection for water resources.

Senator Brackett said he had a concern for blanket exemptions for water users and why weren't there parameters. **Mr. Baxter** said they talked about that and the director felt this was adequate protection. **Senator Brackett** asked that if there was a moratorium, would there be an exemption?

Senator Werk said that if a dry well was drilled and water was found, one could use the water for geothermal, but a permit would be needed. If water is encountered while drilling for oil and gas and it is incidental to this quantity of water, then this would then, for example, be used for oil and gas extraction. **Mr. Baxter** replied that **Senator Werk** was correct. **Senator Werk** said that water can always be beneficially used and he had no further questions.

Senator Stennett had a question for **Ms. Budge** about local control. **Senator Stennett** wanted to make clear the purpose of the rule was for the state to have the right, the purpose and the correct place to be at the helm as to what was going on in the local areas because of their expertise. She said we have rules and we have been in agreement with them. There was a consortium of people from all sides that came to a conclusion and that we all agreed upon. That is where the technical assistance and the expertise, from what she understands, comes from. She asked if that was correct?

Ms. Budge said she thought the regulatory framework should be looked at in whole. The rules were already in place and were close to the model language, but were updated as part of the process. Obviously, the rules draw from the authority under the oil and gas statute. She said it became obvious during the process that the statute needed to be amended as well, which is why the Committee is seeing the four or five bills today. They were given guidance that the statute needed to be very clear.

TESTIMONY:

John Hosrich from the Idaho Petroleum Council said that some local land use things were already in place. He said the state determines what and where to drill a well. The local control comes into place and tells where a fence should be placed around a well, whether shrubs need to be installed and so on. He indicated that industry and communities work together on land use. He said the local government can dictate through an ordinance what works together with permit issues.

Senator Stennett said she felt the words on page 2, line 34 were ambiguous. She wanted to know who was going to determine what is "reasonable local ordinance provisions"?

Mr. Christian said it was an issue of fact and if it became a dispute that ended up in litigation it would be what is reasonable. **Senator Stennett** said that on line 41 on page 2, she questioned the 21 days and "upon good causes", by whom? Who determines whether the local entities can have an extension to make an agreement on something? **Mr. Christian** deferred to the Association of Counties.

Senator Werk asked for a clarification of placing a well where the resource was located. He thought this could be a Conditional Use Permit issue. He said he thought that, for example, if there was a church where the oil and gas were located, drilling could be moved 100 to 250 feet, as it was his understanding the well does not have to be located directly over the resource. Wells can be drilled to get one where they wanted to go, especially if drilling 2, 3, 4 or 5,000 feet down. Access to the resource then would not be denied. Locals should be given a chance to give input through the CUP.

Mr. Christian said the issue of what surface structures are there and other facts similar to that are going to be provided to the Department of Lands and that would be part of their decision-making about where to permit the well. Another thing to take into consideration when talking about directional drilling is that it is more expensive. The depth of where the resource is located, the anticipated size of the resource and those kinds of things are going to come into play and have to be balanced off against the increased expense of engaging in directional drilling.

Senator Werk asked for clarification as he said he was hearing **Mr. Christian** say it would then be the state's job to take into account all of the local considerations associated with the siting of the well and that they are taking on the responsibility of being able to voice the concerns of the community regarding the location of the well. He said he also heard **Mr. Christian** say moving the well site by 100 - 200 feet could potentially make it so that a resource could not be reached that was 4,000 feet below the surface. **Mr. Christian** said he agreed the state was taking a lot of responsibility of addressing all of the local concerns and he said he wanted to refer **Senator Werk** back to **Ms. Budge's** discussion of how they view the statute working. He said he did not agree that the state was taking on all of the responsibility and that a spacing regimen was in place. He said by statute the state has its own restrictions it is going to use.

Senator Werk said the state could have interests that are counter to the interests of the local community because by statute they have interests they are required to follow. **Mr. Christian** said the state has a statutory mandate to avoid wasting a resource and he would not disagree with that at all. Sometimes state and local interests do not line up.

Chairman Pearce commented that time was running out very rapidly and he asked the Committee members to hold their questions as he would like to hear testimony from people who have driven a long way. **Senator Heider** said there were still a lot of questions due to so many contradictions in the wording, and he said we can take as long or as short of period as we would like, and there would be no vote today. **Chairman Pearce said** he wanted to have all of the questions answered, but he wanted to have people testify and that experts could be called upon when needed.

TESTIMONY:

The following people testified in **support** of the bill: **Kerry Ellen Elliott** from the Idaho Association of Counties; **Mark Shigeta**, Payette County Commissioner; **Kirk Chandler**, a rancher in Washington County and the Idaho Farm Bureau; and **Larry Lundin** from Midvale, Washington County.

The following people testified in **opposition** to the bill: **Rick Michael**, Washington County Commissioner; and **Mary Sue Roach**, a resident of Washington County.

Copies of their testimony are attached to the minutes as appropriate.

A question and answer session ensued with the various people who were giving testimony from **Senators Cameron, Tippetts**, and **Heider** asking various questions including the use of CUPs, the determining factors of various associations to support this bill, concerns about the lack of input by the counties, and the industry or state dictating the rules and imposing their will upon the people.

ADJOURNMENT: **Chairman Pearce** said the meeting had to be continued to Friday, March 2, 2012 at 1:00 p.m. The meeting was **adjourned** at 3:00 p.m.

Senator Pearce
Chairman

Linda Kambeitz
Secretary