

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 15, 2017

TIME: 1:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Siddoway, Brackett, Heider, Bayer, Johnson, Stennett, and Jordan

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.

CONVENED: **Chairman Bair** called the Senate Resources and Environment Committee (Committee) meeting to order at 1:00 p.m. **Chairman Bair** announced this is a special meeting to take care of some Committee business prior to joining the House Resources and Conservation Committee in the Lincoln Auditorium for a Joint meeting at 1:30 p.m.

S 1063 **Chairman Bair** said Norm Semanko, Executive Director, Idaho Water Users Association, graciously agreed to help the Committee's Page, Bryon Beams, with his Senior Project which was to research **S 1063**, then present it to the Committee. **Chairman Bair** said no action would be taken on the legislation today.

Mr. Semanko provided some background information on **S 1063**, prior to Bryon's presentation. **Mr. Semanko** said there were a number of Supreme Court cases that were decided in the last century that made clear the assessments made by an irrigation district or a drainage district, now more recently called groundwater districts, are not a tax that is forbidden by the Constitution. **Mr. Semanko** said if one goes to the various districts' statutes, it is very clear that the State does pay for the benefits that are assessed to those lands. The irrigation districts' statute has never been amended to catch up to the state of the law.

Mr. Semanko stated that the Department of Lands (IDL) has suggested that they shouldn't have to pay a particular assessment to a particular irrigation district. **Mr. Semanko** said the reason why he is asking for the bill to be held over is because of the time crunch today and also IDL has raised some issues about which lands may or may not be paying and if there would be some kind of fiscal impact to the State. **Mr. Semanko** stated that his understanding is that the State has been paying some assessments and the fiscal impact would be to the districts' patrons who would have to make up for the amount the State would no longer be paying for the benefits they receive.

Bryon said his understanding of **S 1063** is that there is no assessment. Without an assessment, the people of the adjoining land have to pay for the benefits that the State land is receiving through irrigation water. **Bryon** stated that whoever receives the benefits should have to pay an assessment.

Mr. Semanko said the portion of the fiscal note that is in question is whether there are any State lands that have not been paying. **Mr. Semanko** said the Nampa-Meridian Irrigation District brought this legislation forth and his understanding is that the State has been paying for the benefits they receive from the Nampa-Meridian Irrigation District. In exempting State land, more than \$48,000 in assessments would be shifted to private land owners.

Chairman Bair said that discussion relating to **S 1063** would continue at the next meeting. He then welcomed Wayne Hunsucker, who has been reappointed by the Governor to the Outfitters and Guides Licensing Board.

**GUBERNATORIAL
APPOINTEE
HEARING:**

Mr. Hunsucker stated that he is seeking reappointment to the Outfitters and Guides Licensing Board (OGLB) for another term and has enjoyed the past years that he has served. OGLB is made up of five members: three members are outfitters; one member is from the Idaho Department of Fish and Game; and one member from the general public. **Mr. Hunsucker** said he represents the general public.

Mr. Hunsucker said he is an architect by trade, but is currently retired. **Mr. Hunsucker** previously held architect licenses in Arizona, California, Oregon, and Washington. Presently, he is licensed only in Idaho. Professional affiliations include:

- Idaho Outfitters and Guides Licensing Board
- State of Idaho American Institute of Architects, Past President
- Ada County Historical Preservation Society, Past Board Member
- Building Owners and Managers Association of Treasure Valley, Past Board Member
- Ada County Lincoln Day Banquet, Committee Member
- American Legion, Member

Mr. Hunsucker said that he is an avid fisherman and hunter and also enjoys whitewater rafting. He has used the services of outfitters for these activities many times and appreciates the value they add to his outdoor experiences.

Senator Johnson asked what changes are taking place in the industry, as indicated by Mr. Hunsucker on his application. **Mr. Hunsucker** said the most recent change was the private landowner bill relating to water fowl. Other issues through time has been the changes to technology. Formerly, it took two months to process an outfitter for licensing. Now, it is done online and much faster.

Senator Siddoway inquired about funding for OGLB. **Mr. Hunsucker** said funding is a real issue for them. OGLB's funds come from the licensing fees of the outfitters. It has been a number of years since there has been a fee increase, but **Mr. Hunsucker** said it is apparent that an increase is needed as OGLB is needing to update their software.

**GUBERNATORIAL
APPOINTEE
HEARING:**

A conference call was received from Tom Long who has also been reappointed to OGLB by the Governor. Mr. Long is a licensed outfitter on the Payette River and operates Cascade Raft and Kayak in the summertime. He also operates an adventure business and kayak school in Chile during the winter.

Mr. Long said he appreciated having his hearing by phone as he is in Chile. **Mr. Long** said that when the Governor asked if he would consider serving another term, he replied that he would be honored. **Mr. Long** indicated that the industry is changing from just hunting and fishing to tourist attractions, such as rafting, zip lining, and one-day horseback riding, which he fully supports and appreciates. **Mr. Long** said OGLB has a new director and he is looking forward to working with Ms. Thomason.

Communication was lost and the call ended.

Chairman Bair said consideration of the appointments would take place at the next meeting.

**PAGE
RECOGNITION:**

Chairman Bair presented Bryon Beams with a letter of recommendation signed by the Committee members and a gift card to Barnes and Noble Bookstore for his work as a Senate Page assigned to the Resources and Environment Committee.

ADJOURNED:

There being no further business at this time, **Chairman Bair** adjourned the meeting at 1:25 p.m. and asked the Committee to assemble in the Auditorium at 1:30 p.m.

Joint meeting with the House Resources and Conservation Committee, Lincoln Auditorium, 1:30 p.m. All Committee members present.

CONVENED:

Chairman Bair called the Senate Resources and Environment Committee (Committee) and the House Resources and Conservation Committee (Committee) Joint meeting to order at 1:30 p.m. **Chairman Bair** recognized Marc Gibbs, House Resources and Conservation Committee Chairman. **Chairman Bair** said this meeting is an informational meeting regarding gas and oil. Tom Schultz, Director of Idaho Department of Lands (IDL) will provide an introduction.

INTRODUCTION:

Director Schultz said there is a panel of speakers who will give an overview of oil and gas issues and how the issues are regulated in the West. A report was compiled earlier by the State Oil and Gas Regulatory Exchange (SOGRE) and the findings and recommendations will be addressed by John Baza, Director of the Utah Division of Oil, Gas and Mining. Carol Booth, Communications Manager for the Interstate Oil and Gas Compact Commission (IOGCC), will provide an overview of the Commission. Kelly Williams, an attorney for Quinney and Nebeker, will speak on the regulatory structure in the Intermountain West.

SPEAKER:

Ms. Williams stated that she has made some observations in working with the oil and gas industry. First, there needs to be cooperative development. The second overarching item is uniformity within the industry's standards and third, adequate resources and access to stakeholders are needed in order to build trust.

Ms. Williams said there are two goals for oil and gas regulation and development. The first goal is to promote production to obtain all that you can. The second goal is to prevent waste of those resources. This leads to the need for regulations.

Ms. Williams explained the "Rule of Capture" was what necessitated oil and gas regulations. It has a simple definition, stating that "the owner of a tract of land acquires title to the oil and gas which he produces from wells drilled thereon, though it may be proved that part of such oil or gas migrated from adjoining lands." The "Rule of Capture" may result in damage to reservoirs, excessive drilling, excessive production, and price drops.

Ms. Williams said there are correlative rights and when these rights are talked about in the context of oil and gas, it is basically protection that has been imposed to protect adjoining landowners from being drained. Those ownerships share in the production of the resources. **Ms. Williams** explained about drainage. Drainage is the migration of oil or gas in a reservoir toward a well bore due to pressure reduction caused by the well's penetration of the reservoir. A drainage point is a well bore, or several well bores, that drains the reservoir. Drainage detection involves extensive administrative, geologic, engineering, and other technical analysis of the reservoir and production history for both the regulators and operators.

Spacing was the next subject matter that Ms. Williams covered. Spacing, simply defined, is the space or acreage allocated to a well. It is a conservation measure that identifies the location and number of wells that can be drilled to drain a reservoir. **Ms. Williams** said that depending on the geologic structure, size of the reservoir, and whether it is oil or gas, spacing could be as small as 10 acres and as large as 640 acres.

Ms. Williams said there are different spacing unit types. A stand-up spacing unit would be a north section joined by a south section. A lay-down spacing unit would be a west section joined by an east section. Diagonal spacing is a northwest section joined by a southeast section.

Ms. Williams stated that each state regulates its oil and gas industry, not the federal government. Anything that has to do with development and production is all within the purview of the State for regulations.

SPEAKER:

Carol Booth, Manager of the Interstate Oil and Gas Compact Commission (IOGCC), said she would provide an overview of what IOGCC is all about. The first slide in the PowerPoint presentation was of Oklahoma City, 1938, showing the Capitol building surrounded by oil wells, pump jacks, and all kinds of oil production. Today, there is only one well, right in front of the Capitol building. The Oklahoma Governor brought six states together for a conference which included Colorado, Illinois, Kansas, New Mexico, Texas, and Oklahoma. They returned to their respective legislatures and ratified and approved a pact for prevention of waste and ultimate recovery of petroleum reserves in their States. They were then the ultimate overseer of production in their States.

From these first six States, IOGCC now has 30 full member states, eight associate member states, and several international affiliates. Most of the affiliates are Canadian Provinces. The vision of IOGCC is to be viewed as the authority on domestic oil and gas issues. The programming and services of the Commission will be developed around emerging issues, so that the IOGCC is a leader and a driver of national oil and gas policy.

The mission of the IOGCC is a multi-state government agency that promotes the conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety and the environment. The Commission serves as the collective voice of member Governors on oil and gas issues and advocates States' rights to govern petroleum resources within their borders.

Ms. Booth said that IOGCC collaborates with the Ground Water Protection Council (GWPC). That partnership led to the "States First Initiative". A state-led initiative is aimed at facilitating multi-state collaboration and innovative regulatory solutions for oil and natural gas producing states. Through States First programs, state regulatory agencies are collaborating and communicating with one another in an ongoing effort to keep current with rapidly changing technology, as well as to share the very best and innovative regulatory procedures from state-to-state.

Included in the States First Initiative, states are to:

- recognize and seize opportunities for economic development and job creation;
- seek practical regulatory practices that protect the environment and allow resource extraction;
- environmental response;
- advocate for the health and safety of citizens; and
- deal with opportunities and obstacles.

Ms. Booth stated that there are five pillars in the States First Initiative. They are hydraulic fracturing, underground injection control, inspector training and certification, effective regulation through continuous improvement, and science and technology transfer. Under the fourth pillar, effective regulation through continuous improvement, is the State Oil and Gas Regulatory Exchange (SOGRE). The SOGRE is an innovative regulatory improvement program created by IOGCC and GWPC. The mission of the SOGRE is to assist states to continually improve state oil and gas regulatory programs by providing member states consultation and program assessment services targeted to their specific needs.

Regulatory consultations facilitate consultations between member states, drawing on the expertise of regulatory peers in other states, and to assist states in developing regulatory approaches to address a specific issue. Regulatory assessments assist states in developing rule revisions to address a particular issue by providing a peer evaluation of an individual regulation, specific regulatory initiative or an overall program. Assessments may vary in scope from specific regulatory elements, such as wellbore integrity, to comprehensive reviews of a state's entire regulatory program. The regulatory assessment is based on regulatory elements the SOGRE and the state determine to be relevant to the specific assessment.

SPEAKER:

John Boza, Director, Utah Division of Oil, Gas, and Mining, said his topic is on the findings and recommendations from the SOGRE Report. **Mr. Boza** said he wanted to stress three key points: 1.) there are no major gaps or deficiencies in the Idaho regulatory process as defined by the governing statutes and rules; 2.) Idaho is not out on its own in the regulatory process as every other oil and gas producing state defines how it wants to govern and regulate its oil and gas within its boundary; and 3.) just as states are supportive of helping and learning from one another, you cannot assume that one size fits all.

Mr. Boza said there are six issues that the Department of Lands (IDL) asked SOGRE to look at and SOGRE identified several more. **Mr. Boza** indicated that he wants to address issue number 3, which relates to well spacing and well setbacks. The SOGRE response was the Commission's proposed revised spacing and well setback rules provide for a standard spacing unit of 40 acres for oil and 640 acres for gas. These default spacing unit sizes can be varied by order of the Commission after hearing. In addition, the Commission initially establishes temporary spacing units, and establishes permanent spacing units only after production and reservoir information can be evaluated. Finally, the Commission may approve an exceptional location for a well upon application and hearing. At this stage of oil and gas development in Idaho, use of default units is reasonable, given the current lack of available geologic, engineering, and production data. The default sizes are likely larger than the area to be drained by a well, which is appropriate; having smaller units increases the risk of harm to correlative rights. Moreover, it is not difficult to add infill wells if data supports smaller units. Given these considerations, the Department rules strike an appropriate balance

between certainty and flexibility using regulatory procedures and conventions employed by many other State oil and gas regulatory agencies.

Mr. Boza said that when he first came to Utah, they could only put an oil well on a 40 acre tract and a gas well on 640 acre tract. During the mid 1980's, that was changed to allow any well to be drilled in the middle of a 40 acre tract of land, but that does not say that is the appropriate well spacing for the drilling of wells. It is only after science, production, and a hearing that determines what the appropriate well spacing is for that particular field or reservoir.

Mr. Boza said issue number 5 states that the public has expressed a concern that the Department should actively monitor production meters and reporting to ensure mineral owners are paid fairly. The SOGRE response was that a recent informal survey of state oil and gas regulatory agencies by IOGCC indicates that most state agencies do not meter production or routinely verify all production reports. **Mr. Boza** said that what they have in Utah is an audit program. Surveys are taken on an annual basis to see how production is reported. Production is verified by meter reports that are submitted to the auditors. **Mr. Boza** said that even though it is recognized that the meters and production are a contractual issue between the buyer and seller of oil and gas, the audit program is designed to address some of the needs of the landowners.

An additional issue that the SOGRE team identified was the spacing units and well setback requirements for horizontal well development, which is issue number 1. **Mr. Boza** said few state oil and gas regulatory agencies have specific spacing unit and well setback requirements for horizontal development. Arkansas is a notable exception to this general statement. **Mr. Boza** said that IDL has a unique opportunity to develop spacing rules for horizontal development prior to such development emerging in the state. To give just one example, to the extent Idaho's shale formations are liquids-rich, 40 acre spacing will not be a useful paradigm for horizontal development of such shales.

Mr. Boza said that issue number 4, developing electronic forms and filing, along with a robust database system to store and manage regulatory data, is a key function of a regulatory agency. **Mr. Boza** suggested that Idaho would consider developing a database system for production tracking.

Mr. Boza next addressed the minimum requirement for a compulsory pool. In Utah, 80 percent is required for an operator to appear before the Board to request that the remaining 20 percent must join. This process is done at a public hearing. There is also an opportunity for non-consent. Those landowners will continue to receive royalties, but will not receive their working share of the well as if they were a contributing party to the costs of drilling.

Mr. Boza reiterated the three issues he first addressed. **Mr. Boza** concluded his presentation by saying that Idaho's system of governance can grow and evolve with the needs of the industry and the citizens within the State.

Chairman Bair thanked Ms. Williams, Ms. Booth, and Mr. Baza for their presentations.

Director Schultz also thanked his colleagues from Utah for speaking to the Joint Committees.

Chairman Gibbs requested the House Resources and Conservation Committee remain after adjournment to conduct some Committee business.

ADJOURNED:

Chairman Bair adjourned the Joint meeting of the Senate Resources and Environment Committee and the House Resources and Conservation Committee at 2:55 p.m.

Senator Bair
Chair

Juanita Budell
Secretary