

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, January 23, 2012

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood(35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood(27), Boyle, Hagedorn (Tucker), Harwood, Vander Woude, Gibbs, Pence, Higgins, Lacey

**ABSENT/
EXCUSED:** None.

GUESTS: Bob Brammer, Eric Wilson, Bob Pietras, Neil Crescenti, Idaho Dept. of Lands; Phil Hardy, representing Rep. Labrador; John Chatburn, OER; Scott Nichols, US Geothermal; Lora Rozzell, ICL; John Williams, BPA; Dennis Stevenson, Rules Coordinator; Courtney Washburn, Idaho Conservation League

Chairman Stevenson called the meeting to order at 1:36 p.m.

MOTION: **Rep. Wood(35)** made a motion to approve the minutes of Thursday, January 19, 2012. **Motion carried by voice vote.**

**DOCKET NO.
20-0315-1102:** **Bob Brammer**, Assistant Director for Land, Minerals and Range Division, Department of Lands, said this is a Pending Fee Rule regarding geothermal leasing. Mr. Brammer stated these Rules govern the leasing of all state lands for the exploration, development and use of geothermal resources. He said the majority of these lands are Endowment Trust Lands and are managed for the expressed purpose of maximizing revenues for the trust beneficiaries with public schools being the largest beneficiary. Mr. Brammer reviewed the rule changes.

Mr. Brammer said these are additional rule changes needed for the alignment with last years changes to the Geothermal Leasing Act, creating improvements to the geothermal leasing program. He reviewed the substantive changes in the Rules, which include, allowing lease terms of up to 49 years and lease acreage is no longer restricted. He said rent and royalty rates are to be established by the Land Board through various means to achieve fair market returns. He said the rule provides a range of royalty rates based on the type of use that the lessee makes of the geothermal resource. Mr. Brammer said other changes include specific bond amounts being removed from the rule and determined by the Department, leases will be auctioned in most circumstances to capture additional revenue through competition. He also said a requirement for timely performance for exploration and a timely performance for development has been added. He said reinjection is required to ensure the resource is not depleted and the confidentiality of drill data is limited to one year. Mr. Brammer said lease application and assignment fees were increased to provide for processing cost recovery.

In answers to questions from the Committee, **Mr. Brammer** said the bond requirement amount is to be determined by the Department, depending on the amount of development, and there may be some cross of multiple ownerships and activities. The bond amounts are based on actual costs associated with the liabilities of reclaiming those sites. He said the application fee amounts were set in the rules in 1991 and haven't changed since then, these were raised to reflect the current cost to process an application. Mr. Brammer said the bond amount can be raised by the Department and it is reasonable for the costs to change during a lease of 49 years. He said the change in terms from 10 years to 49 years was done last year in statute, which created a conflict in the Rules. He said they believed the term up to 49 years is a more workable term.

Mr. Brammer answered more questions from the Committee saying, the lessee signs over the renewable credits to the Department for the purpose of calculating the royalties. He said the Department would take a percentage of the gross receipts, the percentage would be between 2 and 5 percent and be associated with the production of power. Mr. Brammer said based on an evaluation of what other states are doing and what they could find with private lease rates, they believe they are competitive.

Eric Wilson, Idaho Department of Lands, answered questions from the Committee saying, there are three different schedules for determining rent and royalties, there are different types of geothermal energy which could have different types of uses and can lend to a different royalty structure. He said many other states have similar structures for their royalties and they have made some changes specifically to address these issues. Mr. Wilson said in response to the geothermal industry having objection to the Rules that the Department has made several changes to the rules in response to the objections. He said when a lease is signed they would work through any issues in the lease and they can negotiate a lease document that both parties can agree on. Mr. Wilson said they want to treat all lessees equally and protect the Endowment Land beneficiaries.

Rep. Bedke welcomed many Oakley and Raft River FFA students to the Committee hearing.

In response to further questions from the Committee, **Mr. Wilson** said the royalty rate and rental are fixed in the lease. He said they can predict those costs in the lease and the Department is trying to capture the market value. He said if there is an escalated value over the years it is spelled out in the terms of the lease, so they can be projected out during the term of the lease. Mr. Wilson said the Department negotiates with the applicant the terms of the lease and they have a document they agree on, they then take the document and have an open public auction on the document and go forward with the high bidder. Mr. Wilson gave an example of how the auction is conducted.

Mr. Brammer said in his closing comments that this is a complicated process and they tried to model it after other states that seem to have systems that work.

Scott Nichols, Lands Permitting Manager for US Geothermal, Inc., said they work with local, state and federal staff on these types of issues in other states. He said their recommendation was to not move forward with these Rules. He reviewed their specific points of concern. He said it is not spelled out in the rules that the lease will be negotiated by the lessee and the Department. He said there have been some changes to the Rule after their concerns were expressed. Mr. Nichols briefly answered questions from the Committee.

Laura Rozzell Idaho Conservation League, said they support the development of renewable energy in Idaho, but do not support the Rule changes. She said the final results of the changes do not create what was intended and the Rule does not protect Idaho's water resource because it allows drilling in creek beds. She suggested the Rule be sent back to Department to be revised and they will be happy to do more work on the Rules.

In response to Committee questions, **Mr. Brammer** said they have made compromises with the industry and they understand the concerns and have tried to accommodate those concerns. He said the issues would be resolved in the lease document and worked out on a case by case basis. He said if the rules were rejected they would still continue to do geothermal leasing, but the existing rules would be in effect and it would not be the best situation for either the industry or the state. Mr. Brammer said the Department is trying to maximize revenue, but not trying to squeeze the industry. He said they are trying to get market value by using a variable rate. The lessees are not going to get financing until they have the lease, then they will know what the rates are going to be. He said it is difficult to determine the rate through a 49 year lease, but these could be negotiated on a case by case basis and give the industry more certainties.

MOTION: **Rep. Raybould** made a motion to hold **Docket No. 20-0315-1102** for time certain until Wednesday, January 25, 2012. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the Committee the meeting adjourned at 3:30 p.m.

Representative Stevenson
Chairman

Susan Werlinger
Secretary