MINUTES

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE:	Friday, February 17, 2012
TIME:	1:00 P.M.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, 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 and the committee secretary took a silent roll call.
GUBERNATORIAL APPOINTMENT:	**Chairman Pearce** presented to the Committee the Gubernatorial appointment of **Tom Schultz**, as the Director of the Department of Lands. **Vice Chairman Bair** moved, seconded by **Senator Heider**, to send the gubernatorial appointment of **Tom Schultz**, as the Director of the Department of Lands, to the floor with the recommendation that it be confirmed by the Senate.The motion **carried** by **voice vote**. **Chairman Pearce** will carry **Mr. Schultz's** appointment on the Senate floor.
APPROVAL OF MINUTES MOTION:	**Vice Chairman Bair** made a motion, **seconded** by **Senator Heider**, to approve the minutes of February 6, 2012. The motion **passed** by **voice vote.**
S 1287:	**Chairman Pearce** introduced **Norm Semanko**, with the Idaho Water Users Association (IWUA). **Mr. Semanko** commented that there were some legitimate concerns identified with **S 1287**, and asked to have it pulled from the agenda at this time. This legislation would authorize city irrigation systems to extend into established areas of impact for the delivery of irrigation water.
MOTION:	**Vice Chairman Bair** made the motion, **seconded** by **Senator Cameron**, to hold **S 1287** in Committee. **Senator Cameron** asked if there were two bills regarding city irrigation systems. **Mr. Semanko** replied no. The motion **passed** by **voice vote**.
S 1289:	**Norm Semanko**, of the Idaho Water Users Association (IWUA), commented that **S 1289** replaced the outdated language and clarified the specific statutory provisions under which appeals may be taken from decisions by the boards of directors of irrigation districts. **Senator Werk** asked if these code section references were the only code sections where this type of appeal could be made or could a particular code section be chosen for this legislation. **Mr. Semanko** replied that he would like to introduce **Mr. Dan Steenson**, Attorney with Ringert Law, to provide an accurate response to this question. **Mr. Steenson** replied that he drafted **S 1289**. The Title 43 Irrigation District statute that went into effect in 1906, has been the guiding tool for such appeals in the past. The appeal procedure to the Board of County Commissioners has been changed. The reference was historically used in Title 43, which was to provide appeals taken from county commissioners pursuant to the Idaho Administration Act. He further commented the Idaho Administration Act carried a number of procedures that may not be applicable for irrigation board decisions. The code provision that is referenced

here can provide the best standards and processes. **Senator Werk** commented that it seemed these appeals were fairly restricted.

MOTION: **Senator Cameron** made a motion, **seconded** by **Vice Chairman Bair**, to send S1289 to the floor with a **"do pass"**. The motion **passed** by **voice vote**. **Senator Heider** will sponsor **S 1289** on the Senate floor.

S 1290: **Norm Semanko**, of the Idaho Water Users Association (IWUA), commented that **S 1290** provides authority for the reapportionment of benefits within a drainage district when it is determined that the lands benefited or the amount of said benefits has either changed or is in error.

Senator Tippets asked if the reapportioning included assessments. If not, then what does the reapportioning refer to in this bill. **Mr. Semanko** replied the amount of benefits are directly related to the amount of the assessments. He further commented that if the benefits are not properly apportioned, then there are landowners being under or over-assessed based on the actual benefit they are receiving. He stated there would need to be matches made and then corresponding changes made. **Chairman Pearce** asked if that would include just drainage districts or all water districts. **Mr. Semanko** replied this is only for drainage districts.

Senator Werk asked about the code 422921 as it refers to court confirmation hearings. **Mr. Steenson** replied this section of the bill is referring to Drainage District No. 2, the largest drainage district in the state. It is located on and serves land north of the Boise River. There was a problem that the landowners received flat rate assessments that are inconsistent with the original apportionment benefits. To modify these assessments, there needs to be a modification in the benefits that are apportioned to the lands, to make an accurate redetermination of those benefits. He further commented, it is necessary for this process to occur, a clear process to provide notice to landowners of the apportionment and redetermination of benefits and assessment. The procedure for this type of process goes as follows: 1) a hearing process, 2) a decision process, and 3) then a court confirmation process. The bottom line of this type of process is to afford the landowners the opportunity to know and participate in the process and challenge the determination if the landowner feels the apportionment of the benefits are incorrect. **Senator Werk** asked if the code reference was for a landowner to have the means to participate in the court confirmation process. **Mr. Steenson** replied yes, and a court confirmation process is different than an appeal process. He further commented there was a need to follow the same process in redetermining the benefits.

MOTION: **Senator Tippets** made a motion, **seconded** by **Senator Brackett**, for the Committee to send **S 1290** to the Senate floorwith a **do pass"** recommendation. The motion **passed** by **voice vote**. **Senator Tippets** will sponsor **S 1290** on the Senate floor.

S 1320: **Norm Semanko** of the Idaho Water Users Association (IWUA), commented that **S 1320** provides a procedure for absentee voting in irrigation district elections. Title 43 of the Irrigation District Code allows for and identifies how to proceed with this process. The Attorney General's office recommended that absentee voting be required in the irrigation district elections. He further commented that at this time there is no absolute uniform agreement amongst our attorneys, as to the exact language referring to the procedure of verifying identification, due to a difference of opinions. **Mr. Semanko** requested a move forward with **S 1320** to the 14th Amending Order, to have a procedural process for voting in the irrigation districts at this time. He asked, in absence of this request, that **S 1320** be approved allowing their attorneys more time to work on this bill, and amend it on the other side.

Vice Chairman Bair asked where this exact language came from and was this language taken from other sections of code. In the handling of absentee ballots, was it consistent with other districts or the general voting election overall, or was it completely different. **Mr. Semanko** replied, absent this language, there is no provision in the code on absentee voting and no reference to follow. No registration is required. If you are a landowner, you are allowed to vote. He further commented that there is the issue of how to recognize absentee voters. There are different provisions at different levels of government and other irrigation districts regarding this issue to recognize absentee voters. **Mr. Steenson** commented that the general election laws provided for registration to vote and the irrigation districts don't require registration. But it is required to verify who you are to be voting as a qualifying elector and to have an initiation of a note within the district (Title 43, Chapter 11). The attorneys who originally drafted this bill worked from Title 43, Chapter 10, following the absentee voting ballot process. He further stated that this draft provides for an elector to apply for an absentee ballot in person or in writing within an irrigation district. If the elector is entitled to receive this ballot: 1) the absentee ballot would be provided to the elector; 2) the elector would be entitled to vote by absentee ballot; and 3) the election would need to satisfy the oath requirement of the irrigation district statutes, by having someone qualified to administer oaths like a notary. This process can cause a hindrance if the elector cannot locate a notary to administer the vote. He commented that under Title 43, which ordinarily requires an administration of oath would be changed in this bill to allow someone to vote by absentee ballot without having it administered by a notary. The proposed language is patterned after the general election laws. **Mr. Semanko** commented that if it pleased the Committee, a new RS could be drafted.

MOTION: **Senator Cameron** made a motion, **seconded** by **Vice Chairman Bair**, to hold **S 1320** in Committee. The motion **passed** by **voice vote**.

SJR 105: **Chairman Pearce** commented **SJR 105** was changing again and he had a request from the sponsor to withdraw and to review this at a later date. This bill amends the Constitution of the State of Idaho to preserve the rights of the people of Idaho to hunt, fish, and trap.

PRESENTATION: **Chairman Pearce** asked **John Foster** of the Idaho Petroleum Council, to introduce **John Peiserich**, UALR William H. Bowen School of Law Adjunct Professor, to conduct the Oil and Gas Industry presentation. **Mr. Peiserich** is a well-respected petroleum attorney in the United States.

Chairman Pearce asked the Committee to review the Eastern Snake Plain Aquifer Progress Reports in their red folders, to be discussed next week. He further commented to the Committee that next week would be the oil and gas week. Five bills passed through the House and four of them are to be presented to this Committee, with the fifth one, which just passed the House, is to be assigned to us .

Mr. Peiserich moderated the oil and gas industry presentation and commented there is a great opportunity for Idaho. There has not been a producing oil well on the state grounds since the 1930s or 1940s. Oil wells can be in rural settings and safely in urban settings as well. He further stated, we should envision the oil and gas industry in Idaho. The most traditional version, like the Jed Clampett's version, has a sand reservoir that holds gas and one can simply stick a straw down into the ground to get in that reservoir. At the end of the drilling process, the drilling rig would go away, and the blow out premier would be replaced with what the industry called a Christmas tree, which is basically a bunch of mechanical valves to allow the flow of gas to be connected to the pipeline.

Mr. Peiserich commented that 85% of the total energy consumption in the United States were hydrocarbons; 23% coal base, and the other 62% liquid base, natural gas or oil; and 8% is nuclear base and the remaining 3% is hydro-powered. Idaho is blessed with 50% of the power being generated by hydropower. Our goal is to produce Idaho natural gas into a power plant and provide power to homes. The most common ways to use natural gas are: 1) industrial; 2) commercial; 3) residential, and; 4) with electrical power (utilized by manufacturing companies). The United States is incredibly dependent on foreign reserves. There has been real development seen over the last few years in North America of shell plates with a large growth of those shell plates in the United States. There is a need to develop our own resources.

Mr. Peiserich commented on the hydrocarbon chemistry. Oil is considered a long chain hydrocarbon and natural gas, a short chain hydrocarbon. It all comes from platens that fell to the sea floor many years ago and that has accumulated, forming black shell. Black shell is simply a mud that accumulates at the bottom of an ancient sea/ocean, that compresses with a result of absence of oxygen. In the absence of oxygen, this organic matter is compressed over time and that makes shell. Based on how much heat and pressure is placed on the shell, oil and gas products can be produced. The first thing found is a solid form called carigen. In 90 degree sea temperature with the appropriate heat and pressure, the shell produces oil, and finally at 150 degrees sea temperature, the shell can produce natural gas. Beyond 150 degrees, this being a thermogenetic process, there is a level that the gas is actually burned off and goes away. This rock is where all this takes place, as we call it in the industry, a source rock. We look for what nature traps and we refer to it as oil traps. It is a layer of rock that prevents oil and gas from migrating up to the atmosphere.

Mr. Peiserich stated there is a good conventional resource in the western Idaho basin. The basin has good frosting and permanent ability. He further commented on unconventional resources, which was about creating permanent ability and frosting in order to extract the gas by hydraulic fracturing. What we have in Idaho is a very traditional set up, where we have a variety of surfaces. We have sands that have water in them, which is where our aquifers are found and stringers of water interstermingle with other clays. The deepest water wells are at 216 feet. Below that, there are very silky sands down to about 700 feet, imperil shells for about 1,000 feet, or until the salt level. About 1,850 feet is the shallowest well seen in the western Idaho basin. To start to build a well, the following takes place: 1) Set conductor pockets, which establishes a good position to start from, and to keep water from getting in the well, and also prevents dirt from falling in the well; 2) Surface testing, going through the aquifer, through the silky sands, and setting it into the imperil shells which make a good base to anchor in; and 3) Surface production casing.

Mr. Peiserich introduced a tape with Dr. Charles Groat, the 13th Director of the U.S. Geological Survey, commenting on oil and gas production. Dr. Groat said that drilling for natural gas, in itself, doesn't pose a problem if it is done properly. As for development, there are places in the U.S.A. where natural gas is near the surface. In the western Idaho basin, around Weiser and Payette, people have commented that natural gas has been in their water wells for a hundred years. This is one of reasons why production companies come to Idaho. We do seismic surveys, creating a sound wave which travels through different types of rock at different rates of speed, showing the little reservoirs and the voids. These voids, or otherwise known as pockets, are what we want to drill down into to find the natural gas from 2,000 to 3,000 feet. Seismic surveys provide important information, such as: 1) where to find the pockets with natural gases; and 2) where volcanic rock is located. In the Boise area, very little natural gas pockets are located in volcanic rock areas. We can also monitor in the wells with

seismic geophones to track, for example, fracturing. The cost is about $1 million dollars a well. The risk is less here in Idaho, making Idaho very attractive to us.

Senator Werk asked about the concerns of the nearsighted processing in order to dehydrate the gas and to decide what is safe with a dehydrated plant. **Mr. Peiserich** replied that his presentation was a general overview, and he would show a video regarding the processing aspect of natural gas. He said, for example, if you have wet gas, there are options of processing, depending on the type of formation and of the type of field in your well casing. He pointed out that Idaho does have a concern regarding transportation of the product. Oil is easier to transport, but the natural gas is a real key to developing pipelines. The United States is not considered a true hot bed of oil and gas development. How is the environment protected? At the National level, you are protected by the Clean Water Act, the Cleaner Air Act, the Safe Drinking Water Act, the National Environment Policy Act, and the Occupational and Safety Health Act. The oil and gas industry is like any other industry and we comply to the acts and laws that apply to us.

Senator Werk asked if there were some exemptions for the oil and gas industry, within some of these laws. **Mr. Peiserich** replied yes and he would be happy to provide this exemption information to the Committee.

Mr. Peiserich commented about how we protect water, both going out or into the well. There is a casing, that has large layers of steel and concrete that goes all the way down to the production zone, ensuring a good solid bond and protection. He further commented they have participated in a State oversight program through the Department of Lands and negotiated rule making passed through legislation with participation with the Idaho Water Resources, Idaho Department of Environment Quality (DEQ), the Idaho Conversation League, the Idaho Water Users Association (IWUA), the counties, and the public. The following steps are taken before a well is ready to begin production: 1) to obtain well treatment permits; 2) test water wells within 1/4 mile of a well head; 3) have inspections from the Department of Lands; and being responsible to the Water Resources Board and DEQ, who will conduct inspections; 4) well bonding; 5) seismic test permits; and 6) other test permits that are required. Well bonding is a risk management technique that has proven reasonable over the course of production in many other states. There is a bond for active (producing) status wells, but also there is an additional bond for an inactive well status. We have surface owner protection through a contractual process, detailed casing requirements, preventive equipment requirements, detailed pit requirements, blow out detail requirements, seismic exploration permits, and bonding requirements. How do we protect Idaho's water? We have some good physical programs such as: 1) well casing; 2) cement bond laws, to run a waterline tool into the casing, and actually take a physical measurement of the bond between metal, the cement and the reservoir, demonstrating a sufficient bond; 3) mechanical integrity testing by pressuring up the well, to show the well can handle the pressures it is intended to function; and 4) pressure monitoring on the back side of the well, to show there are no pressure chambers. We have regulations and requirements that we submit periodically for reporting purposes.

Mr. Peiserich commented that the oil and gas industry tries to be good corporate citizens, to work with the cities and counties, and to be proactive.

The next item to talk about is hydraulic fracturing, which is a well stimulating process that is used to maximize fracking for underground resources. Actually, Idaho has a long tradition, despite the fact it is unknown, of hydraulic fracturing relating to the geothermal, water purposes, and oil and gas purposes. **Senator Stennett** asked what were typical depths for Idaho wells. **Mr. Peiserich** replied the shallowest to be productive is typically 1,850 feet. When eight out of 11 wells were drilled, the deepest productive well was typically 4,500 feet. About 2,000 to 4,000 feet is a general rule to drill. There are two types of levels of fields, a drier gas field, which is shallow with low or no production, and the deeper fields seem to have more liquid or higher production. The Environmental Protection Act (EPA) stated that natural gas is a great source of energy. The EPA will not stand by if there are problems with any oil and gas company in the United States. In 2005, during the Policy Act of the Safe Drinking Water Act, the hydraulic fracturing was never intended to be covered. It is not covered by the Safe Drinking Water Act, unless diesel fuel is used as a carrier fluid, then a permit would need to be obtained through the EPA. There are 9 out of 10 wells currently fracked in the United States. There are about 1 million wells that have been hydraulically fractured over the last 60 years. In the New York State American Process Statement (APS) report it was stated that if you have good management at the surface, (the casing, the cementing, and the isolating of the hydrocarbon zones), contaminations will be avoided. What fluids are going into the ground for the most part are 90% of water and 5% to 9% of sand. He further commented that the list of chemicals given to the Committee, briefly explained the uses of these chemicals and the concentration used with each chemical in the oil and gas industry. The industry, to ensure safety first, used the word hazardous, meaning toxic carcinogens or to cause a physical hazard, in which combustible, or water reactive, is the terminology used when reviewing chemicals and components.

Senator Werk commented that he understood the presentation being made, but the comparison made by **Mr. Peiserich** in regards to the scientific information provided in regards to human carcinogens, to say the least, is unscientific or inaccurate. He said he finds this information misleading in itself, to minimize the potential threat of carcinogens. He further commented there is a class of components that were going to be highly problematic with super, super low concentration. We need to acknowledge these kinds of components in this presentation. **Senator Tippets** commented that we invited these folks here to make a presentation for our benefit and information and it is entirely appropriate to ask questions of the presenters, but it doesn't seem appropriate to debate with the presenters, and use the time of the Committee. **Senator Werk** apologized if he offended anyone. **Chairman Pearce** said to proceed with the presentation and to ask questions at the end of presentation. **Mr. Peiserich** replied that he would be happy to discuss the issue of carcinogens and compounds at a later time with **Senator Werk**. **Mr. Peiserich** continued by saying that **Senator Werk** stated that we do need to be reasonable in any discussion regarding issues of carcinogens and components that could be harmful. He further stated the last thing to mention, would be the difference between underground injection for disposal purposes and hydraulic fracturing in well treatments, in general. Underground injection for disposal of fluids is a long-term project over many, many years in a cohabitated facility. As for hydraulic fracturing, it is a very temporary occurrence that happens one or two times in the life of the well, with the goal to open a pressure network to recover fluids from it. The injection process is to inject fluids in the ground. The underground injection is monitored by the Underground Drinking Program of

the Safe Drinking Water Act. **Mr. Peiserich** said there are a wide variety of states that have a state program for Underground Injection Control (UIC). The ultimate goal is the protection of drinking water. In Idaho, we have two separate programs that dictate this process: 1) the Underground Injection Control Program, administered by Idaho Water Resources for disposal purposes; and 2) the Hydraulic Fracturing Program, administered within the Department of Lands with the Idaho Oil and Gas Conservation Commission, where we obtain permits.

Senator Stennett asked in which counties does the industry currently have leases in and where are they located. **Mr. Peiserich** replied there have been leases taken in the Bear Lake area, the border along Wyoming, the southern border of Nevada, and the western Idaho basin. **Senator Stennett** asked if we were speaking about the Big U around the state from east to west, the geology would possibly be different near the Wyoming border. Would it be likely to do any fracking that is typical in Wyoming, in this particular area of Idaho. **Mr. Peiserich** replied he didn't have enough details to say one way or the other if fracking would occur in this area. **Senator Stennett** asked if gas and oil were the only smaller by-products that have been discovered in the western Idaho basin area. **Mr. Peiserich** commented that natural gas happens to be under temperature and pressure that comes to the surface. It converts from a gassy phase in a reservoir to a liquid phase at the surface because of the temperature change and pressure. If it is gas in the reservoir, when brought to the surface, part of it condenses which is called condensate and it is not a liquid formation in itself. **Senator Stennett** said if it is natural gas, what could the state expect in production. **Mr. Peisererich** stated that the condensate found here in Idaho, is a really high grade condensate and he said it gets about a 15% bonus above oil prices, because it doesn't have to be highly refined. It is a liquid at the surface, getting the benefits of the $95 per barrel of oil. Some of the wells have shown, especially in the southern areas, to be able to produce up to $100 per barrel of oil per day, even without natural gas production. The cost of these wells, compared to the wells in south Texas where the cost is up to $12 to $15 million per well to get $300 to $400 per barrel of oil, could cost approximately one-tenth to get one-third the liquid fraction plus get condensate. Our economics work well here because of the benefit of having condensate and the benefit of a transition line going through fields. Our infrastructure costs will be relatively low here in Idaho. **Senator Stennett** asked if we were likely to use our own production or would it be sent out and what would be the benefits to Idaho. **Mr. Peisererich** replied that Idaho would be able to use their own production. There are two options: 1) the condensate; and 2) the natural gas. These are the products that can be refined locally, possibly at the Salt Lake City refinery.

ADJOURNMENT: **Chairman Pearce** expressed a thank you to **Mr. Peiserich** for his presentation. He said thank you to the Committee, and the meeting was adjourned at 3:00 P.M.

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Senator Pearce
Chairman

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Linda Kambeitz
Secretary