

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

- DATE:** Friday, March 02, 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.
- RS 21452 AND RS 21454** **RS 21452** relating to authorize city irrigation systems to extend into established areas of impact for the delivery of irrigation water and **RS 21454** relating to clarification of the exemption for irrigation and drainage systems from local flood plain regulation was presented by **Norman M. Semanko** for the Idaho Water Users Association.
- MOTION:** **Vice Chairman Bair** made a unanimous request that **RS21452**, authorizing city irrigation systems to extend into established areas of impact for the delivery of irrigation water and **RS 21454** clarifying the exemption for irrigation and drainage systems from local flood plain regulation, be sent to print to the State Affairs Committee and be referred back to the Senate Resources & Environment Committee for further action. There were **no objections**.
- CONTINUATION OF HEARING OF H 464:** This hearing was relating to oil and gas and was continued from the meeting of February 29, 2012.
- TESTIMONY:** The following people testified in **support** of H464: Kit Kamo (letter from Ed & Ruth Raney), Marge Chipman, Tony Poinelli, Idaho Association of Counties; Dave Hawk, Richard Brown, Gary Chipman, Brad Roberts, Rod Walter, and Suzanne Budge.
- TESTIMONY:** The following people testified in **opposition** to H464: Lee Halper, Pattie Young, Stan Weikal, Tony Edmondson, Jeri Soulier, Dennis Cooper, Gayle Poorman, Tina Fisher, John Trail, Amanda Buchanan, Justin Hayes, Bob Barber, Della Johnson, Victor Hill, George Soulier, Reed Mulkey, and Wendy Green. Copies of their testimony are attached where appropriate.
- TESTIMONY:** Various questions were asked by **Senators Werk, Cameron, Tippets, Stennett, Vice Chairman Bair, Heider, and Chairman Pearce** relating to drilling, the use of groundwater, Conditional Use Permits, waiting periods, injection wells related to fracking, pollution, hazardous materials, permits, the rights of property owners and alignment with Federal law. The following people answered questions, in addition to those testifying: **Justin Hayes**, Idaho Conservation League; **Norm Semanko**, Idaho Water Users' Association; **Garrick Baxter**, Department of Water Resources; **Michael Christian**, Attorney with the law firm of Martin, Christian, Davies; **Suzanne Budge** from the Idaho Petroleum Council; and **David Hawk**, retired Director of Energy Natural Resources on the corporate staff of the J. R. Simplot Company in Boise, ID.

Senator Cameron questioned **Mr. Christian** about the verbiage of the Federal law section in the bill. He stated he did not understand why the wording did not mirror federal law because he was told in meetings that the wording was Federal law. **Mr. Christian** reported the wording reflected Federal law. **Senator Cameron** felt there was a problem with the potential interpretation and he suggested wording be added because he felt there was a potential for a loophole. **Mr. Christian** pointed out that by adding verbiage, he would run the risk about making the law more unclear and the language does what it is supposed to do.

Suzanne Budge summarized the information and urged the Committee to pass H464. She stated the passage would benefit Idaho and provide financial assistance to the schools. She pointed out the biggest issue was how to move our economy forward. She indicated the oil and gas industry was not asking for any assistance from the State except for regulatory certainty.

MOTION:

Senator Tippetts made a **motion, seconded** by **Senator Siddoway** that H464 be sent to the Senate floor with a "**do pass.**"

A discussion ensued with **Senator Tippetts** commenting that he had concerns about injection wells, but those concerns had been answered. He said the language was helpful and clarified the use of injection wells. He further stated that we don't want injection wells for hazardous waste and that this bill would not make both proponents and opponents happy. **Senator Tippetts** said the drilling process was a short one. He said he thought government could regulate how and what the well looked like. He said he thought we had reached the right balance and that this was an appropriate first start.

Senator Heider said he, too, had questions and concerns, but since then he had spent time with organizations that were in support of the bill, which helped him understand the bill. **Senator Siddoway** said he had a concern about a real misinterpretation of the bill, but he noted that on page 5, the paragraph was there to protect the water rights and that this was not a creation of a new water right. He noted that the IWDR would get a complaint if there was abuse and they would investigate. He said the bill had been put together with a collaborative process.

Senator Cameron said he pleaded with his colleagues to reconsider their position. He said he supported the oil and gas industry and he wanted to support the development of oil and gas, but he wanted to do it in a reasonable, responsible manner. He did not want to provide loopholes, nor make life more difficult for them, but he wanted to protect our citizens. He also said he has a good relationship with **Ms. Budge** and he very seldom was on the opposite side of the issue with her. She stated in her comments that they were not asking for assistance, which was true, but they were asking for our assistance in setting aside or minimizing public input and minimizing local government input. **Senator Cameron** said he handed out a copy of a letter from his Jerome County Commissioners that he received in opposition and they are his current county commissioners, that he unfortunately will lose in the redistricting; however, the new county he picked up, also wrote a letter in opposition. Two out of the three counties that he represents have written letters of opposition. He said he had the opportunity to visit with both proponents and opponents, the Association of Counties and the Idaho Association of Cities, and while they are here and we went in detail over their letter, he said he thought it was fair to say that this isn't exactly how they would have it drafted if they had their way. He stated that what was odd to him in this process was that on one hand, the industry was unwilling to budge on even modest, minimal, adjustments. There is nothing proposed that is prohibiting the industry from moving forward, nothing proposed that is making it more difficult. He stated the industry seems to be unwilling, on one hand, and on the other hand, he has had folks say they can run bills next year, if you will just let this one go through, we'll fix it next year. He said the time to fix it was now. He asked why the resistance? **Senator Cameron**

said if you read from Subsection (9) down regarding injection wells, he didn't get the problem with that language either. But, when one reads from 36 down and recognizes that the language of sub 8 is the federal code and it excludes those items, then what are we trying to accomplish by repeating it in (d). It doesn't mirror and it creates a loophole. He said it provides an opportunity, whether intended to be used or not, and he thought it could be clearer. He said they were explicitly told this was federal language, but that reflection then was not accurate. He said his counterpart in the House, who carried this bill on the floor, indicated on the floor several times, as was told that it was federal law and it is not. So, it makes him wonder, if we are unwilling to even give the most modest of adjustments and we are loose with the facts on page 7, what are we missing? What is the fear?

Senator Cameron said yesterday in a meeting, **Director Schultz** with the Department of Lands, said he was illustrating the Department of Lands role and **Director Schultz** laid a piece of paper upside down on the table and said, "**Senator Cameron** you don't understand what our role is going to be, you don't understand how we are going to provide the siting". He said we are going to site by section, so this piece of paper represents the section. **Mr. Schultz** said they were going to site by section. **Senator Cameron** said he is asking the Committee members what is going to determine where that well is going to be located. The language in the bill essentially says nobody. So if the Department of Lands gets permission for oil and gas drilling to take place in that section, they can locate it wherever they want, regardless of whether it is at the front steps of the Capitol Building or if it is next to a school, next to my house, next to your neighbor's house, they will have that ability. **Mr. Schultz** went on to explain that the surface right is subservient to the mineral right underneath the ground.

Senator Cameron said he believes the best government is the government that is closest to the people and that is a fundamental principle that all of us have espoused for some time. He said he believes in local control and he trusts in his local units of government and he trusts in their process. He said he felt the state government should have a role in permitting in that section, but the local unit of government should have the right through the Conditional Use Permit process to help determine where the best location of that well should be placed.

Senator Cameron said the Committee had three choices: 1) put this decision off holding this bill for a week to force the parties to come to some modest agreeable changes; 2) send the bill to the 14th order and draft some modest, agreeable changes; or 3) we could end up with a floor fight over it. **Senator Cameron** said he was not wanting the latter, which he felt was counterproductive for all of them.

**SUBSTITUTE
MOTION:**

Senator Cameron made a substitute motion to send H464 to the floor to the 14th order for amendment and **Senator Stennett** seconded.

Senator Tippets said he did not want to remove the language from the top of page 7 regarding injection wells because he said he thought it needed to be there and that he opposed the motion. **Senator Brackett** said that at the hearing on Wednesday, he expressed a concern about what appeared to be a blanket exemption for the oil and gas company to drill in critical ground water areas that are under a moratorium for further drilling. He said he has come to realize the fact that because there is a moratorium in the area is reason enough for the director to initiate a contested case, but the burden of proof is on the company to establish that it will not cause and is not causing significant negative impact. He said his primary concerns have been satisfied and he would be supporting the original motion

Chairman Pearce asked **Senator Cameron** that he alluded to some areas and issues but some of things he talked about and targeted were already in the rules and were passed unanimously by this Committee earlier. **Senator Pearce** asked him to identify specifically what he wanted to amend. **Senator Pearce** said he knew that **Senator Cameron** didn't like page 7, the injection well, but what is the other area that is hurting the issue? **Senator Cameron** said he thought page 7 could be made clearer, but it was not a big issue. He said he had issues with page 5, but with **Mr. Semanko's** testimony, that has helped him feel more comfortable with that language, but, what still remains uncomfortable for him is the process and involvement of local units of government and the process and the time frame. Local units of government have the opportunity to make modest adjustments. He said the Conditional Use Permit was a way to get the counties and cities and local units of government, and that he did not want to extend the time period too much due to the fact that some entities did not meet as often as others. He said he would love to see the counties or local units of government have a public hearing process by which they would make recommendations and suggestions to the Department of Lands. He said he thought that was reasonable, it is not objectionary, it does not create a problem and that is his most fundamental issue and concern. **Senator Heider** said he shared the same concerns as **Senator Cameron**, but there were people who came into his office from the Association of Idaho Cities and the Idaho Association of Counties and others who supported the issue, he found it hard to contradict them when it comes to control when they have greater minds than he did. He said they understand how it fits into mining and mineral rights and how these are rights guaranteed to the state and he said he didn't know how we could intercede and make it have more local control, knowing that these issues and these concepts have already been vetted by the greatest minds in our state. He said he turned to those people whom he respects and values their judgment. **Senator Cameron** said **Senator Heider** was correct and that he felt there would be support if given more time for an application and a Conditional Use Permit was used. He stated that he visited with **Ken Harward** today and he had a conversation with the AIC yesterday. **Senator Cameron** said both of them indicated they would be absolutely supportive of giving additional time and giving the ability to use the Conditional Use Permit as well as public hearings that was his impression. He said he thought they could live with this language, but that the language could certainly be much better and could certainly allow for added protections. Obviously, that is from the hierarchy of those associations, from the local units of government, from the folks from whom we have heard testimony today, the letter he shared with the Committee today. Some of the county commissioners and city council members that are on the ground, they are very concerned with this language. He stated that counties feel the State is usurping their authority and their responsibility. He said he wanted to remind the Committee that the local units of government know their area best. By passing this bill, we are making it easier to locate an oil and gas well than we are for any other industry. We are making it easier to put an oil well in Boise, Idaho than we are allowing Micron to build a new building. In his opinion, **Senator Cameron** said we cannot strip away that public ability and that CUP. To him, that is what is fundamentally flawed in this version.

Vice Chairman Bair read the sentences on page 2, line 5 and said this is already in the statute and it has been there for years and years relating to jurisdiction and authority over all persons and property, both public and private, necessary to enforce the provisions of this act and delegation of authority conferred upon the commission. He said the state already has complete, total authority over gas and oil. **Vice Chairman Bair** said that line 19 was relating to mitigation and he said the authority was given to the County. He said that leaves them with the argument as to how much authority the commissioners and local authority should have and he found the bill reasonable. He further stated he felt there were some things the state has responsibility for and has to take care of and that have to be regulated and controlled. **Senator Werk** said we had a great opportunity to see some economic development in this State. He said there were enough questions and enough ambiguity that we only get this opportunity once. He stated he hoped the oil and gas industry will be big in Idaho. He wanted to make alterations and urged everyone to send the bill to the amending order.

**ROLL CALL
VOTE:**

Chairman Pearce asked for a roll call vote on the substitute motion of sending H464 to the floor for the 14th order. **Ayes: Senator Werk, Senator Stennett and Senator Cameron. Nays: Senator Brackett, Senator Tippetts, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce.** The motion failed with 3 ayes and 6 nays.

**ROLL CALL
VOTE:**

Chairman Pearce asked for a roll call vote on the motion of sending H464 to the Senate floor with a "do pass". **Ayes: Senator Brackett, Senator Tippetts, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce. Nays: Senator Werk, Senator Stennett, and Senator Cameron.** The motion passed with 6 ayes and 3 nays. **Senator Tippetts** will carry the bill.

**CONTINUATION
OF HEARING
H462:**

Relating to Oil and Gas was continued from February 29, 2012.

PRESENTATION:

Paul Kjellander from the Public Utilities Commission testified about gathering lines. The purpose of this legislation is to fill a gap in the safety jurisdiction over "gathering lines" in Idaho by providing such jurisdiction to the PUC. Gathering lines are pipelines and other fixtures used to transport, deliver, or distribute natural gas or crude oil from a well-head to ultimately a transmission line or mainline. As the natural gas fields in Idaho are developed, it was discovered that no local, state or federal agency had safety jurisdiction over gathering lines. The federal Pipeline Hazardous Material Safety Administration (PHMSA) does not exert safety jurisdiction over gathering lines until gas is delivered to the interstate pipeline system. And, although the PUC has authority to regulate natural gas utilities, such regulation arises only where the natural gas is delivered and sold "to the public"; with gathering lines, gas may be sold or delivered to a single entity. The PUC currently has two federally-certified pipeline safety inspectors. The PUC laws already adopted the industry safety standards for pipeline constructions, operation, and maintenance.

MOTION:

Senator Cameron made a motion, seconded by **Senator Werk**, that H462 be sent to the floor with a "do pass" recommendation. The motion passed unanimously by a voice vote. **Chairman Pearce** will carry the bill.

CONTINUATION OF HEARING H379: Relating to Oil and Gas was continued from February 29, 2012.

PRESENTATION: **Tom Schultz**, Department of Lands, presented on behalf of Bob Brammer. The oil and gas severance tax collected by the Oil and Gas Commission must currently be collected and audited separately from the similar tax collected by the State Tax Commission. Furthermore, the current amount of the tax allocated to the Oil and Gas Commission will not be sufficient to cover the administrative expenses of the oil and gas program. Several portions of §47-330 through 332 also contain outdated language and processes that the State Tax Commission no longer uses, and these sections contain many redundancies. The changes will allow the State Tax Commission to collect both portions of the severance tax and eliminate the redundancy of tax collection and enforcement duties. It will also redirect the general fund portion of the State Tax Commission's severance tax to the Oil and Gas Commission. The intent is to fund the oil and gas program exclusively from dedicated funds generated by production and permit fees. Excess funds would be transferred to the general fund. The changes also bring this statute into conformance with the current standards of the Tax Commission and simplify the tax code. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect beginning the first calendar quarter after its passage and approval. A discussion ensued with **Senator Werk** and **Senator Brackett** with **Mr. Schultz** regarding the distribution of funding. Oil and Gas Severance Taxes State Comparisons and the Oil and Gas Program Funding Model are attached to the minutes.

MOTION: **Senator Siddoway** made a **motion**, and **Senator Cameron** seconded that H379 be sent to the floor with a "**do pass**" recommendation. The motion **passed** unanimously by a voice vote. **Chairman Pearce** will carry the bill.

CONTINUATION OF HEARING H460: Relating to Oil and Gas was continued from February 29, 2012.

PRESENTATION: **Tom Schultz**, Department of Lands, presented on behalf of Bob Brammer. The proposed legislation will amend Idaho Code §47-320, which covers drill permit application fees submitted to the Oil and Gas Conservation Commission. Currently, the fee amount is \$100. This amount is not sufficient to cover the costs of reviewing and administering these permits. A fee increase is necessary for the program to become self-sufficient and reduce the burden on the general fund. Fees would be placed into an existing dedicated account for the use of the Commission.

Senator Werk asked **Mr. Schultz** if the fee was directly related to the processing of the application for wells. **Mr. Schultz** said the processing application was for the field staff to inspect the permits, production, and would have a positive effect on the general fund by reducing the burden of general tax dollars required to administer the program.

MOTION: **Senator Siddoway** made a **motion**, **seconded** by **Senator Heider** that H460 be sent to the floor with a "**do pass**" recommendation. The motion **passed** by a unanimous voice vote. **Senator Heider** will carry the bill.

CONTINUATION OF HEARING H463: Relating to Oil and Gas was continued from February 29, 2012.

PRESENTATION: **Tom Schultz**, Department of Lands, presented on behalf of **Bob Brammer**. The definitions provided in statute are not listed alphabetically and some definitions need revision so they are more consistent with current industry standards. The confidentiality of oil and gas well logs currently has no time limit. Changing the confidentiality limitation to one year allows other oil and gas operators to access recent well log data. These changes are consistent with the standards of other states, and will foster, encourage, and promote the development and production of oil and gas as described in Idaho Code §47-315. Lastly, the enforcement provisions of the Commission are outdated and do not have sufficient authority to effectively conserve oil and gas, protect corrective rights, and prevent the pollution of fresh water supplies. **Chairman Pearce** asked if the industry was happy with the change of confidentiality rules. **Mr. Schultz** replied that the industry standard of one year was reasonable and he was not aware of any opposition.

A discussion ensued relating to the release and wasting of resources with **Senator Werk** and **Mr. Schultz**. **Senator Werk** wanted his conversation listed for the record. For the record, **Senator Werk** said because this section of the code does say, "but not limited to", he believes there may be a case where the state could collect severance tax on that was due and owed on that wasted resource.

MOTION: **Senator Heider** made a motion, seconded by **Senator Siddoway** that H463 be sent to the floor with a "do pass" recommendation. The motion passed by a voice vote. **Senator Werk** will carry the bill.

CONTINUATION OF HEARING H526: Relating to Oil and Gas was continued from February 29, 2012.

PRESENTATION: **Steve Thomas**, Chevron, stated this legislation is a trailer to H463, clarifying the time when a civil penalty starts to run if Idaho Section §47-325 is violated, and that for a person to be criminally liable for violating Idaho Code Section §47-325, the person must have acted knowingly. He indicated that Halliburton supports this bill and this would be good public policy for Idaho. As far as he knew, there were no objections to this bill.

A discussion ensued with **Senator Tippetts** who asked for an outline of the bottom of page 1. **Mr. Thomas** said there was always a risk of someone violating the law, but there were "lots of eyes" if there is a perceived violation. **Senator Stennett** asked why there was not a parameter of time given for civil penalties and what the typical time frame was. **Mr. Thomas** said they were aware of the issue and **Senator Stennett** commented that an entity could continue to operate even though they were in violation and she thought the language was a little loose.

TESTIMONY: **Mr. Tom Schultz**, Department of Lands, said they could shut someone down immediately and investigate. He said this had to do with a violation and the accrual of penalties. **Senator Werk** questioned the lack of the accrual of penalties until the hearing. **Mr. Schultz** said the intent was a due process issue. **Senator Werk** commented that if there was not an accrual of penalties, there was no hammer to stop the violation. He asked when rules are violated, unlined pits, for example, does this tie the hands of DEQ and is the Oil and Gas Commission the only authority? He said he could not support this bill because of accruing a fine as the violation continued was being given up.

MOTION: **Senator Heider** made a motion, **seconded** by **Senator Brackett** that H526 be sent to the floor with a "**do pass**" recommendation.

SUBSTITUTE MOTION: **Senator Werk** made a **substitute motion**, **seconded** by **Senator Stennett** that the Committee hold H526 in Committee.

ROLL CALL VOTE: **Chairman Pearce** asked for a roll call vote on the **substitute motion**. **Nay** votes: **Senator Cameron, Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair and Chairman Pearce**. **Aye** votes: **Senator Werk and Senator Stennett**. The substitute motion **failed** to carry with 7 nays and 2 ayes.

ROLL CALL VOTE: **Chairman Pearce** asked for a roll call vote on the motion that H526 be sent to the floor with a "**do pass**" recommendation. **Aye** votes: **Senator Cameron, Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce** . **Nay** votes: **Senator Werk and Senator Stennett**. The motion **passed** with 7 ayes and 2 nays. **Senator Siddoway** will carry the bill.

ADJOURNMENT: **Chairman Pearce** wanted to continue the hearing, but **Senator Cameron** objected because of other commitments. **Bills S1271 and 1282** were **continued** to the next meeting on Monday, March 5, 2012. The meeting was **adjourned** at 5:30 p.m.

Senator Pearce
Chairman

Linda Kambeitz
Secretary