

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 23, 2013

TIME: 1:30 P.M.

PLACE: Room WW55

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

ABSENT/ EXCUSED:

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 Pearce** called the meeting to order at 1:30 p.m. and welcomed those in attendance.

MINUTES: **Senator Heider** made the motion to approve the minutes of January 16, 2013. The motion was seconded by **Senator Bair**. The motion **carried by unanimous voice vote**.

GUB APP'T: **Senator Siddoway** moved to send the Gubernatorial appointment of **William Naillon** to the Fish and Game Commission to the floor with recommendation that it be confirmed by the Senate. The **Chairman** asked if there was any discussion regarding the motion.

DISCUSSION AND CORRECTION: **Senator Brackett** said that he had researched the law regarding the killing of wolves when protecting one's property. Part of the testimony by Mr. Naillon, during his confirmation hearing January 18, was incorrect and the **Senator** said that he wished to clarify the matter. At the hearing, he asked if wolves could be killed at any time, any place, with any method while protecting one's property, and if not, why not? **Senator Brackett** said that Mr. Naillon's answer was yes, that they could be killed. **Senator Brackett** said that was an incorrect answer according to the Idaho Wolf Plan. If the wolf is threatening livestock, then the person has the discretion to take the wolf, or if he has documented livestock kill, then he could obtain a kill permit; but to kill a wolf on sight would cause trouble for the individual.

Another question **Senator Brackett** asked Mr. Naillon was "could a landowner sell a Landowner Appreciation Tag?" The response from **Mr. Naillon** was no and the **Senator** said that he disagrees with the answer. Other than those two issues, **Senator Brackett** feels that Mr. Naillon can be educated and will make a fine Commissioner and he will support him.

There was no further discussion. **Vice Chairman Bair** seconded the motion. The motion **carried by unanimous voice vote**. **Senator Siddoway** will be the **floor sponsor**.

PASSED THE GAVEL: Chairman Pearce passed the gavel to **Vice Chairman Bair** who will conduct the meeting regarding Rules.

Vice Chairman Bair called on Mr. Neil Crescenti, Program Manager for Grazing, Farming and Conservation Leasing for the Idaho Department of Lands (IDL), to present their rules.

**DOCKET NO.
20-0314-1201**

Mr. Crescenti stated that **Docket No. 20-0314-1201** governs the leasing of State endowment trust lands for grazing, farming, conservation, noncommercial recreation and communication site leasing purposes. Grazing lease applicants applying for unleased lands are now required to submit a grazing management plan proposal with their application.

Mr. Crescenti also said that IDL is also taking the opportunity to address several other issues with the intent to broaden the application of rule language, which in several sections speaks only to grazing and farming; clarify the process; and to reduce redundancy where language or subject matter is handled through lease contract language or programmatically by IDL.

The State Board of Land Commissioners directed IDL to enter into negotiated rulemaking on May 15, 2012. IDL drafted and negotiated changes to the current rule with interested stakeholders and with the assistance of the Attorney General's office. Parties that participated included representatives from the Idaho Cattle Association (ICA), Simplot Company, Western Watersheds Project (WWP) and the Idaho Farm Bureau (IFB). Key changes include management plan requirements incorporated into the definitions section, as well as into the applications and processing sections. Two sections have been proposed for deletion. They are "Rights Reserved to the Department" because it is redundant and Cropland Hardship Claims. This program has been under-utilized due to enrollment in crop insurance and other federal disaster programs.

In summary, the pending rule established consistency with statute changes made last year, removes provisions that are more appropriately handled by the lease contract, and clarifies the conflict application appeal process. A copy of Mr. Crescenti's testimony is on file. (See attachment 1).

TESTIMONY: **Mr. Wyatt Prescott**, Executive Vice President of the Idaho Cattle Association, testified that they were active in the negotiated rulemaking process and stand in favor of the rules, as presented today.

TESTIMONY: **Mr. Wally Butler**, Range and Livestock Specialist, Idaho Farm Bureau, said the Idaho Farm Bureau was involved in the process also, and they are in support of the rules.

CONFLICT OF INTEREST: **Senator Siddoway** reported that because he has State leases, according to Rule 39, he could have a potential conflict of interest and wished to declare that.

CONFLICT OF INTEREST: **Senator Brackett** said that he, too, also has State leases, and wished to make the same declaration.

MOTION: **Senator Brackett** moved to approve **Docket No. 20-0314-1201**. **Senator Heider** seconded the motion. The motion **carried by unanimous voice vote**.

Vice Chairman Bair then asked Mr. Pietras to make his presentation.

**DOCKET NO.
20-0315-1201** **Mr. Bob Pietras**, Program Manager for Energy Resources Leasing, IDL, presented **Docket No. 20-0315-1201**. They govern the leasing of all State lands for the exploration, development and use of geothermal resources. Last year, some stakeholders voiced their concerns with sections of the rule that address IDL's ability to shut down operations, require sampling and require use of by-products. **Mr. Pietras** said IDL made a commitment to the legislative committees to reenter negotiated rulemaking this past year to more fully address those concerns.

Participation in the rulemaking process was light, with one representative of industry and one representative from the Idaho Conservation League. IDL drafted and negotiated changes to the current rule with interested stakeholders and with the assistance of the Attorney General's office. Key changes include deletion of sections regarding shut downs, sampling, and development and use of by-products.

Regarding shut downs, it was modified to allow for additional state or federal agencies "with jurisdiction" and expertise to shut down operations to protect "public safety, environment, or for fire suppression."

The section regarding sampling, **Mr. Pietras** said that stakeholders were concerned that the lessee is responsible to pay for any sampling required by IDL. The content of this requirement for sampling has been moved to the lease to provide flexibility in negotiating sampling requirements on a case-by-case basis.

Again, stakeholders were concerned that the lessee could be required to produce by-products even if such production was not financially feasible. The content of this requirement for by-product production has been moved to the lease and modified to allow the State to lease the use of by-products to a third party so long as such use does not unreasonably interfere with lessee's use in the event the lessee elects not to produce and market the by-products.

Senator Stennett inquired as to who oversees the regulation. **Mr. Pietras** said if she was talking about the actual drilling of wells, that falls under the jurisdiction of IDWR. **Senator Stennett** then referred to number 19 on page 147 of the Pending Rule Book which states "**Person**. Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho,..." **Mr. Pietras** said that entry was put in by the Attorney General and he does not have an exact understanding of it, but will get an explanation and get back to the Senator regarding her inquiry.

Mr. Pietras stated that several other sections that included non-substantive language more appropriately included in IDL's geothermal lease template were also deleted to allow these provisions to be negotiated as necessary on a case-by-case basis.

Other sections were modified for clarification purposes, such as: "Reclamation" was replaced with "Plans Required." Another section relating to lease assignments was modified to appropriately protect the State, given that multiple entities are often involved in different stages on capital-intensive projects like geothermal facilities.

Mr. Pietras said to summarize his report, the pending rule addresses the outstanding concerns raised by stakeholders, removes provisions that are more appropriately handled in the lease, establishes consistency in the requirements for auctioning leases, and clarifies the lease assignment procedure. A copy of his presentation is on file. (See attachment 2).

TESTIMONY: Written testimony was submitted by **Scott H. Nichols**, Permitting and Lands Manager, U.S. Geothermal Inc., supporting the proposed geothermal rules. He believes the rules will be good for IDL and the industry. He apologized for his absence and asked that his testimony in favor of the rules be entered into the record. (See attachment 3).

TESTIMONY: **Mr. Ben Otto**, Idaho Conservation League, testified in support of the rules and offered his congratulations to Mr. Pietras and his team for coming up with a good, balanced, clear flexible rule to have geothermal development, while also protecting other trust resources.

MOTION:

Senator Stennett moved to approve **Docket No. 20-0315-1201**. **Senator Cameron** seconded the motion. **Vice Chairman Bair** asked if there was any discussion. **Senator Tippetts** said he is supporting the motion but wanted to express his concern regarding paragraph two, page 145, number 03. **"Other Laws.** In addition to these rules, the Lessee shall comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules." He would like IDL to look at and consider the words "Lessee shall comply" (in the first sentence).

There was no further discussion and the motion **carried by unanimous voice vote**.

Vice Chairman Bair then asked **Mr. Brian Ragan**, who works with the Underground Injection Control Program (UIC), Idaho Department of Water Resources (IDWR), to present the next docket.

**DOCKET NO.
37-0303-1201**

Mr. Ragan said that **Docket No. 37-0303-1201** covers Rules and Minimum Standards for the Construction and Use of Injection Wells. It is a federal program run by the U.S. Environmental Protection Agency (EPA) and the State of Idaho received primacy for the UIC Program in 1984.

The majority of injection wells in Idaho are used for disposal of excess irrigation water, end of canal water disposal, storm water disposal, and water-based heat pump systems. The UIC rules were last revised in 2003. In November, 2011, the Idaho Water Resource Board (IWRB) issued a resolution to revise the UIC rules and initiate the negotiated rulemaking process. Following are the reasons for the revisions: to meet the minimum federal requirements for the Class V Injection control rules; reduce regulation on injection wells associated with open loop heat exchange systems, also Class V Injection control rules; and implement regulatory framework for Class II injection wells in preparation of a budding oil and gas industry.

Mr. Ragan stated that there were five negotiated rulemaking meetings held between April and June. Participants included: Oil and gas industry; Idaho Water Users Association; Idaho Ground Water Appropriators Association; Idaho Ground Water Association; Idaho Conservation League; U.S. Environmental Protection Agency; Idaho Attorney General's Office; Idaho Department of Lands; Idaho Department of Environmental Quality; Southwest District Environmental Health Department; and private citizens. A public hearing was held in October 2012 regarding the proposed rules.

The revisions of Class V rules included updating and adding definitions for consistency with state statutes and federal law and to provide changes in the regulatory process to comply with the minimum federal law to retain primacy of the program. The definition of an injection well was not consistent with Federal Code because all criteria must be met and improved sinkholes are excluded. The proposed definition is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

Improved sinkholes are naturally occurring depressions or crevices found in volcanic terrain and other geologic settings which have been modified by man for the purpose of emplacing fluids into the subsurface. Improved sinkholes are not currently regulated under IDWR rules, but are required to be regulated by Federal Laws. These revised rules regulate improved sinkholes.

Currently, injection wells associated with roof and foundation drain are exempt from the Idaho UIC rules. The exemption is not consistent with Federal Code. The revised rules remove the exemption.

The Class II rules (which are new this year) are specifically related to oil and gas production and wastes generated during production and processing. Three main reasons for Class II injection are:

- Inject fluids for reservoir pressure for enhanced recovery of oil and gas resources
- Inject waste brines associated with oil and gas production
- Inject liquid hydrocarbons for storage of oil and gas resources

Mr. Ragan said IDL has developed rules to regulate Class II injection wells. The new rule establishes the following: permit application process; draft permit process; public notification of permit actions and public comment period; public comments and request for a hearing; bonding for each Class II injection well \$10,000 per well plus \$1.00 per foot; application fees - \$2,500 per well; permit conditions; injection well construction requirements; operating and monitoring requirements; mechanical integrity tests; injection pressure monitoring; area of review; corrective action; aquifer exemption process; plugging and abandoning wells.

TESTIMONY: **Ms. Amanda Buchanan**, a resident of Weiser, Idaho said she participated in IDWR's comment period and she appreciated that they responded to her comments. However, she stated that it did little to alleviate her concerns with the rules. She feels that the "rules are vacuous, inadequate and based on a grand assumption that whomever sits as the Director will have the courage, knowledge and financial capability to set individualized decisions at his discretion with very little guidance in statute." A copy of her testimony is on file. (See attachment 4).

TESTIMONY: Next to testify was **Ms. Alma Hasse**, who presented the committee with a handout (see attachment 5) that said there is conclusive scientific evidence that the injection of fluids (fracking) is causing earthquakes in the U.S., particularly in Texas. She stated that Idaho is the fifth most seismic active state in the country. **Ms. Hasse** said she wanted this information on record so that the committee could not say that they weren't made aware of this situation.

TESTIMONY: **Mr. Justin Hayes**, Program Director for the Idaho Conservation League, said they participated in all of the various public comment periods held during the development of this rule and also provided testimony to IWRB regarding this matter.

Mr. Hayes stated that they feel the proposed rules are not sufficiently protective of the public's interest; especially with regard to the protection of groundwater. He asked that the committee reject these rules until such time that the rule includes additional, needed protections for groundwater and additional restrictions on the use of injection wells to dispose of harmful wastes. A copy of his testimony is on file. (See attachment 6).

CONFLICT OF INTEREST: **Chairman Pearce** said that he might have a possible conflict of interest as he has had oil and gas leases for 30 years, but no wells and asked that it be entered into the record.

MOTION: **Senator Stennett** moved to reject **Docket No. 37-0303-1201**. **Senator Lacey** seconded the motion.

SUBSTITUTE MOTION: **Senator Siddoway** made a substitute motion and moved to approve **Docket No. 37-0303-1201**. **Senator Heider** seconded the motion. The motion **carried** by majority voice vote (7-2). Voting nay were Senators Stennett and Lacey.

PASSED THE GAVEL: **Vice Chairman Bair** returned the gavel to Chairman Pearce.

ADJOURNED: **Chairman Pearce** adjourned the meeting at 3:05 p.m.

Senator Pearce
Chairman

Juanita Budell
Secretary