

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

- DATE:** Thursday, March 21, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW40
- MEMBERS:** Chairman Denney, Vice Chairman Gibbs, Representatives Wood(35), Barrett, Moyle, Eskridge, Raybould, Andrus, Shepherd, Wood(27), Boyle, Vander Woude, Gestrin, Miller, Anderson(1), Pence, Erpelding, Ward-Engelking
- ABSENT/
EXCUSED:** None
- GUESTS:** The sign-in sheet will be retained with the minutes in the Committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes of the Legislative Services Library.
- Chairman Denney** called the meeting to order at 1:31 p.m.
- MOTION:** **Rep. Erpelding** made a motion to approve the minutes of the February 5, 2013, meeting, with the following correction: On page 1, paragraph one, it was noted that Mr. Peter Van Der Meulen, was not the Chairman of the Idaho Water Resources Board. The title of Chairman was deleted. **Motion carried by voice vote.**
- MOTION:** **Rep. Erpelding** made a motion to approve the minutes of February 27, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Erpelding** made a motion to approve the minutes of March 5, 2013. **Motion carried by voice vote.**
- HCR 31:** **Rep. Raybould** stated that **HCR 31** authorizes the Legislative Council to appoint a committee to continue to undertake studies of natural resources. This will be a two-year term and will include five members from the House of Representatives and five members from the Senate. He said during the interim there will be some discussion on the Idaho State Water Plan.
- MOTION:** **Rep. Wood(27)** made a motion to send **HCR 31** to the floor with a **DO PASS** recommendation. **Motion carried by a voice vote.** **Rep. Raybould** will sponsor the bill on the floor.
- H 277:** A continuation of the March 19, 2013 hearing on **H 277** was conducted. Individuals signed up at the original hearing and who were unable to be accommodated due to time constraints were afforded the opportunity to testify.
- Chairman Denney** invited the representative from the Idaho Department of Water Resources to speak.
- Mr. Rob Whitney**, Idaho Department of Water Resources (IDWR), spoke on behalf of **Gary Spackman**, Director, IDWR, who had a prior commitment. Mr. Whitney stated that there is sound reasoning and technical support for a minimum seal depth of 38 feet. He explained that the existing rules were a result of negotiated rulemaking with a large group of stakeholders. He said **H 277** is flawed because it includes language from the existing bill, but omits some of the language which makes the text incomplete or confusing. He said the 38-foot seal requirement would better protect underlying aquifers from contamination and a lesser seal depth could be done if the 38-foot seal requirement is not needed. The 38-foot seal requirement was a compromise agreed upon by the majority of the participants in the negotiated rulemaking.

Mr. Whitney read from a letter from **Mr. Spackman**: "IDWR believes there is a way to proceed under the existing rules, and have offered, in writing, to the proponents of HB 277 to actively analyze, with the help of the drilling community, specific locations or areas where the sealing depth could be reduced. IDWR will also actively continue to consider any proposal for an individual waiver, and has done so in the past." (See attached letter.)

Mr. Rob Howarth, Central District Health Department, spoke **in opposition to H 277**. Mr. Howarth spoke about nitrate contamination. He said there are problems with less deep wells and prevention is better than costly treatment later.

In response to questions from the Committee, **Mr. Howarth** said he can not say for certain that the well cap is the problem in the elevated nitrate that was found, but it could be a contributing factor.

Ms. Shelley Roberts, CEO of Idaho Rural Water Association, spoke **in opposition to H 277**. Ms. Roberts stated the current rule works and helps to protect their communities. She said that whatever the cost for the extra 20 feet, it is less than what can become a great cost in treating drinking water if contamination occurs. She said a contaminated well causes a decline in the property value and poses an unnecessary risk for communities.

In response to Committee questions, **Ms. Roberts** stated that the problems she has observed were due to a well seal.

Mr. Robert Bohling, Water Superintendent for the City of Twin Falls, spoke **in opposition to H 277**. He stated our drinking water is our most valuable resource. He said there is a process of negotiated rulemaking, and it sounds to him as if the communication was not there with this proposed rule. Due to arsenic in his area, which is the highest in the state, if there were problems, a treatment plant would cost \$30 to \$40 million dollars. He said he has doubts that the 18-foot seal will protect our water.

Mr. Lynn Tominaga, Executive Director of the Idaho Groundwater Association, spoke **in opposition to H 277**. He said all drillers agree that they need to drill to the confining layer. He referenced a bid showing there is about a \$600 difference from drilling to 18 feet as opposed to 38 feet and drilling in rock shows a difference of about \$200.

In answer to questions from the Committee, **Mr. Tominaga** said that most customers do not know the geologic formation that their house is being built on, so the current rule is to protect them. He said that neither wording in **H 277** or the current rule, gives the customer a choice in drilling depth.

The meeting was recessed at 2:31 p.m.

Chairman Denney called the meeting to order at 5:01 p.m.

Mr. Gary Coonse, Coonse Well Drilling, Caldwell, licensed well driller for 32 years, spoke **in opposition to H 277**. Mr. Coonse said while he was on the Idaho Groundwater Association every time there was a negotiated rulemaking meeting, the question was always about the seal and there were compromises made. He said their industry and the State have the task of protecting our groundwater for now and for generations to come and he hopes they can work together on compromises.

Mr. Gary DuSpiva, Gary Duspiva Well Drilling and Development, Parma, Idaho, spoke **in favor of H 277**. He said statewide law of 38-foot sealing does not fit the diverse hydrogeology of our State.

In answer to questions from the Committee, **Mr. DuSpiva** said he has not had to use a waiver.

Mr. Kyle Radek, on behalf of the City of Meridian, spoke **in opposition to H 277**. He said the City does not support **H 277**. Wells are in danger of not only contaminating themselves, but others that use the same water. He said 18 feet is not adequate. They think wells need to be sealed to their full depth. He said standards should be made through rulemaking.

Mr. Ed Squires, Hydrologic, Inc., in Boise, spoke in **opposition to H 277**. He said he has been in the groundwater industry for about 25 years. He was also involved in the negotiated rulemaking. He has seen the contamination from aquifers and wells from poorly sealed wells. He is for full-depth seals rather than being preoccupied with the 38 or 18 foot seal rule to protect the groundwater from surface water.

Mr. Roger Dittus, on behalf of United Water of Idaho, spoke in **opposition to H 277**. He said his experience is mostly in the Boise area. He said undesirable water can find its way into the shallow ground water. He said several United Water wells have been impacted and they have had to build expensive treatment facilities. We need better protection than an 18-foot seal.

In response to questions from the Committee, **Mr. Dittus** said they have about 18 production wells that are full-depth seals, older wells are not sealed to as deep a depth. He said 400 to 500 feet might be an average depth. He said typically they decommission a well because they know there is contamination in the area.

Mr. Rod Hendricks, Vice President, Idaho Groundwater Association, spoke in **opposition to H 277**. He said a one-size seal for the state is not going to work. He said the drilling community knows where the seals need to be. They are not happy with the 38-foot seal, but thinks that they are making a better seal today than five years ago. He finds that most people want to see the rule stay at 38 feet.

In answer to questions from the Committee, **Mr. Hendricks** said if a well is drilled in a formation where it will stay open, it is about \$250. If a well is drilled in sand where it will not stay open, it is about \$750. The state of Idaho has different sealing requirements, but a waiver will give permission for whatever depth is needed. The 38-foot rule is a place to start. If they need to go deeper, they get that information from a well log and drill it down deeper. He said getting the waiver form is not difficult or time consuming and there is no money involved. The law states to 38 feet or the first confining layer, so they are not required to get permission to go deeper.

Mr. Jeff Fereday, Givens Pursley, on behalf of the City of Caldwell, spoke in **opposition to H 277**. He said it is not uncommon to find hundreds of wells drilled into the same aquifer and once contaminated it becomes difficult or impossible to remedy.

Mr. Mark Hiddleston, Hiddleston Drilling and Pump, spoke in **opposition to H 277**. He stated that they have had to go in and dig deeper from an 38-foot seal. He said the 38-foot seal rule was negotiated.

In answer to Committee questions, **Mr. Hiddleston** stated that most experienced well drillers know how deep a seal needs to be. He said 38 feet was chosen because it is two lengths of pipe.

Mr. Bruce Evans, Emmett City Works Department, spoke **in opposition to H 277**. He said regarding nitrate priority areas, some are close to dairies.

Mr. Lee Barren geologist, rancher, and licensed well driller spoke **in support of H 277**. He said most of the drillers that spoke in regard to this bill are professionals and have been in the business for years. He said to blame nitrate poisoning on well seals is disingenuous. He stated they drafted the bill according to what Legislative Services told them. He said they changed the word 'must' to 'shall' and the depth from 38 to 18 feet and that is all they changed. He said the 18-foot rule applies unless he finds out otherwise and the Director can tell them when they need to drill deeper.

In answer to questions from the Committee, **Mr. Barren** stated that 31% of the wells they surveyed would be okay with an 18-foot well.

MOTION: **Rep. Gibbs** made a motion to **HOLD H 277** in Committee.

Mr. Brett McCarty was called to answer a question. He said it cost about \$700 to \$800 to drill with the previous 18-foot rule. He said the 38-foot rule would cost about \$3,000.

Rep. Anderson(1) spoke against the motion. He said science should dictate what the seal should be.

ROLL CALL VOTE: A roll call vote was requested on the motion to **HOLD H 277** in Committee. **Motion failed by a vote of 8 AYE and 10 NAY. Voting in favor of the motion: Reps. Gibbs, Moyle, Raybould, Wood(27), Vander Woude, Pence, Erpelding, Ward-Engelking. Voting in opposition to the motion: Reps. Wood(35), Barrett, Eskridge, Andrus, Shepherd, Boyle, Gestrin, Miller, Anderson(1), Denney.**

MOTION: **Rep. Anderson(1)** made a motion to send **H 277** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Pence, Erpelding, Raybould, Wood(27), Moyle, Ward Engleking, Gibbs** requested to be recorded as voting **NAY**. **Rep. Shepherd** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 6:32 p.m.

Representative Denney
Chair

Rosee Winder
Secretary