

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 10, 2014

**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:** 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.

**CONVENED:** **Chairman Pearce** called the Senate Resources and Environment Committee (Committee) meeting to order at 1:30 p.m.

**MINUTES:** **Senator Brackett** made a motion for the approval of the Minutes of February 3, 2014. The motion was seconded by **Senator Stennett**. The motion passed by unanimous **voice vote**.

**MINUTES:** **Senator Heider** made a motion for the approval of the Minutes of January 29, 2014. The motion was seconded by **Senator Tippetts**. The motion passed by unanimous **voice vote**.

**RS 22739C1, RS 22527C1, RS 22820:** **Senator Siddoway** made a motion to print **RS 22739C1, RS 22527C1, and RS 22820**. There was no discussion or objection. The motion was seconded by **Vice Chairman Bair**. The motion passed by unanimous **voice vote**.

**INTRODUCTIONS:** **Chairman Pearce** invited Tom Schultz, Director of the Idaho Department of Lands to introduce the five nominees to the Oil and Gas Commission.

**INTRODUCTIONS:** **Mr. Schultz** stated that he is the Director of the Idaho Department of Lands (IDL) and also the secretary to the Oil and Gas Conservation Commission. During the last legislative session, a new commission was created. Prior to that, the Land Board functioned as the Oil and Gas Commission in Idaho. Now, there is an appointed board consisting of five members who are experts in oil and gas, geology and water, as well as two landowner representatives - one who owns mineral rights and one who owns land without mineral rights. They are: Chris Charles Beck, chairman (water interests); Margaret "Marg" Chipman, vice chairman (landowner with mineral rights); Sidney "Sid" Cellan (landowner without mineral rights); James S. Classen (geological interests) and S. Kennard Smith (oil and gas interests).

**GUBERNATORIAL APPOINTMENT HEARING:** First to speak was **Chris Beck**, and he stated that he grew up in Meridian and graduated from high school there. He then graduated from the University of Idaho in 1983 with a B.S. in Geological Engineering. He received his M.S. in Geological Engineering in 1988. Mr. Beck is also a licensed professional engineer (P.E.) in Idaho and Washington. He has had a private practice for over 30 years and has studied soil, ground water, and geology issues. He feels that with this background, he is a good candidate for the Commission.

With regards to public office, Mr. Beck served as Mayor, City of Hayden Lake in 2012; Councilman, City of Hayden Lake, 2010; Councilman, City of Hayden, 1999, 2003; Commissioner, Hayden Urban Renewal Agency, 2005; Vice Chairman, State Trustee, Panhandle Health District, 1996, 2001, 2006; and member, Rathdrum Prairie Aquifer Comprehensive Aquifer Management Plan Advisory Committee (IDWR), 2009.

**Mr. Beck** said that he was asked to provide information about the Commission. The five members were appointed by the Governor last summer, then attended an orientation meeting in September. In early October, they held their first meeting and so far, that has been the extent of their business.

**Senator Cameron** said that some concerns that have been expressed have been the location of sites and the interface between it (Commission) and local units of government and the Land Use Planning Act. He asked for Mr. Beck's perspective and how he would avoid confrontation with local units of government.

**Mr. Beck** responded by saying that the Commission needs to respect the local land use issues, needs to be cooperative and not get in an adverse situation.

**GUBERNATORIAL  
APPOINTMENT  
HEARING:**

**Mr. Sid Cellan** was called on next. He represents landowners without mineral rights and lives in Soda Springs. He has farmed over 40 years and acquired the land from his father, who had leased or sold all the mineral rights of the property. Mr. Cellan is presently vice president of the Idaho Grain Producers Association and also is a member of the executive board of the National Association of Wheat Growers, located in Washington, D.C.

**Senator Cameron** asked Mr. Cellan what his philosophy is concerning dealing with local government and making sure that the Land Use Planning Act remain in place. **Mr. Cellan** responded by saying that everyone needs to work together and not infringe on anyone's rights. He feels the Commission can obtain those standards.

**GUBERNATORIAL  
APPOINTMENT  
HEARING:**

**Mrs. Margaret Chipman**, vice president of the Commission, testified next. She was born and raised in Moscow, where she received her college degree in business. She met her husband (of 45 years) at college, moved around due to his career, but now lives in Weiser where they have feedlots and ranches. Some of her jobs have included teaching, various office positions, LPN and scrub nurse in the operating room (OR) for ten years and pharmacy tech for six years. Mrs. Chipman has served on the Weiser School District Board of Trustees for 20 years, as well as currently being on the Idaho School Board's Executive Board.

In 2011, they were approached by some men from Texas who were interested in leasing their mineral rights. She said she was nervous and a little less than enthusiastic at first, but she did research and helped facilitate two town hall meetings, one with industry people and the other with agency officials. **Mrs. Chipman** said they realized the potential of this industry for their area and want nothing but the best for the State. A copy of her full testimony is on file (see attachment 1).

**Senator Siddoway** inquired if the oil and gas rigs and personnel caused a disturbance in their area; if it bothered the operation of their farm; and was there a lot of traffic causing dust problems? **Mrs. Chipman** said the oil and gas people kept her informed, were courteous and were up-front about their activities. There was not as much activity in Washington County (where she lives) as compared to Payette County. **Senator Siddoway** asked about the amount of exploration that is going on, have the wells been completed and are they producing now? **Mrs. Chipman** stated that no wells have been drilled in Washington County, but several wells have been drilled in Payette County. A conditional use permit has been obtained to put in a dehydration facility so that they can get the gas delivered to the pipeline. There is gas flowing to Intermountain Gas in the city of New Plymouth from a state well. There is interest in Gem and Canyon Counties. **Senator Siddoway** inquired if Mrs. Chipman had received complaints from the public since she was appointed to the board. **Mrs. Chipman** replied that she has not personally been contacted.

**Senator Stennett** inquired if Mrs. Chipman had a conflict of interest. **Mrs. Chipman** said that she doesn't feel there is a conflict, but would be open at all times, and if the question was brought up, it would be addressed. **Chairman Pearce** said that it was required of one member of the Commission to own land with mineral rights and Mrs. Chipman was selected.

**GUBERNATORIAL  
APPOINTMENT  
HEARING:**

**Mr. James Classen** was the next to be interviewed. He stated that he was born in San Francisco, California and raised in Woodside, California. His education consists of: Engineer of Geology, Colorado School of Mines; M.S. Geology, Stanford University; worked toward a M.B.A., University of New Orleans and TCU night school, as well as occasional additional night courses. Mr. Classen was a 1st Lt., with the Combat Engineers USAR and also served in the Active Reserve. He was awarded an honorable discharge in 1966.

Professional Societies that Mr. Classen belongs to include:

- American Association of Petroleum Geologists;
- American Institute of Professional Geologists (#1858);
- Houston Geological Society;
- Lafayette Geological Society;
- New Orleans Geological Society;
- Rocky Mountain Association of Geologists;
- Society of Petroleum Engineers; and
- Society of Independent Professional Earth Scientists.

Since January 1982 and up to the present time, Mr. Classen has been and is the President of Classen Exploration, Inc. (CEXI). This is an exploration company which generates and sells prospects, manages drilling programs, performs consulting services and participates in oil and gas ventures. CEXI is an adjunct to Classen & Co. LLC, and screens prospects, sometimes putting together their own prospects for sale, participation and drilling. It also participates with working interest in oil and gas prospects.

**GUBERNATORIAL  
APPOINTMENT  
HEARING:**

**Mr. Classen** said that he wants what is best for the State and what is best for the State is also the best for the oil and gas people. He stated that the industry does not want conflict and wants to do what is best for the people. He does not foresee conflict as an issue down the road. When asked why he wanted to volunteer to apply to become a potential member of the Commission, **Mr. Classen** said he thought it would be "fun for an old guy", and with his background, he could help the State.

The last of the candidates to speak was **S. Kennard Smith** now of Boise, but grew up in Texas. When asked why he would like to serve in this capacity, he stated that he has 40 years experience in the oil and gas business and believes his experience would be helpful to the State. Mr. Smith is retired and is willing to serve.

Organizations that Mr. Smith belongs to are the following:

- Texas Society of Certified Public Accountants;
- Boise Philharmonic Association;
- former member of the Society of Petroleum Engineers;
- American Association of Petroleum Geologists (Associate member); and
- American Institute of CPAs.

**Mr. Smith** said that he received his B.A. from the University of Texas at Austin, 1966. His career history includes employment with Petroglyph Energy from 1994 to 2011. He retired from there September 30, 2011 and now consults for them full time. Prior to that, he was executive vice president and chief technical officer from 2008 to 2011; executive vice president and chief operation officer from 1996 to 2008; and chief financial officer from 1994 to 1996.

Mr. Smith has also served as chief financial officer for companies whose business involved exploration, production, contract drilling, refining, oil field services, pipeline, and coal transportation and marketing.

As principal and treasurer of TKS Consulting, he performed economic and financial analysis, as well as served as an expert witness in state and federal court and regulatory agency hearings. He also has had experience in negotiations with the public with regard to their land, drilling sites, roads, fences, etc.

**Mr. Smith** stated that after 40 years in the business, he still enjoys the work and said there is always something to learn.

**Senator Stennett** reviewed some of the requirements to be on the board – landowner with mineral rights; landowner without mineral rights; one or more have an oil and gas background; and one or more have geology experience and knowledge. She then asked who is responsible for covering the water issues for the Commission. **Mr. Beck** replied that he had that obligation.

**Chairman Pearce** said that concluded the interviews for the appointees and he thanked them for their service to the State and the expertise they bring to the Commission. He noted that voting will take place Wednesday, February 12 or possibly Monday, February 17.

**Chairman Pearce** then called on Senator Keough to present her bill, **S 1277**.

**S 1277:**

**Senator Keough** stated that she would like permission to pass out copies of a proposed amendment to **S 1277**. If the Committee so desires, the bill would be sent to the 14th Order (Amending Order) for contemplation of the proposed amendment. She acknowledged the co-sponsors that have worked with her on this legislation, along with many others.

**Senator Keough** said the purpose of the legislation is to find a path forward on the issue of land exchanges that have troubled the Land Board in the past few years. The legislation seeks to clarify how land can be exchanged, whether it is 'cottage sites' or other land that may be in state ownership. **Senator Keough** proposed that the word "similar" on line 14 of the bill be stricken. On line 20 after "private" strike the rest of the line. Strike lines 21 through 26 and insert the following language: "As used in this section, an exchange of state lands means a transaction in which the State conveys the land to another party or parties pursuant to an agreement that predates the exchange, in which transaction a party conveying land to the State may be different from a party to whom the State conveyed land. The parties dealing with the State in such an exchange transaction shall not be prohibited from purchasing or selling assets related to accomplishing the transaction before, simultaneously, or after said transaction, provided that all such prior and simultaneous purchases and sales are expressly provided for in the exchange agreement."

Senator Keough turned her remaining time over to Mr. John Runft, Attorney for the Association for Assembled, Multiparty Land Exchanges (an Idaho unincorporated non-profit association organized under Chapter 7 of Title 53 of the Idaho Code), who can more specifically address the last few lines and the proposed amendment.

**Mr. Runft** provided a blue packet (see attachment 2) that contained information relating to his testimony. He referred to the first page, a copy of the bill with lines 20 through 26 highlighted in yellow, which they propose to revise. The word "similar" and the words "to consolidate state lands" do not appear as a requirement in the Constitution. The second page contains the proposed revised wording. **Mr. Runft** said the purpose of the revised wording is to define the definition of an exchange of state lands. It means a transaction in which the State conveys the land to another party or parties pursuant to an agreement that predates the exchange, in which transaction a party conveying land to the State may be different from a party to whom the State conveyed land.

Mr. Runft then asked to turn over any remaining time to former Idaho Attorney General David Leroy, who has been commissioned by the Speaker of the House, Representative Bedke, for an analysis on the constitutionality of **S 1277**. **Mr. Leroy** stated that he engaged Lynn Thomas, former solicitor general of the state of Idaho, and a man familiar with constitutional issues and concepts to help in research for today's presentation.

**Mr. Leroy** provided a six page questions/summary/analysis/conclusion of his research which was delivered to the Speaker of the House this morning and is on file (see attachment 3). The questions presented are as follows:

1. Does the Idaho Legislature have the legal authority to amend Idaho Code § 58-138 to allow the exchange of trust lands for "dissimilar" or "non-consolidated" public or private property?
2. Does the Idaho Legislature have the legal authority to amend the Code to permit an exchange of state endowment holdings for public or private lands of "greater" than equal value?

3. Does the Idaho Legislature have the legal authority to amend the Code to limit exchanges to lands with primary value buildings which will be occupied by a public purpose entity?
4. Does the Idaho Legislature have the legal authority to amend the Code to prescribe a sufficiently broad definition of "exchange" to include multiple party conveyances, even if a subsequent sale is planned by the recipient?
5. Are land exchanges made pursuant to statute constitutional, or are such transactions merely "disguised sales" and voidable for lack of a public auction?

In Mr. Leroy's summary, it states that the Idaho Legislature does have the authority (1) to allow the exchange of state lands, including those held in trust, for both dissimilar property and for "non-consolidated" properties; (2) to amend the Code to permit an exchange of state endowment holdings for public or private lands of greater value; (3) to amend the Code to limit exchanges to lands with their primary value in buildings which will be occupied by a public purpose entity; and (4) to amend the Code to prescribe a definition of "exchange" that would include multiple party conveyances, even if a subsequent sale is planned by the recipient. Further, (5) land exchanges are specifically authorized under the Constitution in a section separate and independent from the alternative process of a sale of public land at auction. Thus, exchanges, as a matter of law, can not be characterized as merely "disguised sales".

The conclusion that Mr. Leroy came to was that all of the first four questions presented are answered in the affirmative. Fifth, an exchange is fully constitutional in Idaho and can not be negatively characterized as a sale without a public auction. The Legislature has the authority to propose language and enact all of the amending concepts contained in **S 1277**. It also has the authority to amend the same to encourage exchanges for "greater" than equal value.

**TESTIMONY:**

**Mr. David New** said that he is representing himself today and is a professional forester, as well as a business consultant, and is supporting **S 1277**. Currently, he is an advisor to four international timber investment organizations and a tribal natural resource enterprise helping with resource valuation and performance reporting. He is also a consultant advisor to a land exchange company responsible for valuation analysis to establish financially prudent land exchange proposals between public land management agencies and private landowners. In 2007 and 2008, he worked as a consultant for the Idaho Department of Lands (IDL). In 2007, it was the last time that IDL comprehensively reported to the Western States Land Commissioners Association the current valuation, as well as annual net cash and capital returns, of the Endowment Trusts.

**Mr. New** went on to say that in 2007, the total trust assets were valued at approximately \$2.4 billion of rangeland, timberland, commercial and residential properties. Over \$1 billion of these assets did not meet either the average net cash or total return investment targets established in 2011 and 2012 by the Department and Land Board. The Department and the Land Board deserve credit for establishing the much needed Asset Management Plan. However, review of the historical financial performance prior to asset reporting recognizes the problem of under-performing assets, and in Mr. New's opinion, it has existed for decades.

**Mr. New** stated that a quick review of the annual financial reports from the Department revealed that range lands, residential real estate, and low productivity timberland have been earning between zero and three percent net cash on asset value for decades. Reinvestment of these significantly under-performing \$1 billion of assets into working forests and leased agriculture crop lands would provide immediate improvement to the Endowment Trust's annual net cash return basis from zero to three percent, to four to six percent per annum. In closing, **Mr. New** said this is long overdue from the Land Board, IDL, and the Legislature, to establish a road map to exchange, at the very least, ten percent of the endowment's under-performing assets during the next five years. A copy of his testimony is on file (see attachment 4).

**TESTIMONY:**

**Mr. Gordon Crickshank**, Valley County Commissioner, testified in support of **S 1277**. He feels it is important to the state endowment beneficiaries and the residents of Valley County. Much of the conflict and many of the challenges facing state land managers today stem from past land management policies that can be addressed on land exchanges. Much of the state land asset value around Payette Lake is encumbered in a leasehold interest with cottage-site leaseholders owning the improvements. This leasehold arrangement has long been in conflict and a nuisance for both tenant and lessee and should have long ago been resolved through land exchanges. A copy of his complete testimony is on file (see attachment 5).

**TESTIMONY:**

**Director Tom Schultz**, IDL, said that last October, there were several land exchanges that went before the Land Board. A concern was raised over similar land language and the disguised sale issue. This bill does several things - it eliminates the similar land language that the department had tried to remove for three consecutive years and the issue of commercial properties is also addressed in this bill. The Director said that the Land Board has not taken a position on this bill, but they are aware that there is a concern about commercial properties. During this next year, the Land Board is looking at hiring a consultant to look at both the financial trust, as well as the land trust, and to make recommendations on how to make decisions on investments, as well as what types of investments. The Land Board has already taken some of these issues under consideration. **Director Schultz** said that he wanted to thank Senator Keough for bringing this legislation forward and he is here to answer any questions.

**TESTIMONY:**

**Mr. Jeff Lord**, from Elmore County, said that he supports **S 1277**, and is here to speak on behalf of Idaho landowners who also lease endowment lands that have expressed interest in acquiring those lands. His family has previously acquired land through an exchange with the endowment. They disposed of land outside the boundaries of their ranch and acquired land adjacent to a block of state land and subsequently traded that to the State for land within their management control. **Mr. Lord** said that exchanges of this size are difficult to accomplish because they do not justify staff time on a cost benefit basis.

He stated that the bill provides the Legislature the opportunity to exercise its oversight role to help affect land exchanges to generate increased revenues to the endowment beneficiaries. A copy of Mr. Lord's full testimony is on file (see attachment 6).

**TESTIMONY:**

**Mr. Todd Hatfield** said that he is representing himself today and does support the land exchanges, but is asking that it be amended. He stated that the word "structure" is in conflict with Article 9, Section 8 of the Constitution. He also asked for clarification on line 15 regarding consolidations.

**TESTIMONY:**

**Mr. Mark Benson**, Vice President of Public Affairs for the Potlatch Corporation, testified next. He stated that they are in support of **S 1277**.

**Mr. Benson** said that Potlatch was founded in 1903 and has operated continuously in Idaho for 111 years. They own about 800,000 acres of forest land in Idaho and in addition to their forest holdings, they operate a sawmill and plywood plant in St. Maries. The company directly employs about 300 people in the State, plus several hundred local contractors. They are committed to their business and manage their lands sustainably under the Idaho Forest Practices Act, as well as third party certification standards.

**Mr. Benson** indicated that land exchanges are a tool for land managers. Direct and multiparty land exchanges are common across the country for facilitating both land acquisition and disposal strategies. Land exchanges are also extremely useful and at times the only way to consolidate land ownership. Any land owner, including the state of Idaho, benefits over time by being able to exchange lands. The fewer barriers that exist to consolidating lands, the better any land manager can manage its lands. Potlatch and the state of Idaho share hundreds of miles of property lines. It's in their best interest and in the State's best interest to consolidate their respective ownerships over time.

**Mr. Benson** testified that **S 1277** clarifies the laws relating to land exchanges involving state land in Idaho. The bill provides the state of Idaho the same flexibility that other land owners have to manage their land assets. The additional flexibility afforded to the State by being able to engage in direct and multiparty land exchanges enhances the State's management efficiency and in turn benefits the trustees for whom the State manages its land assets. He said that this bill will eliminate the confusion that has hovered over the Land Board regarding its authority to enter into land exchanges. That concluded Mr. Benson's testimony and a copy of his testimony is on file (see attachment 7).

**TESTIMONY:**

**Mr. Jason Kreizenbeck** said that he is representing the Priest Lake State Lessees Association which has 320 members who lease cabin sites on Priest Lake. He has submitted a three page letter from Charles Lempeis, attorney for the Association, to all the Committee members (see attachment 8). **Mr. Kreizenbeck** stated that they support **S 1277** and appreciate all the work done by Senator Keough.

**WRITTEN  
TESTIMONY:**

Written testimony that was submitted and is in favor of **S 1277** includes the following:

Pat Richardson, Orofino, Idaho (see attachment 9);  
Tom and Vicki Wielgos, Coolin, Idaho (see attachment 10);  
Andrew Jacobs, Boise, Idaho (see attachment 11);  
Thomas V. and Kathleen M. Trotter, Priest Lake lessees (see attachment 12);  
Diane Bagley, Boise, Idaho (see attachment 13);  
Russell C. Mager, Lewiston, Idaho (see attachment 14);  
Margaret Drummond and Lon Southard, Coolin, Idaho (see attachment 15);

Edward O'Gara, Ketchum, Idaho (see attachment 16);  
Kevin and Anne Hanigan, Payette, Idaho (see attachment 17);  
Don F. Pickett, Oakley, Idaho (see attachment 18);  
Gary and Tomi McGee, Boise, Idaho (see attachment 19);  
Stephen Rice, Lewiston, Idaho (see attachment 20);  
John Brumley, Coeur d'Alene, Idaho (see attachment 21);  
Thomas Clevenger, Post Falls, Idaho (see attachment 22);  
David Penny, Boise, Idaho (see attachment 23);



Joe and Cindi Feeley, McCall, Idaho (see attachment 24);  
Barbara Barsness, Eagle, Idaho (see attachment 25);  
Kenneth Smith, Boise, Idaho (see attachment 26);  
Anne Herndon, Boise, Idaho (see attachment 27); and  
John F. Magnuson, Coeur d'Alene, Idaho (see attachment 28).

A report, "The Case for Uniform Land Asset Reporting, July 2008" by the Asset Management Subcommittee of the Western States Land Commissioners Association was submitted by Ms. Jane Wittmeyer of Wittmeyer & Associates, LLC (see attachment 29).

**CONCLUSION:**

**Senator Keough** said that she appreciated the opportunity that was given them to present **S 1277**. She indicated that the purpose of the legislation is to delineate what the policy will be in regards to land exchanges and the ownership of those lands and is an attempt to clarify the policy.

**Senator Keough** said that if the Committee feels comfortable in doing so, she would ask that **S 1277** be sent to the 14th Order (Amending Order).

**MOTION:**

**Senator Siddoway** made the motion to send **S 1277** to the 14th Order. The motion was seconded by **Vice Chairman Bair**. **Senator Cameron** inquired if it wouldn't be better to send a "clean" bill to the floor, rather than having this one amended. There was no further discussion. The motion passed by **voice vote**.

A 69 page booklet, "Oil and Gas Resource Exploration and Development Policies in Idaho", compiled by Zachary Johnson, Philip S. Cook, Jay O'Laughlin, and Kenton Bird, all with the University of Idaho, College of Natural Resources, was distributed to the Committee members at the end of the meeting (see attachment 30).

**ADJOURNED:**

**Chairman Pearce** thanked Senator Keough and wished her luck. He then adjourned the meeting at 3:01 p.m.

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Senator Pearce  
Chair

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Juanita Budell  
Secretary