

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Tuesday, March 11, 2014

TIME: 1:30 PM or Upon Adjournment

PLACE: Room EW40

MEMBERS: Chairman Denney, Vice Chairman Gibbs, Representative(s) Wood(35), Barrett, Moyle, Eskridge, Raybould, Andrus, Shepherd, Wood(27), Boyle, Vander Woude, Gestrin, Miller, Anderson(1), Pence, Erpelding, Rubel

**ABSENT/
EXCUSED:** None

GUESTS: Mackenzie Herrock, Veritas Advisors; Sharon Kiefer, Idaho Department of Fish and Game; Tamara Mackenthun, Division of Veterans Services; Rex Barrie, Water District #6; Vernon Case, Wilder Irrigation District; Jim Lowe, Food Producers of Idaho; Skip Smyser, Pioneer Irrigation District; Alan Newbill, Pioneer Irrigation District; Brenda Tominaga, IWPG; Bill Nary, City of Meridian/AIC; Dan Steeson, Sawtooth Law; Gary Allen, Givens Pursley Law Firm; John Evans, AIC; Erik Stidham, Holland & Hart Law Firm; Bob Geddes, Farm Bureau; Ron Platt, Wilder Irrigation District; Darren Coon, Nampa/Meridian Irrigation District; Erica Slayton, Pioneer Irrigation District; Mark Zirschky, Pioneer Irrigation District; Leland Earnest, Pioneer Irrigation District; Robert Grant, Pioneer Irrigation District; Andy Waldera, Pioneer Irrigation District; Norm Semanko, Idaho Water Users Association; Brett Wilder, Food Producers, Karen Merrick, Idaho Transportation Department; Raeleen Welton, RMP/ICOA.

Chairman Denney called the meeting to order at 2:52 p.m.

H 571: **Speaker Bedke** stated this legislation will clarify state policy regarding eminent domain. He said one government entity cannot condemn another government entity and conduct their same business. He said this legislation prevents condemnation for the purpose of taking property that an irrigation or drainage entity owns, operates and maintains to provide water delivery or drainage to the landowners who are entitled to those services and preserves legal authority to condemn an irrigation or drainage entity's property for concurrent public uses unrelated to the irrigation or drainage entity's existing delivery or drainage operations. He indicated there is a retroactivity provision to June 2012 to resolve pending condemnation litigation. Speaker Bedke explained the necessity for this legislation regarding past and future litigation.

Skip Smyser, Attorney for Pioneer Irrigation District, stated the parties (City of Caldwell and Pioneer Irrigation District) are exhibiting good faith in negotiations and both parties have dismissed their lawsuits. He stated the negotiation process will continue to move forward towards a universal agreement.

Eric Stidham, Attorney of Holland & Hart, represents the City of Caldwell and is hopeful of a settlement as the negotiations are heading in the right direction. His opinion is this legislation may be counterproductive to negotiations between the City of Caldwell and Pioneer Irrigation District. His primary concern is the language does not reflect the intent of this legislation as the language is vague and ill focused. Mr. Stidham indicated there is an entire body of law citing eminent domain for a city to protect the health and safety of its citizens. He stated the city's perspective is the irrigation district allows drainage outside the city but not inside the city. He said the citizens own the canals, not Pioneer Irrigation District. He indicated this legislation will hamper growing cities as it is too vague, ambiguous, creates future problems, and is possibly unconstitutional. He indicated the city can save costs by managing infrastructure and by folding the irrigation function into infrastructure and reduce rates for citizens by utilizing the city's workforce and machinery. Mr Stidham cited legal precedence that a city can use eminent domain against another government entity as Caldwell has jurisdiction and the purpose of health and safety. He indicated that Caldwell can do condemnation, but must meet certain criteria and can only condemn within its city limits.

Speaker Bedke indicated the irrigation district has a right-of-way. He stated it is not his intent to thwart the negotiations between the City of Caldwell and Pioneer Irrigation District.

Alan Newbill, farmer, indicated there would be problems if Caldwell takes one-third of the Pioneer Irrigation District from the center of the district. He said there is ten-thousand acres each, above and below, the City of Caldwell of the Pioneer Irrigation District. He said Pioneer Irrigation District is responsible to provide water below the City of Caldwell and water rights are involved. Mr. Newbill indicated there are other ancillary issues with costs involved should the City of Caldwell use condemnation of the Pioneer Irrigation District.

Dan Steenson, Boise Attorney and Lobbyist for the Nampa/Meridian, Settlers and multiple other irrigation districts, and for the Idaho Dairyman's Association, who support this legislation. He stated to allow government to condemn for concurrent uses and protect districts from condemnation of property they own, operate, and maintain to deliver water or provide drainage. He stated irrigation districts own facilities, rights of way, and equipment.

Gary Allen, Givens Pursley Law Firm, represents Sorrento Lactalis in Nampa, Idaho and opposes **H 571**. He alleged abuses of power by the City of Caldwell in eminent domain. He further alleged Pioneer Irrigation District has abused Sorrento Lactalis too. His client spent \$750,000 after 3 years of litigation regarding Sorrento Lactalis' wastewater. Mr. Allen asked the committee to reject the bill.

Mr. Geddes, Idaho Farm Bureau Federation, stated his members depend upon a reliable irrigation system. He cited **Idaho Code 42-1209** and asked that Caldwell does not ignore Idaho Law, that irrigation districts are entities of government by elected officials. He supports this legislation as it provides protection for irrigation and drainage entities against a hostile takeover.

Bill Nary, City of Meridian, believes this legislation has unintended consequences and will lead to more litigation. He stated nothing is broken and does not support this legislation.

Norm Semanko, Idaho Water Users Association, has been in the industry for twenty years and there has never been a more important bill as it draws a legitimate line from a city overtaking of an irrigation district.

John Evans, Idaho Cities Coalition, opposes **H 571** as no change is needed of eminent domain statutes. He indicated his opposition to the retroactivity in this legislation.

Karin Merrick, Right-a-Way Manager for the Idaho Department of Transportation, indicated no formal position on this legislation. She expressed her concerns as she believes this legislation will take away the negotiation process and leverage for projects.

MOTION: **Rep. Wood(27)** made a motion to send **H 571** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Erpelding** requested that he be recorded as voting **NAY.** **Rep. Batt** will sponsor the bill on the floor.

Vice Chairman Gibbs indicated that due to the late afternoon floor hearing, the remaining agenda, **S 1276 and S 1278**, will be heard at the House Resources and Conservation Committee on Thursday, March 13, 2014 at 1:30 p.m. or upon adjournment.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:02 p.m.

Representative Denney
Chair

Jennifer Smith
Secretary