

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Thursday, February 19, 2015

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Raybould, Vice Chairman Gestrin, Representatives Moyle, Andrus, Shepherd, Wood, Boyle, Vander Woude, Gibbs, Miller, Bateman, Burtenshaw, Mendive, VanOrden, Youngblood, Pence, Erpelding, Rubel

**ABSENT/
EXCUSED:** Representative(s) Shepherd, Gibbs

GUESTS: Tom Schultz, Idaho Department of Lands; Gary Marquart, SeaPac of Idaho; Alma Hasse; Doug Paddock, IORC; John Simpson, BRS; Elizabeth Criner, Simplot; Linda Lemmon; Kathy Babington; Lynn Babington; Howard Morris; Rhonda Morris; Lynn Tominaga, IGWA; Bobby Johnson, Idaho Department of Lands; Jim Classen, Idaho Oil & Gas Commission; Bob Hardgrove, IGWA; John Peiserich, Alta Mesa; Suzanne Budge, SBS Associates; Justin Hayes, ICL; Skip Smyser.

Chairman Raybould called the meeting to order at 1:30 p.m.

MOTION: **Rep. Wood** made a motion to approve the minutes of February 9, 2015. **Motion carried by voice vote.**

H 123: **Senator Rice** stated the Oil and Gas Conservation Commission should be exempt from the contested cases provisions of the Administrative Procedures Act and the commission will adopt the administrative procedures that were in place prior to July 1, 1993. Senator Rice asserts that every oil and gas issue could be treated as a contested case and may result in a contested case for purely administrative matters. He explained this change for the Oil and Gas Conservation Commission will align with the current practice of the Land Board.

Tom Schultz, Idaho Department of Land, has worked with **Senator Rice** to clarify Administrative Procedures Act issues. Mr. Schultz explained a resolution under the Administrative Procedures Act can take 3 to 6 months to resolve a contested case hearing to address lands within the oil and gas unit. He stated specifics can include formal and informal matters and may take up to 200 days. Mr. Schultz stated through negotiated rule making and updating rules with best practices will allow the commission to use the contested case hearing process under the Administrative Procedures Act if the Oil and Gas Commission chooses, but this would not be required. Mr. Schultz indicated the appeal options with the new procedure would allow a matter to be filed in court and to be heard before the commission as individuals will maintain their rights under the Constitution.

Alma Hasse, a resident of Payette County, indicated omitting the Administrative Procedures Act from the Oil and Gas Commission in the unitization of land is complete disregard for the due process and to the citizens of Idaho. Ms. Hasse indicated she received a letter from her mortgage company dated January 28, 2015, stating she would be in violation of her mortgage if she was considering an oil and gas lease.

John Peiserich, Alta Mesa, stated there is a due process.

Suzanne Budge, SBS Associates, for Idaho Petroleum Council, stated the bill mirrors the Land Board's approach to contested cases, is similar to how other states operate, and would help the agency do business in an efficient way.

MOTION: **Rep. Gestrin** made a motion to send **H 123** to floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Erpelding** will sponsor the bill on floor.

H 124: **Rep. Boyle** stated **H 124** will allow the Oil and Gas Commission to exclude the Bureau of Land Management (BLM) from unitization and leasing. She stated there is similar legislation in other western states.

Director Schultz, Idaho Department of Lands, stated allowing BLM the option to lease or not lease in the unitization process is a practice in Arkansas, Montana, and Utah and the terminology is similar to these states. Mr. Schultz stated the BLM would be able to initiate a lawsuit. Mr. Schultz indicated there should be a discussion with the BLM as they may not have been consulted in the unitization process.

Suzanne Budge, SBS Associates, represents Idaho Petroleum Council and said they are working with the agency to streamline the process.

John Peiserich, Alta Mesa, addressed the underlying legal abilities of the landowner living next to BLM land.

Jim Classen, geologist for 50 years and privileged member of the Oil and Gas Conservation Commission, stated the Oil and Gas Commission, as a group, has not commented on this industry derived statute change. Mr. Classen stated the BLM is hindering oil and gas exploration in Idaho.

MOTION: **Rep. Miller** made a motion to send **H 124** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Rubel** requested she be recorded as voting **NAY. Rep. Boyle** will sponsor the bill on the floor.

H 125: **Senator Lee**, stated **H 125** corrects a 2012 omission to include condensate in the definition of natural gas.

Alma Hasse stated landowners are being forced into business with a less than credible company and the state is giving minerals away at 2.5% interest and if integrated would be a violation of a mortgage for the hazardous chemicals clause. Further, stated Ms. Hasse, if the lender doesn't allow the lease and if the homeowner signs the lease, this would result in a technical default and foreclosure. Ms. Hasse encouraged legislators to consider their constituents.

Director Schultz, indicated the language existed in 2012 and condensate is a natural gas, an underground gas.

Senator Lee, stated the treasurers and assessors are concerned with the language defining oil and gas, but condensate is different. Senator Lee further indicated her intent to ensure all of these products are subject to tax and for the ability to collect taxes due.

MOTION: **Rep. Rubel** made a motion to send **H 125** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Boyle** will sponsor the bill on the floor.

Speaker Bedke provided a presentation on the Hagerman Valley Water Restoration project and indicated good news since the legislative representatives toured Rangen Fish Hatchery in an effort to address the diminished water resources in that area. Speaker Bedke indicated the state is at an important juncture with the Snake River Basin Adjudication completion. He stated there were many lawsuits and every question has been litigated, with the clarification of property rights, and senior and junior water right holders throughout the Snake River Basin. Speaker Bedke explained we have a group of junior water right holders critical to our economy and take the responsibility for impacts on senior water right holders. He stated every party is in search of 3 things: the certainty, predictability, and stability of water resources in the aquifer. Speaker Bedke said interested parties have been meeting and will continue to meet. He congratulated the Idaho Department of Water Resources (IDWR) and the Attorney General's Office (AG) for their technical expertise and representing the stakeholders.

Speaker Bedke addressed the components for users in the Hagerman Valley regarding aquifer recharge that is dependent upon conservation, rotating crops, high water use crops, and setting up an accurate monitoring system. He explained adaptive management can be performed, but not without an accurate monitoring system. Speaker Bedke said stakeholders were able to meet a court ordered deadline to deliver water to the Rangen Fish Hatchery. He said with a mild winter, the construction of the pipeline project progressed without any shutdowns due to weather. He stated the investments in the Hagerman system were put to good use, but cautioned the diversion of water from the river to the aquifer through a canal system that was not designed for diversion. He further explained some of the systems have hydroelectric systems and chunks of ice may pose to be a detriment. Speaker Bedke stated there is an urgency for the state of Idaho to make investments and address this water issue.

Dean Stevenson is a representative of Idaho Ground Water Appropriators and Chairman of Magic Valley Ground Water System, he reviewed the necessity of ground water and the impacts from pumping that should be addressed. Mr. Stevenson indicated at one point, last spring there were 5 water calls and those were handled by supply or agreements. Mr. Stevenson said we are all users of water. He made commitments through **Speaker Bedke** for Phase 2 to take water into the fish farm and pump the water back up into a ditch and improve the water balance in the Hagerman Valley. He indicated the need for opportunities to put resources towards Hagerman, but admitted the water will not come out of every spring, and the need to attempt to strike a balance.

Craig Searle, Southwest Irrigation District, has attempted to stabilize the depleting water supply. He stated pipelines have been placed to convert ground water to surface water irrigation. He explained the industry has required water intensive crops. He indicated his appreciation for the efforts of the Idaho Department of Water Resources (IDWR) working on a management arrangement for critical ground water areas and his appreciation of many canal companies in Burley and Twin Falls to transport water and tap into their systems to stabilize the ground water levels. He said as a result of these efforts, water levels are stabilizing and higher. Mr. Searle indicated that Idaho is a state with sufficient water if managed properly.

Butch Morris is an irrigator and worked with **Speaker Bedke** on the Hagerman Valley Committee. He believes the project is moving forward and in a positive direction. He stated he is a Hagerman farmer and has seen the springs decline over the years, but appreciates the state's efforts. He asserted the state should invest in fixing the problem with the aquifer recharge.

Gary Markquardt, General Manager of SeaPac of Idaho. Mr. Markquardt is providing his statement on spring flows. Mr. Markquardt stated SeaPac operates a production and processing plant and has worked with several independent growers in Bliss, Twin Falls and other parts of state. He indicated he has been involved for over 25 years with fish and the spring flows continue to decline. Mr. Markquardt stated more progress needs to be put forth to solve this problem as the aquifer is unbalanced and pumpers and fish farmers need to work out a solution. Mr. Markquardt indicated the state has recognized the problem, but the progress needs to focus on the solution to repair and improve the aquifer, as more volume is needed. Mr. Markquardt encouraged the state to continue to move forward with discussions and their involvement has been noticed and appreciated. He stated money has been set aside and these are limited resources to address the long term project and commitment. Mr. Markquardt indicated that senior water right holders only need to call to get their water. He explained there is a need for continued negotiation, a settlement, and current meetings are heading in that direction.

Brian Patton, Idaho Department of Water Resources, said there is a managed aquifer recharge program in place which began in October 2014. Mr. Patton stated it was a great start in recharging the aquifer through the winter with the help of partners, but more work is needed for storage capacity and infrastructure. He stated the Idaho Department of Water Resources is working with canal companies to address the capacity issue as water is available and infrastructure is needed for aquifer stabilization and recharge purposes. Mr. Patton identified the Water Resource Board as managing the aquifer recharge program with support from the legislature, governor, and the cooperation of water stakeholders including IDWR's commitment to the recharge stabilization program.

Randy Budge, Attorney for Idaho Ground Water Appropriators (IGWA), stated a decade of contentious litigation has resulted in a situation where junior water users are subject to curtailment. He further explained this is a disastrous situation to the state's economy and agriculture. He said the Idaho Ground Water Appropriators has stepped up with mitigation plans of developing and implementing the sustainability of the aquifer, provided direct delivery to senior water rights, and a fully funded conversion program. The Rangen water call was detrimental.

Mr. Budge is appreciative of **Speaker Bedke** for his persistence and leadership to correct the problems, and for the great support from **Clive Strong** of the Attorney General's Office (AG), and the Idaho Department of Water Resources (IDWR) for the comprehensive recharge project. Mr. Budge emphasized recharge of the aquifer is critical and an expensive long-term project and the state has stepped up to the challenge and continues to support the financial effort.

John Simpson, Attorney for Buckeye Farms in Hagerman, stated Idaho has seen a decline in water volumes over the past 50 years and Buckeye Farms has made extraordinary efforts to continue through self mitigation. He stated Thousand Springs is a natural beauty in Idaho and needs to be maintained and sustained for the future. Mr. Simpson stated there are two concepts (1) to continue to respect the priority doctrine for water rights as a senior or junior water right holder; and, (2) the problem the water supply issue has created over time. He suggested the water users and state step forward to develop a plan to provide certainty for generations and continue to sustain and stabilization our water resources. Mr. Simpson commends IDWR and the Legislature, but it will take more efforts to stabilize the aquifer. Mr. Simpson said the first steps have been taken towards aquifer stabilization, but there is a need to move upstream to Milner Dam as Idaho has a unique opportunity.

Speaker Bedke gave his closing remarks regarding the Hagerman Valley Water Restoration Project. He indicated all parties are working towards a common goal, watching the water issue and its progression from ditch banks to farms and fish hatcheries. He stated Idaho had a recent curtailment order which would have shut-off water to 157,000 acres of irrigated agriculture along with water to 14 cities, supplemental wells, and a list of industries in the area. Speaker Bedke further explained the curtailment didn't happen and the water is now moving to Rangen thanks to the cooperation and determination of many stakeholders. Speaker Bedke stated this issue can be fixed with time and a large effort. He said these types of obstacles are scalable and junior water right holders should share their responsibility to provide short term water while the parties work together towards a common goal. He said everyone involved is committed to this surmountable challenge. Speaker Bedke thanked the committee for their time and allowing the presentation as an update report on the state's investment in this important issue that stabilizes a strategic resource as growth is expected in the southern part of the state.

Chairman Raybould thanked the House Resources and Conservation Committee's Page, **Shae Davids**, for her service and dedication to the committee as she had completed her service for this session.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:30 p.m.

Representative Raybould
Chair

Jennifer Smith
Secretary