

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 02, 2015

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll and Stennett

ABSENT/ EXCUSED: All present, with a vacancy

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

MINUTES: **Senator Nuxoll** moved to approve the Minutes of February 11, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator Brackett** moved to approve the Minutes of February 18, 2015. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING Mr. Sid Cellan, Soda Springs, Idaho was reappointed to the Oil and Gas Commission for a term commencing July 1, 2014 and expiring July 1, 2018. He is a third generation farmer in the Soda Springs area, farming 2,500 acres dryland wheat and barley with his wife. They are landowners with no mineral rights. **Mr. Cellan** stated that because he does not own mineral rights, he wants to protect landowners in the same situation, as well as protecting the environment. He feels that the State has a real opportunity to expand in the oil and gas industry.

Mr. Cellan's work experience includes:

- Cellan Farms, Inc., owner/operator;
- Caribou County, road and bridge department; and
- City of Soda Springs, public works.

Board experience:

- Idaho Grain Producers, President;
- Lure Crop Advisory Board, Caribou County, board member;
- Idaho Fish & Game Winter Feeding Advisory Board, 5th District; and
- Ducks Unlimited, 5th District Zone Chairman.

Awards and Achievements:

- Idaho Pesticide License; and
- Leadership Idaho Agriculture Graduate;
- Landowner Sportsman of the Year, Idaho Fish & Game.

Chairman Bair thanked Mr. Cellan for his testimony and said voting would take place at the next meeting.

There are three oil and gas bills to be heard. **H 48** is in regards to public disclosure of production records; **H 49** amends legislation to partially fund administration and regulate oversight of oil and gas operations; and **H 50** defines how oil and gas operators cooperate in the development of an oil and gas pool to prevent waste and preserve reservoir pressures for effective drainage.

H 48

Mr. Tom Schultz, Director of the Idaho Department of Lands (IDL), presented **H 48**. **Director Schultz** said the Oil and Gas Conservation Commission (Commission) regulates the exploration, drilling, and production of oil and gas resources on private, state, and federal land. IDL is the administrative arm of the Commission. Drilling and production activities are monitored to ensure that industry adheres to Best Management Practices, as set forth by the American Petroleum Institute to abate possible environmental and reservoir damages. The efficient recovery of oil and gas, protection of correlative rights, and protection of fresh water supplies are the duties of the Commission. This proposed legislation would amend Idaho Code § 47-319, Title 47, Chapter 3, Oil and Gas Wells, in order to allow public disclosure of oil and gas production records after six months of confidentiality from submittal to the Department.

Director Schultz said the proposed legislation requires an operator to submit production records to the IDL by the 21st day of the month following the sixth month after the commencement of production. The aggregated time of the proposed statute and the pending rule would give an operator one year from the beginning of production, until it was available for public disclosure.

IDL seeks to better align Idaho Code § 47-319(5)(i), production records with Idaho Code § 47-319(5)(b), submission of geologic logs. IDL does not seek to change any portion of Title 9 with regards to production records for other industries in Idaho.

A hearing was held before the Commission regarding this proposed legislation. Industry was divided. Some industry representatives supported open reporting and disclosure of production reports. Others raised concerns over protection of intellectual property, competition, and recovery of investment if production reports were to be made public.

Director Schultz stated that IDL conducted a comprehensive comparison of oil and gas producing states for confidentiality of production records (see attachment 1). The proposed legislation provides for a longer confidentiality period than most states. The majority of states do not offer any confidentiality on production reports. A few states offer short-term confidentiality (90 days - 1 year) on submitted production reports for newly producing wells, upon request of the operator. **Director Schultz** said the Commission voted 4-0 in support of moving this legislation forward.

TESTIMONY: **Ms. Kate Haas**, representing Alta Mesa Holdings, testified that having a waiting period before the reports are released is about competition and protecting the company's investments.

TESTIMONY: **Mr. Jim Classen**, an exploration geologist with 55 years of experience, is one of the five members on the Commission. In his capacity on the Commission, he represents industry. The company that has been the most active in the oil and gas development in Idaho has invested about \$65 million, and Mr. Classen feels that a 6 month delay in providing production reports is reasonable, due to the amount of their investment. He also said the Commission supports this bill.

TESTIMONY: **Ms. Alma Hasse** said she is representing herself and is opposed to this legislation, **H 48**. She provided information (see attachment 2) published on DeSmogBlog regarding Chesapeake Energy Corporation's lawsuits from angry landowners. She also pointed out problems that other states are having due to the oil and gas industry. **Ms. Hasse** stated that she feels the production records should be made available to the public immediately, especially to those being forced to give up their mineral rights at rock-bottom prices.

TESTIMONY: **Mr. John Peiserich**, Alta Mesa, said they are in favor of **H 48** and believe there are some significant misunderstandings regarding the bill. **Mr. Peiserich** said that when they pay royalties, the actual production of those wells is reported on the pay stubs, so the landowner sees the production records from day one.

MOTION: **Senator Heider** moved that **H 48** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. Senator Nuxoll will be the sponsor.

H 49 **Director Schultz** testified in support of **H 49**. He said the efficient recovery of oil and gas, protection of correlative rights, and protection of fresh water supplies are the duties of the Commission. The proposed legislation would amend Title 47, Chapter 3, Oil and Gas Wells, in order to partially fund administration and regulatory oversight of oil and gas operations for orderly development and the prevention of waste.

The Idaho Legislature in 2012 approved an increase to the fee for permits to drill or treat a well, Idaho Code § 47-320, from \$100 to a maximum \$2,500. The legislation included a sunset provision, whereby the permit fee will return to \$100 on July 1, 2017. Currently, the Department receives \$156,200 in General Fund monies to operate the Oil and Gas Program. Additional funds of \$16,000 have been collected over the past 12 months from permit and other fees. In order to meet current and future workloads, it is estimated that ongoing costs for the next several years will be approximately \$200,000. Having the fees revert to \$100 will place greater stress on the limited General Fund budget within the IDL. The goal is to have fees and severance taxes, not the General Fund, cover a majority of annual program expenses on an ongoing basis.

The proposed legislation would amend Idaho Code § 47-320 to remove the sunset provision and include a fee schedule for all program fees (see page 1, lines 35-42 and page 2, lines 1-18). IDL calculated the application fees based on the time and expense necessary to process the application. For well drilling and other permit fees, IDL used an estimate of man hours, vehicle mileage, and other staff resources incurred by IDL for one year. The fees for applications requiring a hearing cover the cost of staff time to review the application and the expenses of holding a Commission hearing. IDL also looked at fees charged by other states and the Bureau of Land Management.

Director Schultz said a hearing was held before the Commission regarding this proposed legislation. There was no opposition heard in testimony. The Commission voted 4-0 in support of moving this legislation forward.

TESTIMONY: **Ms. Hasse** testified in opposition of **H 49**. She provided another handout (see attachment 3) which is titled "How 'Orphan' Wells Leave States Holding the Cleanup Bag" by Dan Frosch and Russell Gold. The article mentioned several states were left with cleanup, plus the costs, due to the bonding not being adequate. **Ms. Hasse** said that taxpayers should not have to foot the bill for orphan wells caused by irresponsible companies.

TESTIMONY: **Mr. Peiserich** said that when Alta Mesa purchased Bridge, they paid all their debts according to their purchase and sale agreements. He also stated that the State has rules to make sure that bonding is adequate; there is a flat fee, plus \$8 per foot (hard cost).

TESTIMONY: **Ms. Elizabeth Criner**, representing J. R. Simplot Company, said they support **H 49**.

TESTIMONY: **Mr. Ernest Walker**, Gem County, testified that he agrees with Ms. Hasse and opposes **H 49**.

MOTION: **Senator Brackett** moved that **H 49** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. Senator Cameron will be the floor sponsor.

H 50 **Director Schultz** presented **H 50**, which would amend Title 47, Chapter 3, Oil and Gas Wells, in order to define how oil and gas operators cooperate in the development of an oil and gas pool or field to prevent waste and preserve reservoir pressures for effective drainage. A PowerPoint slide show was presented to help the Committee to better understand the placing of the wells and the boundaries (see attachment 4).

Unit operations (or unitization) are the consolidation of mineral or working interests in oil and gas covering a common source of supply. Stated differently, unitization is the operation of a field or pool as a single production unit. In contrast, integration (also known as pooling) is the consolidation of small tracts to meet spacing requirements for a single well.

The Commission is authorized to review agreements for the unit or cooperative development of a field or pool or a part thereof, under Idaho Code § 47-323. The current Idaho Code does not clearly define a process for operators to request Commission approval to operate a field or pool as a unit in the absence of a voluntary agreement.

Director Schultz said the proposed legislation would amend Idaho Code § 47-323 by adding provisions for the Commission to consider applications for compulsory unit operations if owners cannot agree on how to operate a field or pool as one unit and if the Commission finds such operation is reasonably necessary to prevent waste or to protect correlative rights.

The Commission would be authorized to issue an order for unit operations that defines the unit boundary, identifies the unit operator, provides how production will be allocated, and provides how costs will be determined and charged to those participating in the unit. The legislation further provides when an order approving a plan of unit operations will become effective and how an order may be amended.

Director Schultz said a hearing was held before the Commission regarding this proposed legislation. There was no opposition heard in testimony. The Commission voted 4-0 in support of moving this legislation forward.

WRITTEN TESTIMONY: Written testimony was received from John and Sally Ponath, Canyon County residents, opposing **H 48**, **H 49**, and **H 50**. They would like rules written to protect property rights and mineral rights that belong to the property owners (see attachment 5).

TELEPHONE CONVERSATION: A phone call was received from Greg Johnson, Gem County, opposing **H 50** stating that it needed transparency. He also objected to the number of helicopters flying over the site.

**WRITTEN
TESTIMONY:**

Written testimony was received from Joe Morton, Emmett, objecting to the integrated units. He feels that it pits neighbor against neighbor, family members against family members, and oil and gas drillers against rural property owners, particularly those who own only surface rights in a split estate and who do not have any say (see attachment 6).

TESTIMONY:

Ms. Dawn Monroe, representing herself and her neighbors, has three concerns about **H 50**. The first concern was regarding the 55 percent of landowners agreeing; the remaining landowners would not have an "out" option. She said if that is correct, where is the protection for those landowners with small acreages. **Ms. Monroe** stated that there are 11 landowners with each having 10 acres, and they would like the assurance that there would not be wells on their small parcels as it would be an unfair burden to them as surface owners. **Chairman Bair** asked Ms. Monroe if she owned the mineral rights on her property, and she responded by saying the bank told her she did. **Chairman Bair** suggested that she and Director Schultz sit down and discuss her concerns.

Ms. Monroe responded that at this point, the bill does not have protection for small property owners. **Director Schultz** said the Commission has the discretion to permit the location of the well, and if you don't have the default spacing, the Commission will evaluate, with an application, where that well should be placed. The location of wells is based on geology, setbacks, and also on hearings.

Chairman Bair asked Director Schultz if the Commission has the authority to force landowners of small parcels to have a well on their property. **Director Schultz** said no, if they are the owners of the mineral rights on their property. Minerals are the dominant estate, so surface owners could not legally prohibit the sale of extracting those resources. **Director Schultz** also said that where Ms. Monroe owns both the surface and mineral rights, she would have input and control and could prohibit it.

Another concern of Ms. Monroe's was if one is in the pool, does one have to sell their minerals. **Director Schultz** replied that this would be integration and there are three options: a working interest, a nonworking interest, or be released as part of that process. **Ms. Monroe** inquired if the minerals were left alone now and in 20 years given as an inheritance, would the minerals be there at that time. **Director Schultz** said that if one does not integrate these tracts of land and someone next to you puts in a well, those resources will not be there in 20 years whether one participates or not.

Ms. Monroe's last question was regarding the contamination of the aquifer and if there was a bond to protect it. **Director Schultz** replied that there is a bond that is put in place which is \$10,000 minimum for each well, plus \$8 per foot, based on the depth. The bond would be used for whatever issue has to be reclaimed. As long as there is an operator on the site, they are held accountable for whatever damage they might incur.

Chairman Bair asked Director Schultz if he would meet with Ms. Monroe to make sure her questions had been answered. **Ms. Monroe** thanked Chairman Bair for his concern.

Chairman Bair said there were a number of people yet to testify, and due to time constraints, **H 50**, **H 123**, **H 124**, and **H 125** would be held over until the next meeting.

ADJOURNED:

Chairman Bair adjourned the meeting at 3 p.m.

Ms. Monroe: I'm Dawn Monroe and I have never testified before, but I'm here representing myself and my neighbors and we have some concerns about this bill. We have three primary concerns. First, if we have misinformation, please correct me, but our understanding that in pooling, if 55 percent of landowners agree, then we would be compelled to lease our land and we would not have an option out. That's correct. If that's correct, we would like to ask where our protections for those of us on small acreages. There are 11 of us on about 10 acres each and we would like to know that we would not be compelled to have a well on one of our small parcels. We feel that would be an unfair burden to us as surface owners, and we understand that the technology is there that they can extract from long distances. So, is there any protection in this bill for small property owners to not be compelled to have trucks and a well on their property?

Chairman Bair: Ms. Monroe, do you own the property? And the mineral rights on your property?

Ms. Monroe: The bank told me I do.

Chairman Bair: Here's the best thing to answer your questions. I think the Director would just be thrilled to death to find the time and sit down and visit with you about that. I think probably that's about the best method and best way to get your questions answered.

Ms. Monroe: But at this point, the bill does not have protection for small property owners, for surface small property owners.

Chairman Bair: Director, do you...

Director Schultz: Mr. Chairman and members of the Committee: The bill does not call it anything specifically, what the Commission does is they have the discretion to permit the location of the well. So if you don't have the default spacing, back when we started with this, the well in the middle of the section, the Commission will evaluate, with an application, where that well should be placed. So, the example I gave you, where those wells were, within 10 acres you can work around that. There is flexibility with the Commission to evaluate that. It doesn't have to be on any particular one acre necessarily, but there isn't anything in the bill that I can point to that says "here's where it says a 10 acre tract does not have a well located on it". The Commission has discretion already in code to prescribe and permit where that well will be located. Again, it is going to be based on geology, on set-backs, and we talked about the set-back rules, so those things are taken in consideration by the Commission, as well as if there is an exceptional well location, then there is an opportunity for a hearing from the people within the section that is to be integrated and the landowners could come forward and let their input known to that hearing process in terms of their concerns where that well could be located. But this bill doesn't prescribe where exactly the well will be located. It's the discretion for the Commission to consider that. In the hearing process by where someone could come forward and say I have concerns about where you place that well and if it's a little bit where the default spacing is, they are given an opportunity to have input in that process.

Chairman Bair: So let me ask you. Let me help Ms. Monroe out here. If typically, 640 acres equals a drilling unit, and let's say that within that, there are one or two big mineral rights owners, but let's say we've got 5 or 6 folks with 10 or 15 acres located in there and they really don't want to have it on their property, does the Commission have the authority to force them to have that well on their little 10 acre piece of property?

Ms. Monroe: Thank you.

Director Schultz: Mr. Chairman and Committee: No, if she owns the minerals, then she has the say. They have other instances sometimes when you don't own the minerals. There may be one section where someone else owns the minerals and you own the surface and you cannot — we talked about the dominant estate and the mineral estate is the dominant estate and the surface owner cannot unilaterally prohibit the mineral estate owner from having a well to extract those resources. They need to have an opportunity to extract those resources. If she owns the minerals and surface, she can have input and control in that process. If she has only surface occupancy, she can state that in her lease. The State can do that as well. If you own the minerals, and you own the surface, you can have those surface occupancy stipulations in your lease that you would sign. Yes, you can prohibit it.

Chairman Bair: Ms. Monroe, does that help?

Ms. Monroe: That helps a lot, but I have two more questions.

Chairman Bair: OK. Come on back. Thank you for letting me interrupt you again. I'm sorry.

Ms. Monroe: And I thank you both for that clarification because when I read the bill and my neighbors read the bill, it wasn't clear to us that we had any options, if we owned both of those, so thank you. The other two areas that we have concerns about, and please forgive me, I'm not trying to be rude, but we, as citizens, have this question: When you pool and you say "here's the go ahead now", and we own the minerals and the surface, but if we're pooled, do we still need to sell our minerals? Is that correct?

Chairman Bair: Director. This is unusual, but that's OK. I don't mind.

Director Schultz: Mr. Chair and members of the Committee. We are talking about integration, not specifically about unitization. So, under integration, and we'll take a step back, we had three options. First of all, if someone approaches you to lease your minerals, and if you lease your minerals and you own the minerals, you can prescribe in your mineral lease whether you want to have occupancy or not. And that's a voluntary transaction. In essence, you are leasing your minerals with someone else the right to develop those and typically, you would get a one-eighth royalty.

So if it's an involuntary situation where someone owned the minerals and did not want to lease the minerals, and you had a section and it had a default space in the entire section and you had several mineral owners that did not lease their minerals and somebody that had at least 55 percent and came forward and came to the Commission and said "I want to integrate those other tracts". First of all, 55 percent of the people have to have a lease and have it locked up already and then those that chose not to lease, then they are given options.

One option is a working interest owner, or put forth capital based on the percentage, so if they own 10 acres and it's a 640 acre section, that would make it 6.4 percent of the cost of drilling the well. Or, they could be given something called a non-consenting working interest owner and they would not pay anything up front. They don't pay anybody, but then they would share in future revenues from that, after they pay a penalty of 300 percent of those future revenues and the third option is that they don't take any action and they are considered to be leased, and the term in the rules as being leased, so in any case, if someone is integrated, and we talked about this, then they would get compensated based on the share of the mineral resource they had. So under my scenario of 640 acres, if you had 10 acres in that 640 acre section, you would get 6.4 percent of the production. If you had not leased, you are given one of those options, either to have a working interest, a nonworking interest, or be released as part of that process. In any of

those scenarios, you are going to get compensated for your proportion, or share, on the overall reservoir based on how that unit is established.

Chairman Bair: Ms. Monroe, does that help?

Ms. Monroe: Well, the question that we had, myself and my neighbors was, so, right now if we believed in capitalism, this crosses a line to us. If we own the mineral rights and we would be forced to sell when my neighbors and myself wanted our properties for our sons, for an inheritance for our sons. What if we left the minerals alone now and in 20 years they would have the option to sell them. What we are understanding is, that in this process, we would not have that option. Is that correct?

Director Schultz: Mr. Chairman and Committee, we talked about this again. The rule captures, if you do not integrate these tracts and someone next to you puts in a well, those resources won't be there in 20 years because your neighbor will have drained them. So, whether you participate now, and accumulate that resource or the percentage thereof, but if you don't and it's in the same reservoir and your neighbor puts in a well, this is where you have the problem where you're drilling off-set wells to be the first to get your well in the ground, so this process protects the correlative rights of the other owners in the unit and it also prevents waste. Under the unit scenario, whether you extract that resource over 20 years or you don't participate, that resource for that future generation may not be there regardless whether you participate or not.

Ms. Monroe: One last question.

Chairman Bair: OK. One last question.

Ms. Monroe: Thank you so much for your patience. So, who gets the bonds for surface owners to protect them? Is there a bond to make a contamination to the aquifer?

Chairman Bair: Director

Director Schultz: Mr. Chairman and members of the Committee, it's the same schedule that we had before on the abandoned well and there is a bond that is put in place and it's \$10,000 minimum for each well and then there is an additional \$8 per foot, based on the depth. So there is a bond in place for each well that is drilled and that would be used for whatever the issue is that has to be reclaimed. First of all, if you have an operator out there, they would be responsible and held accountable for any enviro damage that may occur on that site. If you no longer had an operator for whatever reason, you still have that bond in place.

Chairman Bair: Ms. Monroe, I don't know if we have all of your questions answered or not, but I hope we do. If not, Director, will you take time to sit down with Ms. Monroe and help her and her neighbors understand a little bit. I'd be grateful.

Ms. Monroe: Thank you so much. I've very much appreciated this opportunity.

Chairman Bair: You're welcome. Committee, we have a number of people that want to testify on this bill. The Chair will hold this bill till Wednesday and folks, I apologize if you've driven a long, long ways and you're welcome to come back on Wednesday and take this up right where we started from.

Senator Bair
Chair

Juanita Budell
Secretary