

IDAHO OIL AND GAS CONSERVATION COMMISSION OPEN MEETING CHECKLIST

FOR MEETING DATE: February 20, 2024

Regular Meetings

02/08/24	Notice of Meeting posted in prominent place in IDL’s Boise Headquarters office five (5) or more calendar days before meeting.
02/08/24	Notice of Meeting posted in prominent place in IDL’s Coeur d’Alene Headquarters office five (5) or more calendar days before meeting.
02/08/24	Notice of Meeting posted in prominent place at meeting location five (5) or more calendar days before meeting.
02/08/24	Notice of Meeting published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
02/08/24	Notice of Meeting emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
02/08/24	Notice of Meeting posted electronically on the OGCC public website https://ogcc.idaho.gov/ five (5) or more calendar days before meeting.
02/15/24	Agenda posted in prominent place in IDL’s Boise Headquarters office forty-eight (48) hours before meeting.
02/15/24	Agenda posted in prominent place in IDL’s Coeur d’Alene Headquarters office forty-eight (48) hours before meeting.
02/15/24	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
02/15/24	Agenda published on Townhall Idaho website https://townhall.idaho.gov forty-eight (48) hours before meeting.
02/15/24	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
02/15/24	Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ forty-eight (48) hours before meeting.
11/21/23	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA

Special Meetings

	Notice of Meeting and Agenda posted in a prominent place in IDL’s Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in a prominent place in IDL’s Coeur d’Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda published on Townhall Idaho website https://townhall.idaho.gov twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Notice of Meeting or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

Executive Sessions (*If only an Executive Session will be held*)

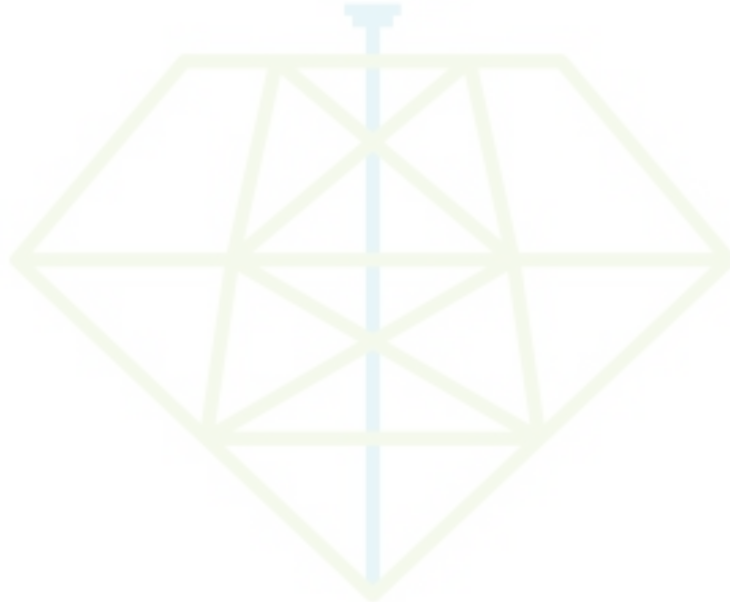
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	Notice of Meeting and Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Kourtney Romie

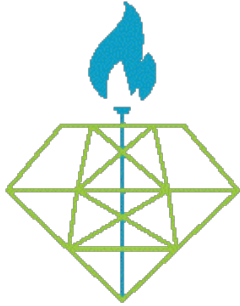
02/15/2024

RECORDING SECRETARY

DATE



IDAHO OIL & GAS
CONSERVATION COMMISSION



IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chair
Ray Hinchcliff, Vice Chair
Margaret Chipman, Commissioner
Marc Haws, Commissioner
Jennifer Riebe, Commissioner

Mick Thomas, Secretary to the Commission

NOTICE OF PUBLIC MEETING FEBRUARY 2024

The Idaho Oil and Gas Conservation Commission will hold a Regular Meeting on **Tuesday, February 20, 2024**, at the Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise. The meeting is scheduled to begin at **1:30 pm (MT)**.

Please note meeting location.

Directions: Enter City Hall from Capitol Blvd.; take the Capitol Boulevard elevators to the 3rd floor; Council Chambers are directly across from the elevators.

The Oil and Gas Conservation Commission will conduct this meeting in person and by virtual means.

This meeting is open to the public. No public comment will be accepted at this meeting.

The meeting will be streamed live via YouTube: <https://youtube.com/live/Wh6FBic1ryg?feature=share>

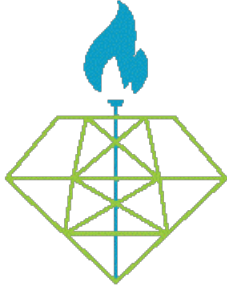
IDAHO OIL & GAS
CONSERVATION COMMISSION

First Notice Posted: 02/08/2024-IDL Boise; 02/08/2024-IDL CDA

The Idaho Oil and Gas Conservation Commission is established by Idaho Code § 47-314.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702

This notice is published pursuant to § 74-204 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.



IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chair
Ray Hinchcliff, Vice Chair
Margaret Chipman, Commissioner
Marc Haws, Commissioner
Jennifer Riebe, Commissioner

Vacant, Secretary to the Commission

Final Agenda

Idaho Oil and Gas Conservation Commission Regular Meeting

February 20, 2024 – 1:30 PM (MT)

Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise

Directions: Enter City Hall from Capitol Blvd.; take the Capitol Boulevard elevators to the 3rd floor; Council Chambers are directly across from the elevators.

The Oil and Gas Conservation Commission will conduct this meeting in person and by virtual means.

This meeting is open to the public. No public comment will be accepted at this meeting.

The meeting will be streamed live via YouTube: <https://youtube.com/live/Wh6FBic1ryg?feature=share>

• **ANNOUNCEMENTS**

No public comment will be accepted at this meeting.

1. Division Administrator's Report

A. Financial Update

B. Current Oil and Gas Activity

• **CONSENT – ACTION ITEM(S)**

2. Approval of Minutes – November 14, 2023 – Regular Meeting (Boise)

• **INFORMATION**

3. Update on Rulemaking IDAPA 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho – Presented by James Thum, Oil & Gas Program Manager

4. Presentation: Oil and gas well status in Idaho – Presented by James Thum, Oil & Gas Program Manager

5. Presentation: Meeting Minutes and Recorded Meetings - What is the Official Record? – Presented by Hayden Marotz, Deputy Attorney General

6. Update: CAIA vs Miller – Presented by Hayden Marotz, Deputy Attorney General

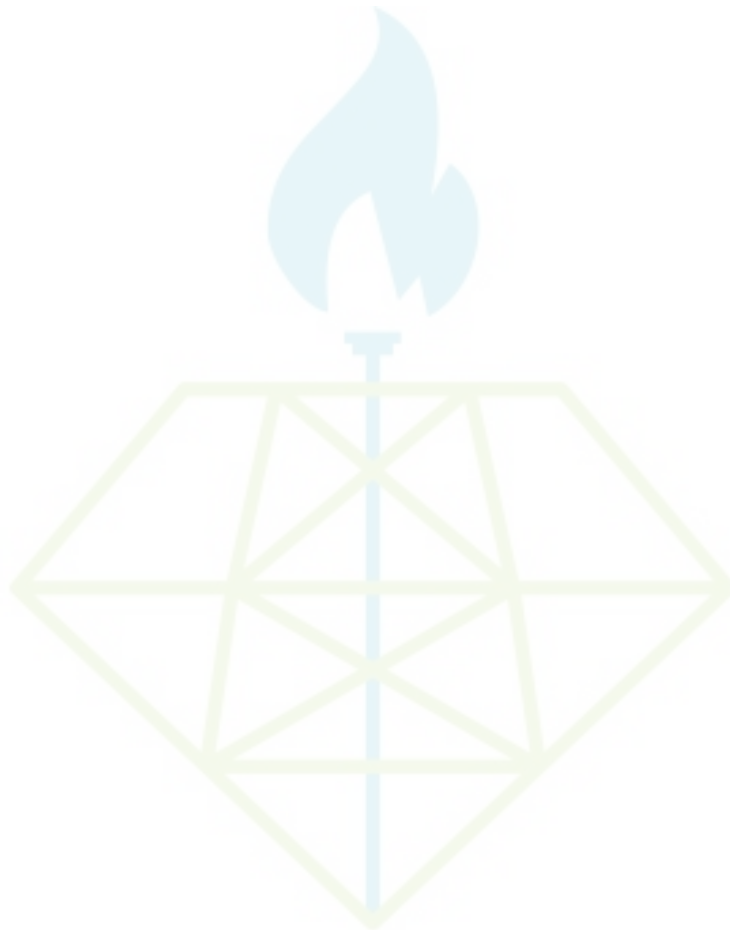
Idaho Oil and Gas Conservation Commission
Final Agenda
Regular Meeting (Boise) – February 20, 2024
Page 1 of 2

- **REGULAR – ACTION ITEM(S)**

None

- **Executive**

None



IDAHO OIL & GAS CONSERVATION COMMISSION



Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT
CHAPTER 2
OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To acquire an interest in real property not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- (g) By the commission of pardons and parole, as provided by law;
- (h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;
- (i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of

a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this chapter to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

How current is this law?

Search the Idaho Statutes and Constitution

**Oil and Gas Regulatory Program
Activities Report as of January, 2024
Fund 16614 Oil and Gas Conservation Fund Cash Flow Report**

		Current Month	Year-to-Date
Beginning Cash Balance 7/1/2023	767,963.00		
Permits		0.00	0.00
*Severance Tax		0.00	48,100.13
Refund (previous year)		5,879.71	5,879.71
Other (transfer to GF)		0.00	0.00
Total		<u>5,879.71</u>	<u>53,979.84</u>
Personnel Expenditures		(7,533.33)	(26,849.37)
Operating Expenditures		(64.08)	(6,828.47)
Capital Outlay Expenditures		0.00	0.00
P-Card Liability to be paid		0.00	0.00
Total		<u>(7,597.41)</u>	<u>(33,677.84)</u>
Ending Cash Balance 1/31/2024			<u><u>788,265.00</u></u>

*The Idaho Tax Commission transfers 60% of the 2.5% Severance Tax to Fund 16614 Oil and Gas Conservation Fund to defray the expense of the Oil and Gas Commission.

General Fund Regulatory Program Expenditures Report

Expenditures from General Fund FY24

Expenses	Allocation	Current		Balance
		Month	Year-to-Date	
PC	227,600.00	18,321.28	62,797.34	164,802.66
OE	81,300.00	2,361.92	21,087.86	60,212.14
CO	0.00	0.00	0.00	0.00
Total	<u>308,900.00</u>	<u>20,683.20</u>	<u>83,885.20</u>	<u>225,014.80</u>

Dedicated Fund Regulatory Program Expenditures Report

Expenditures from Dedicated Fund FY24

Expenses	Allocation	Current		Balance
		Month	Year-to-Date	
PC	154,900.00	7,533.33	26,849.37	128,050.63
OE	58,600.00	64.08	6,828.47	51,771.53
CO	0.00	0.00	0.00	0.00
Total	<u>213,500.00</u>	<u>7,597.41</u>	<u>33,677.84</u>	<u>179,822.16</u>



Southwest Idaho Oil & Gas Activity Map



Legend

Active Oil And Gas Wells

- Shut in Gas
- Producing - Multi Zone
- Producing
- Permitted
- Injection Well

Inactive Oil and Gas Wells

- Plugged and Abandoned (P&A) Oil Show
- Plugged and Abandoned (P&A) Gas Show
- Plugged and Abandoned (P&A) Gas Well
- Plugged and Abandoned
- APD Submitted

- Gas Pipeline
- Gas Transmission Pipeline
- Highway
- Township
- Sections
- Counties
- Approved Unit
- Approved Spacing Unit, Integration Request Submitted

- Gas Plant
- Idaho Mineral Estate Surface Ownership
- BLM
- IDF&G
- IDL

No.	US Well Number	Operator	Well Name	Status
1	11-075-20011	Snake River O&G	Tracy Trust #3-2	Shut in; pending P&A
2	11-075-20020	Snake River O&G	DJS Properties #1-15	Producing
3	11-075-20022	Snake River O&G	ML Investments #2-10	Shut in
4	11-075-20023	Snake River O&G	DJS Properties #2-14	Shut in (Class II UIC)
5	11-075-20024	Snake River O&G	Kauffman #1-34	Shut In
6	11-075-20025	Snake River O&G	ML Investments #1-11	Inactive /Shut in
7	11-075-20026	Snake River O&G	ML Investments #1-3	Shut in
8	11-075-20027	Snake River O&G	Kauffman #1-9	Inactive /Shut in
9	11-075-20029	Snake River O&G	ML Investments #2-3	Shut in
10	11-075-20031	Snake River O&G	ML Investments #3-10	Producing
11	11-075-20032	Snake River O&G	Fallon #1-10	Producing
12	11-075-20033	Snake River O&G	Barlow #1-14	Producing
13	11-075-20036	Snake River O&G	Barlow #2-14	Producing
14	11-075-20037	Snake River O&G	Fallon #1-11	Producing
15	11-075-20038	Snake River O&G	Dutch-Lane #1-13	Producing
16	11-075-20039	Snake River O&G	Irvin #1-19	Producing
17	11-075-20040	Snake River O&G	Barlow #3-14	Producing

Map Notes and Data Sources

Inactive and Active Oil And Gas Wells through 2/6/2024

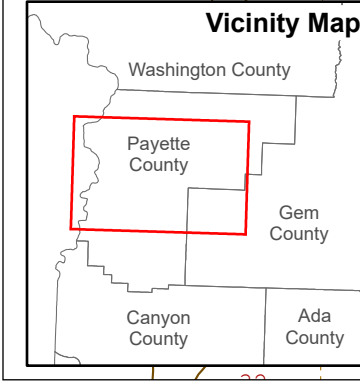
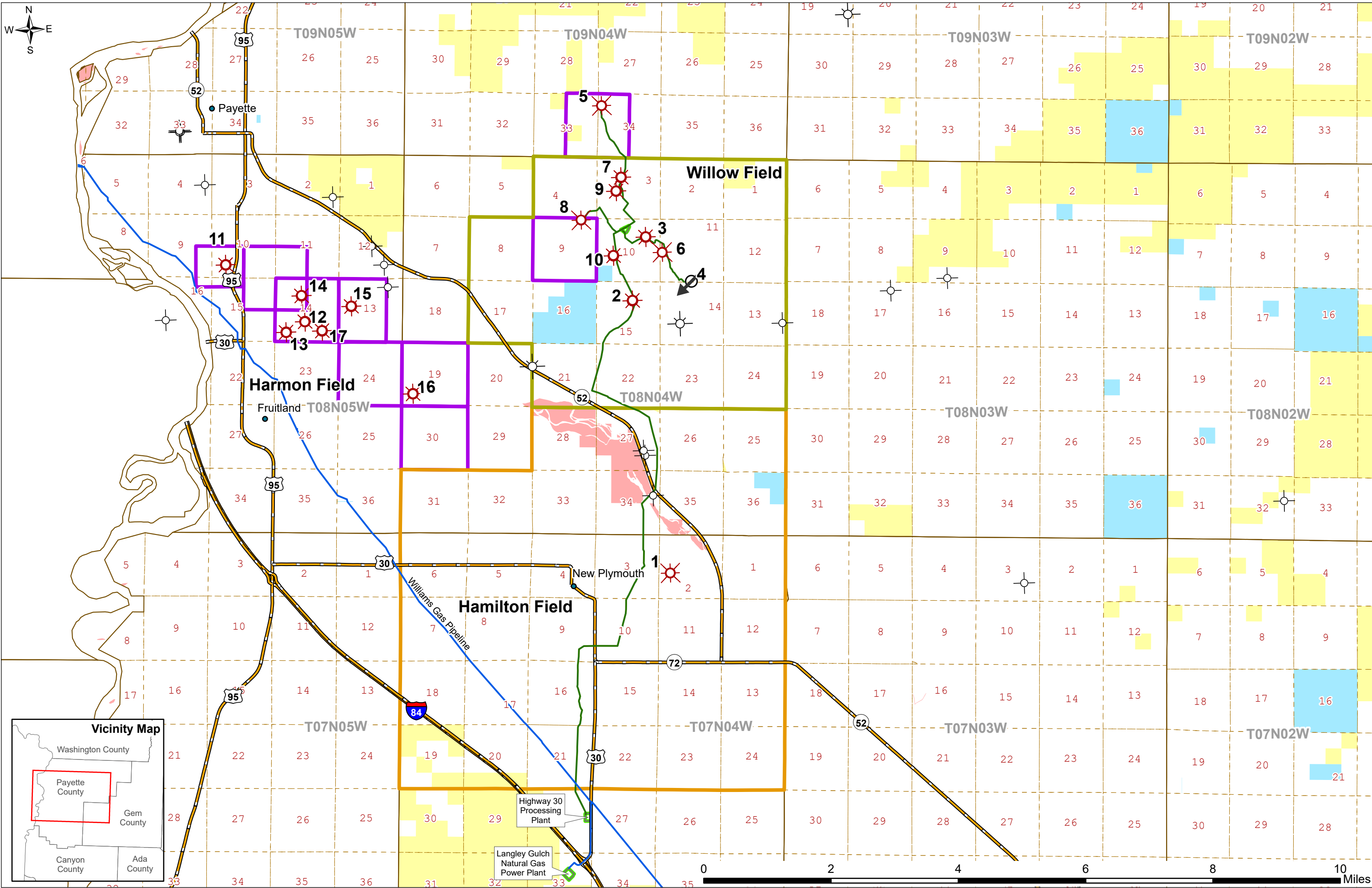
Data Sources: Idaho Department of Lands and Idaho Geological Survey

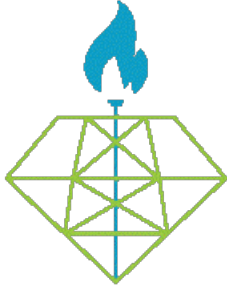
Disclaimer:

This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

Map produced by: Idaho Department of Lands, Boise Staff Office, GIS Department 2/6/2024

Robin Dunn





IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chair
Ray Hinchcliff, Vice Chair
Margaret Chipman, Commissioner
Marc Haws, Commissioner
Jennifer Riebe, Commissioner

Mick Thomas, Secretary to the Commission

Draft Minutes
Idaho Oil and Gas Conservation Commission Regular Meeting
November 14, 2023

The regular meeting of the Idaho Oil and Gas Conservation Commission was held on Tuesday, November 14, 2023, at the State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise, Idaho. The meeting began at 1:30 p.m. (MT). Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Ray Hinchcliff
Commissioner Margaret Chipman
Commissioner Marc Haws
Commissioner Jennifer Riebe

For the record, all Commissioners and Secretary Thomas were present at the physical location.

• **ANNOUNCEMENTS**

Chairman Coppersmith introduced the newest commissioner, Marc Haws and stated that she was glad to have him on the Commission. Chairman Coppersmith gave overview of the agenda.

1. Division Administrator's Report

A. Financial Update

B. Current Oil and Gas Activity

Chairman Coppersmith inquired about the production and that it was all coming from the Harmon field and not from the Willow field. Secretary Thomas confirmed that was correct. Chairman Coppersmith asked if that was because of operational issues or production considerations. Secretary Thomas responded that he believed it came down to cost benefit and that the cost of operating some of the older wells when one considered the water production that it may be cost prohibitive.

C. Status Update

i. Field Inspections

Chairman Coppersmith asked if the issues of concern during the inspection outside of the Division's jurisdiction could be elaborated on. Program Specialist James Thum responded that a copy of the inspection report is on the website. Mr. Thum explained that some of the issues included emissions tests notes; the Department does not regulate emissions,

but he will make note in the inspection report and also discuss it with Snake River staff. Another issue was a portable spill containment device mat was torn that people use for canisters of chemicals when you do not want something to leak on the ground. Mr. Thum stated that a lot of stuff blows in and takes root; they come around once or twice a year and spray it and he will make a note of that and tell them they should take care of it. Vice Chairman Hinchcliff inquired about who does the meter calibration. Mr. Thum responded that the operator has a contract with a third-party company who performs calibrations on site. Commissioner Riebe asked whether being out of compliance is a category of infraction and if this did not rise to the level of being out of compliance. Mr. Thum explained that if we notice something that may be a compliance issue, we will notice the operator, but there is an administrative procedure that we go through, unless it is an emergency situation. We will discuss it internally with the Division Administrator and then that notice of noncompliance either comes from the Department, or in some cases, from the Commission. Mr. Thum added that Department inspection staff have a workstop authorization; if we see something that is endangering the environment, we can issue a stoppage right there and they have to comply. Commissioner Haws asked how often inspections take place. Mr. Thum responded that under Idaho Code 47-315, we are required to inspect all facilities annually and provide a report to the Commission. On some occasions, if there are operations or new equipment, we will inspect more often.

- ii. Class II Well
- iii. Kauffman #1-9 Status

- **CONSENT – ACTION ITEM(S)**

- 2. **Approval of Minutes – June 6, 2023 – Regular Meeting (Boise)**

COMMISSION ACTION: A motion was made by Commissioner Riebe that the Commission approve the meeting minutes. Commissioner Chipman and Vice Chairman Hinchcliff simultaneously seconded the motion. The motion carried on a vote of 5-0.

- 3. **Approval of Minutes – September 14, 2023 – Special Meeting (Boise)**

COMMISSION ACTION: A motion was made by Commissioner Chipman that the Commission approve the meeting minutes. Commissioner Riebe seconded the motion. The motion carried on a vote of 5-0.

- **REGULAR – ACTION ITEM(S)**

- 4. **Negotiated Rulemaking IDAPA 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho – Presented by Mick Thomas, Division Administrator – Minerals, Navigable Waters, and Oil & Gas**

RECOMMENDATION: The Department recommends that the Oil and Gas Conservation Commission authorize the Department to initiate negotiated rulemaking for IDAPA 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.

DISCUSSION: Commissioner Riebe asked if Secretary Thomas could provide an example of something that might change. Secretary Thomas explained that anything in the rules is subject to be discussed during the rulemaking. Secretary Thomas elaborated that initiating rulemaking allows stakeholders, members of the public, to come in and voice their concerns, voice their ideas, their support of remaining the same, support for changes, involving rules. Secretary Thomas added that rulemaking is limited by statutory language; rules cannot override statute. He noted that some of the issues may involve the price of permits, the cost of permits, bonding levels, and that any number of things that are currently in rule are up for grabs. Chairman Coppersmith thanked him for the timeline and asked how onerous this task is and if it is going to require hours and hours of staff's time. Secretary Thomas responded that it is relatively rigorous and thinks it will be relatively straightforward.

COMMISSION ACTION: A motion was made by Commissioner Riebe that the Commission authorize the Department to begin the negotiated rulemaking process. Commissioner Haws seconded the motion. The motion carried on a vote of 5-0.

Background information was provided by the presenter indicated below. No Commission action is required on the Information Agenda.

- **INFORMATION**

- 5. **Presentation: Overview of Legal Requirements for Commission: Open Meetings; Public Records; Ethics in Government** – Presented by Hayden Marotz, Deputy Attorney General

At 2:47 p.m., a motion was made by Vice Chairman Hinchcliff that the Commission convene into Executive Session pursuant to Idaho Code §74-206(1)(f). Commissioner Riebe seconded the motion. Chairman Coppersmith stated a roll call vote is required. Roll Call Vote: Aye: Hinchcliff, Chipman, Riebe, Haws, Coppersmith; Nay: None; Absent: None.

- **Executive**

- A. Idaho Code 74-206(1)(f) - to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. [TOPIC: CAIA v. Miller, Idaho Federal District Court case No. 1:21-cv-00367-DCN]

At 3:00 p.m., a motion was made by Commissioner Riebe that the Commission resolve out of Executive Session. Commissioner Chipman seconded the motion. The motion carried on a vote of 5-0. For the record, no decisions were made during the Executive Session.

There being no further business before the Commission, at 3:01 p.m. a motion to adjourn was made by Commissioner Chipman. Commissioner Haws seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.

IDAHO OIL AND GAS CONSERVATION COMMISSION
February 20, 2024
Information Agenda

SUBJECT

Update on Rulemaking IDAPA 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

BACKGROUND

The Idaho Department of Lands (Department) administers these rules under the authority of the Oil and Gas Conservation Act (Title 47 Chapter 3, Idaho Code). These rules apply to the extraction of any and all crude oil and natural gas resources in the state of Idaho, not including biogas, manufactured gas, or landfill gas, regardless of ownership.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2024. Revisions are needed to better align procedures and wording with statute revisions that occurred in 2017 and 2023.

At the November 14, 2023 Oil and Gas Conservation Commission (Commission) meeting, the Commission authorized the Department to initiate negotiated rulemaking.

DISCUSSION

The Department is currently working to complete the Prospective Analysis Form (PAF) to submit to the Division of Financial Management (DFM) by February 23, 2024. Information about the Rulemaking will be posted on the Commission website by March 6, 2024. The Notice of Intent to Promulgate Rules will be submitted to DFM by March 8, 2024 for publication in the April Bulletin.

ATTACHMENT

1. Draft Rulemaking Timeline

IDAHO OIL & GAS
CONSERVATION COMMISSION



Draft Rulemaking Timeline

IDAPA 20.07.02

Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

November 14, 2023	Approval from OGCC to start negotiated rulemaking (Regular Meeting / regular agenda item)
February 20, 2024	Present update on this rulemaking to the OGCC (Regular Meeting / information agenda item)
February 23, 2024	Prospective Analysis Form due to DFM (1, 2, 5)
March 6, 2024	Post information on OGCC website about this rulemaking
March 8, 2024	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Division of Financial Management (DFM) for Bulletin publication in April
April 3, 2024	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; negotiated rulemaking and public comment period begins
April 5, 2024	Post Draft #1 on OGCC website
April 11, 2024	Negotiated rulemaking public meeting #1 in Boise and via Teams (Draft #1)
April 15, 2024	Negotiated rulemaking public meeting #2 in Fruitland and via Teams (Draft #1)
April 19, 2024	Written Comments on Draft #1 deadline
April 26, 2024	Post Draft #2 on OGCC website
April 29, 2024	Negotiated rulemaking public meeting #3 in Boise and via Teams (Draft #2)
May 3, 2024	Written Comments on Draft #2 deadline
May 16, 2024	Post Draft #3 on OGCC website
May 21, 2024	Present update on this rulemaking to the OGCC (Regular Meeting / information agenda item with Draft #3. Will accept Commission and public comment)
May 31, 2024	Written Comments on Draft #3 deadline and end of public comment period for negotiated rulemaking
July 5, 2023	Last day to submit <i>Notice of Proposed Rule</i> to the Office of the Administrative Rules Coordinator (OARC) for Bulletin publication in August

August 7, 2024	<i>Notice of Proposed Rule</i> publishes in the Idaho Administrative Bulletin and 21-day written public comment period begins
August, 2024	Hold public hearing on proposed rule (Date TBD)
August 28, 2024	End of written public comment period on proposed rule
October, 2024	Request approval from OGCC to adopt pending fee rule (Special Meeting / regular agenda item, Date TBD)
November 8, 2024	Last day to submit <i>Notice of Pending Fee Rule</i> to OARC for publication in December
December 4, 2024	<i>Notice of Pending Fee Rule</i> publishes in the Idaho Administrative Bulletin Pending fee rule to be reviewed during the 2025 legislative session

Note: All dates are subject to change.

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION
February 20, 2024
Information Agenda

SUBJECT

Presentation: Oil and gas well status in Idaho

BACKGROUND

Idaho became the 33rd oil and gas producing state when Bridge Energy drilled the ML Investments #1-10 well in Payette County in March 2010. Production from the Willow Field commenced in August 2015 when the Little Willow gathering facility and the Highway 30 processing facility were completed and commenced operations.

Drilling continues in Payette County with activity concentrated in the Harmon Field area near Fruitland. As Willow Field approaches its ninth year of production, many of the original wells are nearing depletion. The original discovery well, ML Investments #1-10, was plugged and abandoned in 2019.

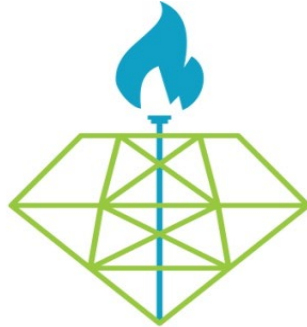
DISCUSSION

The Idaho Department of Lands (Department) will provide a brief history of the discovery and development of hydrocarbons in Western Idaho, followed by an overview of the current status of all the active well permits. Definitions and guidance summaries from the Interstate Oil and Gas Compact Commission (IOGCC) on idle and marginal wells will be discussed, and how they compare to Idaho Administrative Rule.

ATTACHMENTS

1. PowerPoint – Oil and Gas Well Status in Idaho
2. Idaho Well Status Timeline

IDAHO OIL & GAS
CONSERVATION COMMISSION



IDAHO OIL & GAS
CONSERVATION COMMISSION

OIL & GAS WELL STATUS IN IDAHO

JAMES THUM, OIL & GAS PROGRAM MANAGER

IDAHO DEPARTMENT OF LANDS

OIL & GAS CONSERVATION COMMISSION

TUESDAY, FEBRUARY 20, 2024

OIL & GAS WELL STATUS IN IDAHO – TOPICS

- **WESTERN SNAKE RIVER BASIN DRILLING HISTORY SINCE 2010**
- **CURRENT ACTIVITY**
- **INTERSTATE OIL & GAS CONSERVATION COMMISSION – IDLE, ORPHAN & MARGINAL WELLS, TERMINOLOGY**
- **IDAPA 20.07.02.010.24 and IDAPA 20.07.02.501**
- **IDAHO WELL STATUS**
- **FUTURE STATUS AND ACTIVITY**



Drilling operations at the Barlow #2-14 well, Harmon Field, October 2021.

Photo courtesy J. Thum

WESTERN SNAKE RIVER BASIN (WSRB) – DRILLING HISTORY SINCE 2010



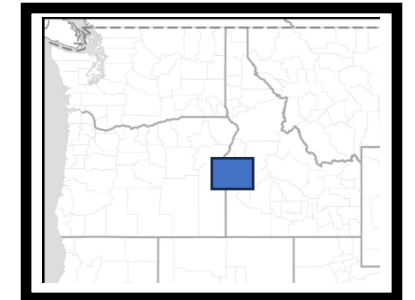
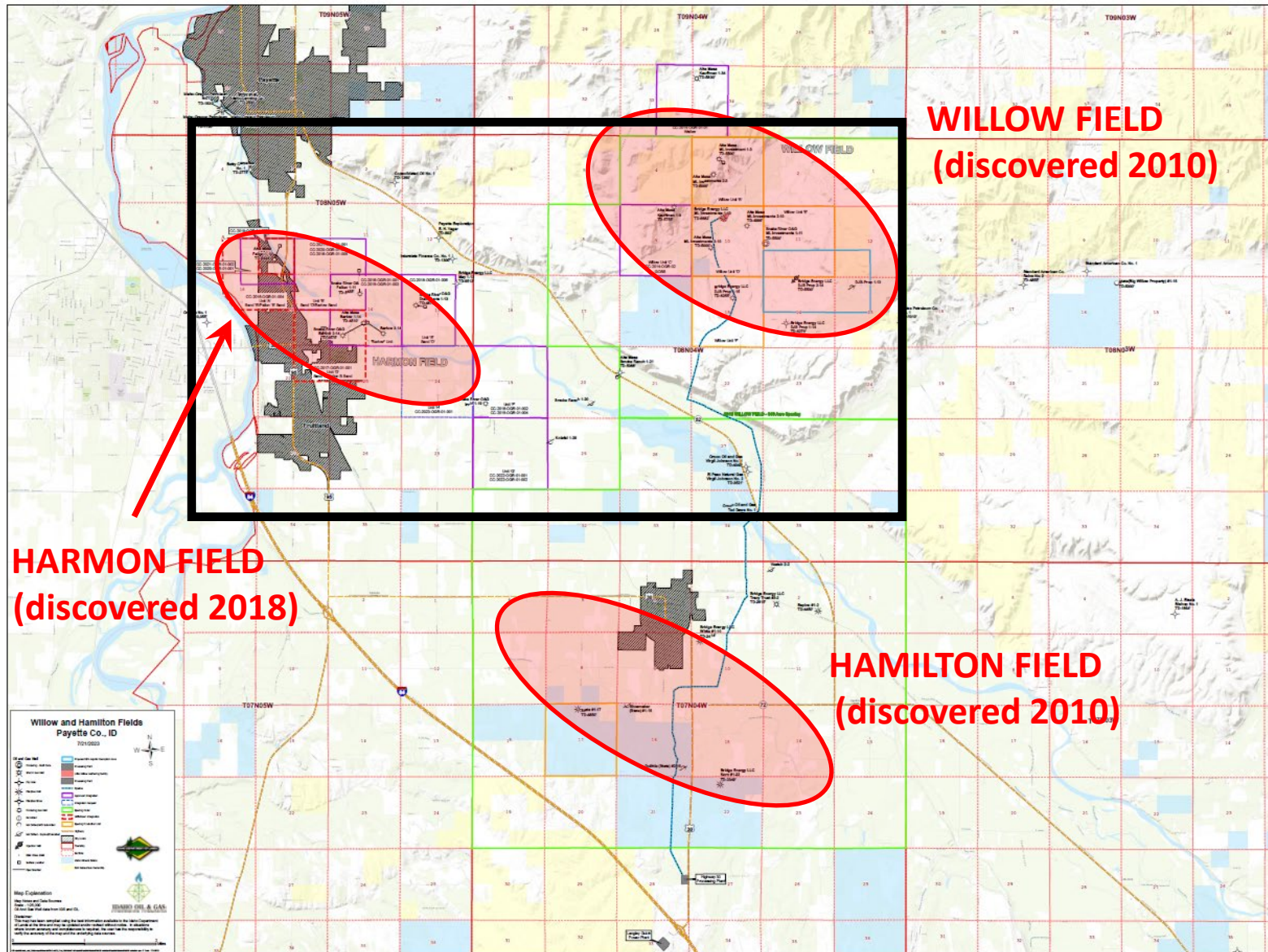
- Current drilling activity began in March 2010 by Bridge Energy with the ML Investments #1-10 discovery well for Willow Field. Ten wells were drilled by Bridge in 2010 in the Willow, Hamilton and Harmon areas. The State #1-17, discovery well for Hamilton Field, was the only well to produce from that field.
- AM Idaho drilled 6 confirmation wells in the Willow area from 2013 through 2014. Based on the results the Highway 30 processing facility and Little Willow gathering facility were constructed and brought online in August 2015. Production from Willow Field commenced at that time.
- Three additional wells were drilled from 2015 to 2018, two in the Harmon area. One well, the Barlow #1-14 resulted in the discovery of Harmon Field. No more drilling has occurred in Hamilton Field since 2010.
- Willow Field- developed from 2010 to 2017; no new drilling since 2017. 11 wells drilled during that period; 9 producing and 2 dry holes. Of 9 producing wells, only 3 are currently producing. DJS 1-15 is the only consistent producer.
- Harmon Field- developed from 2018 through the present. First production (Barlow #1-14) did not occur until December 2020 after a gathering pipeline system was completed. No new wells were drilled in 2023. Ten wells have been drilled in the field area, including the Ore-Ida #1 (dry hole) drilled in Oregon in 1979. Eight producing wells have been drilled in the field and are still productive.
- Well production to date ranges from six months to six or more years production life, 0.5 to 3.5 billion cubic feet of gas (BCFG) per well. Production is from normally pressured sandstone formations between four and six thousand feet below the ground surface. Most wells have not produced continuously due to workover operations, maintenance and infrastructure improvements.



ML Investments #1-10 well testing in February 2013. Condensate produced and sold from the test was the first documented sale of hydrocarbons in Idaho's history.

Photo courtesy B. Hatfield

WESTERN SNAKE RIVER BASIN (WSRB) – CURRENT ACTIVITY, OIL & GAS FIELDS

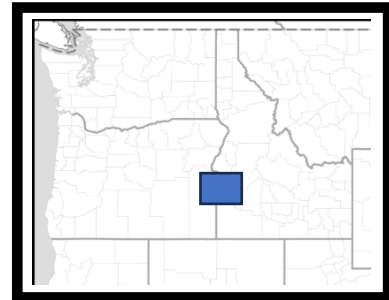


INDEX MAP

WESTERN SNAKE RIVER BASIN (WSRB) – OIL & GAS WELLS





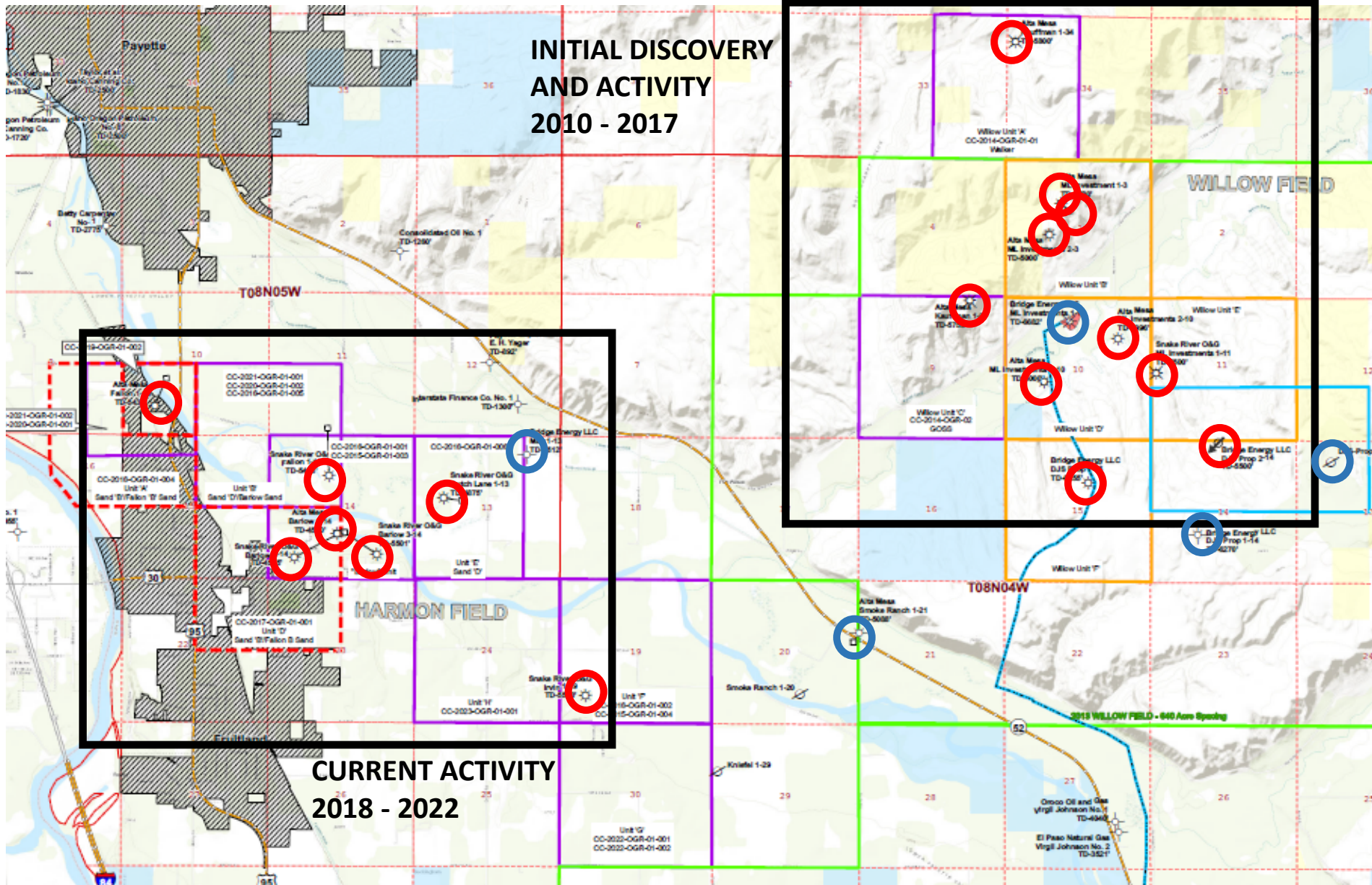
IDAHO OIL & GAS
CONSERVATION COMMISSION



INDEX MAP

KEY:

-  CURRENT WELL PERMIT
-  P&A WELL



INTERSTATE OIL & GAS CONSERVATION COMMISSION – IDLE & MARGINAL WELLS TERMINOLOGY



IDAHO OIL & GAS
CONSERVATION COMMISSION

- **IOGCC definition of “Idle well”:** (1) A well that is not producing or injecting and has received state approval to remain idle or (2) a well that is not producing or injecting, has not received state approval to remain idle, and for which the operator is known or solvent.
- **IOGCC definition of “Marginal well”:** A producing well that requires a higher price per Mcf or per barrel of oil to be worth producing, due to low production rates and/ or high production costs from its location and/or its high co-production of substances that must be separated out and disposed of. A Marginal Well becomes unprofitable to produce whenever oil and/or gas prices drop below its crucial profit point.
- In the latest IOGCC report, “Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies 2021” the total number of approved idle wells reported by states at the end of 2020 was 231,287. The reported approved idle wells ranged from less than 1 percent to 100 percent with an average of 14%. In the Canadian provinces the reported number is 140,183 with an average of 38%. This does not include wells that are not approved for idle status, nor does it include orphan wells.
- “The number of idle wells in a state or province is a concern because of the potential for the idle wells to deteriorate over time or become orphans. An even more critical is the number of idle wells held by an individual operator, especially as a percentage of the operator’s total wells that have been drilled but not plugged. A high percentage of idle wells may indicate an increased vulnerability of the state or province to the operator becoming insolvent and leaving orphan wells.”

Sources:

https://oklahoma.gov/content/dam/ok/en/iogcc/documents/publications/iogcc_idle_and_orphan_wells_2021_final_web.pdf

https://oklahoma.gov/content/dam/ok/en/iogcc/documents/publications/marginal_well_2016_-_final.pdf



DJS Properties #2-14 wellhead during November 2023 field inspection. EPA permit number ID-2D001-A issued December 19, 2022 for Class II injection operations.

Photo courtesy J. Thum

Interstate Oil & Gas Compact Commission (IOGCC) – Partial List of Publications

Idle, Orphan and Marginal Wells



IDAHO OIL & GAS
CONSERVATION COMMISSION

Idle/Orphan Wells

- [Supplemental Information on State Prioritization Systems for Orphan Wells \(2023\)](#)
- [Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies \(2021\)](#)
- [Supplemental Information to the 2019 Idle and Orphan Oil and Gas Wells Report](#)
- [Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies \(2019\)](#)
- [Transfer of Infrastructure and Liabilities - Assessment Criteria and Considerations Toolbox for State and Provincial Regulators \(2018\)](#)
- [Idle Well Toolbox for State and Provincial Regulators \(2017\)](#)
- [State Financial Assurance Requirements \(2016\)](#)
- [Protecting Our Country's Resources: The States' Case \(2008\)](#)
- [Produce or Plug? A Study of Idle Oil and Gas Wells \(2000\)](#)
- [Produce or Plug The Dilemma over the Nation's Idle Oil and Gas Wells \(1996\)](#)
- [A Study of Idle Oil and Gas Wells in the United States \(1992\)](#)

Marginal Wells

- [Marginal Well Report \(2016\)](#)
Data from 2016
- [Marginal Well Report \(2015\)](#)
Data from 2013, 2014, and 2015
- [Marginal Well Report \(2012\)](#)
Data from 2010, 2011, and 2012
- [Marginal Well Report \(2010\)](#)
Data from 2009
- [Marginal Well Report \(2009\)](#)
Data from 2008
- [Marginal Well Report \(2008\)](#)
Data from 2007
- [Marginal Well Report \(2007\)](#)
Data from 2006
- [Marginal Well Report \(2006\)](#)
Data from 2005
- [Marginal Well Report \(2005\)](#)
Data from 2004
- [Marginal Well Report \(2004\)](#)
Data from 2003
- [Marginal Well Report \(2003\)](#)
Data from 2002
- [Marginal Well Report \(2002\)](#)
Data from 2001

[Back to Top](#) ^

Source: <https://oklahoma.gov/iogcc/publications.html>

IDAPA 20.07.02.010.24 AND IDAPA 20.07.02.501

- **IDAPA 20.07.02.010.24** Inactive well definition: “An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted.”
- IDAPA does not specifically define “Idle well.”
- **IDAPA 20.07.02.501** Inactive Wells “01. Determination of Inactive Status. The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission.”
- Administrative Rule defines specific requirements for a well to remain in Inactive status and defines a path for an Operator to return a well to Active status for production or other operations if desired.



DJS Properties #2-14 wellhead during November 2023 field inspection. EPA permit number ID-2D001-A issued December 19, 2022.

Photo courtesy J. Thum

Source: <https://adminrules.idaho.gov/rules/current/20/200702.pdf>

WESTERN SNAKE RIVER BASIN (WSRB) – OIL & GAS WELL STATUS



IDAHO OIL & GAS
CONSERVATION COMMISSION

<i>No.</i>	<i>US Well Number</i>	<i>Operator</i>	<i>Well Name</i>	<i>Status</i>
1	11-075-20011	Snake River O&G	Tracy Trust #3-2	Shut in; pending P&A
2	11-075-20020	Snake River O&G	DJS Properties #1-15	Producing
3	11-075-20022	Snake River O&G	ML Investments #2-10	Producing
4	11-075-20023	Snake River O&G	DJS Properties #2-14	Shut in (Class II UIC)
5	11-075-20024	Snake River O&G	Kauffman #1-34	Shut In
6	11-075-20025	Snake River O&G	ML Investments #1-11	Inactive /Shut in
7	11-075-20026	Snake River O&G	ML Investments #1-3	Shut in
8	11-075-20027	Snake River O&G	Kauffman #1-9	Inactive /Shut in
9	11-075-20029	Snake River O&G	ML Investments #2-3	Shut in
10	11-075-20031	Snake River O&G	ML Investments #3-10	Producing
11	11-075-20032	Snake River O&G	Fallon #1-10	Producing
12	11-075-20033	Snake River O&G	Barlow #1-14	Producing
13	11-075-20036	Snake River O&G	Barlow #2-14	Producing
14	11-075-20037	Snake River O&G	Fallon #1-11	Producing
15	11-075-20038	Snake River O&G	Dutch-Lane #1-13	Producing
16	11-075-20039	Snake River O&G	Irvin #1-19	Producing
17	11-075-20040	Snake River O&G	Barlow #3-14	Producing

CURRENT WELL STATUS AS OF DECEMBER 31, 2023:

17 TOTAL WELL PERMITS
10 PRODUCING WELLS
5 SHUT-IN / ACTIVE WELLS
2 SHUT-IN / INACTIVE WELLS
(41% OF WELLS NOT PRODUCING)
AVERAGE DAILY PRODUCTION:
9.0 MMCFG, 120 BC, 31 BW

Questions & Comments?

James Thum, Oil & Gas Program Manager
Division of Minerals, Navigable Waters, Oil & Gas
Idaho Department of Lands
Phone: (208) 334-0243
Email: jthum@idl.idaho.gov

More Information:

<https://ogcc.idaho.gov/>



Kauffman #1-9 commencement of workover operations, October 2023.

Photo courtesy J. Thum

At the IDAHO OIL AND GAS CONSERVATION COMMISSION
February 20, 2024
Information Agenda

SUBJECT

Update: Meeting Minutes and the Official Record

BACKGROUND

This presentation provides an overview of the statutory requirements for the production of meeting minutes, and the creation of the official agency record for judicial review.

DISCUSSION

Idaho's Open Meetings Law and the Administrative Procedures Act prescribe the requirements for meeting minutes and the official agency record. The Open Meetings Law requires written minutes to be produced for all Commission meetings. Minutes differ from the official agency record, which is controlled by the Administrative Procedures Act. Statutory requirements for the official agency record depend on whether the action being challenged is a rule, an order, or some other agency action.

ATTACHMENT

1. PowerPoint - Meeting Minutes and the Official Record

IDAHO OIL & GAS
CONSERVATION COMMISSION

Meeting Minutes and the Official Record

Hayden Marotz
Deputy Attorney General

1

Minutes Requirement

- Idaho's Open Meetings Law requires the preparation of "written minutes of all . . . meetings"
- "Neither a full transcript nor a recording of the meeting is required, *except as otherwise provided by law.*"
- Minutes must be available to the public "within a reasonable time after the meeting"
 - Idaho Code § 74-205(1).

2

What must minutes include?

- At a minimum, meeting minutes must include –
 - The members of the Commission present;
 - All motions, resolutions, orders, and ordinances proposed and their disposition; and
 - The result of all votes and, if a Commissioner requests, votes on a matter listed by name.
 - Idaho Code § 74-205(1)(a) – (c)
- If the Commission votes to enter executive session, minutes must include –
 - The specific statutory subsection authorizing the executive session, and
 - Sufficient detail to identify the purpose and topic of the executive session
 - Does not have to be so detailed that it compromises the purpose going into executive session.
 - Idaho Code § 74-205(2)

3

The Official Record

- The Idaho Administrative Procedure Act (“APA”) contains substantive requirements for the official agency record.
- What must be included in the record varies based on the type of agency action being reviewed
 - Aggrieved parties may seek review of a Rule, and Order (following a contested case), or other agency action that does not fall into these categories (rare)
 - Idaho Code § 67-5275
- An original or certified copy of the agency record must be filed with a reviewing court within 42 days of a service of the petition for judicial review.

4

The Official Record – Rules

- For judicial review of an agency rulemaking, the official record “shall consist of”
 - All publications made in the Idaho Administrative Bulletin about the rule;
 - All written petitions, submissions, and comments received by the agency and the agency's response to those petitions, submissions, and comments;
 - All written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule;
 - A record of any oral presentations, any transcriptions of oral presentations, and any memorandum prepared by a presiding officer summarizing the contents of the presentations;
 - Any other materials or documents prepared in conjunction with the rulemaking.
- Idaho Code § 67-5225(2)

5

The Official Record – Orders

- Any proceeding which results in the issuance of an order is a contested case.
 - Idaho Code § 67-5240.
- All orders must contain
 - “A reasoned statement in support of the decision,” and
 - Findings of fact, supported by a “concise and explicit statement” of the facts in the record forming the basis of the findings.
- Idaho Code § 67-5248(1)

6

The Official Record – Orders

- For judicial review of an agency's order, the official record "shall consist of"
 - all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
 - evidence received or considered;
 - a statement of matters officially noticed;
 - offers of proof and objections and rulings thereon;
 - the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
 - staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
 - any recommended order, preliminary order, final order, or order on reconsideration.
- Idaho Code § 67-5249(2).

7

The Official Record – Orders

- The presiding officer must arrange for a contested case hearing to be recorded at the agency's expense.
- Any party to that hearing may, at their own expense, have a transcript prepared from this recording.
- Any party may also have their own recording made, so long as producing that recording does not cause a "distraction or disruption"
- Idaho Code § 67-5242(3)(d)

8

The Official Record – Other Actions

- When a challenged action is neither a rule nor an order, the official record must consist of “any agency documents expressing the agency action”
 - I.C. § 67-5275(1)(c).
- What constitutes “agency documents expressing the agency action” will be context dependent.
 - By the time a petition for review is filed, I will be providing advice to the Commission as needed to define the scope of the record.

9

Official Records – A Note on Recordings

- In addition to the mandatory recording requirement for contested cases, Idaho Code § 67-5222(3) provides that by July 1, 2026, “all agencies must post a video or audio recording of any . . . Public hearing on a rule within fifteen (15) days after the meeting.”

10

Summary

- Written minutes are required for all meetings.
- The official agency record varies by the type of Commission action being taken
 - Rulemaking
 - Contested Case
 - Other actions
- All contested case proceedings must be recorded
- All public hearings on a rulemaking must be recorded by July 1, 2026

IDAHO OIL AND GAS CONSERVATION COMMISSION
February 20, 2024
Information Agenda

SUBJECT

Update: CAIA vs Miller

BACKGROUND

As part of the litigation in *CAIA v. Miller*, 1:21-cv-00367-DCN (D. Idaho 2021), the District Court awarded costs to the Oil and Gas Conservation Commission (Commission). This information item provides an update on that award.

DISCUSSION

Following the conclusion of litigation in *CAIA v. Miller*, the Commission filed a “bill of costs” (Attachment 1) with the District Court, seeking reimbursement of \$1,430.10 in deposition costs. The Court did not award costs for a matter of months, apparently due to confusion in its order denying attorney fees. However, in November of 2023, the Court issued an amended order (Attachments 2 and 3), clarifying language in its order and subsequently awarding the Commission costs. Our office has been in touch with CAIA’s attorney to facilitate payment of those costs. CAIA’s attorney has been directed to make the check payable to IDL, c/o Deputy Director Bill Haagenson.

ATTACHMENTS

1. Signed Bill of Costs
2. Amended Memorandum Decision and Order
3. Docket Entry Order

IDAHO OIL & GAS
CONSERVATION COMMISSION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Citizens Allied for Integrity and

v

Dustin Miller, et al.

BILL OF COSTS

Case # 1:21-cv-00367-DCN

Judgment having been entered in the above entitled action on 3/20/2023 against Plaintiffs

the Clerk is requested to tax the following as costs:

1. Clerks and Service Fees - removal fees, filing fees. The cost of private process servers is NOT ALLOWED. Only Marshal's service fees allowed.	
2. Trial Transcripts - furnished upon request of court, or prepared pursuant to stipulation	
3. Deposition Costs - original of noticing party and prevailing party's copy of depositions used in the case; reasonable fees of notary and deposition reporter of noticing party; video depositions costs. Deposition summaries or counsel's fees NOT ALLOWED	1,430.10
4. Witness Fees - at statutory rate (28 USC § 1821). Mileage outside the district limited to 100 miles each way absent prior court order. Expert witness fees at the same rate as other witness fees. Complete the worksheet on the reverse of this form, and enter the total here.	
5. Copies of Papers and Exhibits - Cost of exhibits attached to documents required to be filed and served; exemplification fees; copies of preparing clerks record on appeal. Copies of motions, pleadings and other routine case papers NOT ALLOWED.	
6. Maps, Charts, Models, Photographs, Computations and Summaries - Reasonable costs if admitted into evidence. NO enlargements great than 8" x 10" allowed unless approved by the court. NO models allowed absent an order of the court. Cost of compiling summaries, computations and statistical comparisons is NOT TAXABLE.	
7. Interpreter and Translator Fees - reasonable fees of interpreter allowed if the fee of witness is taxable. Translator fee allowed if document is necessarily filed or admitted in evidence.	
8. Docket Fees - Docket fees pursuant to 28 U.S.C. § 1923	
Attach to your to cost bill an itemization and documentation for requested costs in all categories.	TOTAL 1,430.10

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed to:

james@idunionlaw.com,

Signature of Attorney: *Kristina Fugate* Name of Attorney: Kristina N. Fugate

For: Defendants Miller, Coppersmith, Classen, Date: 4/3/2023

Name of Claiming Party

COSTS ARE TAXED IN THE AMOUNT OF \$1430.10 AND INCLUDED IN THE JUDGMENT.

Clerk of Court By: *P. Richmond* Date: 11/15/2023
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CITIZENS ALLIED FOR INTEGRITY
AND ACCOUNTABILITY, INC. et al.,

Plaintiffs,

v.

MILLER et al.,

Defendants.

Case No. 1:21-cv-00367-DCN

**AMENDED¹ MEMORANDUM
DECISION AND ORDER**

I. INTRODUCTION

Before the Court are two motions for attorney’s fees. Both the State Defendants (Dkt. 39) and the Intervenor–Defendant (“Snake River”) (Dkt. 42) have filed separate motions asking the Court to award them attorney’s fees. For the reasons below, both motions are DENIED.

II. BACKGROUND

On August 5, 2016, the State Defendants issued a mineral integration order allowing Snake River’s predecessor to sink a well on properties near Fruitland, Idaho, including Plaintiffs’ properties. Dkt. 1. These integrated properties became known as Section 14 and the well as Barlow 1-14; some of the property owners (“Leased Plaintiffs”) signed a lease with Snake River while other property owners refused. *Id.* On June 26, 2020, Snake River

¹ The only change in this document is the final line of the Court’s order which previously stated: “Each party will bear its own costs.” As amended, this line now reads: “Each party will bear its own attorney’s fees.” The Court’s inadvertent use of “costs” instead of “fees” recently caused confusion as it relates to the Bills of Costs filed by Defendants and Interveners. *See* Dkts. 40, 41.

applied with the State Defendants to sink another well, Barlow 2-14, in Section 14 and the Plaintiffs again objected. *Id.* This time, Plaintiffs contended that to sink a new well, a new integration order would be required. They argued that the prior 2016 order allowed for the sinking of “a well,” not multiple wells. Dkt. 34 at 1. A new integration order would have significant consequences for Snake River, as a 2018 case had heightened the standard of due process required for these orders. *See Citizens Allied for Integrity and Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216, 1228 (D. Idaho 2018). Plaintiffs argued that the 2016 integration process was constitutionally deficient because it fell below the standard required by *Schultz* and allowing a new well was a continuing harm that reset the statute of limitations. *See id.*; Dkt. 34 at 3.

The State Defendants ratified the sinking of a new well over Plaintiffs’ objections and the Plaintiffs filed suit on September 13, 2021. Dkt. 1. Then, on December 17, 2021, Snake River moved to join the case as an intervenor–defendant, alleging that it could provide additional needed insight. Dkt. 10. The Court granted the intervention over Plaintiffs’ objections (Dkt. 20), and Plaintiffs, Snake River, and the State Defendants all moved for summary judgement on August 12, 2022 (Dkts. 24–26). The Court granted Snake River and the State Defendants’ motions and denied Plaintiffs’ motion on the basis that the statute of limitations had run and that the 2020 decision to allow the Barlow 2-14 well to be sunk was simply an administrative clarification rather than a new integration order. Dkt. 37. Being the prevailing parties, Snake River and the State Defendants now ask for an award of attorney’s fees. Dkts. 39, 42.

III. LEGAL STANDARD

Attorney's fees may be awarded to a prevailing defendant. Fed. R. Civ. P. 54(d)(1); Dist. Idaho Loc. Civ. R. 54.2; 42 U.S.C. § 1988(b). The Court has discretion in determining whether to award attorney's fees. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). "Attorney's fees in civil rights cases should only be awarded to a defendant in exceptional circumstances." *Barry v. Fowler*, 902 F.2d 770 (9th Cir. 1990).

IV. DISCUSSION

Attorney's fees should be awarded only if an action was "wholly without merit." *Galen v. Cty. of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007); *see also Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978) (stating that attorney's fees should not be assessed unless the plaintiff's complaint was "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so," or "brought or continued such a claim in bad faith").

A. State Defendants' Motion

Losing a case "at summary judgment does not make that case per se frivolous, unreasonable, or without foundation." *Galen*, 477 F.3d at 667. "When the law or the facts appear questionable or unfavorable at the outset, a party may [still] have an entirely reasonable ground for bringing suit." *Christiansburg Garment*, 434 U.S. at 422. Even when the law has been clearly established in the Supreme Court and other courts of appeal, if a party raises it for the first time in another court, such an "argument cannot be characterized as wholly without merit." *Taylor AG Indus. v. Pure-Gro*, 54 F.3d 555, 563 (9th Cir. 1995) (cleaned up).

Here, the Court granted State Defendants and Snake River summary judgment, so they are eligible for attorney's fees. Dkt. 42-1, at 2. It remains, however, within the Court's discretion to award them, and here, the Court is not persuaded that Plaintiff's claims were so frivolous, unreasonable, or groundless that fee-shifting is warranted. Hindsight being what it is, the legal issues resolved at summary judgment might seem obvious or settled from today's vantage point. But it was not clear from the outset that the 2021 administrative decision concerning Barlow 2-14 was a necessary byproduct of the 2016 integration order—and so whether the statute of limitations had run. Further, the Ninth Circuit caselaw on continuing violations is complex enough that Plaintiffs could argue about it in good faith. Thus, the question of whether the continuing violations doctrine applied was not frivolous, unreasonable, or groundless.

The Leased Plaintiffs' claims were not wholly frivolous either. Though they had signed a lease with Snake River, and so necessarily had fewer arguments, their remaining arguments were not completely baseless. Again, these issues were not clear at the outset, and the Leased Plaintiffs promptly abandoned those claims that became untenable. *See* Dkt. 42-1, at 7–8.

For these reasons the Court DENIES the State Defendants' Motion. The Court need not determine whether the attorney's fees were reasonable as no fees are being awarded.

B. Snake River's Motion

“Awards to intervenors should not be granted unless the intervenor plays a significant role in the litigation.” *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1535 (9th Cir. 1985). If the “intervenor contributed little or nothing of substance in producing

that outcome,” or if the objective would be achieved without their participation, “then fees should not be awarded.” *See Donnell v. United States*, 682 F.2d 240, 247–48 (D.C. Cir. 1982).

Here, Snake River was not a party to this case until it moved to intervene. Dkt. 10. Plaintiffs opposed the intervention. Dkt. 18. Once brought into the case, Snake River contributed a fraction of the resources the State Defendants did. *See* Dkts. 39-1, 42-1 (contrasting the State Defendants’ billable hours of 867.8 with Snake River’s hours of 129.15). And its briefing on the various motions for summary judgment was largely duplicative of the State Defendants’ motions and briefs. Thus, the Court finds that Snake River’s contribution to the litigation was not significant enough to warrant a fee award.

Further, by seeking to intervene over Plaintiffs’ objections, Snake River brought the cost of attorney’s fees on itself. Dkt. 10-1. Snake River cannot have it both ways: either the legal and factual issues were so complex that it needed to intervene to “offer a necessary perspective to the litigation,” (Dkt. 10) or the issues were so simple and obvious that it was frivolous for the Plaintiffs to bring suit at all. Because the Court granted Snake River’s Motion to Intervene, it will hold Snake River to the first position.

For these reasons, as well as the reasons stated above regarding the State Defendants, the Court will DENY Snake River’s Motion.

V. CONCLUSION

Because it was not clear at the outset whether the 2021 administrative decision was an inevitable byproduct of the 2016 integration order, it was not obvious whether Plaintiff’s claims were time barred, and so their arguments were not wholly without merit. Further,

even if Plaintiff's claims were wholly without merit, in order for Snake River to receive attorney's fees they must show that they contributed significantly to the litigation. Snake River did not. For these reasons, the Court DENIES both motions for attorney's fees.

VI. ORDER

The Court HEREBY ORDERS:

1. The State Defendants' Motion (Dkt. 39) is DENIED.
2. Snake River's Motion (Dkt. 42) is DENIED.
3. Each party will bear its own attorney's fees.²



DATED: November 14, 2023

A handwritten signature in black ink, appearing to read "David C. Nye".

David C. Nye
Chief U.S. District Court Judge

² Costs will be decided separately.

From: ecf@id.uscourts.gov
To: CourtMail@idd.uscourts.gov
Subject: Activity in Case 1:21-cv-00367-DCN Citizens Allied for Integrity and Accountability, Inc. et al v. Miller et al
Date: Wednesday, November 15, 2023 11:04:17 AM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Idaho (LIVE) NextGen 1.7

Notice of Electronic Filing

The following transaction was entered on 11/15/2023 at 11:02 AM MST and filed on 11/15/2023

Case Name: Citizens Allied for Integrity and Accountability, Inc. et al v. Miller et al

Case Number: [1:21-cv-00367-DCN](#)

Filer:

WARNING: CASE CLOSED on 03/20/2023

Document Number: 51(No document attached)

Docket Text:

DOCKET ENTRY ORDER. The Court recently amended its prior order regarding attorney fees. Dkt. [49]. It also approved certain Defendants' Bill of Costs (Dkt. [40]). Dkt. [50]. The Court cannot approve the remaining Defendants' Bill of Costs (Dkt. [41]), however, because it is not properly supported. See Dist. Idaho Loc. Civ. R. 54.1(a)(1)(B). Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (bb)

1:21-cv-00367-DCN Notice has been electronically mailed to:

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1:21-cv-00367-DCN Notice will be served by other means to:



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CONSERVATION COMMISSION