



IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chair  
Ray Hinchcliff, Vice Chair  
Jim Classen, Commissioner  
Dustin Miller, Commissioner  
Jennifer Riebe, Commissioner

Mick Thomas, Secretary to the Commission

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Final Minutes  
Idaho Oil and Gas Conservation Commission Regular Meeting  
May 19, 2022

The regular meeting of the Idaho Oil and Gas Conservation Commission was held on Thursday, May 19, 2022, with the physical location at State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise, Idaho. There was also a teleconference option. The meeting began at 1:32 p.m. (MT). Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Ray Hinchcliff  
Commissioner Jim Classen  
Commissioner Dustin Miller  
Commissioner Jennifer Riebe

For the record, a quorum was in attendance; Chairman Coppersmith, Vice Chairman Hinchcliff, Commissioner Classen, Commissioner Riebe, and Secretary Thomas were present at the physical location. Commissioner Miller called in via teleconference.

• **ANNOUNCEMENTS**

Chairman Coppersmith welcomed new Commissioner Jennifer Riebe to the Commission and went over the agenda items.

**1. Division Administrator's Report**

- A. Financial Update
- B. Current Oil and Gas Activity

Chairman Coppersmith inquired about the three drilled wells that are confidential and if they were in production. Secretary Thomas explained that information was confidential and cannot be shared publicly; he added that there is a six-month delay from when the well first comes on from when that information is released.

Vice Chairman Hinchcliff asked for an update on the Class II application. Secretary Thomas announced that the Environmental Protection Agency (EPA) comment period ended at the end of March and that the Department did provide technical comments on the application. The Department, specifically James Thum, Program Specialist, worked closely with the Ground Water Protection Council which is affiliated with the Interstate Oil and Gas Compact Commission, to provide comments which are being evaluated. Secretary Thomas stated that his understanding is that the EPA is evaluating each comment provided and is responding individually to each

comment that is submitted. Secretary Thomas explained that he does not have a timeline and does not know when the comments will be finalized and when the EPA will issue their final decision. He stated that pending approval, there will be additional testing that will be needed for the well before they can inject. Commissioner Classen responded that would take a day to perform that operation. Secretary Thomas agreed.

- **CONSENT – ACTION ITEM(S)**

2. **Approval of Minutes – February 15, 2022 – Regular Meeting (Boise)**

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

3. **Approval of Minutes – April 12, 2022 – Special Meeting (Boise)**

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

- **REGULAR – ACTION ITEM(S)**

4. **Proposed Legislation for Title 47, Chapter 3, Idaho Code for the 2023 Legislative Session – Presented by Mick Thomas, Division Administrator – Minerals, Navigable Waters, and Oil & Gas**

*RECOMMENDATION:* Approve draft six as the final draft legislation to be submitted to DFM for the 2023 legislative session.

*DISCUSSION:* Chairman Coppersmith called up those that signed up to provide public comment. JoAnn Higby provided comments in person at the meeting and Michael Christian stated over the phone that he did not have any further comments.

The audio recording of this agenda item is available by request to the Department of Lands, Attn: Oil and Gas Commission Recording Secretary, PO Box 83720, Boise, Idaho 83720-0050 or by email to [public\\_records\\_request@idl.idaho.gov](mailto:public_records_request@idl.idaho.gov).

*[Editor's note: Due to duration, parts of the Discussion portion of these minutes are written in first person format. These are not verbatim notes.]*

**Commissioner Classen:** I remain concerned that our Commission, with the majority of industry expertise, has no inputs in generating the final orders affecting the industry here in Idaho. Only if an applicant appeals an order, does the Commission have a chance for input. And that doesn't allow for any new information or questions in their appellate role. A little background, the Commission was formed by statutes in 2013 by the legislators. By statute, the Commissioners were comprised of a groundwater geologist, a petroleum geologist, an oil and gas company employee, a mineral interest owner, and a non-mineral interest owner. Now, if you're a mineral interest owner on the Oil and Gas Commission, that sets a potential conflict of interest situation. They could recuse themselves from

the voting on an order or a change, but it sets up an uncomfortable relationship by having someone who is financially involved with decision making by the Commission. The statutes were sourced from Wyoming and Utah statutes for an oil and gas commission. The commission held the hearings and wrote the decision orders. If an applicant wanted to appeal the order, it was processed in federal or district courts. The decisions made and orders written were not always well-received under this structure. I was a Commissioner, and I was not always happy with the outcomes. The lack of transparency by the operator, then Alta Mesa, and the mineral interest owners' dissatisfaction, prompted the legislators to craft a new set of statutes for the Oil and Gas Commission in 2017 and which are in effect today. They beefed up the requirements for being on the Commission. The current Commission requirements include a county commissioner in the active exploration area, the Director of IDL, and three geoscience or engineering graduates with 10 or more years of industry experience. It was never considered that because of the open meeting rules, the industry-experienced commissioners would have zero input in generating orders being decided. I've worked in at least seven oil and gas producing states and they all have commissions that decide the final orders. They all rely on court procedures in case of an appeal. Currently, a hearing officer manages the hearings and writes the order. If the order is appealed, the Commission acts as an appeals court, but we can't ask questions or seek new information to aid in our review. We can only either approve or disapprove the order. After the Commission's February meeting, I sent a memo to our Secretary suggesting that the hearing officer should recommend their order to the Commission and publish at least 10 days prior to the next Commission meeting. This would allow for a timely review of the order details by the Commission members, and others. Any needed inputs could be requested by the Commissioners. At the next Commission meeting, the applicant and/or our staff could elect to present up to five minutes of comments for additional consideration. The Commission then accepts or modifies the order for final approval. At the time, these ideas could not be presented to all Commissioners because of the open meeting rules. We are forbidden to contact more than one Commissioner, and you can't do that four different times, because that's a no-no for open meeting rules. If there are three of us, it's a quorum. The memo wasn't included in public records for review or consideration either. The procedure would not have the Commission holding hearings. The hearings, held for whatever reason, would be managed by our staff just as they are today. The recommended process would give the applicant and the Commissioners an opportunity to suggest any changes, if needed, to comply with industry standards before the order was finalized. What Idaho has set up here is not being done by any other oil and gas commission that I know of. I feel strongly that this process needs to be changed to allow for Commissioners' input to the final orders. I can't explain this any clearer in my opinion. We have made a mistake by not having our Commission authorize and submit the final orders in my opinion.

**Chairman Coppersmith:** Thank you, Commissioner Classen. Before I make any comments, I'd like to turn it over to the other Commissioners that may have any comments. Commissioner Miller who is on the phone.

**Commissioner Miller:** Thank you, Madam Chair. I don't have any additional comments than what we've discussed in the past. I could kind of hear Commissioner Classen, his concerns with certain parts of this; certainly respect that. Right now, I'm good with the draft as written and I don't have any additional comments. I appreciate the work of Administrator Thomas and his staff working through this with us. Thank you, Madam Chair.

**Chairman Coppersmith:** Thank you, Commissioner Miller. Commissioner Hinchcliff, do you have any additional comments?

**Vice Chairman Hinchcliff:** I look back on the previous 47-3 and the work that's been done today, and I think this is a dramatic improvement over the original, or over the current code that we have. I think it provides the necessary language in here that provides protection for both the mineral interest owners and gives the operator flexibility to make recommendations for applications to drill wells that would result in recovery of the minerals that are benefit both to the landowner and the State. I think it's been a major improvement and I am all for it right now. I understand Commissioner Classen's concern, but I think at this time I would be in favor of keeping the structure the way it is and going with the revised text of Draft 6. I believe that in the event that oil and gas industry in this state ever expands to a point where it is needed to maybe fall in line with what Commissioner Classen has recommended, then this can always be altered at that time. I think we're fine for the level of activity that we have in this state and I'm in favor of adopting the Draft 6 as is written.

**Chairman Coppersmith:** Thank you, Commissioner Hinchcliff. Commissioner Riebe, I know this is all pretty new for you, but wanted to give you an opportunity to have any comments or questions that you may have.

**Commissioner Riebe:** I don't have the benefit of history with previous drafts or how this came to be, but I guess I am curious after hearing those comments, what would be downside of taking that approach?

**Chairman Coppersmith:** Would you like me to take that, Administrator Thomas? Okay. Well, there are a couple of things. One conversation that was had that you weren't able to be a part of because it was earlier this year was, what would that mean, as far as the Commission taking additional technical oversight, and we had a pretty detailed discussion about resources, and what would be the difference with what the Commission does versus what the Division does and the technical oversight that they provide. And it was a significant amount of time. So that was one consideration. The other thing that is weighing heavily in my mind is one of the changes that we did make was on the makeup of the Commission. We did come to consensus on that we're only going to be requiring at least two members that have an oil and gas background. So, the fact that we're saying, maybe the Commission should have greater technical oversight, but we're essentially reducing the required number of technical experts. Those two things are in contrast to me. Just based on my experience, being on this Commission since 2019, we've had one vacancy, and then I know we're trying to fill Commissioner Classen's spot, and we're not having any success with finding technical experts. So along with the public comments that they would like to see more of flexibility in the makeup of the Commission and who those people are, along with that fact that we just don't have a huge pool of technical industry experts here in the state, makes me lean more towards the option that we currently have, which is the less technical oversight, although I appreciate Commissioner Classen's passion around it and I think if we had a bigger industry, a bigger pool, we would consider that a lot more heavily. So that's kind of where I'm landing. I know that was a long roundabout answer to your question. Any other comments, Administrator Thomas?

**Secretary Thomas:** Chairman, thank you very much. I don't have any additional comments at this time. Of course, I'm happy to answer any questions you may have, but no additional comments.

**Chairman Coppersmith:** All right. Based on what we've heard, would anybody like to entertain a motion?

**Commissioner Riebe:** Could I make one more comment?

**Chairman Coppersmith:** Yes, go ahead, Commissioner Riebe.

**Commissioner Riebe:** I don't have the background on all of this, but just in reading through, there were a couple of things that I think just editorially could or should be changed, if I could mention those.

**Chairman Coppersmith:** Okay, please go ahead.

**Commissioner Riebe:** The first was in 47-310, all the way down to 14, Natural Gas Liquids, which just has a sentence in here that's redundant, "liquids consist of varying proportions of butane, propane, pentane and heavier fractions, with little or no methane or ethane" and that is repeated in that section that's added, so I would just strike that sentence.

**Secretary Thomas:** Chairman, Commissioner Riebe, apologies, I was flipping pages, can you tell me again which section that was?

**Commissioner Riebe:** It's under Definitions, and it's hard to tell what number this is, but I believe it's...the four is struck out so I suppose it's 18, under Natural Gas Liquids.

**Commissioner Classen:** What page, please?

**Commissioner Riebe:** It's on page 3, sorry.

**Vice Chairman Hinchcliff:** It's about halfway down the page.

**Commissioner Riebe:** Yea, and then that sentence is basically repeated in the part that's been added. Personally myself, I would just strike the sentence because it is already stated in the added portion.

**Chairman Coppersmith:** Yea, I'm following you, Commissioner Riebe. There's a sentence, it's the second sentence in says, "The liquids consist of varying proportions of butane, propane..." etc. and then two sentences after that it says, "Natural gas liquids include propane, butane, pentane, hexane and heptane..."

**Secretary Thomas:** Oh, I see.

**Commissioner Riebe:** It's redundant.

**Chairman Coppersmith:** And that would not change the intent, I don't believe, of the definition.

**Commissioner Riebe:** Right.

**Secretary Thomas:** Right. And, Commissioner Riebe, you just actually brought up a very valid point, and that is, Commission, as you evaluate whether to approve this or not, I would recommend that if you choose to approve it, that you say, for example, we choose to approve this wording while allowing for, whatever you want to say, grammatical improvements or something like that, to the text, rather than saying as is because if you allow some sort of grammatical improvements then you allow us and DFM to go in and find those little nuances that don't do anything to change the intent of the statute, but can still tweak the readability in the positive sense. So just remember that in your motion.

**Chairman Coppersmith:** Great; thank you. Was there another one?

**Commissioner Riebe:** Yep, very minor. In 47-317 Spacing Units, on page 11, number 4 'An operator may request *an amendment, or to amend...*'

**Vice Chairman Hinchcliff:** I caught that also.

**Commissioner Riebe:** And there's another one in number (5).

**Vice Chairman Hinchcliff:** Right. Basically, when you changed it from "change" to "amend" the grammar doesn't work.

**Chairman Coppersmith:** It needs to be changed from "a" to "an."

**Secretary Thomas:** Chairman and Commissioner, I appreciate that. Remember, I was raised in southwest Missouri, so there's a certain amount of forgiveness you're going to have to give me here, I appreciate this input, we'll make the corrections as needed.

**Chairman Coppersmith:** Thank you, Commissioner Riebe, I really appreciate that you were able to read through this in a very short period of time. Comments are very much appreciated. With that, would anyone like to entertain a motion?

**Commissioner Classen:** I'd like to make one more comment, Chair.

**Chairman Coppersmith:** Go ahead, Commissioner Classen.

**Commissioner Classen:** The Commission has spent many, many hours going over all of these changes, and changes were not taken lightly, and I'm in favor of these other changes, but I reserve the right to agree to disagree. I assume this will be a roll call vote.

**Chairman Coppersmith:** We can certainly make it a roll call vote.

**Commissioner Riebe:** One more question. Is this something that can be revisited periodically? How often do these get reviewed, statutory changes?

**Chairman Coppersmith:** Administrator Thomas, I think the last revision to code was...

**Commissioner Classen:** 2017.

