

IDAHO OIL AND GAS CONSERVATION COMMISSION OPEN MEETING CHECKLIST

FOR MEETING DATE: August 16, 2022

Regular Meetings

8/2/22	Notice of Meeting posted in prominent place in IDL's Boise Headquarters office five (5) or more calendar days before meeting.
8/2/22	Notice of Meeting posted in prominent place in IDL's Coeur d'Alene Headquarters office five (5) or more calendar days before meeting.
8/2/22	Notice of Meeting posted in prominent place at meeting location five (5) or more calendar days before meeting.
8/2/22	Notice of Meeting published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
8/2/22	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.
8/2/22	Notice of Meeting posted electronically on the OGCC public website https://ogcc.idaho.gov/ five (5) or more calendar days before meeting.
8/11/22	Agenda posted in prominent place in IDL's Boise Headquarters office forty-eight (48) hours before meeting.
8/11/22	Agenda posted in prominent place in IDL's Coeur d'Alene Headquarters office forty-eight (48) hours before meeting.
8/11/22	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
8/11/22	Agenda published on Townhall Idaho website https://townhall.idaho.gov forty-eight (48) hours before meeting.
8/11/22	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
8/11/22	Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ forty-eight (48) hours before meeting.
12/16/21	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA
02/01/22	• Revised Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA
04/12/22	• 2 nd Revised 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)

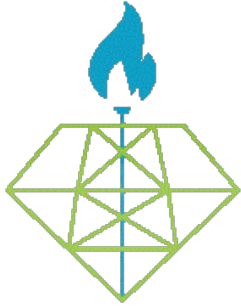
	Notice of Meeting and Agenda posted in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in IDL's Coeur d'Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted at meeting location twenty-four (24) 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.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Kourtney Romine
RECORDING SECRETARY

8/11/22

DATE

IDAHO OIL & GAS
CONSERVATION COMMISSION



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

NOTICE OF PUBLIC MEETING AUGUST 2022

The Idaho Oil and Gas Conservation Commission will hold a Regular Meeting on **Tuesday, August 16, 2022**, at the State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise. The meeting is scheduled to begin at **1:30 pm (MT)**.

Please note meeting location.

The Oil and Gas Conservation Commission will conduct this meeting in person and via teleconference.

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

Contingent upon safety protocols, the public may attend the meeting in person or via teleconference. Members of the public may listen to the meeting via teleconference, using the following:

Dial toll-free: 1-877-820-7831

Enter passcode: 3174418, followed by (#) key

There will be no public comment taken at this meeting, therefore the passcode is for listening only.

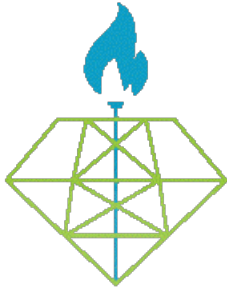
The meeting will be streamed live via IPTV: <https://www.idahoptv.org/shows/idahoinsession/>

First Notice Posted: 08/02/2022-IDL Boise; 08/02/2022-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
Jim Classen, Commissioner
Dustin Miller, Commissioner
Jennifer Riebe, Commissioner

Mick Thomas, Secretary to the Commission

Final Agenda

Idaho Oil and Gas Conservation Commission Regular Meeting

August 16, 2022 – 1:30 PM (MT)

State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise

Please note meeting location.

The Oil and Gas Conservation Commission will conduct this meeting in person and via teleconference.

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

Contingent upon safety protocols, the public may attend the meeting in person or via teleconference.

Members of the public may listen to the meeting via teleconference, using the following:

Dial toll-free: 1-877-820-7831

Enter passcode: 3174418, followed by (#) key

There will be no public comment taken at this meeting, therefore the passcode is for listening only.

The meeting will be streamed live via IPTV: <https://www.idahoptv.org/shows/idahoinsession/>

• **ANNOUNCEMENTS**

No public comment will be accepted at this meeting.

1. Division Administrator's Report

- A. Financial Update
- B. Current Oil and Gas Activity
- C. Status Update
 - i. Oil and Gas Well Analysis
 - ii. Class II Injection Well – Permit Status

• **CONSENT – ACTION ITEM(S)**

2. Approval of Minutes – May 19, 2022 – Regular Meeting (Boise)

Idaho Oil and Gas Conservation Commission

Final Agenda

Regular Meeting (Boise) – August 16, 2022

Page 1 of 2

- **REGULAR – ACTION ITEM(S)**

3. **Election of Chairman and Vice-Chairman** – *Presented by Mick Thomas, Division Administrator – Minerals, Navigable Waters, and Oil & Gas*

- **INFORMATION**

4. **Update on 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*

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

- **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 OIL & GAS CONSERVATION COMMISSION

Idaho Oil and Gas Conservation Commission

Final Agenda

Regular Meeting (Boise) – August 16, 2022

Page 2 of 2

This agenda is published pursuant to § 74-204 Idaho Code. The agenda is subject to change by the Commission. To arrange auxiliary aides or services for persons with disabilities, please contact Dept. of Lands at (208) 334-0242. Accommodation requests for auxiliary aides or services must be made no less than five (5) working days in advance of the meeting. Agenda materials may be requested by submitting a Public Records Request at www.idl.idaho.gov.



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

IDAHO OIL & GAS
CONSERVATION COMMISSION

**Oil and Gas Regulatory Program
Activities Report as of July, 2022
Fund 0075-14 Oil and Gas Conservation Fund Cash Flow Report**

		Current Month	Year-to-Date
Beginning Cash Balance 7/1/2022	363,986.66		
Permits		0.00	0.00
*Severance Tax		28,098.07	28,098.07
Refund (previous year)		0.00	0.00
Other (transfer to GF)		0.00	0.00
Total		28,098.07	28,098.07
Personnel Expenditures		(4,918.77)	(4,918.77)
Operating Expenditures		(41.35)	(41.35)
P-Card Liability to be paid		0.00	0.00
Ending Cash Balance 07/31/2022			<u>340,848.71</u>

*The Idaho Tax Commission transfers 60% of the 2.5% Severance Tax to Fund 0075-14 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 FY23

Expenses	Allocation	Current Month	Year-to-Date	Balance
PC	285,492.00	16,936.73	16,936.73	268,555.27
OE	92,794.00	2,830.70	2,830.70	89,963.30
CO	0.00	0.00	0.00	0.00
Total	378,286.00	19,767.43	19,767.43	358,518.57

Dedicated Fund Regulatory Program Expenditures Report

Expenditures from Dedicated Fund FY23

Expenses	Allocation	Current Month	Year-to-Date	Balance
PC	64,812.00	4,918.77	4,918.77	59,893.23
OE	86,700.00	41.35	41.35	86,658.65
CO	0.00	0.00	0.00	0.00
Total	151,512.00	4,960.12	4,960.12	146,551.88



Southwest Idaho Oil & Gas Activity Map



Legend

Active Oil And Gas Wells

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

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	Producing
4	11-075-20023	Snake River O&G	DJS Properties #2-14	Shut in (Class II appl.)
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	Producing (temp. S/I)
7	11-075-20026	Snake River O&G	ML Investments #1-3	Producing
8	11-075-20027	Snake River O&G	Kauffman #1-9	Producing (temp. S/I)
9	11-075-20029	Snake River O&G	ML Investments #2-3	Producing
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	Drilled/Confidential
15	11-075-20038	Snake River O&G	Dutch-Lane #1-13	Drilled/Confidential
16	Not assigned	Snake River O&G	Irvin #1-19	APD under review

Map Notes and Data Sources

Inactive and Active Oil And Gas Wells through 8/5/2022

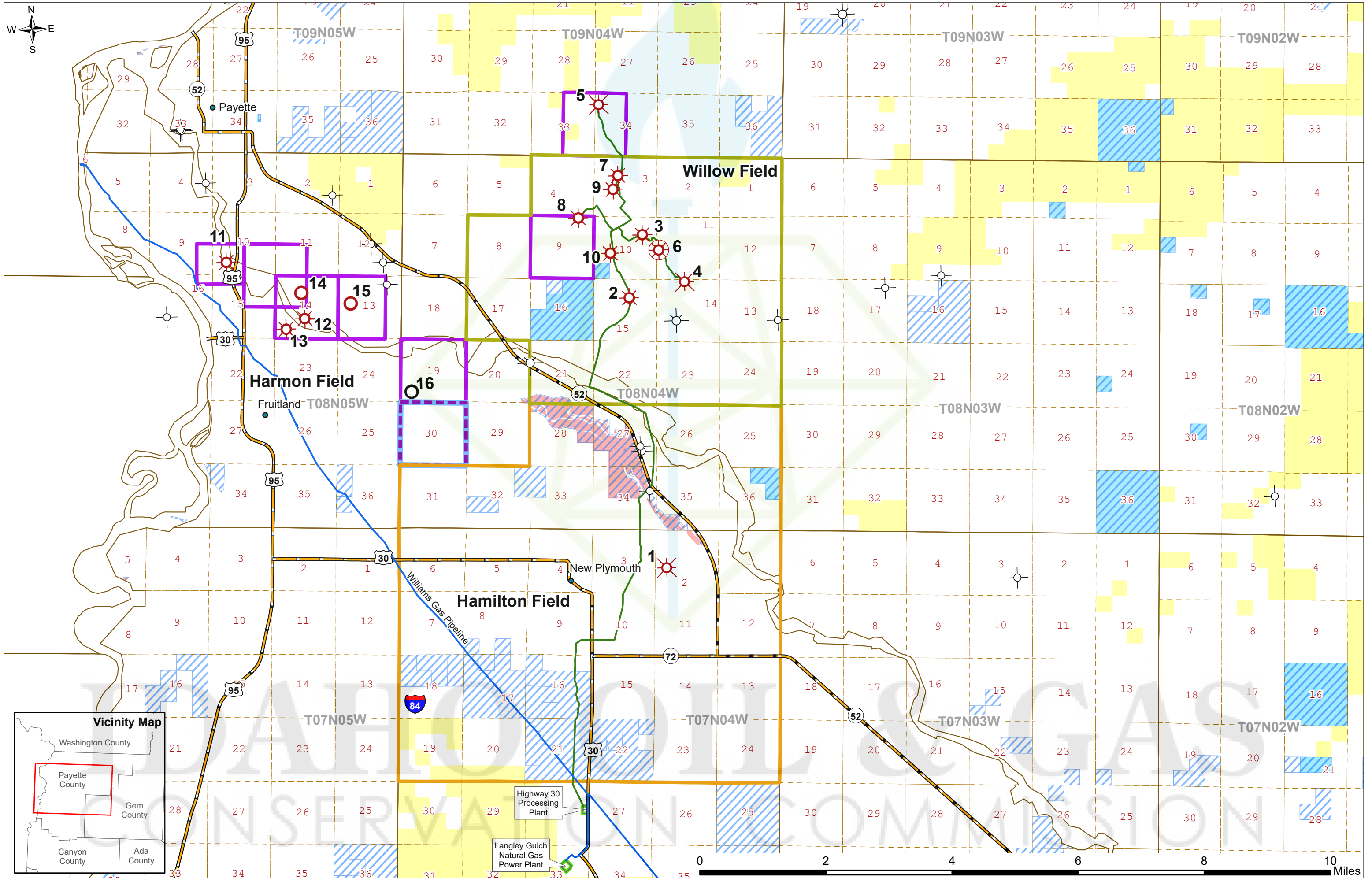
Data Sources: Idaho Department of Lands and Idaho Geological Survey

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 8/5/2022

Robin Dunn



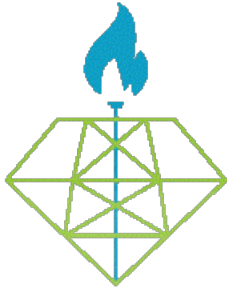
Item 1C - Status Update

i. Oil and Gas Well Analysis:

1. The operator shared that they do perform analysis as needed on wells through contracted engineers.
2. Idaho Department of Lands (Department) staff will meet with the Snake River geologist to discuss potential analysis in the future. In a field tour on August 4, Department staff observed that the top priority of the operator was safety and real time monitoring of operations.
3. The Fallon #1-11 and Dutch-Lane #1-13 are the most recent wells and are still confidential. Location and planned target zone information is posted on the website, either through the detailed unit map we posted in May, or through the Application for Permit to Drill information. Planned versus actual target depths, sand thickness, feet of pay, perforations, and initial flow rates for these two wells is still confidential and not yet released.
4. The Barlow #2-14 information, with the exception of the log data, is now public. The logs will not be released until October.

ii. Class II Injection Well – Permit Status:

1. We spoke with the Environmental Protection Agency (EPA) on August 3, regarding the Class II Injection Well application. Our understanding is that the comments have been received, evaluated, and responded to appropriately. Currently the EPA regional office is briefing their supervisors in DC to work toward a resolution and potential decision.
2. The EPA appreciated the technical comments provided by the Department and shared that this approach was not only helpful, but also somewhat unique when compared to other comments received. In addition, the EPA was encouraged by the states collaboration with the Ground Water Protection Council (GWPC). Idaho is a member state of the GWPC and utilized GWPC resources in responding to the application.



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

Draft 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.

[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.

Chairman Coppersmith: In 2017, so, I would say as needed, but we just need to follow the legislative process, which does take quite a bit of time. As Administrator Thomas said, we have to have the changes submitted by mid-August, the finalized wording, and then that would be voted on in the legislative session in 2023. It does take a little bit of time, but we can revise as needed. Commissioner Hinchcliff, did I hear you start to verbalize a motion?

COMMISSION ACTION: A motion was made by Vice Chairman Hinchcliff to accept draft text six under the title 47-3 Oil and Gas Wells – Geologic Information and Preventive Waste while allowing for grammatical revisions. Commissioner Miller seconded the motion. Chairman Coppersmith called a roll-call vote. Roll Call Vote: Aye: Hinchcliff, Riebe, Miller, Coppersmith; Nay: Classen; Absent: None. The motion carried on a vote of 4-1.

There being no further business before the Commission, at 2:19 p.m. a motion to adjourn was made by Commissioner Classen. Commissioner Riebe seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION

August 16, 2022

Regular Agenda

SUBJECT

Election of Chairman and Vice Chairman

BACKGROUND

As per Idaho Code § 47-314(3):

“The commission shall annually elect a chairman and a vice chairman from their membership. Such officers shall hold their respective offices until their successors are elected. If a vacancy occurs in either office, the commission shall elect a member to fill such office for the remainder of the term.”

DISCUSSION

As per the current Idaho Code § 47-314(3), the Oil and Gas Conservation Commission (Commission) shall elect a member annually to serve as Chairman and Vice Chairman. Historically, the Commission has elected officers in August for the following 12 months. At the August 4, 2021, regular meeting, the Commission elected Betty Coppersmith as Chairman and Ray Hinchcliff as Vice Chairman.

The elected Chairman and Vice Chairman will serve in their respective positions until August of 2023.

RECOMMENDATION

Direct the Commission to elect a Chairman and Vice Chairman.

COMMISSION ACTION

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION

August 16, 2022
Information Agenda

SUBJECT

Update on Proposed Legislation for Title 47, Chapter 3, Idaho Code for the 2023 Legislative Session

BACKGROUND

On May 19, 2022, the Oil and Gas Conservation Commission (Commission) reviewed and voted to submit the sixth draft text to the Division of Financial Management (DFM). Per the recommendations of the Commission, the Idaho Department of Lands (Department) reviewed the draft for grammar and format before submitting to DFM.

The Commission and Department fall under the Executive Agency Legislative System (EALS) guidelines. Following these guidelines, the Department completed and submitted the EALS Legislative Idea Form on June 23, 2022 (Attachment 1).

The Department has also filled out a Statement of Purpose (SOP) and Fiscal Impact form (Attachment 2) to be submitted to DFM along with the final text (Attachment 3).

DISCUSSION

As of the completion of this memo, the Department is waiting for approval to move forward with the next step of submitting the SOP and final text to DFM. The Department has not been notified of any issues with the approval and an update may be provided during the meeting.

ATTACHMENTS

1. EALS Legislative Idea Form
2. Statement of Purpose and Fiscal Impact Form
3. Text to be submitted to DFM – Proposed changes to Title 47, Chapter 3, Idaho Code

EALS #: 320-01

Title: Oil & Gas Act Modernization

Agency: Lands, Department of

Status: Submitted

Primary Contact: Mick Thomas

Phone: 208519-1387

E-Mail: mthomas@idl.idaho.gov

Secondary Contact: James Thum

Phone: 208334-0243

E-Mail: jthum@idl.idaho.gov

Has this idea or a similar idea been submitted in the past three years? No

Provide a short summary of the changes this legislative idea makes:

In 2017, the Idaho Legislature modernized 47-3 to provide additional guidance to operators, mineral interest owners, and the state. There were significant changes to statute at that time. After five years of operating under these new guidelines, the OGCC is recommending some additional changes to provide clarity to stakeholders. These changes improve reporting guidelines for the operator, allow changes to the makeup of the commission to better reflect the needs in Idaho, and lay out terms for integrations as required by the U.S. district court decision CAIA vs. Schultz.

Why is this legislative idea needed? What prompted this request?

The change is needed to fulfill the federal order requiring just and reasonable terms be provided before an integration order is completed. There are also changes needed to address reporting requirements and the makeup of the Commission.

Is this change directly related to:☐ The Red Tape Reduction Act☐ The Licensing Freedom Act**List any affected parties and potential concerns they may have with this legislative idea. How will the agency involve these parties in review of the legislation text if this legislative idea is approved?**

The Commission held a number of public meetings allowing the public and industry to participate in the development of these revisions. In total there were six drafts, and the engagement from all stakeholders was strong. Please see <https://ogcc.idaho.gov/rules-and-statutes/47-3-changes/>

Provide the projected fiscal impact for all programs affected, including both positive and negative impacts to all fund sources (general, dedicated and federal):

There is no direct fiscal impact as a result of these ideas. However, with the improved reporting requirements it may be easier for parties to track severance tax and royalty payments.

What impact will this legislative idea have on the competitiveness of businesses and individuals?

Describing just and reasonable terms in statute should shorten the integration process and enable production to come on-line sooner. Additional reporting clarity will improve transparency of the industry for mineral interest owners and potential operators, thereby improving competition.

Analyst: Amanda Harper

☐ Recommended☐ Not Recommended

Date:

Special Assistant: Nate Fisher

☐ Recommended☐ Not Recommended

Date:

Administrator Recommendation:

☐ Approved☐ Disapproved

Date:

Unofficial Form – not yet officially submitted

Proposal-SOP form questions

Basic Idea Information

1. Title: [Oil and Gas Act Modernization](#)
2. Preferred house of origin and Committee: [House Resources and Conservation](#)
3. Please list all interested parties that are impacted by the potential law change: [Oil and Gas mineral interest owners, Oil and Gas operators, Idaho Oil and Gas Conservation Commission, Idaho Department of Lands](#)
4. Proposal will be uploaded here.

Contacts

5. Contact 1: [Mick Thomas](#)
[208-519-1387](#)
mthomas@idl.idaho.gov
6. Contact 2: [James Thum](#)
[208-334-0243](#)
jthum@idl.idaho.gov

Commentary

7. Statement of Purpose: [In 2017, the Idaho Legislature modernized 47-3 to provide additional guidance to operators, mineral interest owners, and the state. There were significant changes to statute at that time. After five years of operating under these new guidelines, the OGCC is recommending some additional changes to provide clarity to stakeholders. These changes improve and clarify reporting guidelines for the operator, allow changes to the makeup of the commission by removing the Director of the Department of Lands as well as changing the technical requirements of commissioners to better reflect the needs in Idaho. The changes also clarify just and reasonable terms for integration. Building these terms into statute allow mineral interest owners to be made aware of these terms prior to integration as required by the U.S. district court decision CAIA vs. Schultz.](#)
8. Fiscal Impact of legislative idea: [There is no fiscal impact from these changes.](#)

TITLE 47

MINES AND MINING

CHAPTER 3

OIL AND GAS WELLS -- GEOLOGIC INFORMATION, AND PREVENTION OF WASTE

47-306.PRESERVATION AND USE OF SAMPLES AND RECORDS -- REPORTS OF DETERMINATIONS AND IDENTIFICATIONS. The Idaho geological survey shall preserve any samples or records deposited with it pertaining to mineral, oil or gas resources, exploration or production on lands within the state. The Idaho geological survey may use such samples or records to assist with mineral and petroleum assessments and characterization of geologic resources as part of its mission and directive to determine the geology, hydrogeology, geologic hazards, and mineral, oil and gas resources of the state. On request, the Idaho geological survey shall supply to the owner or owners of the samples or records a report of any such determinations and identifications specific to the samples or records provided by the owner or owners of the samples or records.

47-307.USE OF INFORMATION. The Idaho geological survey is hereby authorized to utilize in its study of regional geology, mineral deposits, industrial minerals and aggregates, oil and gas resources, and groundwater resources, in its dissemination of geological and mineral data, and in its publication of reports and maps on the geology and mineral resources of the state, any information derived from samples and records deposited with it. The Idaho geological survey shall not disclose any record, or any information contained therein, if the record or information is exempt from disclosure under the Idaho public records act, [chapter 1, title 74](#), Idaho Code, or is subject to a confidentiality agreement between the Idaho geological survey and the owner or owners of the records or information. Should a confidentiality or data-sharing agreement exist, the terms of that agreement shall control any disclosure by the Idaho geological survey. For information that becomes publicly available or that is not exempt from disclosure under the Idaho public records act, the existence of a confidentiality or data-sharing agreement will not extend the period of confidentiality beyond that available under the Idaho public records act. Subject to any confidentiality or data-sharing agreement, the Idaho geological survey is authorized to share such records or information obtained under section [47-306](#), Idaho Code, or information derived therefrom, with the Idaho oil and gas conservation commission and the Idaho department of lands, in furtherance of the respective authorized functions of the commission and the Idaho department of lands. The sharing of information between the Idaho geological survey, the oil and gas conservation commission and the Idaho department of lands shall not render the shared information subject to disclosure to other persons under the Idaho public records act.

47-309.TITLE. This act may be cited as the Oil and Gas Conservation Act.

SECTION 1. That Section 47-310, Idaho Code, be, and the same is hereby amended to read as follows:

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

47-310.DEFINITIONS. Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this act. The use of the plural includes the singular, and the use of the singular includes the plural.

(1) "Administrator" means the division administrator for oil and gas conservation within the department of lands, as established under section 58-104A, Idaho Code.

(2) "American Association of Professional Landmen" is the land profession's resource for support, ethical standards of practice, career advancement, and legislative advocacy.

(3) "American Petroleum Institute" or "API" is the largest petroleum and natural gas trade organization in America and represents all segments of America's natural gas and oil industry. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

(4) "Arms-Length" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. The following percentages (based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership) determine if persons are affiliated:

(a) Ownership in excess of fifty-percent (50%) constitutes control, or as defined in the joint operating agreement.

(b) Ownership of ten-percent (10%) through fifty-percent (50%) creates a presumption of control.

(c) Ownership of less than ten-percent (10%) creates a presumption of non-control which the commission may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arms-length contracts. To be considered arms-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

(5) "Commission" means the oil and gas conservation commission.

(6) "Confidential well status" refers to a well for which the operator has applied and received confidential status from the commission pursuant to section 47-327, Idaho Code. Information about a confidential well is exempt from disclosure as to the public, but not with regard to the commission or other state authority.

(7) "Condensate" means the ~~light~~ liquid ~~produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir.~~ hydrocarbons that occur as a gas under initial subsurface conditions that condense into a liquid with a decrease in pressure below the dew point during production in the reservoir and at the surface, or only at the surface. The API gravity of condensate is typically fifty (50) degrees to one-hundred-twenty (120) degrees.

(8) "Correlative rights" means the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste.

(9) "Days" means calendar days unless otherwise noted.

(10) "Department" means the Idaho department of lands.

(11) "End purchaser" means a third-party, arms-length purchaser of oil, gas or condensate that is ready for refining or other use, or a third-party, arms-length purchaser of other fluid or

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

gaseous hydrocarbons that have been separated in a processing facility.

(712) "Exploration" means activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. The activities related to the search for oil and gas include without limitation aerial, geological and geophysical surveys and studies, seismic work, core drilling and the drilling of test wells.

(813) "Field" means the general surface area underlain by one (1) or more pools that are related to a single geological feature.

(914) "Gas" means natural gas, which is a mixture of hydrocarbons and varying quantities of non-hydrocarbons that exist either in the gaseous phase or in solution with crude oil in natural underground reservoirs.

(105) "Gathering facility" means a facility that receives gathering lines from wells, commingles the produced materials, and then sends those materials to a processing facility.

(116) "Market value" means the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil and gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the severance tax directly or indirectly.

(127) "MCF" means one thousand cubic feet of gas.

(138) "Mineral interest" means the right to explore, drill or produce oil and gas lying beneath the surface of property.

~~(19) "Oil and gas administrator" means the division administrator for oil and gas conservation within the department of lands, as established under section 58-104A, Idaho Code.~~

(149) "Natural gas liquids" means the liquid hydrocarbons that are gaseous in the reservoir, but will can be separated out in liquid form at the surface at the pressures and temperatures at which separators normally operate. The liquids consist of varying proportions of butane, propane, pentane and heavier fractions, with little or no methane or ethane. Natural gas liquids can be classified according to their vapor pressures as low (condensate), intermediate (natural gasoline), and high (liquefied petroleum gas). Natural gas liquids is commonly abbreviated as NGL.

~~(1520) "Natural gas plant liquids" means hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Natural gas plant liquids obtained include ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed.~~

~~(1621) "Occupied structure" means a building with walls and a roof within which individuals live or customarily work.~~

~~(1722) "Oil" means and includes crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas.~~

~~(1823) "Oil and gas" means oil or gas or both. "Oil and gas" refers not only to oil and gas in combination with each other but also generally to oil, gas, casinghead gas, casinghead gasoline, gas-distillate or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source or supply of oil, oil and gas, or gas-distillate.~~

~~(204) "Oil and gas facility" means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or natural gas.~~

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

(245) "Oil and gas operations" means operations to explore for, develop or produce oil and gas.

(226) "Operator" means any duly authorized person who is in charge of the development of a lease, pool, or spacing or unitized area, or the operation of a producing well.

(237) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil and gas that he produces therefrom, either for himself or for himself and others.

(248) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.

(259) "Pool" means an underground reservoir containing a common accumulation of oil ~~and~~ or gas, or both. Each zone of a structure that is completely separated from any other zone in the same structure is a pool.

(2630) "Processing facility" means a facility that refines gas and liquid hydrocarbons.

(2731) "Producer" means the owner of a well or wells capable of producing oil and gas.

(2832) "Reservoir" means a subsurface volume of porous and permeable rock in which oil and gas may have accumulated.

(2933) "Royalty owner" means any owner of an interest in an oil and gas lease that entitles him to share in the production of the oil and gas under the lease.

(3034) "Tract" means an expanse of land ~~representing the surface expression of the underlying mineral estate that includes oil and gas rights~~. A tract:

(a) May be identified by its public land survey system of rectangular surveys that subdivides and describes land in the United States in the public domain and is regulated by the United States department of the interior, bureau of land management;

(b) Is of no particular size;

(c) May be irregular in form;

(d) Is contiguous;

(e) May lie in more than one (1) township or one (1) section;

(f) May have a boundary defined entirely or in part by natural monuments such as streams, divides or straight lines connecting prominent features of topography; and

(g) May be combined with other tracts to form a lease.

(345) "Uncommitted owner" means one who is not leased or otherwise contractually obligated to the operator.

(326) "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil and gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

(337) "Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil and gas ultimately recoverable from a pool under prudent and proper operations.

(348) "Workover" means an operation in which a well is reentered for the purpose of maintaining or repairing it.

(39) "Zone" means a single continuous deposit of oil or gas, or both oil and gas, in the pores of a reservoir. A zone has a single pressure system and does not communicate with other zones.

47-311.PUBLIC INTEREST. It is declared to be in the public interest to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the state of Idaho in such a manner as will prevent waste; to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho; to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize and provide for voluntary agreements for cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources.

47-312.ACT NOT CONSTRUED TO RESTRICT PRODUCTION -- WASTE PROHIBITED. It is not the intent or purpose of this law to require the proration or distribution or the production of oil and gas among the fields of Idaho on the basis of market demand. This act shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, regulation or judgment requiring restriction of production due to market demand of any pool or of any well (except as provided in section [47-315](#), Idaho Code, hereof) to an amount less than the well or pool can produce without waste in accordance with sound engineering practices. The waste of oil and gas or either of them as defined in this chapter is hereby prohibited.

47-313.LANDS SUBJECT TO THIS ACT. This act shall apply to all lands located in the state, however owned, including any lands owned or administered by any government or any agency or political subdivision thereof, including lands of the United States, or lands subject to the jurisdiction of the United States over which the state of Idaho has police power, except to the degree that it is inharmonious with the uses, activities or regulations of the United States, and furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the commission may, with respect to such unit agreement, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished under such unit agreements, but such suspension shall not relieve any operator from making such reports as may be required by the commission with respect to operations under any such unit agreement.

SECTION 2. That Section 47-314, Idaho Code, be, and the same is hereby amended to read as follows:

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

47-314.OIL AND GAS CONSERVATION COMMISSION CREATED -- POWERS -- LIMIT ON LOCAL RESTRICTIONS -- ATTORNEY GENERAL. (1) There is hereby created an oil and gas conservation commission of the state of Idaho within the department of lands. The commission shall consist of ~~the director of the department of lands,~~ a county commissioner as described in this section, and ~~three~~four (34) members appointed by the governor with the advice and consent of the senate.

(a) The county commissioner shall be from a county where oil and gas are being produced or have been produced within the last ten (10) years and shall be elected by a majority of the county commissioners from such producing counties. The county commissioner shall serve a four (4) year term. A vacancy shall be filled by election for the unexpired term in the same manner provided for election to a full term.

(b) The ~~governor shall appoint four (4) members appointed by the governor who~~ shall serve at the pleasure of the governor. ~~At least two (2) and shall be knowledgeable in oil and gas matters and~~ shall have a college degree in geosciences or engineering and at least ~~ten (10) five (5)~~ years of experience in the oil and gas industry. ~~The governor shall appoint the three (3) technical expert members: one (1) member for a term of four (4) years, one (1) member for a term of three (3) years, and one (1) member for a term of two (2) years. Thereafter, t~~The term of office of each appointed member of the commission shall be four (4) years. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term.

~~(2) On July 1, 2017, the terms of the existing members of the commission appointed under this section shall terminate, with the sole exception that such commission shall decide any administrative actions filed prior to July 1, 2017. Actions filed on and after July 1, 2017, shall be decided by the new commission established under this section.~~

~~(32)~~ The commission shall annually elect a chairman and a vice chairman from their membership. Such officers shall hold their respective offices until their successors are elected. If a vacancy occurs in either office, the commission shall elect a member to fill such office for the remainder of the term.

~~(43)~~ The commission shall meet at least annually and thereafter on dates set by the commission. A majority of the members shall constitute a quorum.

~~(54)~~ The members of the commission appointed by the governor or selected by the county commissioners shall be compensated as provided in section 59-509(n), Idaho Code.

~~(65)~~ The oil and gas administrator of the department of lands shall be the secretary for the commission.

~~(76)~~ The department of lands shall have the power to exercise, under the general control and supervision of the commission, all of the rights, powers and duties vested by law in the commission, except those provided in sections 47-328 and 47-329(3), Idaho Code.

~~(87)~~ The commission shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act, and shall have power and authority to make and enforce rules, regulations and orders, and do whatever may reasonably be necessary to carry out the provisions of this act. Any delegation of authority to any other state officer, board or commission to administer any and all other laws of this state relating to the conservation of oil and gas is hereby rescinded and withdrawn and such authority is hereby unqualifiedly conferred upon the commission, as herein provided. The commission shall follow procedures on applications as provided in section 47-328, Idaho Code, except as provided in

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

sections [47-316\(1\)\(a\)](#) and [47-329\(3\)](#), Idaho Code.

(~~9~~8) It is the intent of the legislature to occupy the field of the regulation of oil and gas exploration and production with the limited exception of the exercise of planning and zoning authority granted cities and counties pursuant to [chapter 65, title 67](#), Idaho Code.

(~~40~~9) To implement the purpose of the oil and gas conservation act, and to advance the public interest in the orderly development of the state's oil and gas resources, while at the same time recognizing the responsibility of local governments to protect the public health, safety and welfare, it is herein provided that:

(a) The commission will notify the respective city or county with jurisdiction upon receipt of an application and will remit, electronically, a copy of all application materials.

(b) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit the extraction of oil and gas; provided however, that extraction may be subject to reasonable local ordinance provisions, not repugnant to law, which protect public health, public safety, public order or which prevent harm to public infrastructure or degradation of the value, use and enjoyment of private property. Any ordinance regulating extraction enacted pursuant to [chapter 65, title 67](#), Idaho Code, shall provide for administrative permitting under conditions established by ordinance, not to exceed twenty-one (21) days, unless extended by agreement of the parties or upon good cause shown.

(c) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit construction or operation of facilities and infrastructure needed for the post-extraction processing and transport of gas and oil. However, such facilities and infrastructure shall be subject to local ordinances, regulations and permitting requirements, not repugnant to law, as provided in [chapter 65, title 67](#), Idaho Code.

(~~14~~0) The commission may sue and be sued in its administration of this act in any state or federal district court in the state of Idaho having jurisdiction of the parties or of the subject matter.

(~~12~~1) The attorney general shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it, and in any proceeding to which the commission may be a party before any department of the federal government. The commission may retain additional counsel to assist the attorney general and, for such purpose, may employ any funds available under this act.

SECTION 3. That Section 47-315, Idaho Code, be, and the same is hereby amended to read as follows:

47-315. AUTHORITY OF COMMISSION. (1) The commission is authorized and it is its duty to regulate the exploration for and production of oil and gas, prevent waste of oil and gas and to protect correlative rights, and otherwise to administer and enforce this act. It has jurisdiction over all persons and property necessary for such purposes. In the event of a conflict, the duty to prevent waste is paramount.

(2) The commission and the department shall protect correlative rights by administering the provisions of this chapter in such a manner as to avoid the drilling of unnecessary wells or incurring unnecessary expense, and in a manner that allows all operators and royalty owners a fair and just opportunity for production and the right to recover, receive and enjoy the benefits of oil

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

and gas or equivalent resources, while also protecting the rights of surface owners.

(3) The commission is authorized to make such investigations as it deems proper to determine whether action by the commission in discharging its duties is necessary.

(4) The commission is authorized to appoint, as necessary, committees for the purpose of advising the commission on matters relating to oil and gas.

(5) Without limiting its general authority, the commission shall have the specific authority to require:

(a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas;

(b) The taking and preservation of samples and findings, if taken or analyzed;

(c) The drilling, casing, operation and plugging of wells in such manner as to prevent: (i) the escape of oil and gas out of one (1) pool into another; (ii) the detrimental intrusion of water into an oil and gas pool that is avoidable by efficient operations; (iii) the pollution of fresh water supplies by oil, gas, or saltwater; (iv) blow-outs, cavings, seepages, and fires; and (v) waste as defined in section [47-310](#), Idaho Code;

(d) The taking of tests of oil and gas wells;

(e) The furnishing of a reasonable performance bond with good and sufficient surety, conditioned upon the performance of the duty to comply with the requirements of this law and the regulations of the commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil and gas;

(f) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the commission;

(g) That wells not be operated with inefficient gas-oil or water-oil ratios, and to fix these ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios;

(h) Metering or other measuring of oil, gas, or product;

(i) That every person who produces oil and gas in the state keep and maintain for a period of five (5) years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission or its agents at all reasonable times within said period, and that every such person file with the commission such reasonable reports as it may prescribe with respect to such oil and gas production; and

(j) The filing of reports or plats with the commission that it may prescribe.

(6) Without limiting its general authority, and without limiting the authority of other state agencies or local government as provided by law, the commission shall have the specific authority to regulate:

(a) The drilling and plugging of wells and the compression or dehydration of produced oil and gas, and all other operations for the production of oil and gas;

(b) The ~~shooting~~perforation and treatment of wells;

(c) The spacing or locating of wells;

(d) Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into a producing formation; and

(e) The disposal of produced water and oil field wastes.

(7) The commission is authorized to classify and reclassify pools as oil, gas, or condensate pools, or wells as oil, gas, or condensate wells.

(8) The commission is authorized to make and enforce rules, regulations, and orders

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.

(9) The commission shall require the department to perform the following activities on an annual basis:

- (a) Inspect and report on all active well sites and equipment;
- (b) Visit and file a report on production and processing facilities; and
- (c) Submit an opinion as to any areas of concern, as identified on inspection reports.

SECTION 4. That Section 47-316, Idaho Code, be, and the same is hereby amended to read as follows:

47-316.PERMIT TO DRILL OR TREAT A WELL -- FEES. (1) It shall be unlawful to commence operations for the drilling or treating of a well for oil and gas without first giving notice to the commission of intention to drill or treat and without first obtaining a permit from the commission under such rules and regulations as may be reasonably prescribed by the commission and by paying to the commission a filing and service fee as provided by this section.

- (a) Any request for a permit or authorization as set forth in subsection (3)(a), (b), (c), (d), (e), (f), (g), (m), (n) or (o) of this section shall be made by application to the department of lands, and processed as provided in this section.
- (b) The department shall notify the director of the department of water resources regarding applications for permits to drill or treat a well. The director of water resources shall have ten (10) business days from the date of receipt of such notification from the department of lands to recommend conditions he believes necessary to protect freshwater supplies.
- (c) Applications submitted under this section, except those listed in subsection (3)(c) and (g) of this section, shall be posted on the department of lands' website for ten (10) business days for a written comment period.
- (d) The department of lands shall approve or deny applications in subsection (3)(a), (b), (c), (d), (f), (g), (m), (n) and (o) of this section in a timely and efficient manner. This time frame does not apply to permits submitted with an application processed under section [47-328](#), Idaho Code.

(e) The department's decision made under this section may be appealed to the commission by the applicant pursuant to the procedure in section [47-328](#)(4) through (6), Idaho Code.

(2) Upon issuance of any permit to drill or treat a well, a copy thereof, including any limitations, conditions, controls, rules or regulations attached thereto for the protection of freshwater supplies as required in section [47-315](#), Idaho Code, shall be forwarded to the director of the department of water resources.

(3) The department shall collect the following fees, which shall be remitted to the state treasurer for deposit in the oil and gas conservation fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this chapter:

- (a) Application for a permit to drill a well \$2,000
- (b) Application to deepen a well ~~\$~~500
- (c) Application to plug and abandon a well, if not completed within one (1) year from issuance of permit to drill a well ~~\$~~500
- (d) Application to treat a well, if separate from an application for a permit to drill a well ~~\$~~1,000
- (e) Application to construct a pit, if separate from an application for a permit to drill a well

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

\$1,500

(f) Application to directionally drill a well, if separate from an application for a permit to drill a well \$1,000

(g) Application for a recompletion, modified blow out prevention standards, using a vacuum for oil or gas recovery, removing casing, or multiple zone completion, if separate from an application for a permit to drill or plug and abandon a well \$1,000

(h) Application for an exceptional well location, if separate from an application for a permit to drill a well \$1,300

(i) Application to ~~change~~amend the size, shape or location of a spacing unit \$1,300

(j) Application to establish or amend a fieldwide spacing order \$1,300

(k) Application for an integration order \$1,300

(l) Application for a unitization order \$1,300

(m) Application for a seismic operations permit covering less than twelve (12) miles of a 2-D survey \$800

(n) Application for a seismic operations permit covering between twelve (12) miles and twenty-four (24) miles of a 2-D survey, or up to seventy-two (72) square miles of a 3-D survey \$2,000

(o) Application for a seismic operations permit covering more than twenty-four (24) miles of a 2-D survey, or more than seventy-two (72) square miles of a 3-D survey \$2,500

Section 5. That Section 47-317, Idaho Code, be, and the same is hereby amended to read as follows:

47-317. ~~DRILLING LOCATIONS~~SPACING UNITS. (1) To prevent or assist in preventing the waste of oil and gas, to avoid drilling unnecessary wells or to protect correlative rights, the department may, on its own motion or on the application of an interested person, and after notice and opportunity for hearing, issue an order establishing ~~drilling~~spacing units on a statewide basis, or for defined areas within the state, or for oil and gas wells drilled to varying depths.

(2) An order establishing ~~drillings~~spacing units shall specify the location, size and shape of the unit, which, in the opinion of the department, result in the efficient and economical development of the pool as a whole. These units established by the department shall be geographic. The geographic boundary of the unit shall be described in accordance with the public land survey system. The department shall issue an order establishing a spacing unit or units to determine the area that can be efficiently and economically drained by one (1) well for the orderly development of the pool. The department may amend the order if evidence determines that additional wells are needed to efficiently and economically drain the pool or if evidence indicates the location of the pool is different from that in the initial order. This is subject to notice and an opportunity for hearing as provided in section 47-328 ~~comply with section 47-318(2), Idaho Code.~~

(3) In the absence of an order by the department establishing ~~drilling or~~ spacing units, or authorizing different well density patterns for particular pools or parts thereof, the following requirements shall apply:

(a) Oil wells. Every well drilled for oil shall be located ~~in the center of a drilling~~ spacing unit consisting of a forty (40) acre governmental quarter-quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, ~~with a tolerance of two hundred (200) feet in any direction from the center location.~~

(i) An oil well located on a forty (40) acre spacing unit shall have a minimum setback

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

of three hundred thirty (330) feet from the completed interval of the wellbore to the closest exterior geographic boundary of the unit.

(i) No oil well shall be drilled less than nine hundred ninety (990) feet from any other well drilling to and capable of producing oil from the same pool; ~~and~~

~~(ii) No oil well shall be completed in a known pool unless it is located more than nine hundred ninety (990) feet from any other well completed in and capable of producing oil from the same pool.~~

(b) Vertical gas wells. Every directional well and vertical well drilled for gas shall be located in a drillingspacing unit consisting of ~~either a one hundred sixty (160) acre governmental quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, or a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto.~~ A vertical gas well located on a one hundred sixty (160) acre drilling unit shall have a minimum setback of three hundred thirty (330) feet to the exterior boundaries of the quarter section. A vertical gas well located on a six hundred forty (640) acre drillingspacing unit shall have a minimum setback of six hundred sixty (660) feet ~~to the~~ from the completed interval of the wellbore to the closest exterior boundaries of the governmental section.

(i) No gas well shall be drilled with the closest point of its completed interval less than nine hundred ninety (990) feet from the closest point of the completion interval of any other well drilling to and capable of producing gas from the same pool; and

(ii) No gas well shall be completed in a known pool unless ~~it~~ the closest point of the completion interval s located more than nine hundred ninety (990) feet from the closest point of the completion interval of any other well completed in and capable of producing gas from the same pool.

(c) Horizontal wells. Every horizontal well drilled shall be located in a drillingspacing unit consisting of a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto. No portion of the completed interval of a horizontal lateral shall be closer than six hundred sixty (660) feet to a section boundary vertical plane intersecting with the closest point of a unit boundary or uncommitted tract within a unit. Except for wells in federal exploratory units or in secondary units, the completed interval shall be no closer than one thousand three hundred twenty (1,320) feet to any horizontal well or vertical well completed in the same formation zone.

~~(d) Notice. After drilling, testing and completing a well that meets the location requirements in paragraphs (a), (b) or (c) of this subsection, but prior to producing that well, an operator shall provide notice and opportunity for hearing for the proposed drilling unit. In addition to any other notice required by statute or rule, the operator shall provide notice of the proposed drilling unit by certified mail to all uncommitted owners within the proposed drilling unit. The department may authorize drilling units upon application, notice and an opportunity for hearing as provided in section 47-328, Idaho Code. However, prior to establishing a drilling unit for a well that meets the location requirements in paragraph (a), (b) or (c) of this subsection, the department may grant a permit to drill that provides only the notice required in section 47-316, Idaho Code.~~

(4) An operator may request an change amendment in the size, shape or location of a drilling spacing unit under this section, ~~as provided in section 47-318(6), Idaho Code.~~ Request may be made for drilling spacing units that are:

(a) Larger or smaller than forty (40) acres for oil;

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

- (b) Larger or smaller than ~~onesix~~ hundred ~~sixty forty~~(1640) acres for gas; or
- (c) Not located within the boundaries of a governmental section, quarter section or quarter-quarter section.

(5) ~~Changes~~ An amendment to ~~drillingspacing~~ units may be authorized upon application, notice and an opportunity for hearing as provided in section 47-328, Idaho Code. To authorize an ~~change~~amendment, the department shall find that such ~~change~~amendment would assist in preventing the waste of oil and gas, avoid drilling of unnecessary wells, or protect correlative rights. In addition to any other notice required by statute or rule, an operator shall provide proper notice and a copy of the application to all uncommitted owners within the proposed unit and to all other parties an operator reasonably believes may be affected. In ~~establishing~~amending ~~drilling~~ spacing units under this section, the department shall review the ~~drilling~~ spacing unit's size, shape and location based on the application, any supporting exhibits, and evidence introduced at a hearing.

(6) The department may amend an order that establishes spacing units for a pool to provide for:

- (a) An exception to the authorized location of a well;
- (b) The inclusion or exclusion of additional areas which the commission determines overlays the pool;
- (c) The increase or decrease of the size of spacing units; or
- (d) The drilling of additional wells within spacing units.

A pool may be divided into zones and a spacing unit for each zone may be established if necessary. The spacing unit within the zone may not be smaller than the maximum area that can be efficiently and economically drained by one (1) or more wells.

(7) Upon the filing of an application to establish a spacing unit, no additional well shall be commenced for production from the pool until the order establishing a spacing unit has been made, unless the commencement of the well is authorized by order of the department.

(8) The department may establish a spacing unit and concurrently authorize the drilling of more than one well in a spacing unit if the department finds that:

- (a) engineering or geologic characteristics justify the drilling of more than one well in that spacing unit; and
- (b) the drilling of more than one well in that spacing unit will not result in waste.

Section 6. That Section 47-318, Idaho Code, be, and the same is hereby repealed.

47-318.WELL SPACING. (1) The department shall promptly establish spacing units for each pool except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) An order establishing spacing units shall specify the size, shape and location of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole. Any unit established by the department shall be geographic. The geographic boundaries of the unit shall be described in accordance with the public land survey system. Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, or as provided in paragraph (b) of this subsection, the size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

by one (1) well; provided:

(a) If, at the time of a hearing to establish spacing units, there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one (1) well, the department shall make an order establishing temporary spacing units for the orderly development of the pool, pending the obtaining of the information required to determine what the permanent spacing should be.

(b) Where the federal agency administering federal minerals that would otherwise be included in a spacing unit has not leased or has failed to offer such federal minerals for lease auction for at least six (6) months, such federal minerals may be excluded from the unit upon application or upon the department's own determination.

(3) Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool. The department may establish spacing units of different sizes or shapes for different parts of a pool or may grant exceptions to the size, shape or location of any spacing unit or units or may change the sizes or shape of one (1) or more existing spacing units.

(4) An order establishing spacing units shall direct that no more than one (1) well shall be drilled to and produced from the common source of supply on any unit, and shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the filing of the application. If the department finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, or for other good cause shown, the department is authorized to make an order permitting the well to be drilled at a location other than that prescribed by such spacing order. Application for an exception shall be filed with the department and may be granted where it is shown that good cause for such exception exists and that consent to such exception has been given by the operators of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and, as to the lands upon which drilling units have not been established, by the majority of mineral interest owners of those lands which would be included in directly or diagonally offsetting drilling units under said order, if said order were extended to include such additional lands.

(5) An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. A pool may be divided into zones and a spacing unit for each zone may be established if necessary to prevent or assist in preventing waste of oil and gas, to avoid drilling unnecessary wells, to protect correlative rights or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one (1) well.

(6) An order establishing spacing units may be modified by the department to change the size, shape or location of one (1) or more spacing units, or to permit the drilling of additional wells on a reasonably uniform pattern. An operator may apply for changes to the size, shape or location of spacing units. The department will review applications to change the size, shape or location of spacing units.

(7) Upon the filing of an application to establish spacing units, no additional well shall be commenced for production from the pool until the order establishing spacing units has been made,

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

unless the commencement of the well is authorized by order of the department.

47-319.SETBACKS. (1) Except as provided in this section, oil and gas wells, tank batteries and gas processing facilities shall not be constructed within three hundred (300) feet of an existing occupied structure, domestic water well, canal, ditch or the natural or ordinary high-water mark of surface waters or within fifty (50) feet of a highway.

(2) Oil and gas wells, tank batteries and gas processing facilities may be constructed less than three hundred (300) feet but more than one hundred (100) feet from an existing occupied structure, domestic water well, canal or ditch if the operator has obtained the express written permission from the owner of the occupied structure, domestic water well, canal or ditch.

Section 7. That Section 47-320, Idaho Code, be, and the same is hereby amended to read as follows:

47-320.INTEGRATION OF TRACTS -- ORDERS OF DEPARTMENT. (1) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the department, upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom. The department, as a part of the order establishing a spacing unit ~~or units~~, may prescribe the terms and conditions upon which the royalty interests in the unit ~~or units~~ shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon ~~terms and conditions that are the~~ just and reasonable terms and conditions set forth herein.

(2) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon.

(3) Each such integration order shall authorize the drilling, equipping and operation, or operation, of a well on the spacing unit; shall designate an operator for the integrated unit; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. Each such integration order shall provide for the ~~four (4)~~ three (3) following options:

(a) Working interest owner. An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into an approved joint operating agreement. ~~approved by the department in the integration order shall deem the joint operating agreement as just and reasonable if the agreement is based on a standard industry form, such as those supplied by the American Association of Professional Landmen, and the operator demonstrates to the department that any~~

amendments to the standard form are not prejudicial to working interest owners.

(b) Nonconsenting working interest owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner, is a nonconsenting working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well, and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement ~~approved by the department in the integration order.~~ The department shall deem the joint operating agreement as just and reasonable if the agreement is based on a standard industry form, such as those supplied by the American Association of Professional Landmen, and the operator demonstrates to the department that any amendments to the standard form are not prejudicial to nonconsenting working interest owners.

(c) ~~Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive no less than one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.~~ Base Entitlement. If an owner fails to make an election within the election period set forth in the integration order, the operator shall compensate such owner for their share of production with the following just and reasonable terms, provided that nothing herein shall be deemed to prevent the operator and owners from voluntarily agreeing to different lease terms before or after the entry of an integration order:

- i. Such owner shall receive one-eighth (1/8) royalty of any gas, oil, or natural gas liquids produced, proportionate to their interest in the integrated unit.
- ii. Royalty payments shall comply with the terms of section 47-331, Idaho Code.
- iii. The operator of an integrated spacing unit shall pay such owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.
- iv. The operator will avoid, to the maximum extent possible, any use of surface lands belonging to owners integrated under this subsection. Where such use cannot be reasonably avoided, use of surface lands, and compensation for such use, shall be governed by sections 47-334, Idaho Code.
- v. The operator shall comply with the requirements of sections 47-319, 47-332, 47-333, and 47-334 Idaho Code.
- vi. An integration order including the terms specified in this subsection fulfills the department's obligation to integrate mineral interests upon just and reasonable terms.

~~(d) Deemed leased. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the~~

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

~~integration application.~~

(4) An application for an order integrating the tracts or interests in a spacing unit shall substantially contain and be limited to only the following:

- (a) The applicant's name and address;
- (b) A description of the spacing unit to be integrated;
- (c) A geologic statement concerning the likely presence of hydrocarbons;
- (d) A statement that the proposed drill site is leased;
- (e) A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator;
- (f) A proposed joint operating agreement ~~and a proposed lease form~~;
- (g) A list of all uncommitted owners in the spacing unit to be integrated under the application, including names and addresses;
- (h) An affidavit indicating that at least sixty-seven percent (67%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner;
- (i) An affidavit stating the highest bonus payment paid to a leased owner in the spacing unit being integrated prior to filing the integration application; and
- (j) A resume of efforts documenting the applicant's good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit. Provided however, if any owner requests no further contact from the applicant, the applicant will be relieved of further obligation to attempt contact to reach agreement with that owner. At least one (1) contact must be by certified U.S. mail sent to an owner's last known address. If an owner is unknown or cannot be found, the applicant must publish a legal notice of its intention to develop and request that the owner contact the applicant in a newspaper of general circulation in the county where the proposed spacing unit is located. The resume of efforts should indicate the applicant has made reasonable efforts to reach an agreement with all uncommitted owners in the proposed spacing unit. Reasonable efforts are met by complying with this subsection.

(5) At the time the integration application is filed with the department, the applicant shall certify that, for uncommitted owners who are unknown or cannot be found, a notice of the application was published in a newspaper in the county where the proposed spacing unit is located. Each published notice shall include notice to the affected uncommitted owner of the opportunity to respond to the application, and the deadline by which a response must be filed with the department.

(6) An operator who has not been able to obtain consent from sixty-seven percent (67%) of the mineral interest acres in the spacing unit may nevertheless apply for an integration order under this section if all of the conditions set forth in this subsection have been met. The department shall issue an integration order, which shall affect only the unit area described in the application, if it finds that the operator has met all of the following conditions:

- (a) The operator has obtained consent from at least fifty-five percent (55%) of mineral interest acres;
- (b) The operator has negotiated diligently and in good faith for a period of at least one hundred twenty (120) days prior to his application for an integration order; and
- (c) The uncommitted owners in the affected unit shall receive from the operator mineral lease terms and conditions that are no less favorable to the lessee than those set forth in

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

section [47-331](#)(2), Idaho Code.

(7) An application for integration shall be subject to the procedures set forth in section [47-328](#), Idaho Code.

(8) An integration order shall be in effect for a term of five (5) years, and so long thereafter as oil and gas operations are being conducted by the operator, unless extended by the department upon application of the operator. Any application to amend or extend an integration order shall comply with the notice requirements of section 47-328(3)(b), Idaho Code. For purposes of such notice, all parties receiving the base entitlement set forth in subsection 47-328(3)(d) herein shall be considered “uncommitted owners.”

(9) The entry of an integration order does not inhibit the right of mineral interest owners to pursue claims against the operator for damages to person, property, or water rights.

Section 8. That Section 47-321, Idaho Code, be, and the same is hereby amended to read as follows:

47-321. UNIT OPERATIONS. (1) An agreement for the unit or cooperative development or operation of a field, pool, or part thereof, may be submitted to the department for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. Such approval shall constitute a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. The failure to submit such an agreement to the department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.

(2) The department, upon its own determination or upon application of an owner, shall conduct a hearing to consider the need for unit operation of an entire pool or portion thereof, to increase ultimate recovery of oil and gas from that pool or portion thereof. The department shall issue an order requiring unit operation if it finds that:

- (a) Unit operation of the pool or portion thereof is reasonably necessary to prevent waste or to protect correlative rights;
- (b) Unit operation of the pool or portion thereof is reasonably necessary for maintaining or restoring reservoir pressure, or to implement cycling, water flooding, enhanced recovery, horizontal drilling, de-watering or a combination of these operations or other operations or objectives to be cooperatively pursued with the goal of increasing the ultimate recovery of oil and gas; and
- (c) The estimated cost to conduct the unit operation will not exceed the value of the estimated recovery of additional oil and gas resulting from unit operation.

(3) An application for requesting an order providing for the operation as a unit of one (1) or more pools or parts thereof in a field shall contain:

- (a) A plat map showing the proposed unit, the existing spacing units, and well(s) within the units;
- (b) The names and addresses of all persons owning mineral interests and working interests in the proposed unit;
- (c) An affidavit that the applicant, by certified mail, notified all persons owning unleased mineral interests and working interests in the proposed unit at least sixty (60) days prior to filing the application with the department of the applicant's intention to make the application;
- (d) A proposed plan of unit operations for the proposed unit that contains the information in

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

subsection (5) of this section; and

(e) A proposed operating agreement that is consistent with the proposed plan of unit operations.

(4) An application for unit operations shall be subject to the procedures set forth in section [47-328](#), Idaho Code.

(5) An order for a unit operation must be upon just and reasonable terms and conditions and shall prescribe a plan for unit operations that include all of the following:

(a) A description of the vertical and horizontal limits of the unit area;

(b) A statement of the nature of the operation contemplated;

(c) A provision for the supervision and conduct of the unit operation that designates an operator of the unit and provides a means to remove the operator and designate a successor operator;

(d) A provision to protect correlative rights, allocating to each separately owned tract in the unit area a just and equitable share of the production that is produced and saved from the unit area, other than production used or unavoidably lost in the conduct of the unit operation;

(e) A provision for credits and charges to adjust among working interest owners in the unit area for their interest in wells, tanks, pumps, machinery, materials and equipment that contribute to the unit operation;

(f) A provision establishing how the costs of unit operation, including capital investments and costs of terminating the unit operation, shall be determined and charged to each working interest owner or the interest of each owner, including a provision establishing how, when and by whom the share of unit production allocated to an owner who does not pay the share of those costs charged to that owner or to the interest of that owner may be sold and the proceeds applied to the payment of that owner's share of those costs, and how accounts will be settled upon termination of the unit;

(g) A provision, if necessary, for carrying or otherwise financing an owner who elects to be carried or otherwise financed, which allows owners who carry or otherwise finance to recover up to three hundred percent (300%) of the unit costs attributed to an owner who elects to be carried or otherwise financed payable out of that owner's share of the production;

(h) A time when the unit operation is to commence and the manner in which, and the circumstances under which, the unit operation is to terminate and the unit is to be dissolved; and

(i) Additional provisions found to be appropriate to carry on the unit operation, to prevent waste and to protect correlative rights.

(6) An order for a unit operation may provide for a unit operation of less than the whole of a pool as long as the unit area is of size and shape reasonably required for that purpose and the conduct thereof will have no significant adverse effect upon other portions of the pool.

(7) The department, upon its own determination or upon the application of an owner, may for good cause terminate a unit operation and dissolve the unit on just and equitable terms. If not terminated earlier, the unit operation shall terminate upon final cessation of production from the pool or unitized portion thereof, the plugging and abandonment of unit wells and facilities, and reclamation of the surface.

(8) An order requiring a unit operation shall not become effective until the plan for unit operations approved by the department has been signed and approved in writing by the owners who, under the department's order, will be required to pay at least sixty-seven percent (67%) of the costs of the unit operation, and also signed and approved in writing by the working interest owners

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

of at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.

(9) An order providing for unit operation may be amended by an order of the department in the same manner and subject to the same conditions as an original order providing for the unit operation.

(10) The department may issue an order for the unit operation of a pool or pools or parts thereof that includes a unit created by a prior order of the department or by voluntary agreement. This subsequent order, in providing for the allocation of the unit's production, must treat first the unit area previously created as a single tract and then allocate, in the same proportions as those specified in the prior order, the portion of the new unit's production allocated to the previous unit among the separately owned tracts included in the previously created unit area.

(11) The department may approve additions to the unit of portions of a pool not previously included within the unit and may extend the unit area as reasonably necessary to prevent waste or to protect correlative rights. The department may approve exclusions from the unit area as reasonably necessary to prevent waste or to protect correlative rights. An order adding to or excluding from a unit area must be upon just and reasonable terms, which shall be determined by the application of the terms set forth in subsection (3) of section 47-320, Idaho Code.

(a) An order that amends a plan of unit operations and adds an area to a previously established unit shall not become effective until the amended plan of unit operations has been signed and approved in writing by the owners who will be required to pay at least sixty-seven percent (67%) of the costs of the unit operation in the area to be added, and also signed and approved in writing by the working interest owners of at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.

(b) An order providing for an exclusion from a unit area may not become effective until an amended plan of unit operations excluding an area from the unit has been approved in writing by the owners in the original unit area that are required to pay at least sixty-seven percent (67%) of the costs of unit operations, and also approved in writing by the working interest owners in the original unit area required to pay at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.

(12) Operations, including the commencement, drilling or operation of a well upon a portion of a unit area, are deemed conducted on each separately owned tract in the unit area by the owner or owners thereof. That portion of a unit's production allocated to a separately owned tract in a unit area, when produced, is deemed produced from a well drilled on that tract. Operations conducted under an order of the department providing for a unit operation shall constitute fulfillment of expressed or implied obligations of a lease or contract covering lands within the unit area to the extent that compliance with those obligations is not possible without a further order of the department.

(13) That portion of unit production allocated to a tract and the proceeds of sale for that portion are deemed the property and income of the several persons to whom or to whose credit that portion is allocated or payable under the order providing for unit operation.

(14) A division order or other contract relating to a sale or purchase of production from a separately owned tract or combination of tracts remains in force and applies to oil and gas allocated to the tract until terminated in accordance with provisions of the order providing for unit operation, or in accordance with the terms of such division order or other contract.

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

(15) Except to the extent that all affected parties agree, an order providing for unit operation does not result in a transfer of all or part of a person's title to the oil and gas rights in a tract in the unit area.

(16) Except to the extent that all affected parties agree, all property, whether real or personal, that may be acquired in the conduct of a unit operation hereunder is deemed acquired for the account of the owners within the unit area and is deemed the property of the owners in the proportion that the expenses of the unit operation are charged.

(17) The formation of a unit and the operation of the unit under an order of the department shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in the restraint of trade.

47-322.OIL AND GAS METERING SYSTEMS. (1) Each meter shall be properly constructed, maintained, repaired and operated to continually and accurately register the quantity of oil and gas produced from the well.

(2) The meter shall be installed, used and operated according to industry standards and guidelines promulgated by the American petroleum institute, American gas association, and the gas processors association that are in effect at the time of installation of the meter. If standards conflict, the most current American petroleum institute standard shall apply.

(3) All custody transfer meters and all allocation meters used in the allocation of custody transfer volumes shall be calibrated by a third party at least quarterly in each calendar year. The records of calibrations shall be maintained by the operator of the meter for at least five (5) years and copies shall be submitted to the department.

47-323.COMMINGLING OF PRODUCTION. A producer shall not, prior to metering, commingle production from two (2) or more oil and gas wells without prior approval from the department after notice and opportunity for hearing.

Section 9. That Section 47-324, Idaho Code, be, and the same is hereby amended to read as follows:

47-324.REPORTING REQUIREMENTS. (1) All reporting parties shall file the applicable reports described in this section to the department within the time frames provided. Each report shall be completed on forms prescribed by the department.

(a) Monthly production report. Operators shall file monthly production reports to properly account for all oil, gas and water production and disposition from each well, including the amounts of oil and gas sold from each well. Production reports shall be filed on the required form before the fifteenth day of the second calendar month following the month of production.

(b) Gathering facility report. Operators of a gathering facility shall file monthly reports concerning the operation of the plant on the required form before the fifteenth day of the second calendar month following the month of operation.

(c) Gas processing plant report. The operator of each plant manufacturing or extracting liquid hydrocarbons, including gasoline, butane, propane, condensate, kerosene or other derivatives from natural gas, or refinery or storage vapors, shall file a report concerning the operation of the plant on the required form before the fifteenth day of the second calendar

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

month following the month of operation.

(d) Monthly transportation and storage report. Each gatherer, transporter, storer or handler of crude oil or hydrocarbon products, or both, shall file monthly reports showing the required information concerning the transportation operations of the gatherer, transporter, storer or handler before the fifteenth day of the second calendar month following the month of operation. ~~The provisions of this subsection shall not apply to the operator of any refinery, processing plant, blending plant or treating plant if the operator of the well has filed the required form.~~

(e) Monthly end purchaser report. Any ~~person who purchases or is entitled to purchase any product~~ third-party, arms-length purchaser of oil, gas or condensate that is ready for refining or other use that is subject to the state of Idaho severance tax from the producer or operator of a lease located in this state shall file monthly reports to account for the purchase of all hydrocarbons, including volume and price paid. ~~End P~~ purchaser reports shall be filed on the required form before the fifteenth day of the second calendar month following the month in which the hydrocarbons were purchased. If the end purchaser does not provide the required report, the operator shall provide the above information by the end of the second calendar month following the month in which the hydrocarbons were purchased.

(2) All well test reports. An operator shall file all well test reports within thirty (30) days of completing or recompleting the well. The reports shall include all oil, gas and water produced during all tests.

(3) Well production potential test reports. Unless otherwise provided for in this section, each operator of producing gas or oil wells shall test each producing well for a twenty-four (24) hour period every six (6) months and shall record all oil, gas and water volumes, including choke size, pressures and any interim bottom hole pressure surveys every six (6) months, resulting from the test on the form.

(4) Logs. An operator shall file all logs, including but not limited to those listed in this subsection, not later than thirty (30) days after the date the log was run, if run:

(a) An open hole electrical, radioactivity or other similar log, or combination of open hole logs of the operator's choice;

(b) A gamma ray log from total depth to ground level elevations. The operator may require a shorter-logged interval if it determines that the log is unnecessary or impractical or if hole conditions risk jeopardizing the open hole; and

(c) A cement bond log across the casing, verifying the formation seal integrity and isolation.

(5) Additional reports. An operator shall file a drilling, completion, workover or plugging report within thirty (30) days of completing or plugging the well.

(6) The department shall report quarterly to the commission on the produced volumes of oil and gas, sales volumes of oil and gas, and the meeting of industry standards.

(7) Should an operator fail to comply with this section, the commission may assess a penalty in accordance with section 47-329(3), Idaho Code, or may order the well or oil and gas facilities to be shut-in, after notice, opportunity to cure, and opportunity for a hearing.

47-325. FALSIFICATION OF RECORDS -- LIMITATION OF ACTIONS. (1) Any person who, for the purpose of evading this act or any rule, regulation or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum required by this act, or by any such rule, regulation or order, or shall omit, or cause to be omitted, from any such

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

report, record, account, or memorandum, full, true and correct entries as required by this act, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding twelve (12) months, or to both such fine and imprisonment.

(2) No suit, action or other proceeding based upon a violation of this act or any rule, regulation or order of the commission hereunder shall be commenced or maintained unless same shall have been commenced within one (1) year from date of the alleged violation. Provided however, the provisions of this subsection shall not apply to actions governed by the provisions of [chapter 52, title 67](#), Idaho Code.

Section 10. That Section 47-326, Idaho Code, be, and the same is hereby amended to read as follows:

47-326.PUBLIC DATA. (1) Subject only to any applicable provisions of section [47-327](#), Idaho Code, the following data is public information that shall not be considered trade secret information under [chapter 8, title 48](#), Idaho Code, nor be exempt from public records disclosure under [chapter 1, title 74](#), Idaho Code. Except as provided in section [47-327](#), Idaho Code, the department shall, upon receipt of the information, make publicly available all data under this section on its website without requiring any person to submit a public records request:

- (a) All reports required under section [47-324](#)(1) through (5), Idaho Code;
- (b) All well [survey location](#) plats; and
- (c) All state-required permits, except seismic data.

(2) The department shall provide complete internet access to all documents in subsection (1) of this section, not granted confidential status, on its website ~~by no later than December 31, 2017.~~

(3) A claim to exempt data from disclosure shall be supported and accompanied by a specific citation to the law authorizing an exemption from disclosure and an explanation of how the data meets the standards for being withheld from disclosure. When a portion of a record or a portion of a page in that record is subject to disclosure and the other portion is subject to a claim that it is exempt from disclosure under this chapter or [chapter 1, title 74](#), Idaho Code, the person making the claim must clearly identify the portion claimed as exempt and the portion not claimed as exempt from disclosure at the time of submittal.

Section 11. That Section 47-327, Idaho Code, be, and the same is hereby amended to read as follows:

47-327.CONFIDENTIALITY OF WELL AND TRADE INFORMATION. (1) Information that shall be held confidential from the public includes logs of a well granted confidential well status pursuant to subsection (2) of this section, electrical or radioactivity logs, electromagnetic or magnetic surveys, core descriptions and analyses, ~~maps, and other geological, geophysical and engineering information~~ [and geophysically or geologically derived subsurface maps](#). Seismic data shall remain confidential from all parties at the discretion of the operator due to the nature of purchasing and licensing such data.

(2) An operator may request confidential well status at the time of filing an application for a permit to drill. The information in the application form itself will not be confidential.

- (a) Confidential status shall be granted and shall include all pertinent data and information

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

relating to drilling completion and testing the well. Such information shall be kept confidential from the public for a period of one hundred eighty (180) days after completion of the well.

(b) Well test results shall be kept confidential from the public for a period of one hundred eighty (180) days after completion of the test.

(c) No extensions shall be allowed beyond the one hundred eighty (180) day confidentiality period.

(3) An operator may request that well logs for a well with confidential well status be held confidential.

(a) To obtain confidential treatment of a well log, the operator of the well shall place the log in an envelope, noting log readings and marked "confidential."

(b) An operator may request, and the department may grant, an additional six (6) months of confidentiality for well logs.

(c) Confidential status for a well log shall terminate six (6) months after the run date on the log or, in the case of an extension, twelve (12) months after the run date on the log. Confidential status for a well log shall not continue for a period in excess of twelve (12) months from the date the log was run on the well.

(4) The state tax commission, the oil and gas conservation commission, the Idaho geologic survey and other state agencies shall share oil and gas records when necessary for those agencies to carry out their duties assigned by law, regardless of whether the records are held confidential from the public under this section. This sharing of records shall not render the shared records subject to disclosure to the public under the public records act.

(5) All state agencies, state employees, contract personnel, temporary personnel and their agents or affiliates shall be governed by the confidentiality provisions of this section and shall be subject to sections [74-117](#) and [74-118](#), Idaho Code, should any information or records protected under statute be disclosed.

Section 12. That Section 47-328, Idaho Code, be, and the same is hereby amended to read as follows:

47-328.RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (1) The commission shall have authority to hear rulemaking proceedings, complaints filed with it pursuant to this chapter and appeals from the ~~oil and gas~~ administrator's decision on an application filed pursuant to this chapter, and any other matter the commission decides should be heard by the commission. The commission may act on its own motion. The commission may prescribe rules governing the procedure before it, subject to the provisions of the administrative procedure act, [chapter 52, title 67](#), Idaho Code. ~~Provided however, that no rulemaking except for that done under section 67-5226, Idaho Code, may be conducted for twelve (12) months beginning on July 1, 2017.~~

(2) In all cases where a complaint is made by the commission or any person that any provision of this act or any rule or order of the commission is being violated, the commission shall serve notice of any hearing to be held on such application or complaint to the interested persons by certified mail, return receipt requested, or in the same manner as is provided in the rules of civil procedure for the service of summons in civil actions. Where the interested person is unknown or cannot be located, the commission shall serve notice by publishing at least one (1) notice of the hearing to such person in a newspaper of general circulation in the county where the affected tract

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

is located. Such notice must be sent, delivered or published, as appropriate, at least five (5) business days before the date of the hearing.

(3) Except as provided in section [47-316](#)(1)(a), Idaho Code, and subsection (2) of this section, any request for an order related to oil and gas activities within the commission's jurisdiction, other than a civil penalty proceeding pursuant to section [47-329](#), Idaho Code, or other enforcement action by the department of lands or the commission, shall be made by application to the department of lands and processed as provided in this section.

(a) The department shall notify the applicant within five (5) business days of receipt of an application if additional information is required for the department to evaluate the application.

(b) For applications involving an order regarding establishment or amendment of a spacing unit, unit operations or integration of a drillingspacing unit, the applicant shall send a copy of the application and supporting documents to all known and located uncommitted mineral interest owners, ~~to~~ all working interest owners within the proposed spacing unit, and to the respective city or county where the proposed unit is located. The mailing shall be sent by certified mail within seven (7) calendar days of filing the application and include notice of the hearing date on which the oil-and-gas administrator will consider the application. For any uncommitted owners and working interest owners who cannot be located, an applicant shall publish notice of any application for an order, notice of hearing and response deadline once in a newspaper of general circulation in the county in which the affected property is located and request the department publish notice on its website within seven (7) calendar days of filing of the application. Only an uncommitted owner in the affected unit may file an objection or other response to the application, and the uncommitted owner shall file at least fourteen (14) calendar days before the hearing date provided in the notice.

(c) For applications not involving paragraph (b) of this subsection, the department and any uncommitted owner within the area defined in the application may file objections or other responses to the application and shall file at least fourteen (14) calendar days before the hearing date provided in the notice.

(d) The oil-and-gas administrator shall hear the application and make a decision on the application's merits. The oil-and-gas administrator shall set regular hearing dates. Applications shall be filed at least forty-five (45) calendar days before a desired hearing date. Untimely applications shall be continued until the next hearing. The oil-and-gas administrator may for good cause continue any hearing. The oil-and-gas administrator may appoint a hearing officer, who shall have the power and authority to conduct hearings. Discovery is not permitted. The department may appear and testify at the hearing. When applications are uncontested, the applicant may request, and the oil-and-gas administrator may allow, approval without a hearing based on review of the merits of a verified application and the supporting exhibits.

(e) The oil-and-gas administrator shall issue a written decision on any such application within thirty (30) calendar days of the hearing. The oil-and-gas administrator's decision shall not be subject to any motion for reconsideration or further review, except for appeal to the commission provided in subsection (4) of this section.

(4) The oil-and-gas administrator's decision on an application or a request for an order may be appealed to the commission by the applicant or any owner who filed an objection or other response to the application within the time required. An appeal must be filed with the oil-and-gas administrator within fourteen (14) calendar days of the date of issuance of the oil-and-gas

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

administrator's written decision. The date of issuance shall be three (3) ~~calendar~~ days after the ~~oil and gas~~ administrator deposits the decision in the U.S. mail, or the date on which he remits a decision electronically. Such appeal shall include the reasons and authority for the appeal and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings, by certified mail, or by personal service. Any person who participated in the proceeding may file a response to the appeal within five (5) business days of service of a copy of the appeal materials. The appellant shall provide the ~~oil and gas~~ administrator with proof of service of the appeal materials on other persons as required in this section. The commission shall make a decision based on the record as set forth in the written submittals of only the appellant and any other participating qualified person, the ~~oil and gas~~ administrator's decision, and any oral argument taken by the commission at an appeal hearing.

(5) Appeals to the commission shall be heard at the next regularly scheduled commission hearing, or at a special meeting of the commission if determined by the commission. In no case will a hearing be later than thirty (30) ~~calendar~~ days after the filing of an appeal. The commission may take argument from, but not new testimony of, the appellant and other qualified participating persons at the hearing. The commission shall make a decision on the appeal at the hearing and issue a written order within five (5) business days of the hearing. The prevailing party shall draft a proposed written order and submit it within two (2) business days. The final order of the commission shall not be subject to any motion for reconsideration.

(6) If no appeal is filed with the commission within the required time, the decision of the ~~oil and gas~~ administrator shall become the final order.

(7) Judicial review of actions taken by the commission shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(8) For an application or request for an order submitted under subsection (3) of this section, only a person qualified under subsection (4) of this section who has completed the appeal procedures set forth in this section shall be considered to have exhausted administrative remedies as required in section 67-5271, Idaho Code.

(9) Each order shall include a reasoned statement in support of the decision, including a concise statement of facts supporting any findings, a statement of available procedures and time limits for appeals. Findings must be based exclusively on materials in the record. The applicant and any participating qualified person shall be served with a copy of the order. The order shall include or be accompanied by a certificate of service.

(10) Every application shall be signed by the applicant or his representative, and his address shall be stated thereon. The signature of the applicant or his representative constitutes a certificate by him that he has read the application and that to the best of his knowledge, information and belief there is good ground to support the same. Each application shall be of such form and content and accompanied by the number of copies required by rule of the commission. Each application shall be accompanied by a fee as established in statute or rule.

47-329.POWERS OF COMMISSION -- WITNESSES -- PENALTY. (1) The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by the commission.

(2) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of refusal of any witness to testify as to any matter regarding which

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

he may be interrogated, any district court in the state, upon the application of the commission, may issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

(3) Any person who violates or fails to comply with any of the provisions of this chapter or any rules or orders made or promulgated hereunder may be assessed a civil penalty by the commission or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each violation and shall be liable for reasonable attorney's fees. Each day the violation continues shall constitute a separate and additional violation, punishable by separate and additional civil penalties in like amount or other like civil penalties as determined by the commission; provided that the civil penalties do not begin to accrue until the date notice of violation and opportunity to be heard are given.

(a) Assessment of a civil penalty may be made in conjunction with any other commission administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to [chapter 52, title 67](#), Idaho Code, which civil penalty begins to accrue no earlier than the date notice of violation and opportunity for a hearing are given.

(c) If the commission is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the commission has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the commission to have occurred pursuant to [chapter 52, title 67](#), Idaho Code.

(e) All civil penalties collected pursuant to this section shall be remitted to the oil and gas conservation fund.

(4) Whenever it shall appear that any person is violating or threatening to violate any provision of this act or any rule, regulation, or order made hereunder, the commission may bring a civil action in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant, if there be more than one (1) defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. In such suit, the commission may seek damages to recover costs caused by such violation including, but not limited to, costs of well control, spill response and cleanup, restoration of fresh waters, well plugging and abandonment, and reclamation of surface disturbance.

(5) Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission shall fail to bring suit to

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

enjoin any actual or threatened violation of this act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected and who has, ten (10) days or more prior thereto, notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit.

(6) Any person who knowingly violates any provision of this chapter, or any of the rules promulgated hereunder for carrying out the provisions of this chapter, or who knowingly fails or refuses to comply with any requirements herein specified, or who knowingly interferes with the commission, its agents, designees or employees in the execution or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or be imprisoned in a county jail for not more than twelve (12) months, or be subject to both such fine and imprisonment.

(7) Nothing in this chapter shall be construed as requiring the commission to report minor violations for prosecution when it believes that the public interest will be best served by suitable warnings or other administrative action.

47-330.OIL AND GAS CONSERVATION FUND CREATED -- TAX. (1) For the purposes of paying the expenses of administration of this act and for the privilege of extracting oil and gas in this state, there is hereby levied and imposed on all oil and gas produced, saved and sold or transported from the premises in Idaho where produced a tax of two and one-half percent (2.5%) of the gross income received by the producer of the oil and gas produced. "Gross income" shall mean the amount realized by the producer for sale of the oil and gas, whether the sale occurs at the wellhead or after transportation of the product, without deduction for marketing, transportation, manufacturing, and processing costs borne by the producer. Where the parties to the sale are related parties and the sales price is lower than the price for which that oil and gas could otherwise have been sold to a ready, willing, and able buyer and where the taxpayer was legally able to sell the oil and gas to such a buyer, gross income shall be determined by reference to comparable arms-length sales of like kind, quality, and quantity in the same field or area. For purposes of this subsection, "related parties" shall be as defined in section 267 of the Internal Revenue Code, as defined, in section [63-3004](#), Idaho Code. This tax is in addition to all other taxes provided by law. It shall be the duty of the state tax commission to enforce collection of this tax and to make such rules as may be necessary, pursuant to the provisions of [chapter 52, title 67](#), Idaho Code. All money so collected shall be remitted to the state treasurer for deposit in the oil and gas conservation fund, which fund is hereby created in the office of the state treasurer of the state of Idaho.

(2) The persons owning an interest, working interest, royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, shall be liable for such tax in proportion to their ownership at the time of production. The tax so assessed and fixed shall be payable monthly, and the sum so due shall be remitted to the state tax commission, on or before the twentieth of the month following the month in which the tax accrued, by the producer on behalf of himself and all other interested persons. The person remitting the tax, as herein provided, is hereby empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas, or in the proceeds thereof, at the time of production a proportionate amount of such tax before making payment to such persons.

(3) The tax imposed by this section shall apply to all lands in the state of Idaho, anything in

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

this act to the contrary notwithstanding; provided however, there shall be exempted from the tax hereinabove levied and assessed the following, to wit:

- (a) The interest of the United States of America and the interest of the state of Idaho and the political subdivisions thereof in any oil and gas or in the proceeds thereof.
- (b) The interest of any Indian or Indian tribe in any oil and gas or the proceeds thereof, produced from lands subject to the supervision of the United States.
- (c) Oil and gas used in producing operations or for repressuring or recycling purposes.
- (4) To the extent that such sections are not in conflict with the provisions of this act, the deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections [63-3038](#), [63-3039](#), [63-3040](#), [63-3042](#) through [63-3065A](#), [63-3068](#), [63-3071](#) and [63-3075](#) through [63-3078](#), Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due. Said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection pursuant to this act, be described as an oil and gas tax lien or proceeding.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment or any other amount erroneously or illegally collected shall be paid or satisfied out of the state refund account created by section [63-3067](#), Idaho Code.

(5) All moneys collected under this chapter shall be distributed by the state tax commission as follows:

- (a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.
- (b) For the balance of the proceeds, forty percent (40%) shall be distributed by the end of the month following each monthly due date by the state tax commission into any oil and gas revenue share account as follows:
 - (i) Forty-four percent (44%) is hereby appropriated and shall be paid to the current expense fund of the county from which the oil and gas was produced, to be used to mitigate the impacts associated with oil and gas production, development and transportation in that county;
 - (ii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the cities within the county from which the oil and gas was produced. Such funds shall be distributed to each city based upon the proportion that the city's population bears to the total population of all of the cities within the county; and
 - (iii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the public school income fund.
- (c) The remainder of the moneys deposited into the oil and gas conservation fund, sixty percent (60%) of the proceeds after refunds, may be expended pursuant to legislative appropriation and shall be used for defraying the expenses of the oil and gas conservation commission in carrying out the provisions of this act. At the beginning of each fiscal year, those moneys in the oil and gas conservation fund, after applicable refunds and distribution

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

as noted in paragraphs (a) and (b) of this subsection, that exceed two hundred percent (200%) of the current year's appropriations for the oil and gas conservation commission shall be transferred to the general fund. The oil and gas conservation commission shall audit all bills for salaries and expenses incurred in the enforcement of this act that may be payable from the oil and gas conservation fund that shall be audited, allowed and paid as to the claims against the state.

Section 13. That Section 47-331, Idaho Code, be, and the same is hereby amended to read as follows:

47-331.OBLIGATION TO PAY ROYALTIES AS ESSENCE OF CONTRACT --

INTEREST. (1) The obligation arising under an oil and gas lease to pay oil and gas royalties to the royalty owner or the owner's assignee, to deliver oil and gas to an **end** purchaser to the credit of the royalty owner or the owner's assignee, or to pay a portion of the proceeds of the sale of the oil and gas to the royalty owner or the owner's assignee is of the essence in the lease contract.

(2) Unless otherwise agreed by the parties:

(a) A royalty of no less than twelve and one-half percent (12.5%) of the oil and gas or natural gas plant liquids produced and saved shall be paid. The lessee shall make payments in legal tender unless written instructions for payment in kind have been provided.

(b) Royalty shall be due on all production sold from the leased premises except on that consumed for the direct operation of the producing wells and that lost through no fault of the lessee.

(3) If the operator under an oil and gas lease fails to pay oil and gas royalties to the royalty owner or the owner's assignee within one hundred twenty (120) days after the first production of oil and gas under the lease is marketed, or within sixty (60) days for all oil and ninety (90) days for all gas produced and marketed thereafter, the unpaid royalties shall bear interest at the maximum rate of interest authorized under section [28-22-104](#)(1), Idaho Code, from the date due until paid. Provided, however, that whenever the aggregate amount of royalties due to a royalty owner for a twelve (12) month period is less than one hundred dollars (\$100), the operator may remit the royalties on an annual basis without any interest due.

(4) A royalty owner seeking a remedy for failure to make payments under the lease or seeking payments under this section may file a complaint with the commission or may bring an action in the district court pursuant to section [47-333](#), Idaho Code. The prevailing party in any proceeding brought under this section is entitled to recover court costs and reasonable attorney's fees.

(5) This section does not apply if a royalty owner or the owner's assignee has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

47-332.REPORTS TO ROYALTY OWNERS. (1) Each royalty payment shall be accompanied by an oil and gas royalty check stub that includes the following information:

(a) Lease or well identification;

(b) Month and year of sales included in the payment;

(c) Total volumes of oil, condensate, natural gas liquids or other liquids sold in barrels or gallons, and gas in MCF;

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

- (d) Price per barrel, gallon, or MCF, including British thermal unit adjustment of gas sold;
 - (e) Severance taxes attributable to said interest;
 - (f) Net value of total sales attributed to such payment after deduction of severance taxes;
 - (g) Owner's interest in the well, expressed as a decimal to eight (8) places;
 - (h) Royalty owner's share of the total value of sales attributed to the payment before any deductions;
 - (i) Royalty owner's share of the sales value attributed to the payment, less the owner's share of the severance taxes;
 - (j) An itemized list of any other deductions; and
 - (k) An address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered. If information is requested by certified mail, an answer must be mailed by certified mail within thirty (30) days of receipt of the request.
- (2) All revenue decimals shall be calculated to at least eight (8) decimal places.
 - (3) All oil and gas volumes shall be measured by certified and proved meters.
 - (4) The lessee must maintain, for a period of five (5) years, and make available to the lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the lessor may require to verify the gross production, disposition and market value.

47-333.ACTION FOR ACCOUNTING FOR ROYALTY. (1) Whenever an owner of a royalty interest makes a written demand for an accounting of the oil and gas produced, but no more frequently than once every twenty-four (24) months, and makes written demand for delivery or payment of his royalty as may then be due upon the person or persons obligated for the delivery or payment of the royalty, and the obligated persons then fail to make the accounting demanded and the payment or delivery of the royalty due within a period of ninety (90) days following the date upon which the demand is made, then the royalty owner may file an action in the district court of the county wherein the lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated.

(2) In such an action, the prevailing party or parties shall be entitled to reasonable attorney's fees to be allowed by the court, together with the costs allowed to a prevailing party, pursuant to section [12-120](#), Idaho Code.

(3) The remedies under this section are not exclusive and do not abrogate any right or remedy under other laws of this state.

Section 14. That Section 47-334, Idaho Code, be, and the same is hereby amended to read as follows:

47-334.USE OF SURFACE LAND BY OWNER OR OPERATOR. (1) For the purposes of this section, the following definitions shall apply:

- (a) "Surface land" means land upon which oil and gas operations are conducted.
- (b) "Crops" means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.
- (c) "Surface landowner" means a person who owns all or part of the surface land as shown

by the records of the county in which the surface land is located. Surface landowner does not include the surface landowner's lessee, renter, tenant or other contractually related person.

(d) "Surface landowner's property" means a surface landowner's surface land, crops on the surface land and existing improvements on the surface land.

(e) "Surface use agreement" means an agreement between an owner or operator and a surface landowner addressing the use and reclamation of surface land owned by the surface landowner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface landowner's crops on the surface land, loss of value of existing improvements owned by the surface landowner on the surface land and permanent damage to the surface land.

(2) An owner or operator may:

(a) Enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations; and

(b) Use the surface land:

(i) To the extent reasonably necessary to conduct oil and gas operations; and

(ii) Consistent with allowing the surface landowner the greatest possible use of the surface landowner's property, to the extent that the surface landowner's use does not interfere with the owner's or operator's oil and gas operations.

(3) Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall:

(a) Mitigate the effects of accessing the surface landowner's surface land;

(b) Minimize the interference with the surface landowner's use of the surface landowner's property; and

(c) Compensate a surface landowner for unreasonable:

(i) Loss of a surface landowner's crops on the surface land;

(ii) Loss of value to existing improvements owned by a surface landowner on the surface land; and

(iii) Permanent damage to the surface land.

(4) For the purposes of this section, an owner or operator is not required to:

(a) Obtain location or spacing exceptions from the department or commission; or

(b) Utilize directional or horizontal drilling techniques that are not:

(i) Technologically feasible;

(ii) Economically practicable; or

(iii) Reasonably available.

(5) The provisions of subsection (2) of this section do not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations.

(6) (a) The provisions of this section do not prevent:

(i) A person from seeking a remedy allowed by law; or

(ii) An owner or operator and a surface landowner from addressing the use of surface land for oil and gas operations through a lease, a surface use agreement or another written contract.

(b) An agreement described in paragraph (a)(ii) of this subsection shall control:

(i) The use of surface land for oil and gas operations; and

(ii) Compensation for damage to the surface land caused by oil and gas operations.

(7) A nonbinding mediation may be requested by a surface landowner and an owner or

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

operator by providing written notice to the other party if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface landowner on the surface land, or unreasonable permanent damage to the surface land. A mediator may be mutually selected by a surface landowner and an owner or operator. The surface landowner and the owner or operator shall equally share the cost of the mediator's services. The mediation provisions of this section do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

(8) A surface use bond shall be furnished to the department by the owner or operator in accordance with the following provisions:

(a) A surface use bond does not apply to surface land where the surface landowner is a party or a successor of a party to:

- (i) A lease of the underlying privately owned oil and gas;
- (ii) A surface use agreement applicable to the surface landowner's surface land; or
- (iii) A contract, waiver or release addressing an owner's or operator's use of the surface landowner's surface land.

(b) The minimum surface use bond shall be in the amount of six thousand dollars (\$6,000) per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface landowner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

(c) The surface use bond shall be furnished to the department on a form designed by the department after good faith negotiation and prior to the approval of the application for a permit to drill. The mediation process identified in this section may commence and is encouraged to be completed. The department may accept a surface use bond in the form of a cash account or a certificate of deposit. Interest will remain within the account. The department may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage. The surface use bond shall remain in effect by the operator until released by the department.

(d) The surface use bond shall be payable to the department for the use and benefit of the surface landowner, subject to this section. The surface use bond shall be released to the owner or operator after the department receives sufficient information that:

- (i) A surface use agreement or other contractual arrangement has been reached;
- (ii) Final resolution of the judicial appeal process for an action for unreasonable damages has occurred and damages have been paid; or
- (iii) Plugging and abandonment of the well is completed.

(e) The department shall make a reasonable effort to contact the surface landowner prior to the department's release of the surface use bond.

47-335.PRODUCERS -- MONTHLY STATEMENTS -- IDAHO STATE TAX

COMMISSION. (1) Every producer engaged in the production of oil or gas from any well or wells in the state shall each month file with the Idaho state tax commission, on forms prescribed by the Idaho state tax commission, a statement containing the information required by subsection (2) of this section relating to the oil or gas produced, saved and sold or transported from the premises in Idaho where produced.

(2) The statement required in subsection (1) of this section shall include:

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

- (a) The name, description and location of:
 - (i) Every well or wells; and
 - (ii) Every field in which the well or wells are located; and
- (b) Any other reasonable and necessary information required by the Idaho state tax commission.
- (3) The statements required to be filed with the Idaho state tax commission shall be signed and sworn to by the producer or a designee.
- (4) The Idaho state tax commission is authorized to conduct audits, relating to producer compliance with the provisions of this section, at least every three (3) years.

47-336.INTERSTATE COMPACT FOR CONSERVATION OF OIL AND GAS RATIFIED. (1) The state of Idaho does hereby ratify, approve, adopt and confirm the interstate compact to conserve oil and gas heretofore executed in the city of Dallas, Texas, on February 16, 1935, and is now deposited with the department of state of the United States and which has been extended with the consent of congress to September 1, 1947, which said compact is substantially as follows:

INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico have ratified and congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio.
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.
- (c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.
- (d) The creation of unnecessary fire hazards.

FINAL DRAFT TO BE SUBMITTED TO DFM

Unofficial Copy

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as "The Interstate Oil Compact Commission," the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have the power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) by the affirmative votes of the majority of the whole number of the compacting states represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

FINAL DRAFT TO BE SUBMITTED TO DFM
Unofficial Copy

No state joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This compact shall continue in effect until congress withdraws its consent. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in article I of this compact. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

(2) Notice of approval of said compact shall be given by the governor of Idaho to the interstate oil and gas compact commission (IOGCC) and to the department of state of the United States.

(3) That the governor of the state of Idaho be and hereby is authorized and empowered, for and on behalf of the state of Idaho, to determine when and if it shall be for the best interests of the state of Idaho to withdraw from said compact, upon sixty (60) days' notice, as provided by terms thereof, and in the event he shall determine that the state should withdraw from said compact, he shall have full power and authority to give necessary notice and take any and all other steps necessary to effect the withdrawal of the state of Idaho from said compact.

(4) The governor of the state of Idaho shall appoint one (1) representative of the state of Idaho to the IOGCC, whose duty and authority on behalf of the state of Idaho shall be as provided in said compact.

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION

August 16, 2022
Information Agenda

SUBJECT

Overview of Legal Requirements for Commission: Open Meetings; Public Records; Ethics in Government

BACKGROUND

The Open Meetings Law, the Public Records Law, and ethics laws are all legal requirements that apply to the Idaho Oil and Gas Conservation Commission.

The Idaho Open Meeting Law is codified at Idaho Code §§ 74-201 to 74-208. The law was designed to ensure transparency of the legislative and administrative processes within state and local governments. The legislature articulated “that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.” Idaho Code § 74-201.

The Idaho Public Records Law is codified at Idaho Code §§ 74-101 to 74-126. The law provides that “all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.” Idaho Code § 74-102.

Several general statutes govern ethics in government, but more specific statutes can apply as well. Understanding these statutes is important to identify and analyze specific situations that may arise as a commissioner.

DISCUSSION

This informational presentation will explain these legal requirements.

MANUALS PROVIDED AT MEETING

1. Open Meeting Law Manual, July 2019 – [link to manual](#)
2. Public Records Law Manual, July 2020 – [link to manual](#)
3. Ethics in Government Manual, July 2019 – [link to manual](#)



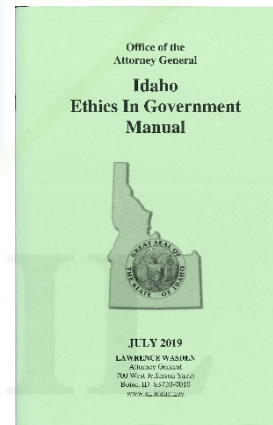
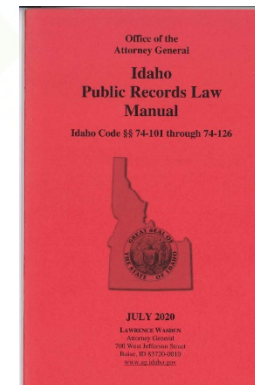
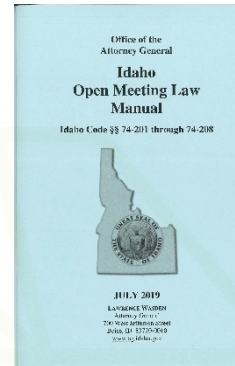
Legal Requirements for Commission

“Open & Honest Government”

IDAHO OIL & GAS
CONSERVATION COMMISSION

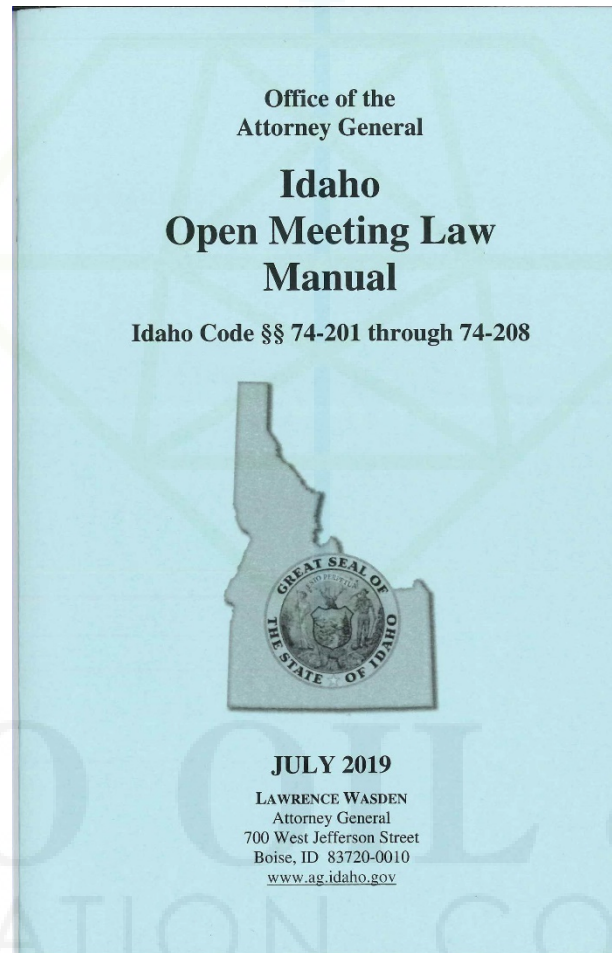
Topics

- Open Meeting Law
- Public Records Law
- Ethics



IDAHO OFFICE OF THE ATTORNEY GENERAL & GAS
CONSERVATION COMMISSION

Open Meeting Law



Policy

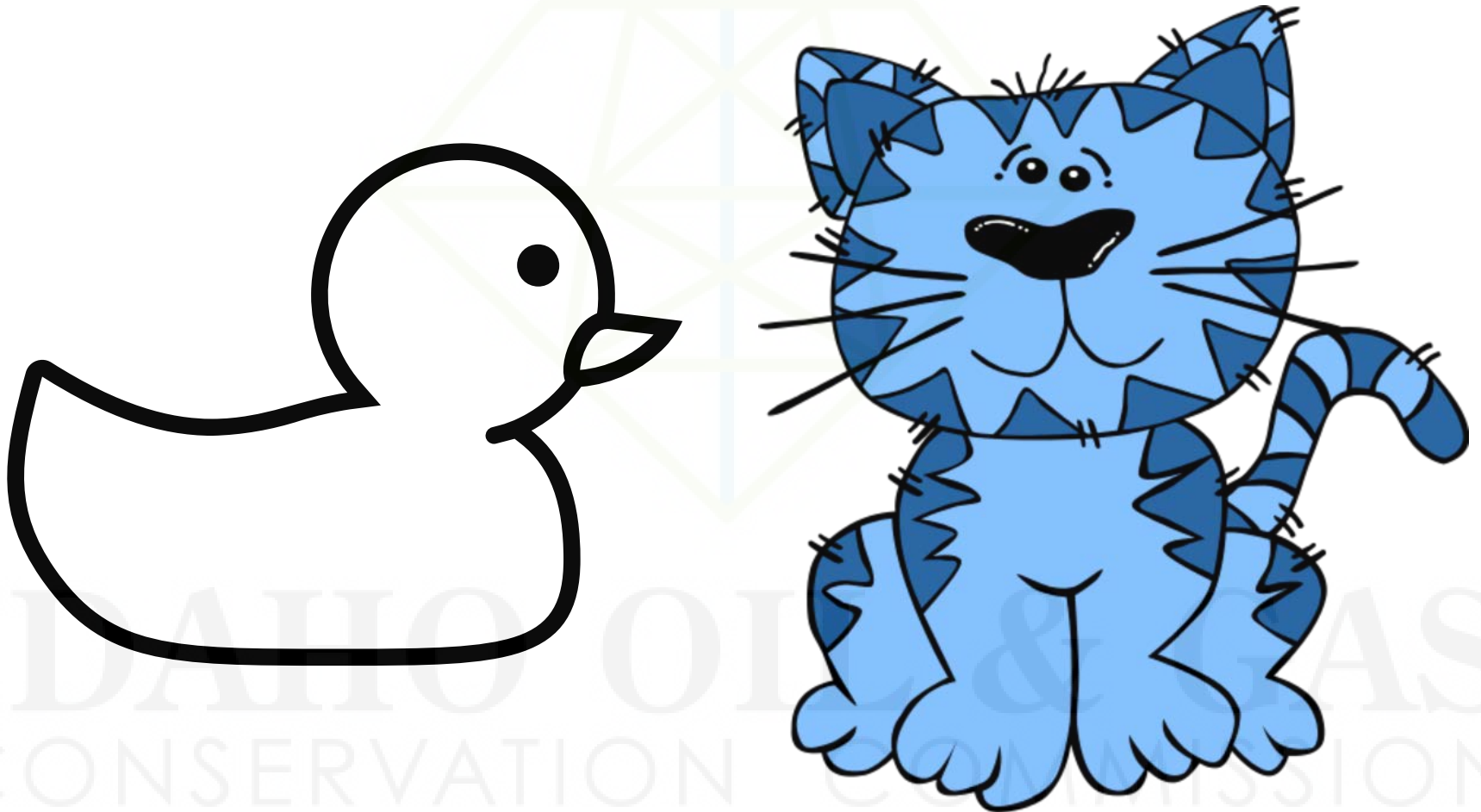
The legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

Idaho Code § 74-201

Topics

- Statutory Interpretation
- When do Open Meetings Laws Apply?
- Is this a Meeting?
- Notice and Agenda
 - Requirements
 - Amending Agenda
- Executive Session
- Violations / Cure

Statutory Interpretation



When do Open Meetings Laws Apply?

- All meetings of a governing body of a public agency. Idaho Code § 74-203
 - “governing body” means members of a public agency with two or more members, with authority to make decisions for or recommendations to a public agency regarding any matter
 - “public agency” includes any state board, commission, department, or agency created by statute except the judiciary

Is this a meeting?

- “Meeting” means convening a governing body of a public agency to make a decision or deliberate toward a decision on any matter.
- “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.
- “Deliberation” means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specially relate to a matter then pending before the public agency for decision.

Quorum



Notice & Agenda

- Regular Meetings
 - Notice no less than five (5) calendar days
 - 48 hour agenda notice
- Special Meetings
 - At least 24 hour meeting and agenda notice, unless an emergency exists

Idaho Code § 74-204(1),(2)

Agenda

- Posted in same way as notice of meeting
 - In a prominent place at agency's principal office
 - Posted electronically if entity has website or social media
- Agenda items that require a vote shall be identified as an “action item” to provide notice that action may be taken on that item.
 - A vote is not required to be taken

Idaho Code § 74-204(4)

Amending the Agenda

- A motion and vote are required to amend an agenda within 48 hours of meeting or during the meeting.
- Amendments must provide good faith reason item was not included in the original posting.
- Final Action cannot be taken on agenda items added after the start of a meeting unless an emergency is declared
 - Any emergency declaration must go in minutes

Idaho Code § 74-204(4)

Meeting

- Open to public. No decisions shall be made by secret ballot. Idaho Code § 74-203(1).
- Can telecommute, but at least 1 member must be physically present at location to ensure public can attend. Idaho Code § 74-203(5).
- Members may not use computers or texting to conduct private conversations among themselves about commission business.

Minutes

- Written minutes are required.
- All minutes shall be available to the public within a reasonable time after the meeting.
- Must include:
 - Members present
 - All motions, resolutions, orders, or ordinances proposed & their dispositions
 - Results of votes (and names, if requested)

Idaho Code § 74-205

Executive Sessions

- Members of the public may be excluded, “but only for the purposes and only in the manner set forth in this section.” Idaho Code § 74-206
- Executive Sessions may only be held for ten narrow purposes identified in the Open Meeting Law. See Idaho Code § 74-206(1)(a) – (j).

Exceptions include...

- (1)(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code
- (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. The mere presence of legal counsel at an executive session does not satisfy this requirement.

Stay focused

- Exceptions are narrowly construed.
- Changing the subject within executive session is a violation of law.

No final action

- “No executive session may be held for the purpose of taking any final action or making any final decision.” Idaho Code § 74-206(3).
- Exit executive session and enter open meeting to make a decision on executive session topics.

How to enter Executive Session

- Motion must identify the specific subsection of Idaho Code § 74-206 authorizing the session.
- Roll call vote on motion
- At least 2/3 of members must authorize.
 - 3 out of 4 members
 - 4 out of 5 members

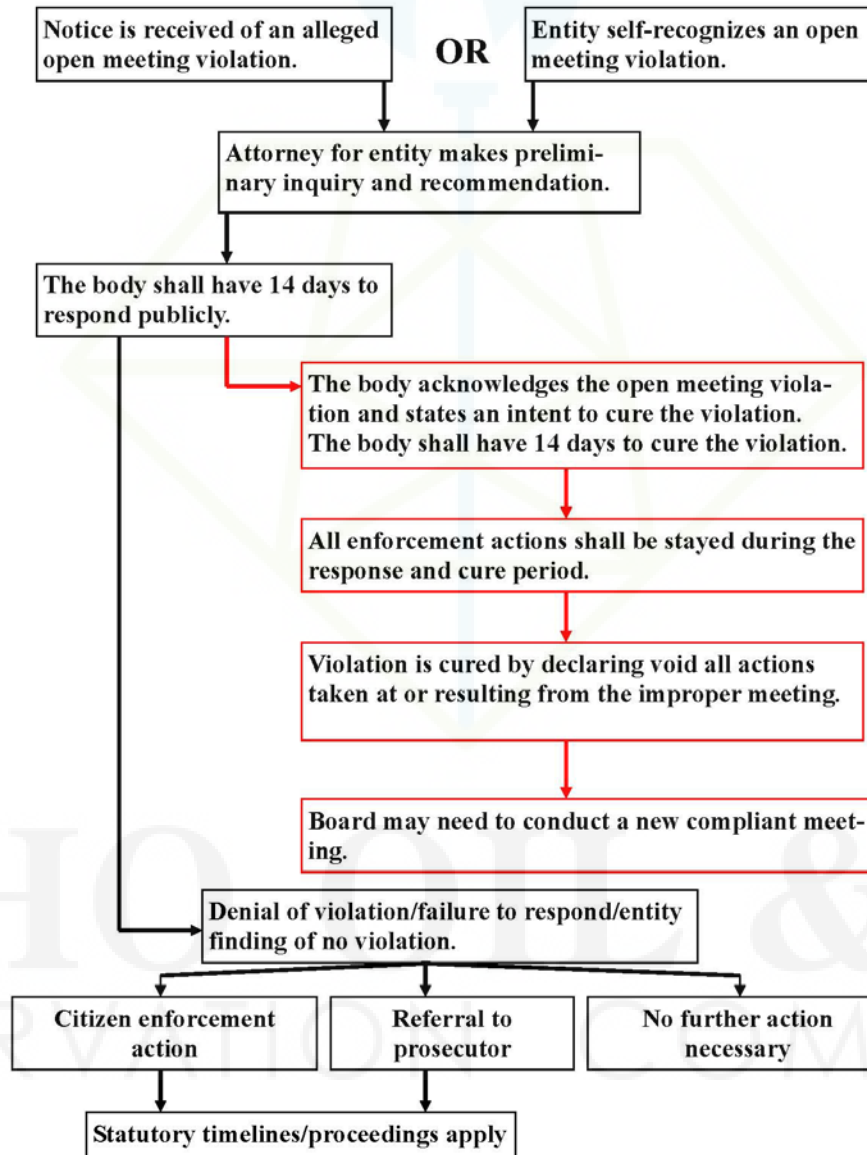
Enforcement



Enforcement - Idaho Code § 74-208

- Failure to comply renders the action null and void.
- Civil penalties
 - up to \$250
 - up to \$1500 for “knowingly violates”
 - up to \$2500 for subsequent knowing violation
- Attorney General shall have the duty to enforce this act in relation to public agencies of state government.
- Cure – OML Manual p. 40

Curing Process – Idaho Code § 74-208(7)

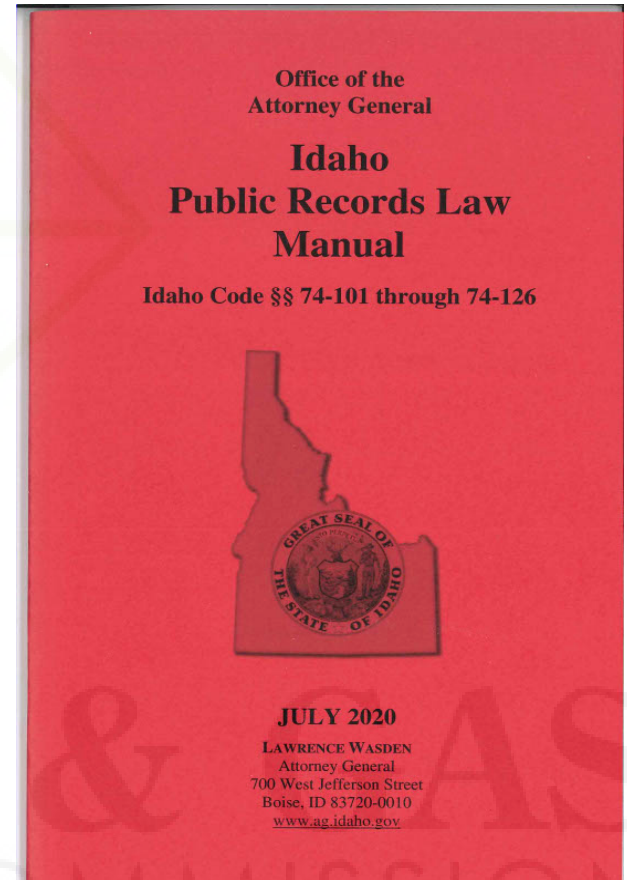


Procedure at Meetings

- Agency may adopt reasonable rules to govern orderly conduct at meetings, i.e. Robert's Rules of Order. OML Manual pp. 12-13.
- Example of simplified parliamentary procedure:
 - Chair runs the meeting and gives permission to speak.
 - A member proposes the Commission take action by making a motion.
 - Another commissioner seconds the motion.
 - Chair then repeats the motion and commission discusses.
 - When discussion ends, Chair restates the motion and commission votes. Chair announces the result of the vote.

Public Records Act

As commissioners, you will view, use, possess, and create public records.



Right to Examine

“Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records are open at all reasonable times for inspection except as otherwise provided by statute.”

Idaho Code § 74-102 (emphasis added).



Definitions – Idaho Code § 74-101

- “Public Record”

Any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency . . . regardless of physical form or characteristics.

- Provided, however, that personal notes created by a public official solely for his own use shall not be a public record as long as such personal notes are not shared with any other person or entity.

- “Writing”

Includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing, and every means of recording.

Requests

- A public agency may require that a request for public records be submitted in writing.
 - Specifically describes the subject matter and records sought, including a specific date range for when the records sought were created.
 - Requesting party shall be as specific as possible
 - Describe records sought in sufficient detail for agency to locate with reasonable effort
- Examination must be conducted during regular office or working hours.
- Custodians can use vigilance as required to prevent alteration of public records while being examined.

Responses to Requests

- Time Requirements – Idaho Code § 74-103
 - Grant or deny within 3 working days
 - If a longer period of time is needed to locate or retrieve the records, the requestor shall receive the record no later than 10 working days from the request.
- IDL has a policy for responding to requests

Exemptions & More

- Exemptions to disclosure are located in the Public Records Law and other statutes
- Narrowly construed
- Penalty (Idaho Code § 74-117)
 - Official deliberately and in bad faith refused a legitimate request
- Immunity (Idaho Code § 74-118)
 - No liability for any loss or damage based on release if acted in good faith to comply

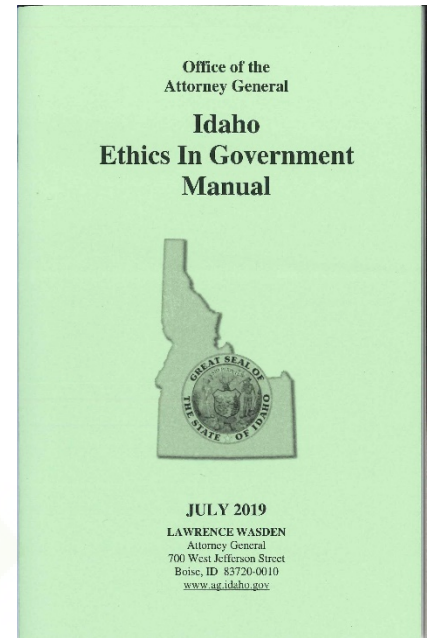
Denial

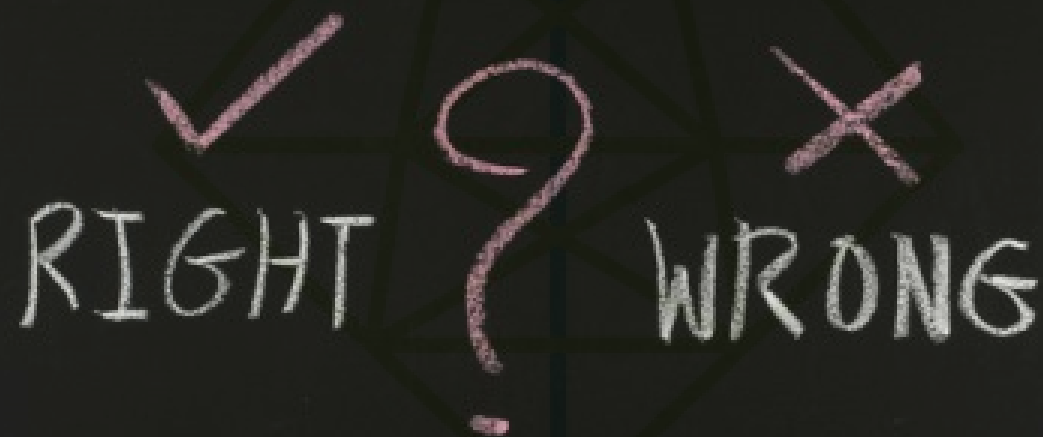
- If denied or partially denied, requestor will be notified of denial in writing
- Denial will state appeal rights
- Denial will state whether or not an attorney has reviewed that denial.

Idaho Code § 74-103

Ethics

- Ethics in Government Act
(Idaho Code §§ 74-401 – 74-406)
- Prohibitions Against Contracts with Officers
(Idaho Code §§ 74-501 – 74-511)
- Bribery and Corrupt Influence Act (Idaho Code
§§ 18-1351-18-1362)





RIGHT ? WRONG

IDAHO OIL & GAS
CONSERVATION COMMISSION

Ethics in Government Act



- Applies to Commissioners
- “The position of a public official at all levels of government is a public trust.” Idaho Code § 74-402.

Conflicts of Interest

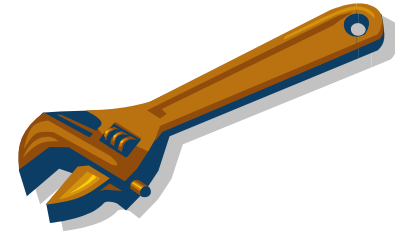
The Ethics in Government Act requires public officials disclose conflicts of interest.

Idaho Code § 74-404

“Conflict of interest” is defined in Idaho Code § 74-403(4)

- The focus is a “private pecuniary benefit” to the public official, a member of official’s household, or a business with whom official is associated.

Tools



- General ethics approach:
 - Identify whether there is an ethical issue.
 - Consult with an attorney.
 - Comply with applicable statutes and advice.
- How to identify an ethical issue:
 - Identify the matter before the commission.
 - Is your vote required?
 - Will the matter benefit: you, your family, your business, property you own?
 - If yes to any, consult with an attorney.

Bribery & Corrupt Influence Act

- Cannot accept gifts.
 - No public official in a regulatory agency shall solicit, accept, or agree to accept a pecuniary benefit from a person known to be subject to such regulation or against whom litigation is pending or contemplated.
- Law does not apply to:
 - trivial benefits of \$50 or less that don't substantially risk impartiality;
 - gifts due to kinship or other personal, or professional relationship independent of official capacity.

Idaho Code § 18-1356



Prohibition Against Contracts with Officers

- State officials can't be interested in any contract they make in their official capacity.
IC § 74-501
- Contracts that violate statute are voidable.
IC § 74-504
- Officials are deemed not interested if
 - only a remote interest exists (defined in IC § 74-502)
 - disclose that interest to the commission
 - interest noted in official minutes before contract formed
 - Commission approves without counting vote of that member.
 - Member shall not attempt to influence any other member to enter into the contract.



Questions?

IDAHO OIL & GAS
CONSERVATION COMMISSION