



IDAHO OIL AND GAS CONSERVATION COMMISSION

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

Mick Thomas, Secretary to the Commission

Final Minutes
Idaho Oil and Gas Conservation Commission Special Meeting
September 14, 2023

The special meeting of the Idaho Oil and Gas Conservation Commission was held on Thursday, September 14, 2023, at the State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise, Idaho. The meeting began at 1:00 p.m. (MT). Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Ray Hinchcliff – via virtual means
Commissioner Margaret Chipman
Commissioner Jennifer Riebe

For the record, a quorum was in attendance; Chairman Coppersmith, Commissioner Chipman, Commissioner Riebe, and Secretary Thomas were present at the physical location. Vice Chairman Hinchcliff attended via virtual means.

- **ANNOUNCEMENTS**

Chairman Coppersmith opened the meeting and welcomed new Commissioner Marg Chipman. Chairman Coppersmith stated that no public comment will be accepted except for the speakers who are lined up for the appeal of the Kauffman #1-9.

At 1:02 p.m., a motion was made by Commissioner Riebe that the Commission convene into Executive Session to communicate with counsel for us to discuss the legal ramifications and options for responding to the plaintiffs' latest communication pursuant to Idaho Code §74-206(1)(f). Commissioner Chipman seconded the motion. Chairman Coppersmith stated a roll call vote is required. Roll Call Vote: Aye: Hinchcliff, Chipman, Riebe, Coppersmith; Nay: None; Absent: None.

- **Executive**

A. Idaho Code 74-206(1)(f) - to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. [TOPIC: Appeal of Kauffman #1-9 well status]

At 1:40 p.m., the Commission resolved out of Executive Session by unanimous consent. For the record, no decisions were made during the Executive Session.

- **REGULAR – ACTION ITEM(S)**

1. **Appeal of Kauffman #1-9 well status**

RECOMMENDATION: Evaluate the options for the operator and make a decision on whether to maintain the inactive status of the Kauffman #1-9 or return it to active well status.

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 and do not include the entire presentation.]

DISCUSSION:

Chairman Coppersmith: At this point, we are going to have the parties who are going to be speaking come up. When I call your name, please identify yourself and who you represent. Mr. Christian.

Michael Christian: Madam Chair, Michael Christian, I represent the appellant, Snake River Oil & Gas.

Chairman Coppersmith: Thank you. Mr. and Mrs. Kauffman.

Thana Kauffman: I am Thana Kauffman; this is my husband, Randy Kauffman. We are the landowners and mineral right owners.

Chairman Coppersmith: Are you two going to give comment later or are you just here to see the proceedings?

Ms. Kauffman: We submitted a written statement.

Chairman Coppersmith: Yes, and we have those.

Ms. Kauffman: If we feel we need to comment further, we will let you know, or any questions that you would have for us, that is why we are here.

Chairman Coppersmith: Great, thank you. Are there any other persons who filed comments during the initial comment period that intend to provide comments today? I do not see anyone. With that, we will hear oral argument on the appeal, and if we need it, we will enforce a 15-minute time segment for each argument. Snake River if you would like to come up.

Mr. Christian: Madam Chair, Commissioners, I appreciate the opportunity to be here. Before I start, I wanted to introduce the members of the Snake River Oil & Gas team that are here. You know Richard Brown; he has been very active here. His partner in Weiser Brown Oil Company, Chris Weiser, is here. Nate Caldwell, the Idaho operations manager, who you are also familiar with. Dave Smith is both a working interest partner and provides geophysical and geology services to Snake River. And Biff Caldwell, who I just had the pleasure of meeting today, is a petroleum engineer and provides

engineering services to Snake River. I will go as fast as I can if I am subject to a 15-minute time limit. I will say two things first. One, this is an important issue because it involves a significant resource, so I think it bears a thorough examination. I will also say, before I start, just as a personal matter, I am here, and my job is to advocate as well as I can on behalf of Snake River. That said, I believe that I have had a good working relationship with the Department; we appreciate the ability to work with them. As zealously as I may advocate here, that does not change. I would like to just briefly go through the background of this appeal and then I want to talk about the statutory and rules framework that I think apply, and then get this to what we believe are some appropriate outcomes.

[Editor's note: This section does not include Mr. Christian's entire presentation.]

Mr. Christian: Based on this discussion, I would respectfully suggest that either of two outcomes is appropriate. One, Snake River's appeal is granted subject to a requirement that it individually bond the Kauffman well at an appropriate level and then Snake River may pursue its new planned operations under the rules applicable to an active well. I want to go back for a moment to what I mentioned earlier about the basis for the determination to deny the request to return to active status to allow it to pursue its water disposal options. The Department's decision on August 2 said essentially that the Department had reviewed the annual reports and all other filings for the well, and the Department has considered the uncertain probability of the factors that Snake River would deem necessary for the well to be economically viable. That is the sum of the Department's decision. While of course the Department has discretion, I do not know what that last part means. If the operator in its prudent decision making has decided that it is worthwhile to continue pursuit of its water disposal operations and that it believes it can get that solution in place in 18 months, I am not sure that there is enough reasoning in the Department's decision to override the operator's prudent decision. Be that as it may, a second option here would be to remand the matter to the Department with direction to accept the new request from Snake River to immediately produce the well, accept that request for conversion to active status, review it, and consider it and decide on it appropriately pursuant to Rule 501.05. [IDAPA 20.07.02.501.05.], again subject to the requirement that the well is appropriately individually bonded, which it may be at this point, the Department may decide not. The first option, granting the appeal, would contain a built-in deadline for the return of the well to inactive status, 18 months, which would create a new plugging deadline; it would create a certain end date. The second alternative, if it results in a positive decision by the Department to return the well to active status, would also contain a new deadline, per Rule 501.05 read in conjunction with Rule 500.02. [IDAPA 20.07.02.500.02.] In either case, I think we could end up with a resolution which would provide certainty about time frames, and in either case the well will remain appropriately bonded on an individual basis. I will close by saying something similar to what I opened with, which is I think reaching the point where we are, which is a well with what the operator believes to be substantial resources still in the ground to be produced to the benefit of the operator, the royalty owner, and to the State in the form of severance taxes, getting to the point where that well should be required to be plugged was avoidable. Snake River certainly plays a role in that, but I want to state here that Snake River is serious about improving, as it always is, its communications and relationship with the Department staff. I think we have worked well with them in the past and I think we will continue to work well with them in the future. Obviously, Snake River has a significant interest in continuing the use of it; they are the only operator here, they are the only one that is going to be regulated, and they have a significant investment in this basin. I hope that this discussion and the commitment to engaging proactively and collaboratively with the Department to plan for future plugging liabilities will help both Snake River and the Department focus on realizing the goals of the Act [Idaho Oil and Gas

Conservation Act, Title 47, Chapter 3, Idaho Code] and allow for everyone to benefit from greater future production. I stand for any questions you may have.

Chairman Coppersmith: Actually, I am going to check with the Kauffmans to see if they want to come up and make any statements.

Ms. Kauffman: I think our statement that we submitted is enough.

Chairman Coppersmith: You did go a little bit longer than 15-minutes, but because no one else was slated to speak, and as you said, this is a very important matter, that was acceptable.

Mr. Christian: Thank you, Madam Chair.

Chairman Coppersmith: I will open it up to questions from Commissioners.

Commissioner Riebe: You gave us two options that you felt were the best course forward. There are other options, it seems, that also allow you that flexibility. There is the option of applying to extend the inactive status, or reapplying for an active status. Can you talk about both of those?

Mr. Christian: Madam Chair, Commissioner Riebe, one of the options I proposed is to direct the Department to accept the new proposal to return to active status and to have an actual in-depth evaluation of the proposed operation, or operations, that Snake River would pursue to immediately get the well back into production. They are interested in it; I know the royalty interest owners are interested in it. If they can do it, they believe they can do it in a manner which allows them to produce the well in a way that moderates water production such that it can be done economically, and the well can generate revenue while they continue to pursue water disposal. That is one option. You are correct, Commissioner Riebe, that requesting an extension of inactive status is possible. What that does not allow for is production of the well during that time period. In other words, inactive status could be requested and granted, Snake River could continue outside of operating the well to work on water disposal solutions and reach a point where one of these options reaches fruition and then they would return to the Department, make a request to convert the well to active status on the immediate availability of much larger water disposal, and go forward at that time. By all appearances, they are going to be able to reduce the cost of contracted water disposal now, which would facilitate allowing them to produce the well immediately on an economical basis.

Vice Chairman Hinchliff: You identified various artificial lift methods that might have to be tested to make sure this well could get back into normal operations. I am assuming that is a process like all downhole operations, you do not know until you try, so returning this to an active status in the near term, do you have a feel for what the timing of that might be to determine when you would find an acceptable artificial lift method to lift the water out of this well?

Mr. Christian: My understanding is that Snake River is in a position to implement the modified gas lift procedure within 30-days. I do not know how long after that, were that to be not successful, for them to make attempts at other artificial lift methods as you mentioned. My expectation is that they would move expeditiously from one to the next because they want to get the well in production if they have the ability to dispose of water on a reasonable basis.

Vice Chairman Hinchcliff: Returning the well to active status sooner than later would provide the operator the opportunity to test those methods, is what you are telling us.

Mr. Christian: That is correct.

Commissioner Chipman: Mr. Christian, it is nice to see you again after all these years. You stated that it is the Department's role through its Administrator, they have the expertise to make these decisions, I am just wondering why you are appealing the decision of the Administrator.

Mr. Christian: Commissioner Chipman, good to see you again, too. We are initially appealing in part because we reached an understanding through communications with Department that they would not accept a new request to return the well to active status to test these methods to bring the well back to production and that we needed to pursue it as part of this appeal. Again, I want to do what the Department wants to the extent I can, but I do believe that as a procedural matter, it is most appropriate for the Department to accept a new request, because I think the rules allow for it and the statutory duties compel it under these circumstances, but it is appropriate for the Department to be evaluating the technical aspects of the request to return the well to production, and making a decision about the sideboards of that decision: how long is this extension going to be for, and what are going to be some of the conditions they want to see in order to grant it. I think that is well within the Department's purview, and certainly if we get to a point where a decision is issued and we disagree again, we might come back to you, but your role is as an appellate body.

Chairman Coppersmith: I am a little bit confused; in the appeal letter there is a statement that says Snake River believes the most appropriate path is for it to submit a new request to the Department, pursuant to IDAPA 20.07.02, based on its new proposal to conduct the gas lift procedure and reestablish well production. Is that the plan going forward?

Mr. Christian: That is the greatest goal. Granting the appeal based on the conclusion that Snake River is working in good faith toward establishing long-term water disposal solution would get us to the same place, because if it is an active well, they can conduct operations. But it seems to me what they really want to do is operate the well, then under the rules the most appropriate thing is for them to make a request to the Department as it allows and gets a decision on that basis.

Commissioner Riebe: Procedurally, is your understanding if the appeal is not granted, and you went back to reapply for active status, would that process take longer or be more onerous in your eyes.

Mr. Christian: Our understanding, based on communications with the Department, is the Department's position is if the appeal is not granted, or if we were to have withdrawn the appeal and not done it at all, we would have to plug the well. We could not make a request to return the well to active status. I would have preferred to simply make a new request to return the well to active status on the basis of an actual operation they intend to do in the near future; that is the most relevant thing. The communication we had from the Department was something different, so our option was to appeal and bring both matters before you and suggest that you as a Commission may direct a different procedural approach than the Department was communicating to us, but with the goal of getting to where a well is not unnecessarily plugged, a well is appropriately bonded, the operator has the opportunity to test procedures to get the well back in production.

Commissioner Riebe: This is maybe a question for the Administrator, or counsel. Is that a correct interpretation, that this appeal would need to be granted for Snake River to return to active status?

Secretary Thomas: Chairman, Commissioner Riebe, I would like for Ms. Vega to speak on our behalf in answer to that.

Joy Vega: Thank you, Chairwoman and Commissioner Riebe. The Department's position is that the circumstances of this well and its inactivity are such that it is most appropriate to plug the well by that January 2024 date. If in the event the problems with the excess water are dealt with, namely the Class II injection well moves forward, then that, I believe the Department's opinion, would be an appropriate circumstance for an application to bring the well into active status. The alternatives that Mr. Christian has talked about today, alternative to the Class II injection well, are alternatives that I do not believe have previously been presented as options for consideration by the Department.

Chairman Coppersmith: I think the question, Ms. Vega, is can they make that application, specifically to the gas lift option that they are looking at.

Ms. Vega: The first step, Chairwoman Coppersmith, is for the Commission to decide the appeal before it, and only then would the Department be in a position to accept additional information depending on the Commission's position.

Chairman Coppersmith: Thank you, Ms. Vega.

Commissioner Riebe: Is that an option for Snake River Oil & Gas? Do they have the ability procedurally to reapply if they have this technique that they think can be utilized?

Secretary Thomas: Chairman, Commissioner Riebe, going back to what Ms. Vega said, if the Commission denies or approves, and maybe whatever you remand or recommend come back to the Department, it does open up options for the Department to consider, depending on the factors that are presented. The reason it is before the Commission right now is because we actually reached a point where the ask to return to active status was denied and the next logical step, the only option at that point, was to come before the Commission. I would say yes, depending on what you say today, it opens up different factors and options between the Department and the operator, and I will affirm sincerely, and I think each of you know, that the Department and the operator have worked very well together and openly over the past almost five years since this well has produced to attempt to resolve this.

Vice Chairman Hinchcliff: To me, listening to the different arguments that the logical path forward is, one, Snake River is prepared to offer a bond that is sufficient to plug the well, two, by agreeing to their request to deny the ruling from the Department, it allows them to go ahead and move forward with their operations to turn it back to active status, while at the same time it provides the State with insurance that they will plug the well at the appropriate bonding level, if their operations are not successful.

Chairman Coppersmith: I think that is an accurate statement. Before we discuss among the Commissioners, are there any more questions for Mr. Christian?

Mr. Christian: May I make one 15 second comment about the question that was posed by Commissioner Riebe to Ms. Vega?

Chairman Coppersmith: Yes, go ahead.

Mr. Christian: I think the whole reason we are here today is there has been a misunderstanding between the two sides over what is procedurally correct. We each have a different understanding of what happens if a request to return the well from inactive to active status is denied. The Department's position, as I understand it, is that once that has happened, you are in appeal mode and no other request may be considered. The applicant's position is each request stands on its own. We may appeal the decision to deny the request based on the request for 18 months to get water disposal done, but we could separately make a request that has nothing to do with the first one, to conduct a new operation to produce the well, and that should be the subject of its own decision and its own appellate process. That is where the two sides have diverged. It is unfortunate, I apologize for the confusion I may have caused in the process. Lastly, to Commissioner Riebe's question, I think the Commission has much flexibility; it may grant the appeal, it may deny the appeal, it may modify the decision below. It may remand the matter to the Department with instructions to do something, which in this case I think would be take in the new application and review it and let us see what happens. I think the Commission has a great deal of flexibility within its general authority under the statute to regulate oil and gas exploration and production.

Chairman Coppersmith: Alright, I will go ahead and start our discussion here. There really are two things that I see going on, one is what Mr. Christian alluded to as far as the process and having a clearer picture procedurally, but the first thing is really looking at the Administrator's decision to deny returning the well to active status based on the information they were given. In my mind, procedurally the Division followed the code; their decision is valid, mainly because there was nothing presented to them that would show that there was an intent to return the well to production, and the fact that, as stated in the written record, the well has not produced since 2018. This is not a recent development. My thoughts are twofold, that the Administrator's decision, that we support that in full, but have the recommendation for Snake River to go ahead and apply for this modified gas lift operation. If the application is made in a timely manner and it can be tested out in 30 days, that is well before the plug date of January 2024, and it also gives you time for another application if you decide to pursue one of these other artificial lift methods. I would like to hear from the other Commissioners.

Commissioner Riebe: I would support that conclusion.

Commissioner Chipman: Madam Chairman, that is exactly what I was thinking. I think supporting the Administrator's decision and then leaving open the option that certainly Snake River could reapply.

Vice Chairman Hinchcliff: The only question I have is by not granting this appeal, would that provide Snake River the opportunity to timely move forward in doing this, or are they still going to be in the plug and abandonment timeframe? By granting the appeal, it basically gives them another 18 months, whereas not granting the appeal they are on the January 31st clock.

Chairman Coppersmith: That is correct. Again, the reason I am leaning toward denial is that the well has not produced since 2018. That is a significant amount of time.

Commissioner Riebe: I would add that they do have the opportunity to apply for an extension of inactive status, so that would give them a little bit more time to get that application for active status and their water disposal process worked up without having to plug and abandon the well in January. There are opportunities for Snake River Oil & Gas to have that flexibility and still uphold the Administrator's decision.

Chairman Coppersmith: I agree with that statement.

Vice Chairman Hinchcliff: In doing that, if we go down that route, we need to instruct, or give guidance to the Department to expediently work with Snake River in moving forward on this.

Chairman Coppersmith: Noted, Commissioner Hinchcliff.

Commissioner Riebe: I want to add that I think we all have the same goal, if the well can be productive, I think everybody would like to see that happen.

Chairman Coppersmith: Any other discussion, Commissioners? Would someone like to entertain a motion?

COMMISSION ACTION: A motion was made by Commissioner Riebe to uphold the Administrator's decision to maintain this well in inactive status with a plug date of January 31, 2024, plug and abandonment. Commissioner Chipman seconded the motion. Chairman Coppersmith asked for a roll call vote. Vice Chairman Hinchcliff inquired about Commissioner Riebe modifying that motion to add that the Department work with Snake River Oil & Gas to find a solution to turn this well back to active status. Commissioner Riebe stated she was fine with that. Chairman Coppersmith asked to add that we also include a statement that the Chairman sign and issue the order on behalf of the Commission. Commissioner Riebe agreed and Commissioner Chipman concurred. Deputy Attorney General Joy Vega asked that the motion be restated. Commissioner Riebe repeated her motion that the Commission uphold the Administrator's decision to maintain the well on inactive status with a plug and abandonment date of January 31, 2024, with the recommendation that the Department work with Snake River Oil & Gas to develop mechanisms and a process for returning the well to active status. Chairman Coppersmith added that the motion includes a statement that the Chairman sign and issue the order so that she can sign on behalf of the Commission. Secretary Thomas inquired if there was also going to be an option, if the operator decides, to ask for an extension of inactive status. Chairman Coppersmith responded that is within their ability; it does not need to be a part of the motion. Commissioner Chipman seconded the complete motion. Chairman Coppersmith stated they are ready for a vote. *Roll Call Vote:* Aye: Hinchcliff, Chipman, Riebe, Coppersmith; Nay: None; Absent: None. The motion carried on a vote of 4-0.

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

RECOMMENDATION: Direct the Commission to elect a Chairman and Vice Chairman.

DISCUSSION: Vice Chairman Hinchcliff inquired about the revised statute and if it was changed to a 2-year assignment. Chairman Coppersmith responded that it was part of the Commission's proposal but it did not end up in the final code and was changed back to annually. Chairman Coppersmith asked if

