

IDAHO OIL AND GAS CONSERVATION COMMISSION OPEN MEETING CHECKLIST

FOR MEETING DATE: November 14, 2023

Regular Meetings

11/01/23	Notice of Meeting posted in prominent place in IDL's Boise Headquarters office five (5) or more calendar days before meeting.
11/01/23	Notice of Meeting posted in prominent place in IDL's Coeur d'Alene Headquarters office five (5) or more calendar days before meeting.
11/01/23	Notice of Meeting posted in prominent place at meeting location five (5) or more calendar days before meeting.
11/01/23	Notice of Meeting published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
11/01/23	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.
11/01/23	Notice of Meeting posted electronically on the OGCC public website https://ogcc.idaho.gov/ five (5) or more calendar days before meeting.
11/07/23	Agenda posted in prominent place in IDL's Boise Headquarters office forty-eight (48) hours before meeting.
11/07/23	Agenda posted in prominent place in IDL's Coeur d'Alene Headquarters office forty-eight (48) hours before meeting.
11/07/23	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
11/07/23	Agenda published on Townhall Idaho website https://townhall.idaho.gov forty-eight (48) hours before meeting.
11/07/23	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
11/07/23	Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ forty-eight (48) hours before meeting.
12/13/22	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA
05/23/23	• Revised Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA
08/02/23	• 2 nd Revised Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA
09/07/23	• 3 rd 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)

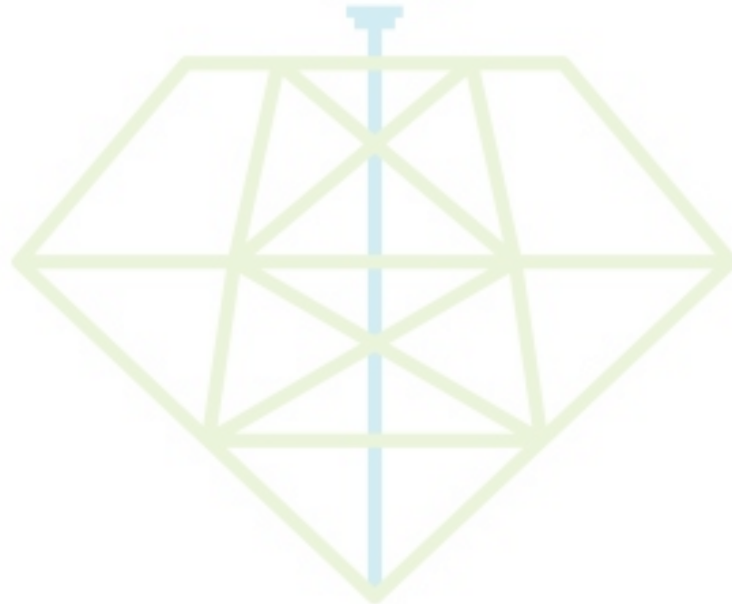
	Notice of Meeting and Agenda posted in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
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	Notice of Meeting and Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ twenty-four (24) hours before meeting.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

Kourtney Romine

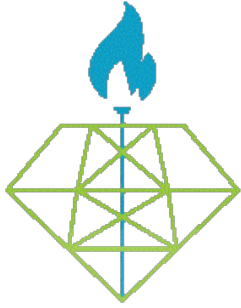
11/07/23

RECORDING SECRETARY

DATE



IDAHO OIL & GAS
CONSERVATION COMMISSION



IDAHO OIL AND GAS CONSERVATION COMMISSION

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

Mick Thomas, Secretary to the Commission

NOTICE OF PUBLIC MEETING NOVEMBER 2023

The Idaho Oil and Gas Conservation Commission will hold a Regular Meeting on **Tuesday, November 14, 2023**, 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 the meeting time.

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

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

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

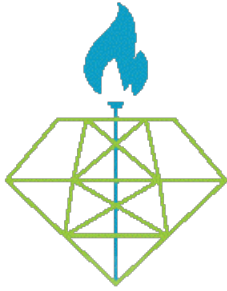
IDAHO OIL & GAS
CONSERVATION COMMISSION

First Notice Posted: 11/01/2023-IDL Boise; 11/01/2023-IDL CDA

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

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

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



IDAHO OIL AND GAS CONSERVATION COMMISSION

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

Mick Thomas, Secretary to the Commission

Final Agenda

Idaho Oil and Gas Conservation Commission Regular Meeting

November 14, 2023 – 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 by virtual means.

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

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

- **ANNOUNCEMENTS**

Welcome new Commissioner Marc Haws.

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

- **CONSENT – ACTION ITEM(S)**

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

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

Idaho Oil and Gas Conservation Commission

Final Agenda

Regular Meeting (Boise) – November 14, 2023

Page 1 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 <https://www.idl.idaho.gov/contact-us/>

- **REGULAR – ACTION ITEM(S)**

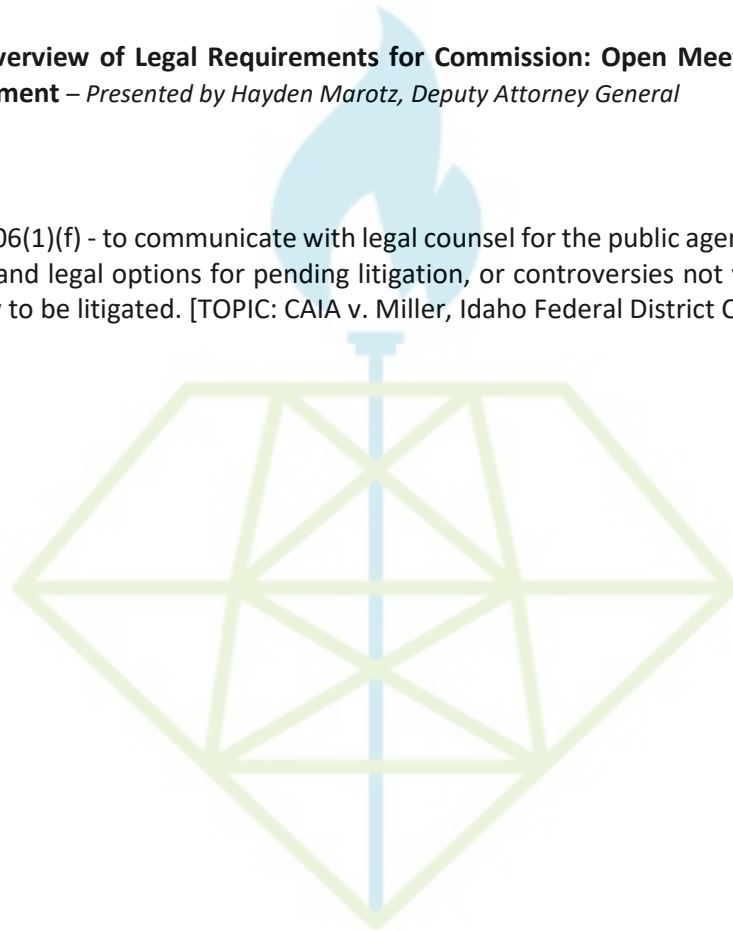
4. **Negotiated Rulemaking IDAPA 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho** – *Presented by Mick Thomas, Division Administrator – Minerals, Navigable Waters, and Oil & Gas*

- **INFORMATION**

5. **Presentation: Overview of Legal Requirements for Commission: Open Meetings; Public Records; Ethics in Government** – *Presented by Hayden Marotz, 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 Federal District Court case No. 1:21-cv-00367-DCN]



IDAHO OIL & GAS CONSERVATION COMMISSION



Idaho Statutes

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

TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT
CHAPTER 2
OPEN MEETINGS LAW

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

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

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

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

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

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

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

History:

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

How current is this law?

Search the Idaho Statutes and Constitution

IDAHO OIL & GAS
CONSERVATION COMMISSION

Oil and Gas Regulatory Program
Activities Report as of October, 2023
Fund 0001 (General) 0075-14 (Dedicated)

General Fund 0001 Allocation for Fiscal Year 2024:

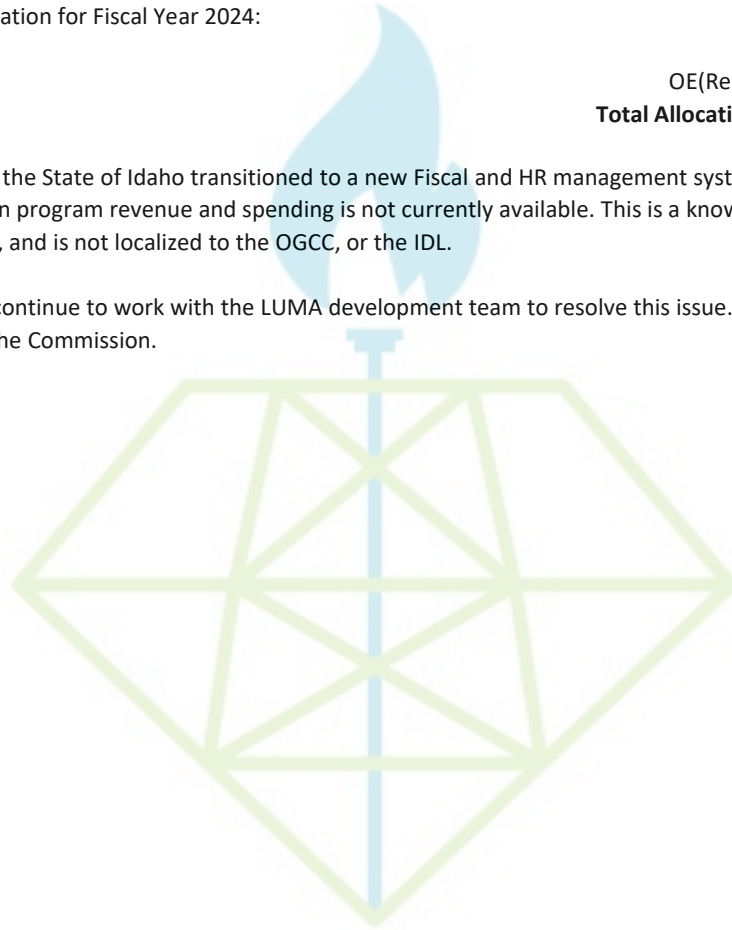
PC:	\$227,000
OE:	\$65,000
OE(Rent):	\$16,285
Total Allocation:	\$308,285

Dedicated Fund 0075-14 Allocation for Fiscal Year 2024:

PC:	\$154,900
OE:	\$53,000
OE(Rent):	\$5,625
Total Allocation:	\$213,525

NOTE: Beginning July 1, 2023, the State of Idaho transitioned to a new Fiscal and HR management system (LUMA). As a result, additional detail on program revenue and spending is not currently available. This is a known issue with the new management system, and is not localized to the OGCC, or the IDL.

Fiscal teams for each agency continue to work with the LUMA development team to resolve this issue. Once data is available, we will share with the Commission.



IDAHO OIL & GAS
CONSERVATION COMMISSION



Southwest Idaho Oil & Gas Activity Map



Legend

Active Oil And Gas Wells

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

Inactive Oil and Gas Wells

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

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

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

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

Map Notes and Data Sources

Inactive and Active Oil And Gas Wells through 10/26/2023

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 10/26/2023

Robin Dunn

Division Administrator's Report
November 14, 2023

Item 1C - Status Update

i. Field inspections:

On September 22nd, the Idaho Department of Lands (Department) conducted an annual inspection of the Highway 30 Gas Processing Facility. Participating in the inspection were staff from the Department's Southwest office and employees of Snake River Oil & Gas. All inspection reports are posted on the Oil and Gas Conservation Commission (Commission) website. Below are highlights of the facilities inspection.

- Idaho Department of Environmental Quality permit is currently on file with the operator. The Department requested that the permit be kept on site or in the New Plymouth office.
- Containment berm for the condensate tanks needed to have vegetation removed.
- Portable spill containment device used to store chemicals was torn and needs repaired.
- Meter calibration data is to be sent to the Department.

ii. Class II Well:

The Class II injection well permit was issued by the Environmental Protection Agency (EPA) November 3, 2022 and took effect December 19, 2022. The operator is evaluating costs to convert the DJS Properties #2-14 to the injection well.

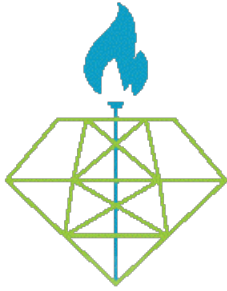
If the conversion is not completed and injection commenced by December 19, 2024, the permit will expire and the operator will have 90 days to plug and abandon the well. Alternatively, the operator may request that EPA grant an extension and outline the reasons for the extension to the EPA Director.

iii. Kauffman #1-9 status:

During the September 14, 2023 special Commission meeting, the Commission ruled to maintain the Kauffman #1-9 well status as inactive, with a schedule plug date of January 31, 2024, and for the Department to work with the operator to develop a process to return the well to active status before that scheduled plug date.

On October 13th, the operator commenced workover operations to reestablish production from the oil zone. As of this update, the workover is ongoing.

The operator also submitted an individual well bond to the Department for the well in the amount of \$150,000.



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
June 6, 2023

The regular meeting of the Idaho Oil and Gas Conservation Commission was held on Tuesday, June 6, 2023, at the State Capitol, House Hearing Room, (EW42), Lower Level, East Wing, 700 W Jefferson Street, Boise, Idaho. The meeting began at 1:41 p.m. (MT). Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Ray Hinchcliff – via virtual means
Commissioner Jim Classen
Commissioner Dustin Miller
Commissioner Jennifer Riebe – via virtual means

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

- **ANNOUNCEMENTS**

Chairman Coppersmith thanked the Commissioners for the reschedule of this meeting from the May 16 regular date. She also thanked Commissioner Classen and Commissioner Miller for their service as this may be the last meeting for them due to the change in commissioner makeup. Chairman Coppersmith went over the agenda items.

1. **Division Administrator's Report**

- A. Financial Update

Commissioner Classen asked why we do not keep track to see if we break even or in the positive since the inception of the Commission, he added that would be an interesting number down the road to be proud of. Secretary Thomas responded that since 2016, when the new statutes were in place, he does not have the exact numbers. Secretary Thomas followed that it is something Mr. Thum and he track and that we are still in a net negative over that time span, but we are significantly less negative than we were 12 or 18 months ago when the field was shut in. Commissioner Miller inquired about the section of code Secretary Thomas mentioned, regarding monies in the Oil and Gas Conservation Fund transferring to the general fund if it exceeds 200% of appropriation and Secretary Thomas responded that it was Idaho Code 47-330(5)(c).

B. Current Oil and Gas Activity

Chairman Coppersmith stated that she had not looked at information for the Hamilton and the Harmon fields and asked if the operator had expressed any interest in further exploring in those areas. Secretary Thomas responded that the operator has not indicated any specific interest but that he believes they do plan to continue development of the field. He added that having the injection well will make a big difference on the economic viability of a lot of the wells in the field, and that the integration application that is before the Department right now indicates some future plans.

- **REGULAR – ACTION ITEM(S)**

2. Format of meeting minutes for the Commission

RECOMMENDATION: Using the November meeting minutes attached, please provide direction to the Department on what method to use moving forward. This decision will take effect immediately.

DISCUSSION: Chairman Coppersmith called on Commissioner Riebe to have her state her thoughts around this topic. Commissioner Riebe explained that she thinks minutes are really important because they are a written document that the public can call on, and in the case of the Commission, the meetings are recorded; if the public really wants a verbatim understanding of what was discussed, they can refer to the recording, but the written minutes need to be a description and explanation of what was discussed without having the absolute detail. Commissioner Riebe added that it is important that they be clear and she looked up some guidance on meeting minutes on the internet and there is a lot of latitude in how minutes are recorded; they do not have to be an explanation of every thought; it is really just to record what the discussion was about. She added that she really appreciates the work that Renée did in boiling that down for version number 3, and that it is a pretty good compromise between the verbatim that was version number 1 and version number 2. Chairman Coppersmith responded that she appreciates the time and effort that was put into those revisions and that the two things that she took away from it was, as Commissioner Riebe said, avoiding writing everything everyone said down, and that the minutes should be a summary of the outcome of the discussion. Chairman Coppersmith referred to the Land Board minutes as a comparison, and thought it was very helpful that there is an editor's note, it says 'the discussion portions, if any, for agenda items may be written in first person format,' and the critical part, 'this is not a verbatim transcript' and suggested that if we used that same methodology, so that would give whoever is doing the minutes a little bit of freedom to summarize. Commissioner Miller asked if the purpose behind this exercise was just to provide some clarity for the public when reviewing the minutes. Chairman Coppersmith responded yes. Commissioner Miller reiterated that the public does have access to the recordings; transparency is of the utmost importance here. Chairman Coppersmith stated that going through those minutes it was a little bit of a hard read and that making an attempt to summarize what was said versus word-by-word what was said would make it a little bit easier to follow. Commissioner Riebe explained that when she reads through something that sounds like a transcript, it is a transcript, and it captures every hesitation and rewording, and it ends up as a record of the meeting that sounds almost unprofessional and that is what struck her about it. She added that it should be a summary; it should not be an absolute record and be detailed enough that they bring you back to the discussion without being overly burdensome with every little detail. Commissioner Classen stated that he likes the way Renée has been doing it; maybe some little more technical might be in order, but historically they say what happened reasonably well. He added that he does not know why we are even having this discussion.

Chairman Coppersmith believes that the point of this action item was to give some clarity to the administrative staff. Secretary Thomas noted his appreciation on this, and that clarity is important. He brought up a few things that operationally are something to consider. Commissioner Riebe is correct that there is a lot of latitude in how minutes are recorded. There is a recording of the meeting, a video or audio recording that is available. Long term, he does not know what technology is going to be in 10 or 15 or 40 years. He has looked back at minutes from the '80s, and even the '40s and '50s, to get context for a legislative decision. He believes that just relying on the audio or video is not foolproof. Second, having someone have that latitude to clarify, and we do not know what that person's technical ability is going to be in 5 or 10 or 20 years. There is something to think about there of keeping it relatively simple for whatever staff we have to do minutes. Chairman Coppersmith inquired about a recommendation based on what we have heard since it is an action item. Secretary Thomas reiterated that specifically we are talking about a process and the decision, for example, if we are going to stick with the method that we have used thus far, then you would approve the November meeting minutes and subsequent minutes. Or you could say we are going to have a variance, but we only want this to apply to the November minutes, and then accept the February through April minutes. Commissioner Riebe stated the first draft of minutes is quite different from Renée's second version, which is version number 3 in what was attached and asked if it was true that version number 3 more accurately reflects what is typically done, and this was an unusual meeting and was time consuming, so it was not edited much at all. Secretary Thomas responded that normally it is a very close to verbal transcript that is done by staff; the ums and ahs can be corrected; our staff does a good job of making things readable. He asked Renée if she would like to speak up. Renée responded that version 3 is more typical and that repetitive thoughts about the same idea do not add to the minutes, and it depends on the topic. As Mick mentioned, that one was a conversation that was not on the agenda, there were no supporting documents in the meeting materials for the public to have a reference; it was an anomaly. Commissioner Miller asked Renée, if version 3 is more streamlined yet is still consistent with the audio recording and is it a simpler way of capturing the minutes. Renée responded yes, from her perspective it is and added that is really the way she does it for Land Board. Chairman Coppersmith stated that the question on the floor is version 3, the methodology used in version 3, is that something we want to adhere to going forward on our meeting minutes. That would be the motion, or not. Vice Chairman Hinchcliff explained that we should let the staff optimize the minutes to the best of their ability and not dictate method two, method three, method four or whatever method. He added that over time, there is going to be different staff come through the office there and that he does not think we should be dictating to them on how to write minutes; that should be an administrative task and not something the Commission should be weighing in on. Chairman Coppersmith stated that Administrator Thomas pointed out, we always do have the option to modify the minutes as we go through and review them; she is not really hearing a consensus here, or a motion, so we can take the action of taking no action. Commissioner Riebe thinks the third version would have been fine and that she is fine with doing it the way it is currently done; it sounds like the November meeting minutes were not the way it is typically done. She added that she thinks it is incumbent on us to read them and if we see something in there that was summarized incorrectly or does not reflect what actually happened, that is our job; that is why we review the minutes and make a motion to accept them, as written or as corrected. Commissioner Riebe would prefer to get a version that she can make corrections to ahead of time so that if we have corrections, we can send those back and adopt minutes that were corrected or not, if that is a possibility. Renée responded that we could provide a Word version of the minutes.

COMMISSION ACTION: A motion was made by Chairman Coppersmith to take no action on this agenda item. Commissioner Miller seconded the motion. The motion carried on a vote of 5-0.

- **CONSENT – ACTION ITEM(S)**

3. Approval of Minutes (revised) – November 15, 2022 – Regular Meeting (Boise)

DISCUSSION: A motion was made by Commissioner Classen to accept the other three sets of minutes. Chairman Coppersmith responded that we can do that but since the November 15th minutes are a special case, she would like to handle that one separately.

COMMISSION ACTION: A motion was made by Commissioner Classen to use version 3 of the November minutes (as provided in item #2). Commissioner Riebe seconded the motion. The motion carried on a vote of 5-0.

4. Approval of Minutes – February 21, 2023 – Regular Meeting (Boise)

5. Approval of Minutes – March 29, 2023 – Special Meeting (Boise)

6. Approval of Minutes – April 13, 2023 – Special Meeting (Boise)

COMMISSION ACTION: A motion was made by Commissioner Miller to accept the remaining three sets of minutes. Commissioner Riebe seconded the motion. The motion carried on a vote of 5-0.

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

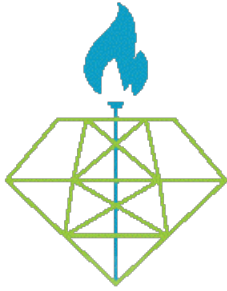
- **INFORMATION**

7. 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

- **Executive**

None

There being no further business before the Commission, at 2:39 p.m. a motion to adjourn was made by Commissioner Riebe. Commissioner Classen seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.



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

Draft 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 Hinchcliff: 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

Vice Chairman Hinchcliff was willing to continue in the role as Vice Chair, in which he responded yes. Chairman Coppersmith said that she was also willing to serve but if someone else wanted to step in the position, please say so.

COMMISSION ACTION: Commissioner Riebe noted that Chairman Coppersmith and Vice Chairman Hinchcliff have done an outstanding job and would be thrilled if they accepted the nomination for another year. Commissioner Chipman asked if that was a motion, Commissioner Riebe responded yes. Commissioner Chipman seconded the motion. The motion carried on a vote of 4-0.

There being no further business before the Commission, at 2:34 p.m., Chairman Coppersmith adjourned the meeting.

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION
November 14, 2023
Regular Agenda

SUBJECT

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

BACKGROUND

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

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

DISCUSSION

The Department anticipates diminishing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized.

A proposed timeline for the rulemaking process is provided in Attachment 1.

RECOMMENDATION

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

COMMISSION ACTION

ATTACHMENTS

1. Draft Proposed Timeline



Draft Rulemaking Timeline

IDAPA 20.07.02

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

November 14, 2023	Approval from OGCC to start negotiated rulemaking (Regular Meeting / regular agenda item)
February 20, 2024	Present update on this rulemaking to the OGCC (Regular Meeting / information agenda item)
March 6, 2024	Post information on OGCC website about this rulemaking
March 8, 2024	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Division of Financial Management (DFM) for Bulletin publication in April
April 3, 2024	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; negotiated rulemaking and public comment period begins
April 5, 2024	Post Draft #1 on OGCC website
April 11, 2024	Negotiated rulemaking public meeting #1 in Boise and via Teams (Draft #1)
April 15, 2024	Negotiated rulemaking public meeting #2 in Fruitland and via Teams (Draft #1)
April 19, 2024	Written Comments on Draft #1 deadline
April 26, 2024	Post Draft #2 on OGCC website
April 29, 2024	Negotiated rulemaking public meeting #3 in Boise and via Teams (Draft #2)
May 3, 2024	Written Comments on Draft #2 deadline
May 16, 2024	Post Draft #3 on OGCC website
May 21, 2024	Present update on this rulemaking to the OGCC (Regular Meeting / information agenda item with Draft #3. Will accept Commission and public comment)
May 31, 2024	Written Comments on Draft #3 deadline and end of public comment period for negotiated rulemaking
July 5, 2023	Last day to submit <i>Notice of Proposed Rule</i> to the Office of the Administrative Rules Coordinator (OARC) for Bulletin publication in August
August 7, 2024	<i>Notice of Proposed Rule</i> publishes in the Idaho Administrative Bulletin and 21-day written public comment period begins

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

Note: All dates are subject to change.

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION
November 14, 2023
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.

ATTACHMENT

1. PowerPoint presentation

MANUALS PROVIDED AT MEETING

1. Open Meeting Law Manual, January 2023
<https://ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>
2. Public Records Law Manual, January 2023
<https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>
3. Ethics in Government Manual, January 2023
<https://ag.idaho.gov/content/uploads/2022/01/EthicsInGovernmentManual.pdf>



Legal Requirements for Commission

“Open & Honest Government”



Topics

- Open Meeting Law,
I.C. §§ 74-201 – 74-208
- Public Records Law,
I.C. §§ 74-101 – 74-127
- Ethics in Government,
I.C. §§ 74-401 – 74-406,
74-501 – 74-511,
18-1351 – 18-1362



Policy

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

Open Meeting Law

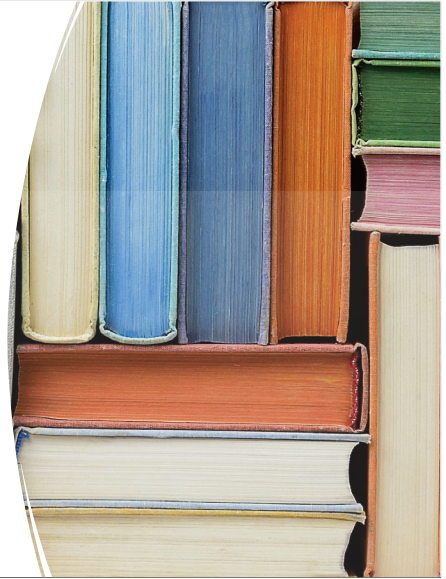
Topics

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



Statutory Interpretation

- Words explicitly defined in the statute take that definition, no matter what the common understanding of the word may be.
- Only if the statute does not define a word do we give it its common meaning.



When do Open Meetings Laws Apply?

“All meetings of a governing body of a public agency.”
I.C. § 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 the governing body is required, at any meeting at which a quorum is present.
- "Deliberation" means the receipt or exchange or 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 I.C. § 74-202



Quorum


- Five members of the Commission, so **three** makes a quorum
- Take care to avoid serial meeting problems

Notice & Agenda

- Regular Meetings
 - Notice no less than five (5) calendar days
 - 48 hour agenda notice
 - Idaho Code § 74-204(1)
- Special Meetings
 - At least 24 hour meeting and agenda notice, unless an emergency exists
 - Idaho Code § 74-204(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.



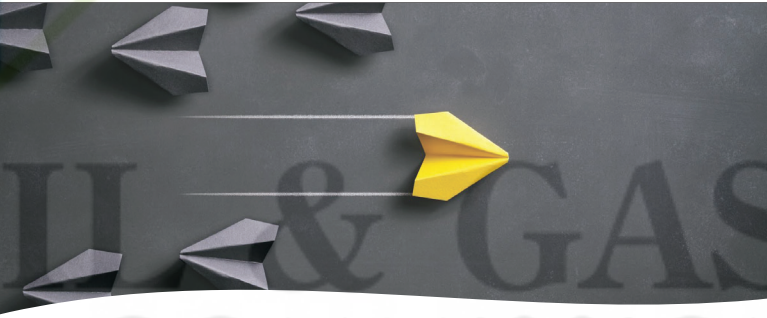
Stay focused

- 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



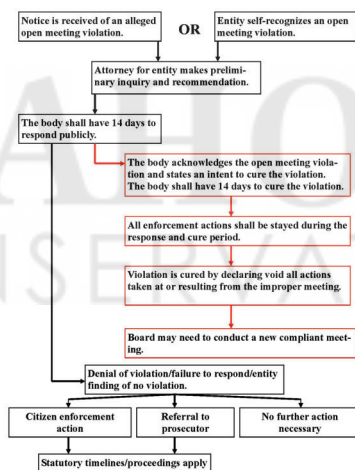
Enforcement

Something goes wrong, what happens next?

Enforcement - Idaho Code § 74-208

- Failure to comply renders the action null and void.
- Civil penalties
 - up to \$250
 - up to \$1500 for “knowingly participating”
 - up to \$2500 for subsequent 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

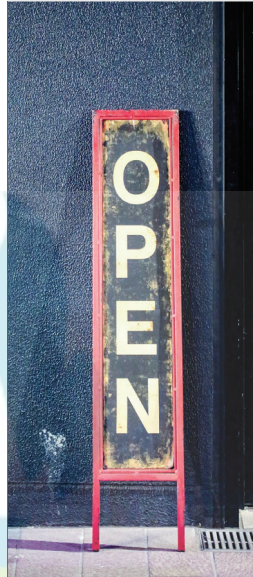
- Agency may adopt reasonable rules to govern orderly conduct at meetings, i.e. Robert's Rules of Order. OML Manual pp. 12-13.
- Example of simplified parliamentary procedure:
 - Chair runs the meeting and gives permission to speak.
 - A member proposes the Commission take action by making a motion.
 - 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

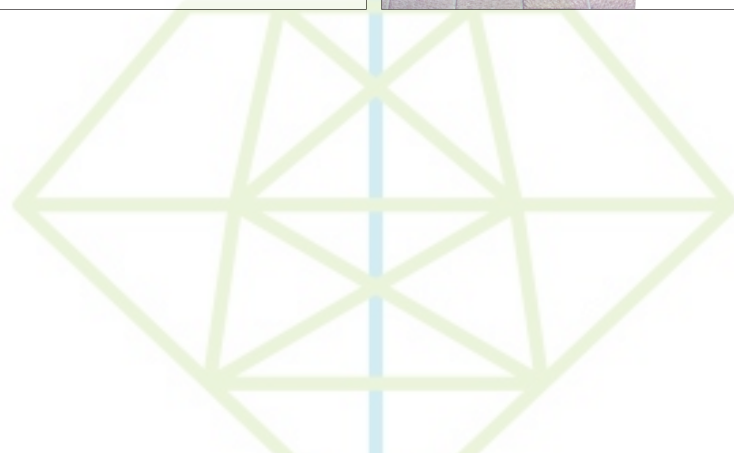
- As commissioners, you will view, use, possess, and create public records.



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

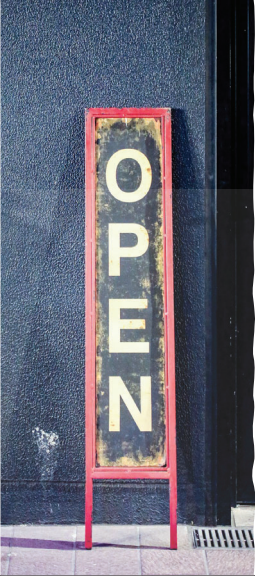
- “Public Record”
Any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency . . . regardless of physical form or characteristics.
provided, however, that personal notes created by a public official solely for his/her 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



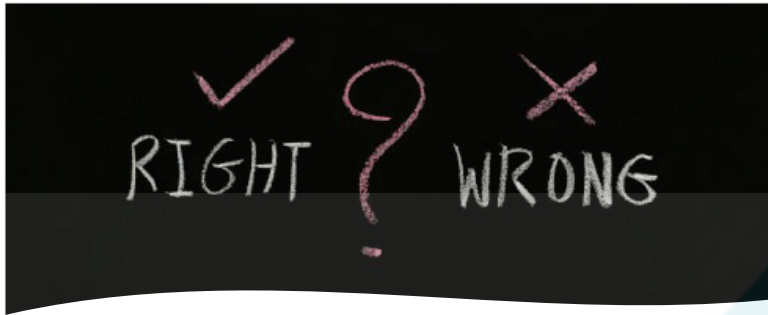
Denial

- 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 sec. 74-103

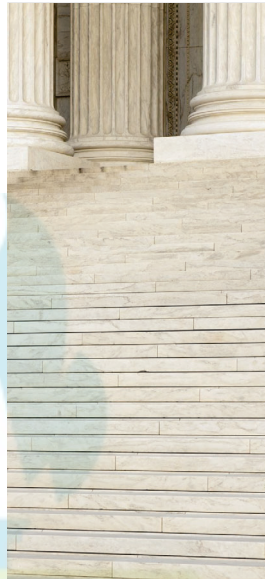


Ethics

- 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)

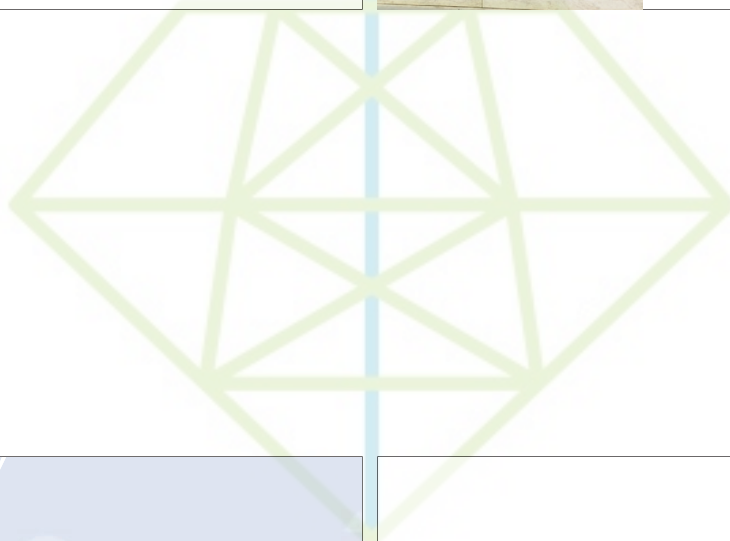


These laws provide the “ground-floor” for personal conduct. In conducting your business, you should strive to go above and beyond this minimum standard to avoid troubles.



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 § 59-704

“Conflict of interest” is defined in Idaho Code § 59-703(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. Idaho Code § 18-1356
- 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.
- I.C. § 74-501
- Contracts that violate statute are voidable.



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?