

From: [Sharla Arledge](#) on behalf of [Comments](#)
To: [Kourtney Romine](#); [Mick Thomas](#)
Subject: FW: Comments on Proposed Statutory Change Recommendations
Date: Wednesday, December 01, 2021 10:41:43 AM
Attachments: [Comments on Proposed Statutory Change Recommendations 11-30-21.pdf](#)

From: Beth Ringert <Beth@idunionlaw.com>
Sent: Tuesday, November 30, 2021 4:37 PM
To: Comments <comments@idl.idaho.gov>
Subject: Comments on Proposed Statutory Change Recommendations

Please see attached letter re: Proposed Statutory Change Recommendations.

Thank you,

Beth Ringert

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Please note we have moved to Suite 370.

PIOTROWSKI ♦ DURAND

November 30, 2021

Idaho Oil and Gas Conservation Commission

Via Email: comments@idl.idaho.gov

Re: Comments on Proposed Statutory Change Recommendations

Dear Commissioners,

These comments are offered on behalf of Citizens Allied for Integrity and Accountability (CAIA). CAIA is a non-profit organization dedicated to protecting the natural resources of Idaho and its citizens, and preventing the misuse or abuse of those resources. CAIA has participated and will continue to participate in the processes established by the Idaho Oil and Gas Conservation Act to ensure that the Act meets the promises made to Idaho citizens, property owners, and other residents.

The latest proposed changes to the IOGCA seem aimed primarily at protecting the interests of out of state corporations that exist solely to extract profits from the concentration and development of mineral resources. There is little or nothing in the proposal designed to protect the interests of CURRENT mineral rights owners, especially those that recognize the value of those rights beyond the utility of their short-term exploitation. The proposals also raise a number of issues that may result in facial challenges should those changes be adopted by the Idaho Legislature.

In Idaho Code Section 47-314(b) the IOGCC is considering a proposal to further weaken the qualifications for members of the Commission. While requiring direct experience as an employee or owner of an oil and gas development company runs the risk of having commissioners beholden to the industry, the complete absence of standards (beyond the discretion of the governor) does nothing to protect the interests of Idahoans. The IOGCC should be, instead, proposing a change that would require the Commission to have balanced representation that includes the interests of both small and large mineral interest owners, the environmental and/or conservation communities, the real estate industry, and municipal interests. The current proposal would turn the Commission into merely a collection of people favored by the Governor, creating a patronage-based body with neither expertise nor direct interest in good law and policy.

In Idaho Code Section 47-318 the IOGCC is considering abandonment of its current statutory duty to promptly establish spacing units, making such establishment entirely discretionary instead. While there is little sense to establishing statewide spacing units in the absence of knowledge of recoverable hydrocarbons, the law has always and should continue to impose a duty to act where action is needed. The current system relies almost solely on the intervention of industrial/development interests. Instead, the IOGCC should consider a more orderly process with clearly stated standards as to when and how spacing units will be established.

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The proposed changes to Idaho Code Section 47-320 constitute nothing more than an attempt to allow the oil industry to determine what terms for nonconsenting working interest owners and compelled lessees will be considered “just and reasonable.” The declaration therein that lease/working interest terms will be “just and reasonable” so long as they conform to an industry standard agreement leaves Idaho property owners almost entirely without recourse to overreaching by oil companies. It is beyond doubt that the IOGCA meets constitutional muster only if it ensures that mineral owners will receive “just and reasonable” terms. Although the federal courts have been hesitant to precisely define the requirements of “just and reasonable,” merely throwing the definition to one of the interested parties in such transactions almost certainly violates due process of law requirements enshrined in the U.S. and Idaho Constitutions. This would be the equivalent of requiring all homeowner to buy their natural gas from Intermountain Gas, and then allowing Intermountain Gas to unilaterally set its own rates. It is an invitation to the industry to engage in monopolistic abuses, and serves solely to enrich industry at the expense of Idahoans.

As to compelled lessors, those who are “deemed” leased against their will, the proposed definitions of “just and reasonable” entirely fail to protect the market value of the minerals owned by such individuals. This clearly constitutes rate setting, as the price is set by statute at 1/8 royalty plus a per acre bonus that has not changed in the Idaho gas fields for well over a decade, and which will remain mired at \$100 per mineral acre. Furthermore, the statute would allow compelled use of surface estates which constitutes a direct taking under the takings clause of the Fifth Amendment to the U.S. Constitution. No amount of “just and reasonable” redefinitions can fix such a taking, only the provision of just compensation as constitutionally required will do.

These proposed changes to the IOGCA fail to make any serious effort to protect the property interests of Idahoans, Idaho’s environment, its agricultural or recreational industries, or any interest other than the profits of oil and gas companies. The proposals were generated without public input and without seeking the opinions of CAIA or any of the mineral interest owners that CAIA represents. It is quite likely that the oil industry was consulted, raising serious concerns about industry bias. Some of the proposals are useful clarifications of existing standards, and as to those provisions CAIA offers its support and approval. But the primary changes are in redefining “just and reasonable.” This focus proves that the primary purpose of these changes is to prevent mineral owners from getting real value for their assets by preventing them from choosing not to sell unless and until the price is right. In short, these statutory changes constitute little more than “picking winners” without regard to who would win in a fair market.

CAIA encourages IOGCC to reject the majority of these proposals, and instead to seek actual stakeholder input from a broad cross-section of interested Idahoans including non-governmental organizations, mineral owners, tribal organizations, municipal and county governments and others. This would provide valuable information about the needs of groups other than the industry which seeks solely to maximize its own profits.

Sincerely,



James M. Piotrowski
Attorney for CAIA