

From: [Sharla Arledge](#) on behalf of [Comments](#)
To: [Kourtney Romine](#); [Mick Thomas](#)
Subject: FW: Comments On Proposed Statutory Change Recommendations
Date: Wednesday, January 12, 2022 03:47:26 PM
Attachments: [Comments on Proposed Statutory Change Recommendations 01-12-22.pdf](#)
[Comments on Proposed Statutory Change Recommendations 11-30-21.pdf](#)

From: Beth Ringert <Beth@idunionlaw.com>
Sent: Wednesday, January 12, 2022 3:32 PM
To: Comments <comments@idl.idaho.gov>
Cc: James Piotrowski <james@idunionlaw.com>
Subject: Comments On Proposed Statutory Change Recommendations

Please see attached letters re: Proposed Statutory Change Recommendations.

Thank you,

Beth Ringert

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Please note we have moved to Suite 370.

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January 12, 2022

Idaho Oil and Gas Conservation Commission
Via Email: comments@idl.idaho.gov

Re: Comments on Proposed Statutory Change Recommendations

Dear Commissioners,

In late 2021 the Commission published proposed statutory changes and asked for public comment. Many provided public comment, including Citizens Allied for Integrity and Accountability (“CAIA”), which this firm represents. Recently, the Commission published additional changes appear to reflect only one or two of the prior comments or concerns. It appears that most of the latest changes were made to benefit the oil and gas industry, creating the impression that the Commission is responsive to industry concerns, but not the concerns of mineral owners. The Commission states it is now accepting comments from the public about these latest changes. This letter presents CAIA’s comments on those changes.

Citizens Allied for Integrity and Accountability is a membership based, non-profit organization consisting primarily of mineral rights owners in Idaho and those who share their concerns about protecting Idaho’s natural resources. Other than the various, now-bankrupt subsidiaries of Alta Mesa (for-profit companies dedicated primarily to providing money to its owners), no private party in Idaho has appeared in more cases arising under the Idaho Oil and Gas Conservation Act. No private party in the state has put more time and effort into seeking meaningful judicial review and construction of the Act. And no private party in the state has put more time and effort into seeking meaningful legislative changes to the Act, other than those who do so primarily for their own profit.

The amended proposal reflects very minor changes in response to the prior round of public comments. They create the appearance the IOGCC has little or no interest in addressing the specific concerns raised by CAIA and others in prior comments. Rather than repeat those comments a further copy is provided as an attachment to this letter. The problems and concerns stated therein remain valid.

In addition to the concerns raised in its November 30, 2021 letter, the latest set of

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proposed changes raise additional issues. These include:

(1). I.C. §47-310(3). The Commission proposes to modify the definition of “condensate” to add the sentence “The API gravity of condensate is typically 50 degrees to 120 degrees.” This change does not require that only those liquids with API gravity in the range will be considered condensate, nor does it specify that liquids falling outside that range will be deemed some other substance. Thus, the sentence does not in any sense “define” condensate. It merely states a common, but neither universal nor necessary characteristic shared by some but not all condensates. The amendment thus serves no purpose and adds ambiguity to the statute in ways that did not appear previously.

(2) I.C. §47-310(36). The Commission proposes to place into the Idaho Code a statement that appears to have been taken directly from the American Petroleum Institute’s public relations documents. It is entirely inappropriate to place advertisements for industry associations in the statute.

(3). I.C. §47-310(37). The Commission proposes to place into the Idaho Code a statement that appears to have been taken directly from the American Association of Professional Landsmen’s public relations documents. It is entirely inappropriate to place advertisements for industry associations in the statute.

(4). I.C. §47-310(38). The commission’s proposed definition of “arms-length” is entirely at odds with the common usage of that term, as well as with other understandings of the term found in the law. The proposed definition would treat “arms-length” as meaning any transaction where the two parties are separately controlled, even if they have overlapping directorates, have shared interests that are at odds with the public interest, or otherwise are not genuinely dealing at “arm’s length.” A transaction is not at “arms-length” if it occurs between entities that are members of a joint venture, whose financial interests are closely tied to each other, where both parties stand to benefit by doing harm to third parties, and in multiple other situations. The Commission should not recommend a definition that is so limited, is outside the mainstream of legal or public understanding, and would leave industry free to define their own market values via collusion.

The Commission has more than adequate time to engage in an effective public input process before using its public office and public funding to lobby for statutory changes. Such a process would first identify all stakeholders including industry, mineral owners, public entities that regulate land use, public and private entities with interests in real property regulation, and public interest organizations. The commission could then engage in public workshops to identify the concerns held by these stakeholders and devise solutions to those concerns, all while seeking a set of statutory amendments supported by a clear consensus of those stakeholders. While the details of these processes can vary, the Commission as a public entity funded by Idaho taxpayers should take seriously the need to serve the public interest and do so by inviting wide public involvement.

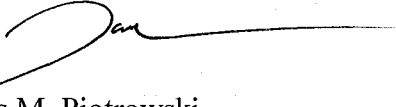
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CAIA and its members stand ready to participate in such a process, help to define it in advance, and assist in its implementation if the Commission is serious about determining how the IOGCA can be improved to meet the needs of Idahoans.

Sincerely,



James M. Piotrowski

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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