



IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chairman
Marc Shigeta, Vice Chairman
Jim Classen, Commissioner
Ray Hinchcliff, Commissioner
Dustin T. Miller, Commissioner

Mick Thomas, Secretary to the Commission

Final Minutes

Idaho Oil and Gas Conservation Commission Regular Meeting
May 25, 2021

The regular meeting of the Idaho Oil and Gas Conservation Commission was held on Tuesday, May 25, 2021, with the physical location at State Capitol, House Hearing Room EW42, Lower Level, East Wing, 700 W Jefferson Street, Boise, Idaho. There was also a teleconference option. The meeting began at 1:19 p.m. (MT) due to technical difficulties. Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Marc Shigeta
Commissioner Jim Classen
Commissioner Ray Hinchcliff

For the record, four Commissioners and Secretary Thomas were present at the physical location. Commissioner Miller was absent due to a business commitment at an area office.

• **ANNOUNCEMENTS**

Chairman Coppersmith introduced the newest Commissioner, Ray Hinchcliff, and welcomed him to the board. Chairman Coppersmith went over the agenda items and explained that people will need to leave the room during the executive session.

1. Division Administrator's Report

A. Financial Update

Chairman Coppersmith inquired about any large expenses or not meeting the budget by the end of the fiscal year. Secretary Thomas responded that he did not see any problems with the budget and explained that due to the organizational changes made the previous July that those measures helped with the budget. Secretary Thomas followed up with the statement that he had also been told that some oil and gas program funding should be returned in fiscal year 2022, since that was a one-time hold back for many departments throughout the state in anticipation of potential shortfalls.

Commissioner Classen added that the program is costing more money than it is getting in, but every state has an oil and gas commission that has oil and gas production, and it is just too bad that to date oil and gas has not been able to develop enough income to pay for the Commission. So, when a program has criticism which is due for spending more money than it

is making, people have to realize somebody has got to do that as a matter of course and that is why the Commission is in the red for the first time in eight years.

Secretary Thomas thanked Commissioner Classen for his statement and stated that while staff was restructured, they continue to be dedicated to this industry.

B. Current Oil and Gas Activity

Commissioner Classen commented that the Environmental Protection Agency (EPA) estimated they would approve the saltwater disposal well in 2018 and that the system is just taking too long for everything.

Secretary Thomas explained that he and Mr. James Thum had conversations with the EPA on Friday (May 21st) regarding the timeline. The EPA has all positives to say about the current operator. The previous operator, there was a fair amount of miscommunication or delay in producing the data the EPA was looking for and that generally delayed the process. EPA has spoken very highly of the current operator, Snake River Oil and Gas. Secretary Thomas clarified that it is not a saltwater injection well. What Secretary Thomas and Mr. Thum heard is this is fresh water that is coming up and going back, and that put a new twist into the EPA's process; EPA wants to make sure to get this right. And because the water well is not saltwater injection, it is predominantly freshwater formation production, or 'brackish' per Commissioner Classen, the EPA has certain thresholds that the water is below, as far as solids go. It is new to EPA and staff is pushing through this. Mr. Thomas added that he asked the EPA how long it has been involved with this, and staff said in earnest it started with the new operator. It was really giving EPA that data it needed, so real timeline is twelve or fourteen months thus far. Department staff is working with EPA to make sure it has what is needed now. Chairman Coppersmith asked if EPA offered an estimated approval timeline. Secretary Thomas responded no, but historically EPA has kept the Department apprised when a timeline estimate is known.

- **CONSENT – ACTION ITEM(S)**

2. Approval of Minutes – February 24, 2021 – Regular Meeting (Boise)

CONSENT AGENDA COMMISSION ACTION: A motion was made by Commissioner Classen that the Commission approve the meeting minutes on the Consent Agenda. Vice Chairman Shigeta seconded the motion. The motion carried on a vote of 3-0. Commissioner Hinchcliff did not vote since he was not on the Commission during that time.

At 1:32 p.m., a motion was made by Vice Chairman Shigeta that the Commission convene into Executive Session pursuant to 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. Commissioner Classen seconded the motion. Chairman Coppersmith stated a roll call vote is required. *Roll Call Vote:* *Aye:* Shigeta, Classen, Hinchcliff, Coppersmith; *Nay:* None; *Absent:* Miller.

- **EXECUTIVE SESSION**

- 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: Docket No. CC-2020-OGR-01-003]

At 1:54 p.m., the Commission resolved out of Executive Session by unanimous consent. Chairman Coppersmith clarified that the Commission is here to decide on the hearing officer's Recommended Order and Docket No. CC-2020-OGR-01-003. All the evidence in this case is already in the record, no exceptions were filed so the Commission will not hear any additional arguments or accept any additional evidence in this matter. The Commission will be deliberating on considering this Recommended Order. On review, the Commission exercises all the decision-making power that it would have had if it would have presided over the hearing versus hearing officer. Thus, the Commission can decide whether its final order will adopt, in full or in part, decline, or vacate and remand the Recommended Order.

- **REGULAR – ACTION ITEM(S)**

3. **Docket No. CC-2020-OGR-01-003:** Hearing Officer's Recommended Order in the matter of Determining Whether the Integration Order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well.

RECOMMENDATION: None.

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.]

DISCUSSION:

Chairman Coppersmith: Let's have deliberations first. What I was looking at the decisions that were made in the Recommended Order, there's a lot of information in here, so, going to the findings of fact seemed the most logical thought for me. I went through every finding and went through the reasoning of it to figure out, that if I could see the path, on the decision that was made there, and I agree with a lot of the items in here. One thing that jumped out at me and seems a bit problematic is the reliance on Idaho Code 47-317 and 318, primarily in 318. Because it is pretty clear language here, in 318(1) it says the Department shall promptly establish spacing units for each pool except in those pools that have been developed to such an extent that it would be impractical or unreasonable. When you look at the definition of what a pool is in the regulations, it is an underground reservoir containing oil and gas. Each zone of a structure that is completely separated from another zone is a pool. So, 318(1) says the Department shall establish spacing units for each pool and we have two wells, two distinct pools. Under section 2 of 318, it says the size of the spacing shall not be smaller than the maximum area that can efficiently and economically be drained by one well. So, unless I'm reading this incorrectly, and I'd like to hear your thoughts on

this, it's pretty clear in black and white, one pool, one well. There are other documents referred to like the joint operating agreement that makes a reference to multiple wells, but it is a generic operating agreement, in fact, it's AAPL form 610 and it's got a lot of strike throughs with it which is the majority of the modifications. Before you get to the section where it talks about the multiple wells, it does say, "this agreement shall be subject to the applicable laws of the state in which the contract area," again, it's very generic, "is located to the valid rules regulations and orders of any duly constituted regulatory body of said state and to all other applicable federal, state, and local laws." So, it says this joint operating agreement applies but there are other things that can also apply, and you also have to comply with those things. So that is really the main hinge of why I may not agree with the Recommended Order. Because again, 318, they picked out pieces of 317, pieces of, I believe it's 320 and other sections, but you can't take those out of context. Because they all apply including, I believe, 318(1) and (2). Commissioners, what are your thoughts on that or any other thoughts that you have?

Commissioner Classen: I don't know what the numbers are but to have a statute, which I do not agree with, that says you can only have one well in one pool goes against industry standards, historically or in the future. The statute ought to be changed if that brings up confusion in your opinion. That is going to be part of the statement I'm going to make a little bit later when we have further discussion. The point is that if you have a reservoir that cannot be fully drained by one well then obviously you do not want to prohibit drilling additional wells in the same pool. In the statutes of Idaho are some sections that talk about making multiple wells in one pool. I gathered from that, the intent was not to restrict only one well in one pool but that's what happens the first time they drill a well to determine if there is a pool.

Chairman Coppersmith: I certainly hear you and I agree with you, except that right now, what's in the statute, if we decide to approve this Recommended Order it is counter to what's in the state statute. Part of the responsibility of the Commissioners is to not only ensure that resources are developed with good stewardship but it's also to comply with the existing rules and regulations that are in effect at this time.

Commissioner Classen: I do not understand, because we've already determined, I believe, that there have been statements from the operator, that this is not the same pool.

Chairman Coppersmith: All right.

Commissioner Classen: It's a different pool. So, what you're asking is, does the integration unit apply only to one pool?

Chairman Coppersmith: That's what 318 is saying to me.

Commissioner Classen: Well, I disagree with that. And we will have further discussion.

Chairman Coppersmith: Okay.

Commissioner Classen: How about my other Commissioners? Do you have any thoughts?

Commissioner Hinchcliff: I would tend to agree with Commissioner Classen, but I would think that geologically that's what'd you define the pool. And if this 214 is targeting a separate geological area of the reservoir that cannot be drained from the first well then I don't see the conflict.

Chairman Coppersmith: Okay. Thank you, Commissioner. As I said, you know, operationally, I would agree with you, except we have a statute that says different integration orders established for each pool. There is a provision in 318, it might be 320, that actually says if you can't drain with a single well, you can drill an additional well in the same pool which is not what we are talking about here; but, you've got to provide proof that you have evidence from the first well, that says we can't drain and here's the reasons why. That's a whole different topic than having a separate order for each pool as it says right here in black and white in 318. Not to belabor the point but I just see that as problematic; logically, I can understand the reasoning of the hearing officer, but the fact that they didn't address this particular issue that's in 318 which he uses heavily to pull out other points to support his decision and this is also problematic.

Commissioner Hinchcliff: But Chairman, aren't they targeting a different pool?

Chairman Coppersmith: They are. They are definitely. In 318 it says, you should have a different integration order per pool, and that's my point.

Commissioner Hinchcliff: That is not how I interpreted it.

Commissioner Classen: Madam Chair, if you recall, at the meeting where a decision was made to have a hearing, I suggested that the Commission take some time to look at the statutes and talk about what integration is involved and I will talk about this later. Once we make a motion then we are going to talk about the motion. Right?

Chairman Coppersmith: If there's any other discussion, yes.

Commissioner Classen: So, at your guidance, and on your wishes if you want to hear a motion, I will make a motion.

Chairman Coppersmith: Okay. Commissioner Shigeta, do you have anything that you would like to add to this discussion?

Commissioner Shigeta: No.

Chairman Coppersmith: Okay, before we make a motion, Commissioner Classen, you said that you had some other comments. Are they relevant to the motion or should we hear them before the motion is made, is my question to you?

Commissioner Classen: Whatever your wishes are is my desire.

Chairman Coppersmith: Okay, go ahead, please.

Commissioner Classen: Okay well, initially I was going to wait until we had a discussion about whether or not we want to make a motion to agree with a Recommended Order so, I guess I'll state that in my opinion I would agree with the Recommended Order, and I will be happy to make a motion towards that at your convenience. I would also like to again add some comments about the whole current hearing processes, and statutes pertaining to the hearing processes. The existing statutes need to be revised as the approval delays are unacceptable in my opinion. The Commission is comprised of, now, under the new regime, the Commission is comprised of a majority of experienced oil and gas industry members. Our expertise is not able to be used nor communicated to our staff on hearing matters under the current statutes. We cannot ensure that important talking points will be included in the hearing process, which is what you were discussing earlier. We need to have our staff hold the hearings and recommend orders to this Commission for their final approval as is the case that occurs in many states, most states. We need to be able to talk with our staff during the hearing process. We are not able to do that. In this hearing, for example, there was an opportunity to clarify some issues related to integration that were not even discussed. For example, nothing was discussed on how long an integration order remains in effect. An integration order fixes the working interest ownership for as long as commercial production is in effect based on the terms in the leases making up the integration unit. The lease terms dictate how long the leases remain in effect and therefore how long the integrated unit exists. Leases can remain in effect past their primary term if commercial production continues within a unit area. The leases are held and extended by production. However, in some states, they require that any approved unit must be dissolved before allowing a new unit in the area to be formed. Sometimes a Pugh clause in a lease requires that areas outside of a producing unit be terminated past the primary term of the leases. Idaho does not differentiate between a pre-drill integration unit from a post-drill production unit. A production unit determines which royalty owners are to be paid in protecting their correlative rights.

No discussion centered on why this integration was necessary. The integration order occurs to allow a majority of mineral interest owners to develop their minerals over an objection of a minority of interest owners. It also forms an area where the working interest owners have a fixed ownership interest before spending a couple of million dollars to drill a test well. An operator wants to ensure that if a test well proves to be successful, they will receive their fair share of the sales. They want to ensure their fixed working interest will cover all of the potentially productive area. That is similar to Idaho code. An integrated unit does not necessarily determine what royalty owners get paid from production if the test well is successful in establishing commercial production. The productive area for a producing unit depends on a review of the results of the test well and the geology of the interpreted trap area. Because none of us who have experience could communicate with our staff during this process, these points were not even brought up. If you talk about an integration unit, which is what I wanted to discuss before we rushed to have another hearing, you must understand what's the purpose of an integration unit. There is nothing, once you integrate, that changes the fixed working ownership within the box which you put together around a potential well to be drilled. So, because of the current statutes, things are screwed up and we need to revamp this, we need to revamp the system, so that the experience that the government is paying us our \$50 a meeting can be used to help our staff ask the right questions at the hearing, so we will have enough information to make a reasonable judgement and a decision. That is my input.

Chairman Coppersmith: All right. Any other comments from any of the other Commissioners? Okay, I think we are ready for a motion.

COMMISSION ACTION: A motion was made by Commissioner Classen that the Commission adopt the hearing officer's decision in the Recommended Order. Commissioner Classen further moved that the Commission give the Chairman authority to issue a written order consistent with the Commission's decision. Commissioner Hinchcliff seconded the motion. The motion carried on a vote of 3-1 with Chairman Coppersmith being the opposed vote.

- **INFORMATION**

None

There being no further business before the Commission, at 2:14 p.m. a motion to adjourn was made by Vice Chairman Shigeta. Commissioner Classen seconded the motion. The motion carried on a vote of 4-0. Meeting adjourned at 2:14 p.m.

IDAHO OIL AND GAS CONSERVATION COMMISSION

/s/ Betty Coppersmith

Betty Coppersmith, Chairman
Idaho Oil and Gas Conservation Commission

/s/ Mick Thomas

Mick Thomas
Secretary to the Commission

The above-listed final minutes were approved by the Commission at the August 4, 2021 regular Idaho Oil and Gas Conservation Commission meeting.