



IDAHO OIL AND GAS CONSERVATION COMMISSION

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

Mick Thomas, Secretary to the Commission

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Final Minutes

Idaho Oil and Gas Conservation Commission Regular Meeting  
October 20, 2020

The regular meeting of the Idaho Oil and Gas Conservation Commission was held on Tuesday, October 20, 2020 with the physical location at State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St., Boise. There was also a teleconference option. The meeting began at 2:00 p.m. (MT). Chairman Betty Coppersmith presided. The following members were present:

Vice Chairman Marc Shigeta  
Commissioner Jim Classen  
Commissioner Dustin Miller

For the record, all four Commission members were present at the physical location. Secretary Thomas was also present at the physical location.

• **ANNOUNCEMENTS**

Chairman Coppersmith explained there were three parts to the meeting today: the normal portion of the meeting, an executive session in which the room will need to be cleared out, and then return to regular session to hear the appeal of the Administrators Denial of the Barlow #2-14.

**1. Division Administrator's Report**

- A. Financial Update
- B. Current Oil and Gas Activity

Vice Chairman Shigeta inquired about the wells in the Hamilton field and whether they were plugged. Secretary Thomas responded that those wells have been plugged but regarding abandonment some have not been due to the reclamation of the surface sites which are being discussed between the surface owner and other people. Program Manager James Thum explained that the Tracy Trust #3-2 needs additional work done that requires bringing in a rig from outside of the state and due to that the well is shut-in and not considered plugged. Commissioner Classen asked about the saltwater disposal, Secretary Thomas explained he spoke with Evan Osborn at the Environmental Protection Agency (EPA) the day before the meeting. It was indicated that they are in the final review process and hope to have something by early spring next year. The EPA also confirmed that the operator has provided everything they needed.

- **CONSENT – ACTION ITEM(S)**

2. **Approval of Minutes** – August 5, 2020 – Regular Meeting (Boise)

*CONSENT AGENDA COMMISSION ACTION:* A motion was made by Commissioner Miller that the Commission approve the meeting minutes on the Consent Agenda. Vice Chairman Shigeta seconded the motion. The motion carried on a vote of 4-0.

- **REGULAR – ACTION ITEM(S)**

3. **Omnibus Rulemaking – Adoption of Pending Rule for IDAPA 20.07.02 – Rules Governing Conservation of Oil and Natural Gas in the State of Idaho** – Presented by Mick Thomas, Division Administrator – Minerals, Public Trust, and Oil & Gas

*RECOMMENDATION:* Adopt the proposed fee rule as the pending rule for IDAPA 20.07.02 Rules Governing Conservation of Oil and Natural Gas in the State of Idaho and authorize the Department to submit a Notice of Adoption of Pending Rule consistent with that adoption.

*DISCUSSION:* None

*COMMISSION ACTION:* A motion was made by Commissioner Miller to move with the adoption of the proposed fee rule as the pending rule for IDAPA 20.07.02 – Rules Governing Conservation of Oil and Gas in the State of Idaho and authorize the Department to submit a Notice of Adoption of Pending Rule consistent with that adoption. Commissioner Classen seconded the motion. The motion carried on a vote of 4-0.

At 2:12 p.m., a motion was made by Vice Chairman Shigeta to convene in Executive Session pursuant to Idaho Code 74-206(1)(f) to communicate with legal counsel for the public agency to discuss legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated. Commissioner Miller seconded the motion. Chairman Coppersmith stated a roll call vote is required. Roll Call Vote: *Aye:* Shigeta, Miller, Classen, Coppersmith; *Nay:* None; *Absent:* None.

- **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: Application for Permit to Drill – Barlow #2-14]

At 3:01 p.m., the Commission resolved out of Executive Session by unanimous consent. Chairman Coppersmith stated that no action was taken by the Commission during the Executive Session.

- **REGULAR – ACTION ITEM(S)**

**4. HEARING: Appeal of the Administrator’s Denial of Application for Permit to Drill, Barlow #2-14**

*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](mailto: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:** This hearing will address Snake River Oil and Gas LLC's application for the permit to drill the Barlow #2-14 well. This application was denied on September 11<sup>th</sup> and then Snake River filed its appeal on September 25<sup>th</sup>. One thing to keep in mind as we are taking arguments is that all the evidence in this case is already in the record, so we are taking no new evidence and if something is mentioned that is new evidence we'll have to ask you to cease your comments. As a result, no public comment will be taken, and we'll talk about what that means here in a minute.

We will not consider comments filed by those who did not previously file comments on the application prior to the Administrator's denial. We do have several responses that were filed to Snake River's appeal by persons who filed comments during the comment period. Snake River subsequently filed a motion to strike those written responses and respondents' further participation in the appeal. This is the motion to strike that we are going to make a decision on first.

To document who is here either in person or on the phone and wishes to give arguments I'm going to ask that you identify yourself and I'm going to call some names and ask if there is anyone else that meets these criteria. When I call your name, you'll identify yourself and who you represent; I would ask you to come up to the microphone and make that statement. The first person I have is Mr. Christian.

Attorney Michael Christian was present in person representing the applicant Snake River Oil and Gas, LLC and Attorney James Piotrowski was present via teleconference representing Brad and Angela Barlow, Sue Bixby, Cookie Atkins, Janie Rodriguez, Melvin and Terri Person, Jan and Jamie Mitchell, Bruce Burrup, Dale Verhaeghe, Linda Dernoncourt, William Tolbert, Julie Fugate, Joey and Brenda Ishida, and Citizens Allied for Integrity and Accountability.

Mr. Christian gave his argument on the motion to strike and answered questions from the Commission. Mr. Piotrowski gave his argument on the motion to strike and answered questions from the Commission.

Chairman Coppersmith opened the floor for discussion amongst the Commission.

**Commissioner Miller:** There is just a lot of ambiguity here and not as much clarity as I would like to see written in the statute so it certainly puts us in a situation where there's...you could go a couple different directions here; don't have a lot else to add, other than just looking at the plain language of the statutes that are in front of us.

**Commissioner Classen:** This is a fuzzy situation. Just standing back it seems to me like the people who made their comments in the past had a chance to express themselves and their attorney had a chance to express his viewpoint of their feelings. I think we have given them the opportunity so they should not even be involved in this fashion in the appeal.

**Chairman Coppersmith:** All right, thank you Commissioner Classen. My thoughts on this are, and I'll use your word fuzzy, Commissioner Classen; there is ambiguity in the legal interpretation of participating parties, qualified persons, so I am more inclined to take a very broad view of that for some of the reasons that have been stated. The intent is to have persons who have interest in a project the opportunity to have their voices heard.

In this case, the Idaho code refers to qualified persons and yet that is not defined down to the level that we maybe wish it would. But that also gives us the opportunity to determine what that would be in proceedings of this nature. In other words, it allows us to have discretion, especially as we are looking at case-by-case scenarios.

In that light, I would be more inclined to allow all those persons wishing to present argument who are qualified as previously defined to have the opportunity to speak at this time.

**COMMISSION ACTION:** A motion was made by Commissioner Classen to strike. No second was given, therefore the motion failed. A motion was made by Chairman Coppersmith to deny Snake River's motion to strike because respondents or participating qualified persons are not excluded in the definition in the Idaho Code. Commissioner Miller seconded the motion. Chairman Coppersmith took a roll call vote for the record. *Roll Call Vote:* Aye: Shigeta, Miller, Coppersmith; Nay: Classen; *Absent: None.* The motion carried on a vote of 3-1.

**Chairman Coppersmith:** Let's move on to the more technical aspects of this appeal. Because of the nature of the arguments, we're going to give each speaker fifteen minutes and I will allow an additional five minutes for Snake River if you want to use that five minutes at the end for a rebuttal to any other comments that have been made and we would just need you to state that when you come up to speak. With that, Mr. Christian, if you would like to come up and make your arguments on the appeal.

Mr. Christian gave his argument on the technical aspects of the appeal and answered questions from the Commission. Mr. Piotrowski gave his argument on the technical aspects of the appeal; there were no questions from the Commission. Mr. Christian gave a rebuttal argument; there were no questions from the Commission.

Commissioner Classen asked if he could ask Secretary Thomas questions. Chairman Coppersmith responded no. Commissioner Classen then asked if he could ask Mr. Christian a question. Chairman Coppersmith responded yes and called Mr. Christian back to the podium. Mr. Christian answered more questions from the Commission.

Chairman Coppersmith asked if any of the Commissioners had additional points they wanted to speak on.

**Commissioner Classen:** Madam Chair, I'd like to repeat one point that has been established and that is that once you integrate a section and fix the working interest ownership it stays in effect until the leases become void. So, once an integrated unit, always an integrated unit, until such time as the leases go away.

**Chairman Coppersmith:** All right, thank you Commissioner Classen. Commissioner Miller do you have any additional comments?

**Commissioner Miller:** I do not Madam Chair, thank you.

**Chairman Coppersmith:** And Commissioner Shigeta?

**Commissioner Shigeta:** No.

**Chairman Coppersmith:** All right. I do appreciate the arguments brought forth by Mr. Christian and Mr. Piotrowski. It's very easy in this case to jump into the details and the nuts and bolts, but I keep stepping back to the burden of proof. Having permitted several wells in my career, and several permit applications, the burden is always on the applicant to prove your case. When the regulatory body asks for clarification or additional information that hasn't been requested as part of the normal application, it's incumbent upon the applicant to submit that information or make your case. One thing is the map. Of course, correlative rights; it's going to come up and one of the responsibilities of this Commission, and also the Division, is to protect those correlative rights. It needs to be addressed, some way, in the application. Again, the burden of proof is on the applicant itself; not on the Division, not on the Commission.

Kind of the same issue with the well-spacing argument and the reconciliation with the 2016 order, although I appreciate the different nuances there, it was not addressed at all in the application. Again, even though you can argue it's not a line item requirement, it's going to come up as a discussion point and there needs to be some type of justification in the application package itself. It's kind of a moot point, but also that thing about the arguments on the noticing...the written arguments started we weren't told we were supposed to notice by the Division. Again, noticing requirements is always on the applicant. My thoughts here are that, not that this permit application should be based, the denial of this permit application, I just don't think we have enough information to say "yay" or "nay" but there's definitely some gaps there that need to be addressed. That's where I'm landing, is just the burden of proof issue. It appears that more information is needed to permit this well and it's within the Division's realm of authority to ask for that information and to be, at least somewhat, able to evaluate that information and make a decision on whether to grant a permit to drill.

**Commissioner Classen:** Getting a drilling permit is sometimes done over the phone in many states. In requesting more information, you're saying there's the burden of proof on the operator's part. The operator didn't say he was going to drain somebody else's reserves. All he said was I'd like to drill a well down here. As I laboriously went through earlier, there's a lot of detail, time, money, and effort in science spent saying there is justification to want to drill another well here.

The operator is fully cognizant of drainage issues, especially in this play, in this area, because we've had a lot of past comments talking about drilling the well on a spacing unit and then figuring out who the rightful royalty owners that ought to get paid. That is in essence what correlative rights is. The Commission has the authority to call a hearing after the well is drilled and we see what the information is, if the Commission staff feels that there's a considerable issue here with potential lack of protecting correlative rights and we can do that by putting a condition, if needed, on the permit that requires the results of the well to be detailed and brought back in because the well is kind of close to the edge of a section.

But the point made previously that if you drill a well and it's a successful well, then were we in a normal situation, right next door there would be other operators who have some mineral interests that would call a hearing or call their own group together to drill an offset well. It is normal for an operating company, if their data shows that the prospects have other hydrocarbons remaining to be drilled in any particular section or unit so to speak, drilling unit, that they should go ahead and be allowed to drill to find those other reserves.

I don't see where there is a burden of proof for an operator to disclose all kinds of technical information; all they want to do is drill a well. The department had a right to speculate that it might cause drainage from adjacent areas that they should be concerned about that need to be handled in the future. This is a simple deal. We want to drill another well. They have met all the right requirements that allows them to drill a well. If this was in the middle of nowhere, they could drill a well, making these requirements met in their application. If the department felt enough concern about drainage, they could have gone back to them and asked for further information I suppose. As a Commission, we don't talk to our staff about what they are doing on permitting wells. We have delegated that downward.

**Chairman Coppersmith:** Thank you Commissioner Classen. I agree with you that we don't know what interactions happened between the Division and the applicant, but the issues are coming up now. And gosh, I wish I had worked in a state where I could get a drilling permit over the phone; I never had that experience. But, the reality again, is that the burden of proof is on the applicant. You made a really great argument about the uncertainty in mapping for predicting drainage radiuses or speculating on well performance, but we don't know that it will, but we don't know that it won't. Again, in my mind the applicant needs to make some case for the drainage is going to be contained within this area – or not. There's just no mention of that whatsoever in the application and that's where I'm landing with this. Knowing that we've been tasked to protect correlative rights in the state of Idaho, it's a normal question.

**Commissioner Classen:** I hate to admit the fact that I was a 100% failure in taking interest in drilling wells on amplitude maps. I have since had one success out of probably nine wells. So, we might be over-emphasizing how good the science is. I believe in the science and it's working great up here in this country but it's not infallible. As Mr. Christian said earlier, we are getting to the point where we want to have maps of the whole area and predetermine where the spacing units ought to be and how they should be configured before we allow a company to drill a wildcat well. I think this is ludicrous based on my experience.

**Chairman Coppersmith:** I appreciate those comments. One other option though, that hasn't been addressed, is using the one well that is already completed in this zone, as an analog. That is another method that you can present a case on without having the mapping. So, there are multiple ways to do it, just the fact that it wasn't done at all is where I'm going with this.

**Commissioner Miller:** But, Madam Chair, I just question on the application process, is that information a requirement, understanding what resource availability is in the subsurface pools and whatnot and, again, I'm one of those nontechnical guys, Jim.

**Chairman Coppersmith:** Based on the actual application form that was filed, that information does not appear to be requested on the form.

**Commissioner Classen:** I made the statement here that a company is not expected to give any technical input to the department. All they are doing is asking permission to drill a well and they have met the requirements as stated on a 640-acre gas drilling unit, to be allowed to do that. There's a map in the past by another operator, that may or may not be right, and if it is right after they drill a well and we sit here and the staff consults, they may figure that they need to have a hearing before they let them produce this well in fear of bad correlative rights protection. And we have the authority. The Commission, and our staff, through our staff to the Commission. The Commission has authority to call for a hearing and get this straightened out and it might be that you form two units: the undrilled unit to the south where the correlative rights might be in danger, and a unit where they drill the well to produce the reserves where the well will drain.

**Chairman Coppersmith:** It seems to me to be more of an issue of due diligence. Do you wait for something negative to happen or do you do your best to assess it prior to it becoming an issue?

Any more discussion on this point? All right. I think we're at the point where we are ready to make a motion.

**COMMISSION ACTION:** A motion was made by Commissioner Classen that the Commission grant the application for permit to drill (APD) because it appears to be a legally requested drill site meeting all the requirements for drilling a wildcat well in a 640-acre drilling unit that has already been fixed. Vice Chairman Shigeta seconded the motion. Chairman Coppersmith took a roll call vote for the record. *Roll Call Vote:* Aye: Shigeta, Miller, Classen; Nay: Coppersmith; Absent: None. The motion carried on a vote of 3-1.

A motion was made by Commissioner Miller to give the Chairman the authority to issue a written order consistent with the Commission decision. Commissioner Classen seconded the motion. The motion carried on a vote of 4-0.

- **INFORMATION**

None

There being no further business before the Commission, at 4:35 p.m. a motion to adjourn was made by Commissioner Miller. Vice Chairman Shigeta seconded the motion. The motion carried on a vote of 4-0. Meeting adjourned at 4:35 p.m.

IDAHO OIL AND GAS CONSERVATION COMMISSION

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*/s/ Betty Coppersmith*

Betty Coppersmith, Chairman  
Idaho Oil and Gas Conservation Commission

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*/s/ Mick Thomas*

Mick Thomas  
Secretary to the Commission

The above-listed final minutes were approved by the Commission at the February 24, 2021 regular Idaho Oil and Gas Conservation Commission meeting.