

PEER ASSESSMENT

Report 2017

**Idaho Department
of Lands**



State Oil & Gas Regulatory Exchange



States First is a state-led initiative aimed at facilitating multi-state collaboration and innovative regulatory solutions for oil and natural gas producing states.

Governors, regulators, and policy leaders from oil and gas producing states across the country have partnered with the Interstate Oil and Gas Compact Commission and Ground Water Protection Council in this endeavor. This joint initiative allows a unique mix of regulatory experts, state policy and technical staff from across the country to come together and to share the way they do business, review internal operations and opens up opportunities for extrapolating effective practices from one state to another.

Looking forward, the states remain committed to excellence and to providing the regulatory leadership necessary for a sound energy future. As leaders, the states recognize the need to continuously improve and to develop innovative solutions to emerging regulatory challenges. Through States First programs, state regulatory agencies are collaborating and communicating with one another in an ongoing effort to keep current with rapidly changing technology, as well as to share the very best and innovative regulatory procedures from state to state.

The **State Oil and Gas Regulatory Exchange** (SOGRE) is an outreach program created under the States First Initiative. The mission of the SOGRE is to assist states to continually improve state oil and gas regulatory programs by providing member states consultation and program assessment services targeted to their specific needs.

Ground Water Protection Council

The Ground Water Protection Council (GWPC) is a nonprofit 501(c)6 organization whose members consist of state ground water regulatory agencies which come together within the GWPC organization to mutually work toward the protection of the nation's ground water supplies. The purpose of the GWPC is to promote and ensure the use of best management practices and fair but effective laws regarding comprehensive ground water protection.

The mission of GWPC is to promote the protection and conservation of ground water resources for all beneficial uses, recognizing ground water as a critical component of the ecosystem. The organization provides an important forum for stakeholder communication and research in order to improve governments' role in the protection and conservation of ground water.

Interstate Oil & Gas Compact Commission

The Interstate Oil and Gas Compact Commission, comprised of 38 oil and gas producing states, is a multi-state government entity that promotes the conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety and the environment.

The Commission, acting through member-state governors, assists states to maximize oil and natural gas resources through sound regulatory practices. As the collective voice of member governors on oil and gas issues, the IOGCC advocates for states' rights to govern petroleum resources within their borders.

State Oil & Gas Regulatory Exchange Peer Assessment Report 2017

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State Oil & Gas Regulatory Exchange Peer Assessment Report 2017

Idaho Department of Lands

SOGRE Idaho Assessment Team

Matt Lepore, Director, Colorado Oil and Gas Conservation Commission

Assessment Team Lead

Matt Lepore became Director of the Colorado Oil and Gas Conservation Commission in August 2012. An attorney by profession, Mr. Lepore has more than 20 years' experience in environmental and natural resources law and policy.

Immediately prior to joining the Commission, Mr. Lepore was a member of the law firm Beatty & Wozniak, P.C., where his practice focused on oil and gas regulatory matters, enforcement proceedings, and litigation. Prior to joining Beatty & Wozniak, Mr. Lepore was a Colorado Assistant Attorney General and was counsel to the Colorado Oil and Gas Conservation Commission. Mr. Lepore represented the Commission before the state trial and appellate courts, and advised the Commission on regulatory and enforcement matters, and as well as agency rulemaking. Mr. Lepore earned his B.A. degree, summa cum laude, from the University of Colorado, Boulder and his J.D. degree from Stanford University. He has served as the IOGCC Legal and Regulatory Affairs Committee Chair and is currently the IOGCC 2nd Vice Chairman.

John Baza, Director, Utah Division of Oil, Gas and Mining, Department of Natural Resources

With more than 20 years of state service, John Baza has been the Director of the Utah Division of Oil, Gas and Mining, since 2005. He is a petroleum engineer by education and work experience, holding both Master of Science and Bachelor of Science degrees in petroleum engineering from Stanford University.

Mr. Baza's career spans over 33 years working with the energy and mineral extractive industries with several petroleum companies including Phillips Petroleum Co., Amoco Production Co., and Flying J Oil and Gas Inc. Mr. Baza has been involved in petroleum exploration and development in Wyoming, North Dakota and Utah, and he has also worked on geothermal power projects in Utah, Nevada, and California.

Mr. Baza is a registered professional engineer in Utah. He is also a 36 year member of the Society of Petroleum Engineers, having held various officers positions including section chairman, program chairman and scholarship committee chairman. He has also served as IOGCC Vice Chairman and received the E.W. Marland Award for outstanding regulator in 2015.

Cathy Foerster, Chair & Commissioner, Alaska Oil and Gas Conservation Commission

In 2005, Alaska Governor Frank Murkowski appointed her to serve as the engineering commissioner for the Alaska Oil and Gas Conservation Commission, and in 2012, Alaska Governor Sean Parnell appointed her Chair of the Commission.

Mrs. Foerster earned a mechanical engineering degree with highest honors from the University of Texas in 1977. Upon graduation she worked for Exxon Company USA. She left Exxon in 1979 to work for ARCO, where she held a variety of engineering, operations, and management positions until ARCO was acquired by BP in 2000. She worked on contract for BP for almost two years before leaving to work as an engineering consultant for various clients, including BP and the State of Alaska.

In 2005, Mrs. Foerster was named an Outstanding Mechanical Engineering Graduate of the University of Texas, and in 2008 she was named a Distinguished Graduate of the University of Texas Cockrell School of Engineering. Also in 2008, she was named to the Athena Society, a national organization of business professionals who are recognized for mentoring young women. She was the 2014 IOGCC Vice Chair and is the current Chair of the Council of State Regulatory Officials.

Mike Nickolaus, Special Projects Director, Ground Water Protection Council

Mike Nickolaus received his Bachelor's degree in Geology from Indiana University and has been a Licensed Professional Geologist since 1986. He is also a member of the Society of Petroleum Engineers.

Mr. Nickolaus has worked as the Special Projects Director for the GWPC since May, 2005. In this capacity he is responsible for development and management of projects related to water/ energy issues and underground injection control.

Prior to joining GWPC, Mike worked for the Indiana Division of Oil and Gas for nearly 20 years in program enforcement, permitting, and underground injection control. In his final two years with the division, Mr. Nickolaus served as the state Director of Oil and Gas.

Dr. Berry H. (Nick) Tew, Jr., State Geologist and Oil and Gas Supervisor, Geological Survey for Alabama/ Alabama Oil and Gas Board, Chairman, Alabama State Water Agencies Working Group (AWAWG)

Dr. Berry H. (Nick) Tew, Jr. is Alabama's state geologist and oil and gas supervisor. In these capacities, he directs the Geological Survey of Alabama and the staff of the State Oil and Gas Board of Alabama. In February of this year, he was appointed research professor and director of the Center for Sedimentary Basin Studies in the Department of Geological Sciences at the University of Alabama, in addition to his other duties. Nick holds bachelor's, master's, and Ph.D. degrees in geology and has been with GSA and OGB for more than 30 years, serving in his present capacity since 2002.

Dr. Tew has extensive knowledge of Alabama's surface and subsurface geology and the state's rich endowment of geologically related natural resources. He is an expert in Gulf Coastal Plain stratigraphy, petroleum geology and public policy applications of the geosciences, as well as the regulation of oil and natural gas operations. Dr. Tew is chairman of the Alabama Water Agencies Working Group (AWAWG), a group of state agencies directed by Governor Robert Bentley to recommend an action plan and timeline for implementing a statewide water management plan.

He is a member of the National Petroleum Council and the National Academies of Science, Engineering and Medicine Roundtable on Hydrocarbon Resources, in addition to numerous other committee, board and service activities. He is a past president of the American Geosciences Institute and Association of American State Geologists and served as vice-chairman of the Interstate Oil and Gas Compact Commission and chairman of the U.S. Department of the Interior Outer Continental Shelf Policy Committee. Dr. Tew is a fellow in the Geological Society of America. He is the 2013 recipient of the E.W. Marland Award for outstanding state regulator and the 2016 recipient of the AGI Medal in Memory of Ian Campbell for Superlative Service to the Geosciences, the highest award of the American Geosciences Institute.

INTRODUCTION

The Idaho Department of Lands (“Department”) is the state agency with primary responsibility for regulating oil and gas exploration and production in the state. Exploration and production of the state’s oil and natural gas resources has been limited – Idaho currently has eight producing wells – but it is growing. The recent increase in exploration and production activity has brought increased attention to the Department’s regulatory regime from operators, the State Legislature, and the public. The Department requested the State Oil and Gas Regulatory Exchange (“SOGRE”) conduct a comprehensive peer assessment of the Department’s statutory authorities and implementing regulations. Through this peer assessment by the SOGRE Assessment Team (“SOGRE Team”), the Department sought to obtain the perspective of other state oil and gas regulators on Idaho’s regulatory regime, including its statutory authority, implementing regulations, administrative procedures, staffing, and funding.

Background Materials Evaluated

Each member of the SOGRE Team read the following materials related to the Department’s regulatory regime:

1. The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3 Idaho Code;
2. Rules Governing Conservation of Oil and Natural Gas in the State of Idaho, Idaho Administrative Procedures Act, 20.07.02;
3. Draft rule changes for 20.07.02 dated from July, 2016;
4. Draft legislation regarding hearing processes; and
5. The Department’s responses to SOGRE’s “Idaho Consultation – Statutory Analysis Questionnaire.”

In July 2016, SOGRE Team members Matt Lepore, Mike Nickolaus, and Carol Booth, IOGCC Communications Manager and SOGRE Assessment Liaison, spent a full day with Department personnel and the Department’s Deputy Attorney General reviewing the Department’s responses to the SOGRE Statutory Analysis Questionnaire and discussing details of the Department’s regulatory regime. Department personnel present were: Diane French, Assistant Director, Lands and Waterways; Eric Wilson, Resource Protection and Assistance Bureau Chief; James Thum, Oil and Gas Program Manager; Kourtney Romine, Resource Protection and Assistance Administrative Assistant; Margaret Chipman, Commissioner, Idaho Oil and Gas Conservation Commission; and Kristina Fugate, Idaho Deputy Attorney General.

SOGRE TEAM FINDINGS

A. Statutory Authority and Implementing Regulations

1. The Idaho Oil and Gas Conservation Act (the “Act”), adopted in 1965, provides the Department with essential jurisdiction and authority necessary to effectively regulate oil and gas exploration and production in the State.
 - a. The Idaho Act is based on the Interstate Oil and Gas Compact Commission Model Act. Most other oil and gas producing states’ conservation acts are also based on the IOGCC Model Act.
 - b. The Act creates the Idaho Oil and Gas Conservation Commission (“Commission”) and provides the Commission with broad general authority to regulate development of Idaho’s oil and gas natural resources. Idaho Code 47 317(8), (9); -319; -327.
 - c. The Act further provides the Commission authority to regulate many specific aspects of oil and gas exploration and production operations in the state. A listing of specific statutory authorities granted to the Commission is included as Appendix 1.
2. The Department has adopted comprehensive implementing regulations. The SOGRE Team evaluated these regulations, including several pending amendments and updates to them, and did not identify material substantive gaps in the implementing regulations. The SOGRE Team did identify a number of regulatory topics for additional consideration by the Department or Commission; those areas are specified in section C of this report.

The Department’s regulations govern the following substantive topics. A more complete index of the Department’s implementing regulations is included in Appendix 2.

Subchapter A – General Provisions. IDAPA 20.07.02.000-099.

Subchapter B – Exploration and Development. IDAPA 20.07.02. 100-199.

Subchapter C – Drilling, Well Treatment, and Pit Permits. IDAPA 20.07.02.200 299.

Subchapter D – Well Sites and Drilling. IDAPA 20.07.02.300-399.

Subchapter E – Production. IDAPA 20.07.02.400-499.

Subchapter F – Well Activity and Reclamation. IDAPA 20.07.02.500-510.

B. SOGRE Team Response to Specific Issues Raised by the Department

In its response to SOGRE’s Statutory Analysis Questionnaire, the Department identified a number of specific regulatory or administrative issues about which it requested guidance from the SOGRE Team. Preliminary discussions about, and further clarification of these issues occurred during the Team’s on-site visit. Many of the issues raised by the Department concern legislative or policy issues that each state oil and gas regulatory agency must resolve through that state’s political processes. Agency funding, for example, is quintessentially an issue each state’s oil and gas regulatory agency must resolve through the state legislative process. The SOGRE Team has not made specific recommendations about political or policy issues, but in some cases has offered broad guidance on these issues based on the review team’s general knowledge of how different state oil and gas regulators address these issues. The SOGRE Team has offered more substantive responses on more purely technical or regulatory issues.

1. Department Issue: By statute, the five member Commission is comprised of citizens appointed by the Governor and confirmed by the state Senate. The Act requires the Commission be comprised of individuals with diverse areas of expertise, including one member who is “knowledgeable in oil and gas matters” and one who is “knowledgeable in geological matters.” New Commissioners who do not have specific oil and gas experience may face a steep learning curve on more technical issues.

SOGRE Response: Many oil and gas producing states follow a similar “citizen commission” model, in which Commissioners are appointed by the Governor and in some instances also approved by the state House or Senate. Statutes in other oil and gas producing states are more prescriptive regarding the required level of experience, knowledge or training for the members with oil and gas or geological backgrounds. For example, some state requirements include: “substantial experience and a college degree in petroleum geology or petroleum engineering;” or “a petroleum geologist [engineer] with at least ten years’ experience.” The Department may want to consider whether more specific qualification requirements of this type would be beneficial.

Commission staff may also wish to consider developing orientation materials for new Commissioners. Additional educational resources on specific topics are available from a number of third party resources. Some recommended resources include: Interstate Oil and Gas Compact Commission (iogcc.ok.gov); Oklahoma Energy Resources Board (www.oerb.com); Rocky Mountain Mineral Law Foundation (www.rmmlf.org); and Ohio Oil and Gas Energy Education Program (www.oogeep.org).

2. Department Issue: At present, the Department’s oil and gas program has only one full-time employee. Department staff with limited oil and gas experience are assisting the oil and gas program on as-needed / as-available basis. The Department has contracted with professional consultants for specific needs. The staff does not currently have experienced oil and gas inspectors to meet demand if development activity increases as expected.

SOGRE Response: Right-sizing staff is a familiar challenge for state and oil and gas regulatory agencies. Evaluating staffing needs through a lens of specific articulated and objective performance metrics may help quantify staffing needs. Developing such metrics may also assist the Legislature to evaluate agency budget requests. Examples of such metrics include the average days required to process drilling permits, average time required to inspect all active wells in the state, and percentage of required tests (such as Blow Out Prevention (BOP) and Mechanical Integrity Tests (MITs)) the staff are able to witness each year. Many other metrics could also be used.

Using contractors or temporary employees, as the Department has done, is a common means by which regulatory agencies meet demand peaks while retaining the flexibility to downsize when work loads diminish. The SOGRE Team recommends the Department focus early hiring efforts on individuals with the experience to wear many hats, such as an engineer with significant oil and gas exploration and production operations experience.

3. Department Issue: The Department is considering modifications to its well spacing and well setback rules, which are currently drawing scrutiny from the industry and community members.

SOGRE Response: The Commission’s proposed revised spacing and well setback rules provide for a standard spacing unit of 40 acres for oil and 640 acres for gas. Subsection 120.01.a., b. These default spacing unit sizes can be varied by order of the Commission after hearing. Subsection 120.07. In addition, the Commission initially establishes temporary spacing units, and establishes permanent spacing units only after production and reservoir information can be evaluated. Subsection 120.07.a. Finally, the Commission may approve an exceptional location for a well upon application and hearing. Subsection 120.40.

At this stage of oil and gas development in Idaho, use of default units is reasonable, given the current lack of available geologic, engineering, and production data. The default sizes are likely larger than the area to be drained by a well, which is appropriate; having smaller units increases the risk of harm to correlative rights. Moreover, it is not difficult to add infill wells if data supports smaller units. Given these considerations, the Department rules strike an appropriate balance between certainty and flexibility using regulatory procedures and conventions employed by many other state oil and gas regulatory agencies.

4. Department Issue: The Department does not have jurisdiction over Class II Underground Injection Control (“UIC”) wells. UIC wells are currently under the jurisdiction of the Idaho Department of Water Resources, which has not been delegated authority to implement the UIC program from the U.S. Environmental Protection Agency.

SOGRE Response: Many state oil and gas regulatory agencies have delegated authority from U.S. EPA to implement the Class II UIC program in their respective state. Other states, however, have elected not to seek delegation of any part of the UIC program from EPA. Whether a state seeks delegated authority for the EPA’s Class II UIC program is within the sound discretion of each state. However, in most states with delegated authority for Class II UIC wells, the state oil and gas regulatory agency is the regulating body. To the extent Class II injection wells are being constructed and permitted in Idaho, the Department may wish to consider pursuing delegation from EPA or, at a minimum, developing well construction/integrity rules or standards for such wells.

5. Department Issue: The public has expressed a concern that the Department should actively monitor production meters and reporting to ensure mineral owners are paid fairly.

SOGRE Response: A recent informal survey of state oil and gas regulatory agencies by the Interstate Oil and Gas Compact Commission indicates that most state agencies do not meter production or routinely verify all production reports.

6. Department Issue: Processing times for drilling applications are set by statute at 15 days. This will potentially be difficult for staff to meet at current staffing levels. 47 320(1)(e).

SOGRE Response: It is foreseeable that the current statutory processing requirements could pose a challenge for the Department if oil and gas development accelerates, especially if staffing is not increased. If the Department cannot reasonably keep up with processing permit applications, the Legislature may find it necessary to revisit the statutory deadline requirement with some frequency. The consequences of the Department’s failure to meet the processing deadlines are unclear.

An alternative approach followed by some states is to have a statutory requirement for a “timely and efficient” permitting process, without firm timelines built into the statute. The Legislature could monitor processing times, and stakeholders who believed the process was not meeting the Legislature’s intent could raise their concerns with the Department or the Legislature.

C. Issues for Department Consideration Identified by SOGRE Team

The SOGRE Team identified several issues for the Department's consideration as its rules and procedures continue to evolve to meet the changing environment for oil and gas exploration and production in Idaho.

1. **Spacing units and well setback requirements for horizontal well development.** Few state oil and gas regulatory agencies have specific spacing unit and well setback requirements for horizontal development.¹ Arkansas is a notable exception to this general statement. The Department has a unique opportunity to develop spacing rules for horizontal development prior to such development emerging in the state. To give just one example, to the extent Idaho's shale formations are liquids-rich, 40-acre spacing will not be a useful paradigm for horizontal development of such shales.
2. **The Department may wish to transfer some administrative obligations to the Operator/Applicant.** Currently, the Department is obligated to send unit operations or integration applications to all known and located uncommitted owners, all working interest owners, and the respective city or county where the proposed unit is located. Many state oil and gas regulatory agencies require the applicant for integration or unit operations to serve interested parties, including uncommitted owners and working interest owners, with copies of the application and a notice of hearing, and to certify to the regulatory agency that such parties were timely served. Given the Department's staffing concerns, it is recommended the Department consider shifting the burden of mailing such applications and notices to the applicant.
3. **The Department has not promulgated rules specific to enhanced oil recovery operations.** The Department has statutory authority to create unit operations for enhanced oil recovery (EOR), 47 323(1), (2)(b), but its unit operations' rules do not directly address EOR operations. EOR units can be an important tool to fulfill the Department's Legislative mandates. The Commission should consider whether its unit operation rules adequately accommodate applications for EOR units.
4. **Develop electronic forms and filing, along with a robust database system to store and manage regulatory data.** Obtaining, storing, maintaining, retrieving, and disseminating data related to oil and gas wells, hydrocarbon production, spills and releases, and other aspects oil and gas operations is a core function of an oil and gas conservation commission. All stakeholders will expect the Department to be able to produce data and statistics on all subjects within its jurisdiction on demand. Having the capability to process regulatory forms electronically (rather than paper) will facilitate the Department's ability to meet these expectations. The Department should consider investing in a sophisticated database system and electronic forms at this early stage of development of the state's oil and gas resources. Doing so almost certainly will be more cost-effective than efforts to retro-fit such a system and capture existing data that is available only in paper copy.
5. **Bonding requirements; abandoned wells.** The Department requires a performance bond of \$10,000 plus \$1 per foot of planned well length. Subsection 220.01. Like many states, the Department allows operators to post a "blanket bond" to cover all of the operator's wells within the state. Subsection 220.02. For example, an operator may cover 30 wells with a \$100,000 bond, or \$3,333 per well; similarly, 60 wells can be bonded for \$150,000 or \$2,500 per well. *Id.*

¹ See "Horizontal Well Development Pooling, Spacing and Unitization: A Regulatory Toolbox for Key Policy, Regulatory, and Statutory Considerations," IOGCC Legal & Regulatory Affairs Committee, June 2015." <http://iogcc.ok.gov/Websites/iogcc/images/PSToolboxFINAL.pdf>

The Department has additional financial assurance requirements for wells that are declared inactive due to a cessation of activity for more than 24 months. The Department can require operators to post a bond of \$10,000 plus \$8 per foot of well length for inactive wells. The intent of this provision is to capture the approximate cost of well abandonment for marginal wells that are at the highest risk of being orphaned.

While the Department's financial assurance requirements are consistent with requirements in some other states this level of bonding may not be sufficient to cover the cost to plug, abandon, and reclaim a well site. During the recent commodity price drop many operators declared bankruptcy and, in some cases, abandoned multiple wells. The Department's inactive well bonding requirements are good tools, but have limitations: the Department has the burden of identifying inactive wells, and an operator may not be able to satisfy the additional financial assurance sought by the Department if a large percentage of its wells are inactive.

The Department may want to consider increasing its financial assurance requirements or seeking the creation of a separate, dedicated fund for plugging and reclaiming abandoned wells and oil and gas locations.

6. **Transfer of wells.** The Department has specific rules governing the transfer of drilling permits. Subsection 221. The Department may wish to consider a provision that allows the Department to evaluate the economic viability of the acquiring entity, and the right to condition the transfer on a demonstration of economic viability, an increased performance bond, or other conditions.
7. **UIC Well Construction Requirements.** Although the Department does not have jurisdiction over permitting UIC wells, it may wish to consider promulgating rules requiring operators to comply with EPA UIC well construction requirements. Alternatively, the Department may wish to review other states' UIC wellbore construction requirements as models that the Department could modify as necessary to meet Idaho's geologic conditions. The Department should be aware that wells initially drilled for UIC service may later be converted to another use and, therefore, stringent wellbore construction requirements should be imposed and enforced.
8. **Hydraulic fracturing offset requirements (for unconventional development).** High pressure hydraulic fracturing used during completion of wells in unconventional formations has the potential to cause damaging pressure increases (sometimes called "frac hits") in wells proximate to hydraulically fracturing. Although horizontal drilling and high pressure hydraulic fracturing have not yet occurred in Idaho, the Department may wish to consider adopting rules or policies to minimize the risk of potential impacts to nearby wellbores during high pressure hydraulic fracture stimulation operations.
9. **Surface casing depth requirement.** The Department's surface casing requirements (Subsection 310.05.b.) do not seem to be correlated to the depth of known fresh water aquifers, although the rules do require surface casing to "provide for . . . protection of fresh water." (Subsection 310.05). The Department should consider whether the existing standards (ten percent of total well depth or a minimum of 200 feet in areas where pressures or formation are unknown) provide the Department flexibility and discretion to require deeper surface

² See "State Financial Assurance Requirements," IOGCC Legal & Regulatory Affairs Committee, September 2016." http://iogcc.ok.gov/Websites/iogcc/images/Financial_Assurances_FINAL_web.pdf

casing in the event a fresh water aquifer exists or is later determined to exist at a depth that exceeds ten percent of the planned wellbore or 200 feet. For example, other states' surface casing rules require surface casing to be deeper (by "X" feet) than the deepest known fresh water aquifer a wellbore will penetrate.

10. **Induced seismicity.** Deep injection of fluids under pressure is known to be a possible trigger for seismic events. Many state oil and gas regulatory agencies have recently adopted rules or developed policies intended to minimize the potential for induced seismicity related to injection of exploration and production waste in Class II disposal wells. Some states also have adopted rules or policies related to high pressure hydraulic fracturing operations. The Department may wish to consider policies or rules related to the potential for induced seismicity related to Class II disposal wells or high pressure hydraulic fracturing. The States First publication, "Potential Injection-Induced Seismicity Associated with Oil & Gas Development: A Primer on Technical and Regulatory Considerations Informing Risk Management and Mitigation" is an excellent resource concerning induced seismicity. The Primer is available at www.statesfirstinitiative.org/induced-seismicity-work-group.
11. **Clarify Commission's authority to impose penalties for violations of orders and permit conditions.** Idaho Code section 47-325(c) expressly provides the Commission authority to assess a civil penalty against any person who violates any provision of the Act or implementing rules. The Commission may impose any such penalties following a properly noticed Commission hearing. *Id.* This section of the Act does not expressly authorize the Commission to impose penalties for violations of Commission permits or orders. Section 47-325(d) of the Act authorizes the Commission to bring a civil suit in district court seeking injunctive relief for violations of the Act, rules, regulations or orders; this section does not authorize civil penalties. The Department should consider seeking an amendment to section 47-325(c) to provide the Commission express authority to impose civil penalties for violations of Commission permits and orders.
12. **Produced water reuse and recycling initiatives.** Extracting hydrocarbons can result in production of large volumes of "produced water," which occurs naturally in the hydro carbon formations, as well as water used during well completion that flows back to the surface. Produced water has historically been considered a waste product, and has been managed and disposed of accordingly. In recent years reuse and recycling of produced water has become a topic of keen interest to state regulators, the regulated community, and many non-governmental entities, particularly in Western states. For example, the States First Initiative (www.statesfirstinitiative.org) is sponsoring a series of multi-stakeholder roundtable discussions regarding challenges and opportunities associated with reuse and recycling of produced water. Some states have recently addressed withdrawal, use or management of produced water through legislation or judicial action. The Department may want to consider engaging with States First or other similar initiatives and consider regulatory mechanisms to encourage and facilitate reuse and recycling of produced water in the future.

Disclaimer:

The SOGRE Team has not performed a legal analysis or interpretation of the Department's Rules or the Idaho Oil and Gas Conservation Act, and nothing contained in this Report should be construed to be a legal analysis or interpretation.

Appendix 1

Specific Statutory Authority Granted to the Commission

The Act expressly vests the Commission with the following specific regulatory authority, among others:

1. to conduct investigations of oil and gas operations in the state, to require operators to keep records of their operations; to summon witnesses, administer oaths, and require the production of documents. Idaho Code 47 319(3), 5(i); 325;
2. to require the drilling, casing, operation, and plugging of wells. Idaho Code 47 3195(c);
3. to post financial assurance to ensure compliance with the Act with respect to drilling, maintaining, operating and plugging wells. Idaho Code 47 319(5)(e);
4. to require the measurement of oil and gas produced from a well using a standardized method, to require metering of wells, and to limit production from wells with inefficient gas-oil or water-oil ratios. Idaho Code 47 319(5)(f), (g), (h);
5. to regulate the shooting and treatment of wells. Idaho Code 47 319(6)(b);
6. to regulate the spacing of wells. Idaho Code 47 319(6)(c);
7. to regulate disposal of saltwater and oil field wastes. Idaho Code 47 319(6)(e);
8. to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practices and procedures before the Commission, and to administer the Act. Idaho Code 47-319(8).
9. The Act requires an operator to notify the Commission and obtain a permit prior to drilling or treating well. Idaho Code 47 320.
10. The Act provides the Department statutory authority to space, pool, and unitize minerals. Idaho Code 47-321; -322; -323.
11. The Act provides the Department authority to conduct administrative hearings, adjudicate disputes related to the Act or implementing rules, and issue legally binding orders, subject to judicial review, for matters within the Department's jurisdiction. Idaho Code 47-324.
12. The Act provides the Commission with authority to enforce violations of the Act or implementing rules, and to impose administrative and civil penalties for violations. Idaho Code 47-319(3), 5(b), (i); -325. The Department's statutory authority to impose a penalty of up to \$10,000 per day for a violation is consistent with penalty authority among other states' oil and gas regulatory agencies.
13. The Act provides specific funding mechanisms for the Department to carry out its regulatory oversight mission. Idaho Code 47-320(3), -330. The Idaho funding mechanisms are common among other state oil and gas regulatory agencies.

Appendix 2

Index to Implementing Regulations

Subchapter A: General Provisions. IDAPA 20.07.02.000-099. Includes:

- Definitions – subpart 010.
- Protection of Correlative Rights – subpart 015.
- Permit Processing – subpart 040
- Enforcement – subpart 050

Subchapter B – Exploration and Development. IDAPA 20.07.02. 100-199. Includes:

- Seismic Operations – subpart 100
- Surface Owner Protection – subpart 110
- Well Spacing – subpart 120
- Integration – subpart 130

Subchapter C – Drilling, Well Treatment, and Pit Permits. IDAPA 20.07.02.200 299. Includes:

- Drilling Permits – subpart 200
- Well Treatments – subpart 210
- Hydraulic Fracturing – subpart 211
- Financial Assurance – subpart 220
- Transfer of Drilling Permits – subpart 221
- Pit Requirements – subpart 230

Subchapter D – Well Sites and Drilling. IDAPA 20.07.02.300-399. Includes:

- Identification of wells – subpart 300
- Well Site Operations – subpart 301
- General Drilling Rules – subpart 310
- Mechanical Integrity Testing – subpart 320
- Well Completion Reporting – subparts 340-341.

Subchapter E – Production. IDAPA 20.07.02.400-499. Includes:

- Production Reports – subparts 400-419
- Tank Batteries – subpart 420
- Gas Processing Facilities – subpart 430

Subchapter F – Well Activity and Reclamation IDAPA 20.07.02.500-510. Includes:

- Active Well – subpart 500
- Inactive Wells – subpart 501
- Well Plugging – subpart 502
- Surface Reclamation – subpart 510



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