

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Wednesday, January 25, 2017

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Gibbs, Vice Chairman Gestrin, Representatives Moyle, Raybould, Shepherd, Wood, Boyle, Vander Woude, Miller, Burtenshaw, Mendive (Mendive), Youngblood, Kauffman, Giddings, Blanksma, Erpelding, Rubel, Jordan

**ABSENT/
EXCUSED:** Representative(s) Shepherd

GUESTS: Mike Murphy, Dave Schwarz, Eric Wilson and James Thum, Idaho Department of Lands; Jonathan Oppenhiemer, ICL; Elizabeth Criner, Simplot; Brent Mathew, Doug Paddock, Julia Page, and Elizabeth Roberts, IORC; Jim Classen; Rialin Flores, CVI; Kate Haas, Alta Mesa; Dennis Stevenson and Jay Shaw, Department of Administration; C.J. McDonald, Lone Tree Petroleum; Lenny Craig; Austin Hopkins, ILL; Miguel Legarreta, ATI

Chairman Gibbs called the meeting to order at 1:30pm.

MOTION: **Rep. Kauffman** made a motion to approve the minutes of the January 19, 2017 meeting. **Motion carried by voice vote.**

RS 24880: **Eric Wilson**, Resource Protection Assistant to the Bureau Chief, Idaho Department of Lands stated this proposed legislation would improve the permitting and hearing processes used for applications filed with the Oil and Gas Conservation Commission. It would simplify the integration process and modify some options for the integrated parties, would clarify confusing and potentially conflicting time frames and processes for notification, publication, review, and approval, and finally, would establish predictable hearing dates that would benefit permittees, affected parties, and the Department. This proposed legislation would also provide a way to eliminate hearings if no objections are received and clarify the appeal process.

MOTION: **Rep. Wood** made a motion to introduce **RS 24880**. **Motion carried by voice vote.**

**DOCKET NO.
20-0316-1601:** **Mike Murphy**, Bureau Chief, Idaho Department of Lands stated there were two negotiated rule making meetings in July 2016. Attendees included industry members and members of the public. The following are changes reached through the negotiated rule making for this pending fee rule. The Department submitted legislation to allow for oil and gas lease terms of "up to" 10 years, which gives the Department discretion to issue shorter leases when in the best interest of the endowed beneficiary. Nomination fees were increased from \$25 to a minimum of \$250 per nomination, as set by the Land Board. Processing fees for assignments were increased from \$5 to a minimum of \$100 per lease, as set by the Land Board. Annual rental rates were increased from \$1 per acre to \$3 per acre, with a minimal annual rental payment of \$250. Lease boundaries are no longer limited to a single section, but will have a maximum size of 640 acres (or one full section). The Department would have the discretion to combine nominated tracts into one lease. Annual shut-in fees are now twice the rental rate. On-line auctions are now recognized as a method for holding lease auctions, and definitions were clarified and the rules were reorganized to clarify the nomination and auction process. The fee increases reflect cost recovery levels for administrative efforts on behalf of the Department and are in line with other oil and gas producing states in the Western United States.

A public hearing was held in October 2016, and the Department emailed more than 80 parties interested in oil and gas issues. There were only two comments received, the most significant from the Idaho Conservation League (ICL) identifying many concerns such as prohibiting surface occupancy on state lands serving a dedicated purpose from degradation by oil and gas infrastructure, prohibiting surface occupancy on lands with split surface and mineral estates, and providing consistency for setbacks across rules. The Department did not support the first two concerns, but did agree with consistency for setbacks across rules and has proposed changes within this proposed fee rule.

There was much discussion within the committee regarding the rewording of the competitive bidding process with the removal of "highest bid." The concern is that with the removal of the original language, the winning bid may no longer be the highest bid.

MOTION: **Rep. Rubel** made a motion to **HOLD Docket No. 20-0316-1601** for time certain, January 31, 2017.

Discussion continued until there was general agreement that with the phrase "in the best interest of the state" still within the body of the pending fee rule, along with the final determination coming from the Land Board, that the pending fee rule as written is adequate.

SUBSTITUTE MOTION: **Rep. Youngblood** made a substitute motion to approve **Docket No. 20-0316-1601**. **Motion carried by voice vote.**

DOCKET NO. 20-0701-1601: **Eric Wilson**, Resource Protection Assistant to the Bureau Chief, Idaho Department of Lands stated the Department is the administrative agency for the Idaho Oil and Gas Conservation Commission and it is the Commission's duty to prevent waste during exploration and development of oil and gas resources, protect the correlative rights of mineral owners, and protect fresh waters during oil and gas development on all federal, state, and private lands in Idaho. In July 2016, the Commission directed the Department to enter into rulemaking to repeal **IDAPA 20.07.01**. These rules went into effect in 1992, and predate the Administrative Procedures Act (APA). Therefore, the APA supersedes these rules. In addition, changes to **Title 47, Chapter 3, Idaho Code**, in the 2016 Legislative Session modified how administrative proceedings take place. As a result, **Docket No. 20-0701-1601** no longer governs actions by the Commission. Repealing this rule section clarifies administrative processes.

MOTION: **Rep. Kauffman** made a motion to approve **Docket No. 20-0701-1601**. **Motion carried by voice vote.**

DOCKET NO. 20-0702-1601: **Eric Wilson**, Resource Protection Assistant to the Bureau Chief, Idaho Department of Lands stated in March 2016, the Oil and Gas Commission directed the Department to revise **IDAPA 20.07.02** relating to spacing, drilling, plugging, and production of oil and gas wells. Changes to **Title 47, Chapter 3, Idaho Code**, during the 2016 Legislative Session necessitated these changes. The Department also identified several parts of the proposed rule that needed to be changed and clarified. The most substantive changes are as follows. Consistent terminology is added throughout the proposed rule including several definitions. The role of the Commission and Department is aligned with statutes. Permit requirements and processing are modified throughout to conform to statutes. Seismic exploration is better defined and requirements are clarified. Requirements for spacing units are modified for clarity to better explain how exceptional wells and spacing unit changes are handled and to better protect correlative rights. Integration, unitization, and several other processes are modified to conform to statute and to clarify the process. Drill pad construction prior to permit approval is conditionally authorized. A setback of wells from occupied structures is added. The permit transfer process is modified to ensure any new operator is registered and in good standing with

the State of Idaho. Inventory of wellhead equipment is added. Well logging and reporting requirements are modified to improve information gathering and retention. Production and well reporting requirements are modified to get the information to the Department sooner to reduce the need for corrected reports. Gas-oil ratio is increased to 10,000:1 for gas well classification. Meter calibration is increased in frequency and transparency. And, tank battery and processing facility standards are modified to add flexibility.

Seven negotiated rulemaking sessions were held from May through July, 2016. Participation ranged from industry representatives to community members to non-governmental organizations. While agreement was reached on many points, requests that would conflict with statute, were outside of the scope of rulemaking, were outside the scope of the Commission's authority, or involved issues that other states are not in agreement on/no clear correct answer could be found, could not be fulfilled. These proposed changes build on the established regulatory framework for oil and gas development and would further the mission of the Commission.

There was much discussion within the committee members regarding the process undertaken to conduct the meetings, how comments were tracked, minutes recorded, and how information was made available from these meetings to the public in a timely manner.

Brent Mathew, member of ICL and Idaho Resource Council, urged the committee to look closely at the public health impact regarding the setback on issues with air, water, and noise pollution. He also urged the committee to direct the Department to increase the setback to protect public health and quality of life.

Jim Classen, an exploration geologist for over 57 years, called attention to one issue with these rules. The rulemaking process was long and arduous but he was in favor of the rule in general. One area of concern he has was with spacing. Standard spacing units for oil should be a 40 acre temporary unit around the well location. The standard spacing for a gas well, in his opinion, should be 160 or 320 acres around the well location. No unit should be restricted by section or township lines. For 640 acre spacing for a gas well, he suggests holding a hearing where public comments can be made and the IDL staff can review those comments.

Elizabeth Roberts, self, from Eagle Idaho, agrees that the 300 foot setback isn't enough. She worries about possible methane leaks, noise from truck traffic, lights, and possible water contamination. She would like to see an increase in the setback for the health and quality of life of Idaho residents when the committee considers these rules.

Kate Haas, representing Alta Mesa, an oil and gas operator in the Payette area, addressed the committee and said they have made a substantial investment in Idaho. They agree the rulemaking process was very open and transparent and the staff should be commended. They do have concerns about how things were added after the close of the rulemaking and public comment process. They believe there were significant policy decisions at the end of that process that were not part of the rulemaking process. They didn't agree on all aspects of the rules, but generally, in their opinion, it was a good rulemaking process. They have done an analysis and believe this rule is workable if the committee chooses to approve it.

C. J. McDonald, representing Lone Tree Petroleum. He has worked for 34 years in the oil and gas industry all over the world. He has extensive experience in permitting, regulatory issues, and consulting. He participated in the rulemaking process, which he stated was frustrating. He participated to try to better the state of Idaho to move the process forward. He believes if Idaho was in line with the other states and the process was clear cut, it would make things more doable. Without an outline and a clear cut process to move forward, it leaves a lot of questions. He stated they are analyzing how many of the wells are going to be in Idaho at this time. He doesn't feel the transparency is there to make a plan to move forward. He also feels spacing is an issue due to the fact that landowners do not have defined property lines along section and township lines, which causes problems when trying to set wells. He believes this rulemaking will make the statute worse by defining it to a section line.

Senator Larry Craig, self. He stated these rules are critical to Idaho with this growing industry. He attended all seven of the negotiated rulemaking sessions and testified at several of them. He stands before the committee today **in opposition**. It is his opinion they do not create a kind of transparency, clarity and openness that is necessary to create the competitiveness in this state. He questioned if the state of Idaho or a private citizen whose resources are being pulled from the ground and sold by a private contractor be disclosed of immediately, this should be a requirement. The measuring of those resources should be immediate because that can determine the selling price. It's called metering. Idaho is not yet to the national standard, so that makes it difficult to operate in Idaho. Spacing is another issue. If it were not an issue, then the wells would all be located in the center of the lease to assure all setback requirements were met. But, most of the wells in Idaho are not in the center; they are located off to the edge. That is because the operators know exactly where they want the wells located based on the 3D seismic readings that tell them where the resources are located. This impacts the landowners adjacent to these leases when it comes to spacing and setbacks. He stated this proposed rule will not advance competition, it will not bring more wells online, and it will not put more money in the treasury of the state of Idaho to the levels stated.

Julia Page, member of IORC in the Boise area. She said this organization helps farmers and ranchers and concerned citizens participate in decisions that impact their communities and quality of life. IORC took part in the negotiated rulemaking process, but did not feel their needs were met through this process. The needs are different for industry than they are for people who live nearby. The people who live close by stand to lose the most when it comes to quality of life, property values and health due to the threat of leaks and spills, constant noise, lights, additional traffic, and burdens to local infrastructure like schools, law enforcement, and medical facilities. They do not agree that a 300 foot setback is adequate to protect homeowners from impacts to oil and gas development. Local governments have the ability to enact local ordinances that require a greater setback than the state, but often the state standards are used as a ceiling, not a floor. Greater setbacks are needed at the state level. They support strengthening the reporting requirements in the rules; the Department must require the highest levels of transparency in all reporting to assure that it is available to the public in a timely manner. They feel this proposed rule is a minimal start.

Jonathan Oppenheimer, representing Idaho Conservation League, stated they have many concerns with this proposed rule, specifically with regard to water quality and setbacks. The concerns are based on the fact that there has not been consultation with the Idaho Department of Environmental Quality (DEQ), therefore work on the proposed rule lacks regulatory and statutory direction. He asked the committee to reject this proposed rule and ask that the Department of Lands work with DEQ and concerned citizens to address the issues of water quality as well as setbacks.

Rep. Boyle stated the majority of the activity is happening within District 9 and she has had a lot of comments from her constituents who are not happy with this rulemaking process. She is not happy with this proposed rule either and will be voting against this proposed rule.

MOTION: **Rep. Boyle** made a motion to reject **Docket No. 20-0702-1601. Motion carried by voice vote. Chairman Gibbs** requested to be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 3:30pm.

Representative Gibbs
Chair

Tracey McDonnell
Secretary