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10/26/2016

Oil and Gas Program
Idaho Department of Lands
300 N 6th St.
Boise, ID 83701

Submitted via email: oilandgasconservationrulemaking@idl.idaho.gov

RE: ICL Comments on Rulemaking for IDAPA 20.07.02: Rules Governing the Conservation of Oil and Natural Gas in the State of Idaho

To Whom It May Concern:

I write today on behalf of the Idaho Conservation League, Idaho's largest state-based conservation organization. Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. With more than 25,000 supporters, we work on behalf of all Idahoans, protecting Idaho's air, water and special places. Many of our members and supporters reside in counties currently undergoing oil and gas development and have a deep personal interest in ensuring that new oil and gas developments are appropriately managed and regulated.

We appreciate the opportunity to comment on the Idaho Department of Land's proposed rulemaking for IDAPA 20.07.02. Our comments are described in detail following this letter.

Please do not hesitate to contact me at 208-345-6933 ext. 23 or ahopkins@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

A handwritten signature in black ink that reads "Austin Hopkins".

Austin Hopkins
Conservation Assistant

RE: Idaho Conservation League comments on Rulemaking for IDAPA 20.07.02: Rules Governing the Conservation of Oil and Natural Gas in the State of Idaho

Definition 02 – Active Well

Definiton 02 in the proposed draft reads:

***k Well.** A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months.*

First, we believe “k Well” is a typo and instead should read “Active Well” as it does in previous versions of these rules.

Second, in accordance with Idaho’s rules governing injection wells (IDAPA 37.03.03), the permitting, construction, or use of Class II injection wells is prohibited in Idaho (see IDAPA 37.03.03.040.02.a). The rules prescribed by IDAPA 20.07.02 must be consistent with all germane rules; As such, the definitions of “Active Well” and “Inactive Well” should not include the words “disposal, or injection” as these activities are not allowed in Idaho.

Review of Fresh Water Uses

Definition 25 defines what constitutes “fresh water” both currently and projected future uses. This definition lists which parameters will be analyzed when determining if fresh water will be utilized for future uses, including hydrogeologic conditions, water quality, future land use activities, and social/economic considerations.

Although these parameters are listed in the definition fresh water, there does not exist a section in the rest of the rules that outlines the process of how these parameters will be assessed. These rules also do not make it a requirement for oil and gas operators to assess the likelihood of future uses of fresh water, even though the definition of fresh water states it is necessary. These rules should contain an explicit requirement for a formal review of current and projected fresh water beneficial uses. If necessary, we encourage IDL to review IDEQ’s Antidegradation Policy contained in IDAPA 58.01.02.051 as guidance for their fresh water review.

Occupied Structure

We are pleased to see a definition for “Occupied Structure” as it provides clarity in proceeding sections of these rules.

Definition 40 – Pit

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In order to be consistent with the requirements set forth in section 230 of these rules, the definition of Pit should include the requirement that an excavated or constructed depression or reservoir must be lined in order to contain fluid.

Surface Water Floodplains

The definition of surface water is limited to the natural channel of surface water bodies. It is unclear if this is inclusive of a river's floodplain, which is an extension of a river's channel. During high runoff events, a river will naturally overtop its banks in order to dissipate energy and spill water across its floodplain. This water ultimately returns back to the the river channel, either as overland flow or through minimal travel through the subsurface. The definition of Surface Water should therefore reflect this fact and include the word floodplain along with river channel.

Defining Waste in Terms of Oil and Gas

The purpose of these rules is to ensure oil and gas produced in Idaho are utilized to the maximum extent possible. To accomplish this, regulating entities must be able to identify when oil and gas operations are appropriately conserving resources, and conversely when they are inappropriately wasting resources.

With regards to wasting resources, we are concerned over the removal of the "Waste as Applied to Oil" and "Waste as Applied to Gas" definitions. These rules must define what it means to waste these resources, and at present no such definition exists to replace the proposed removal of these definitions. IDL should either keep these definitions in their rules, or provide an appropriate substitute definition for waste in these rules.

Definition 71 - Workover

We are pleased to see that the definition of workover explicitly states that it does not pertain to hydraulic fracturing.

Location of Wells

Section 200.04 states "no oil or gas wells may be drilled within three hundred (300) feet of existing occupied structures..." We believe 300 feet is an inadequate buffer distance to provide sufficient protection and peace of mind to residents adjacent to wells. We suggest using five hundred (500) feet as a minimum setback distance for oil or gas wells from occupied structures based on the following reasons.

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First, air permitting conducted by IDEQ for individual wells highlight that pollution emanating from these wells spans a much greater distance than 300 ft. IDL has the ability to provide a simple, common-sense solution to air pollution concerns by increasing setback distances for wells. Increasing the setback distance provides more room for air pollution to dissipate before reaching residents of occupied structures, thereby helping to mitigate potential impacts to human health.

Second, Oil and Gas Commissions in neighboring states with more developed oil and gas programs, including Wyoming and Colorado, are currently working to increase their setbacks to 500 and 2500 feet, respectively^{1,2}. It seems prudent that Idaho heed the lessons learned from more experienced states and follow suit in selecting greater setback distances.

Third, this sentiment was widely supported during multiple rulemaking sessions by Idaho residents and parties representing Idaho residents unable to attend.

Permit to Drill Application Requirements

As part of the application for a permit to drill, applicants are required to describe best management practices that will be used for erosion and sediment control. We believe this sentence should also include stormwater runoff, thus requiring the applicant to describe what BMPs will be utilized to control stormwater runoff.

Also, the bulleted lettering appears to be off in this section. It is unclear if IDL is trying to combine previously bulleted material into a single paragraph or if the lettered bullets were mistakenly deleted.

Pollution of Fresh Water Supplies

Pursuant to section 200.06 of the proposed rule, IDL is allowed to deny permit applications if it is deemed that drilling operations will pollute fresh water supplies. We are curious as to how IDL will assess whether or not a drilling operation will pollute fresh water based solely on an application for a permit. If a formal process exists, we ask to be provided such information. If a formal process does not exist, these rules should include information describing how IDL will make the determination that fresh water will be polluted based solely on material available during the permit application process.

¹ See Wyoming proposes legislature changes:

<http://legisweb.state.wy.us/InterimCommittee/2015/09Appendix12-0528.pdf>

² See proposed Colorado ballot measure:

https://cogcc.state.co.us/documents/library/Technical/Miscellaneous/Init_78_Proposed_2500ft_Setback_Assessment_Report_20160527.pdf