



July 25, 2017

Mark Watson  
State Oil and Gas Supervisor  
P.O. Box 2640  
Casper, WY 82602-2640  
Via electronic mail to: [WOGCC\\_rules@wyo.gov](mailto:WOGCC_rules@wyo.gov)

RE: Comments on Proposed Amendments to Chapters 1 and 5 and New Chapter 6 of the WOGCC Rules

Dear Mr. Watson,

Thank you for the opportunity to submit these comments on behalf of our members in Wyoming. Our organization represents landowners and homeowners adversely impacted by oil and gas development and advocates for responsible development of our state's oil and gas resources on behalf of the citizens of Wyoming.

### **Comments on Proposed Amendments to Chapters 1 and 5**

We appreciate the time and effort of the WOGCC staff to propose these much-needed revisions to the rules. As only about 10% of APDs are actually drilled, there is a great need to reduce the bureaucratic headache that results from hearings on APDs that are only filed to settle disputes between companies. The amendments to Chapter 5 should help the WOGCC staff adapt to this new workload and should help them better manage an ever-growing hearing docket. Specifically, we wholeheartedly support the changes to the continuance rules, including the assessed fee.

We also generally support the changes to better conform to the Office of Administrative Hearings contested case rules. The changes will provide greater clarity and direction to those wishing to participate in WOGCC hearings.

However, we do have several questions and comments:

- In Section 4(b), Filing and Service of Papers, we suggest allowing for electronic service upon consent of the parties. Especially given the tight timelines involved for many cases, electronic service will best facilitate notice and accommodate the opportunity for response. Many agencies in Wyoming allow for electronic service, either through their docket websites or through email or both. Electronic receipt of documents will also facilitate dissemination to the Commissioners and reduce the workload of the staff to scan the documents.
- In Section 8, Discovery, we encourage a specific reference to the Wyoming Rules of Civil Procedure discovery rules, especially Rule 26's important expert disclosures and discovery scope and limits.

- We understand why there is a proposal to repeal Section 9 on rulemaking petitions. However, as an organization that has petitioned the WOGCC to promulgate and amend rules, we appreciate the direction provided in the WOGCC rules on how such petitions should be submitted and how they will be addressed by the Supervisor and Commission when received. We encourage the WOGCC to keep some reference to rulemaking petitions in your rules, even if it is just a cross-reference to the APA with instructions on where and how to file a petition, so those wishing to file a petition will be able to find the proper process in the WOGCC rules.
- In Section 21, Burden of Proof, we suggest a general phrase like “unless otherwise assigned by the hearing officer or Commission, the burden of proof rests with the applicant.”
- In Section 22, Evidence, we suggest that deposition testimony only be allowed if the witness is unavailable to testify at the hearing (or for impeachment purposes). While examination by the other attorneys is allowed at depositions, it is often not robust and not done with the intention of substituting for examination at a hearing.
- If one does not currently exist elsewhere in the WOGCC rules, we suggest adding a conflict of interest section to the Rules of Practice and Procedure to specify when conflicts occur and how a Commissioner can recuse him or herself from a proceeding. It would also be important to specify how a party can raise a conflict of interest issue with the Commission.

We also appreciate the efforts of the WOGCC staff to facilitate abandonment and cleanup of oil field equipment. As our state’s orphan well problem grows, so does the problem of abandoned facilities that go with the wells. We hope the proposed amendments to the rules will assist to achieve cleanup goals, and we support them.

### **Comments on Proposed New Chapter 6**

While we understand that the WOGCC is merely incorporating rules proposed by A&I, we oppose the rules. The rules are not tailored to the needs of the WOGCC to allow records to be available for public inspection for no or minimal fees. Our organization has worked well with the WOGCC staff to accommodate our records requests and we have always appreciated the willingness of the staff to allow records to be open and transparent. We are concerned that these rules will move the WOGCC in the wrong direction from its current posture of being an open and transparent agency.

We are concerned that the new fees could contravene WOGCC requirements for permit files to be open and available for those seeking to comment on a permit. For instance, the WOGCC regularly holds aquifer exemption and UIC permit hearings and to charge members of the public who wish to review the records a fee will likely jeopardize the WOGCC’s compliance with EPA mandates for public participation opportunities.

We have attached comments we submitted to the A&I and ask that the WOGCC consider them in the scope of your rulemaking. We understand the desire for consistency across state agencies, however, the rules must be tailored to the needs and purpose of the WOGCC and

specifically its obligations to facilitate public comment and involvement in permitting actions, rulemakings, and other public hearings.

We also encourage the WOGCC staff to maintain, and perhaps improve, efforts to post as many records online on the website as possible. Information posted online should serve to negate the need for frequent records requests and will serve to increase transparency. The website is an important source of information for members of the public, the media, and the industry.

Thank you for the opportunity to provide these comments. I will be in attendance at the August 8<sup>th</sup> public hearing should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

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May 9, 2016

Department of Administration and Information  
Director's Office  
2001 Capitol Ave.  
Cheyenne, WY 82002  
Submitted via electronic mail to: [ai-information@wyo.gov](mailto:ai-information@wyo.gov)

RE: Proposed Revisions to Public Records Act Regulations

Dear Director Fausset,

The Powder River Basin Resource Council is a nonprofit organization in Wyoming. On behalf of our members who live throughout the state of Wyoming, we write to oppose the Department of Administration and Information's proposed regulations on fees, costs, and charges related to the inspection, copying, and producing of public records pursuant to the Public Records Act. Our organization is opposed to high fees and charges for the use of the Public Records Act because those fees will thwart the very purpose of the Act itself – creating a more open and transparent government.

Our organization is a frequent user of the Public Records Act. We routinely requests public documents from a variety of state agencies as part of our government watchdog functions. The scope of our records requests can vary from needing to look at a single file available in a public reading room to needing copies of electronic correspondence and third-party provided information over a period of time. In all cases, our requests are made in the public interest. The information we obtain is often disclosed in a variety of forums, including our newsletter and social media, and is shared with our members, reporters, and other organizations. It informs our advocacy work, and can, at times lead to litigation against an agency that is violating the law. In short, it is critical that our organization maintains access to public records in Wyoming to help fulfill our tax-exempt, public mission.

We are concerned that the proposed fees and costs will be prohibitive for a small public interest organization like ours. Agencies that we routinely request records from (Department of Environmental Quality, Infrastructure Authority, University of Wyoming, and the Oil and Gas Conservation Commission) most often fulfill our requests for free. We have paid minimal copying fees when records are unavailable electronically, but have never paid for staff time associated with fulfilling a records request. And for electronic files, we have never been charged fees for their production. By requiring standard fees for all agencies, this proposal would likely change that trend and could force our organization to pay exorbitant fees for routine requests of records.

We understand that there are some burdens on agency staff in fulfilling records requests. That is why our organization works with agencies to minimize the burden they have to produce the records, and we do our own scanning through a copier/scanner in a public records room if

possible. However, for electronic records only available on staff computers and other records that are not accessible in public reading rooms, it takes agency staff time to search, compile, and produce the records. Additionally, in some cases, the records must be reviewed by an agency attorney or supervisor before the records can be released. For these reasons, the \$180 threshold is simply too low as it is only 4.5 hours of professional staff time. Fees beyond that amount could easily accumulate into hundreds of dollars for each request, making them cost prohibitive for an organization like ours.

Fulfilling records requests should be integrated into an agency's operations, and its budget, because providing information to the public about an agency's activities is a core part of its work. We encourage agencies to continue to produce records for free, as part of their normal business operations.

We also do not believe pre-payment is necessary. At the very least, this portion of the rule should be re-visited once agencies have a better understanding of how long it will likely take them to respond to requests. Requiring up-front payment – of potentially too high of rates – will deter askers of the information from pursuing their requests. If payment is required (and as stated above, in many cases we believe it should not be required at all), it should be after the fact, allowing organizations like ours that already have billing relationships with agencies to be billed for fees. Additionally, there should be accommodation in the rules to allow requesters to work with agencies to reduce the anticipated costs, or limit the work to a certain amount, not just a “pay up or you don't get the records” policy. The best practice is for there to be communication between the requester and the agency staff fulfilling the request so both parties can accommodate each other.

We are also opposed to the “inspection” requirement of the proposed rules for electronic records. The proposal of requiring the document requester to inspect the records at the agency's designated location could be quite problematic in a state as big as Wyoming. Our organization often requests records from agencies whose offices are a long drive from our office, and the inspection requirement could therefore be a prohibitive burden for us. In fact, we're not sure why there is this requirement at all. The records are electronic, so there should be electronic means to deliver them to the requester. We often receive emailed records in response to records requests, or a CD with records if the records are too numerous or too large to email. Agencies have also used Dropbox, Google Drive, or FTP sites to produce requested electronic records. As opposed to requiring “inspection” at the agency's office, the default rule should be electronic production, saving expenses and time of both the requester and the agency.

We also oppose the “request priority” provision as currently written. While it may make sense to allow smaller requests that are easier to fill to have priority over others, using the arbitrary and much too low amount of \$180 is problematic. The rule could propose using a term such as a “voluminous” request, like many federal agencies do to implement the Freedom of Information Act (FOIA). Also, FOIA allows requesters to split requests into two or more parts, with production of specifically named documents or easy to obtain records getting produced before more general requests for records. As discussed above, we encourage agencies to have practices to work with requesters to clarify their request and negotiate what should be produced

and in what order. Communication between the agency and the records requester should solve many of the perceived problems these rules are trying to correct.

On the non-electronic record fees, we are unsure what it means to “supervise” copying, and are opposed to this fee. As discussed above, we frequently review records in public reading rooms and then do our own copying/scanning. No staff is there to “supervise” our staff, as the agency staff generally goes back to their desk to do other work once they show us where the records are. Does the proposed rule imply that an agency staff member will be just standing there watching us use the copier? At that point, they should just do it themselves for the \$40/hour. At the very least this fee needs to be clarified to explain what it means to “supervise” copying.

In addition to the general comments above relevant to all agencies, the Department’s proposals are especially problematic for the Department of Environmental Quality (“DEQ”), which in addition to complying with the Public Records Act, must also comply with the Wyoming Environmental Quality Act’s specific requirements for public records contained in W.S. § 35-11-1101. These requirements provide that “Any records, reports or information obtained under this act or the rules, regulations and standards promulgated hereunder are available to the public.” Disclosure of records is necessary for the DEQ to meet minimum standards for public participation and engagement contained in federal laws that the agency administers. For instance, to charge for review and disclosure of a permit application that is out for public notice and comment, along with associated electronic and paper correspondence between the agency and the permit applicant related to the permitting process, could violate the terms of DEQ’s primacy agreements with the Environmental Protection Agency and the Office of Surface Mining because such fees would hinder a member of the public’s ability to participate in the comment process. While we appreciate the desire for consistency across state agencies, such consistency may come at the cost of forcing an agency to violate its own independent law, such as the Environmental Quality Act.

All in all, this proposal demonstrates why Wyoming’s Public Records Act should include a fee waiver provision for public interest inspectors, similar to FOIA. Those that are requesting records for commercial or personal purposes may be able to afford high fees, but those of us in the public interest sector cannot. And, in fact, charging high fees might violate requirements of public interest laws, such as the Environmental Quality Act.

In short, our organization is opposed to the Department’s proposed rules because they will thwart the very purpose of the Public Records Act: creating a more open and transparent government.

Thank you for your time and attention, and we look forward to expanding on these comments during the upcoming public hearing. Please keep us on your mailing list and notify us about developments related to these proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal flourish extending to the right.

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