

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil)
and Gas, LLC to Integrate the Spacing Unit)
Consisting of Section 30, Township 8 North, Range)
4 West, Boise Meridian, Payette County, Idaho.)
Snake River Oil and Gas, LLC, Applicant.)

Docket No. CC-2022-OGR-01-001

**ORDER VACATING HEARING
AND NOTICE OF HEARING
TO DETERMINE “JUST AND
REASONABLE” FACTORS**

The Oil and Gas Division Administrator (“Administrator”) of the Idaho Department of Lands (“Department”) hereby: (1) vacates the September 8, 2022 evidentiary hearing; (2) sets a September 8, 2022 hearing to determine “just and reasonable” factors in the above-captioned spacing unit; and (3) gives notice of hearing and sets filing deadlines for the September 8, 2022 hearing. The September 8, 2022 hearing will take place at 1:00 PM (MT) at Fruitland City Hall, 200 S. Whitley Dr., Fruitland, Idaho, with a Zoom teleconference option also available for remote attendance.

I. Background

On July 22, 2022, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the 640 acre spacing unit consisting of Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho.

The above-captioned proceeding is governed by the Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code); the Idaho Administrative Procedure Act (Chapter 52, title 67, Idaho Code); Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas

Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02). A copy of the Rules of Administrative Procedure is available at the Idaho Department of Lands office located at 300 N. 6th Street, Suite 103, Boise, Idaho, and at the Office of Administrative Rules Coordinator's website, accessible at <http://adminrules.idaho.gov>.

II. The Evidentiary Hearing is Vacated

The Administrator is authorized and required to conduct a hearing on this integration application. Idaho Code § 47-328(3). That includes the authority to conduct all prehearing procedures and to continue a hearing for good cause. *Id.* The Administrator sets regular hearing dates and applications shall be filed at least forty-five (45) days before these hearing dates. *Id.* The Administrator's next regular hearing date is September 8, 2022, and the 45 day deadline to submit applications for that hearing date was July 25, 2022.

Pursuant to Idaho Code § 47-328(3)(d), the Administrator for good cause vacates the September 8, 2022 evidentiary hearing because the Administrator must, prior to the evidentiary hearing, make a decision on the factors to consider in determining whether an integration order's terms fulfill Idaho Code § 47-320(1)'s "just and reasonable" requirement. This is required to comply with the United States District Court for the District of Idaho's order to "hold a new hearing that complies with due process by explaining the factors that will be considered when determining whether the terms and conditions of an integration order are 'just and reasonable.'" *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216 (D. Idaho 2018). The Oil and Gas Conservation Commission ("Commission") decided at its April 23, 2019 meeting that prior to holding an evidentiary hearing on the integration application's merits, the Administrator will hold a hearing and issue a ruling identifying the factors he will consider in

determining whether an integration order's terms fulfill Idaho Code § 47-320(1)'s requirement that "each integration order shall be upon terms and conditions that are just and reasonable."

III. The Administrator sets a hearing to determine the factors he will use to determine whether an integration order's terms are "just and reasonable."

To ensure the Administrator affords due process consistent with the court's order in *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, the parties should be given the opportunity to present argument as to what factors the Administrator should consider when determining whether the terms and conditions of an integration order are "just and reasonable" as articulated in Idaho Code § 47-320(1). In addition to presenting argument at hearing, parties may submit briefs and supporting affidavits, but no testimony will be taken at hearing. In order for such a hearing to be productively focused on this issue, the Administrator issues this order preliminarily identifying the matters that the parties should address at the hearing.

At this hearing the Administrator will not consider the substantive question of whether terms and conditions proposed are in fact "just and reasonable." Instead, the Administrator will consider and issue a decision determining the factors that fall within the meaning of "just and reasonable" as to the above-captioned spacing unit. After the Administrator issues a ruling identifying such factors, he will schedule an evidentiary hearing on the application and give notice of that hearing to all uncommitted owners.

In determining the factors necessary for an order to be just and reasonable, the Administrator intends to apply fundamental principles that cabin the Commission's discretion:

- First, Idaho Code § 67-5279 provides that an administrative order cannot violate constitutional or statutory provisions. Therefore, parties are asked to demonstrate how their proposed "just and reasonable" factors comply with existing statutes.

- Second, Idaho Code § 67-5279 provides that an administrative order cannot be arbitrary or capricious. In order to avoid a finding of arbitrariness, an agency is bound by the rules that it has promulgated. *Vitarelli v. Seatori*, 359 U.S. 535, 540 (1959). Therefore, parties are asked to demonstrate that any proposed “just and reasonable” factors comply with existing Commission rules.
- Third, Idaho Code § 67-5279 provides that the terms of an administrative order cannot be “in excess of the statutory authority of the agency.” In other words, if a subject is already addressed by an existing statute, the Commission may be prohibited or restricted in its ability to impose requirements in addition to those imposed by the statute. *See In re Truman*, No. 36082, 2010 WL 9585673, at *2 (Idaho Ct. App. Jan. 27, 2010) (mandatory language in statute left “little room for an unfettered exercise of discretion”). Nor can an integration order impose requirements if the Legislature has vested another agency with exclusive jurisdiction over the subject matter. Thus, parties are asked to demonstrate that any proposed “just and reasonable” factors are within the Commission’s statutory authority and discretion and do not impose burdens, conditions, or restrictions in excess of or inconsistent with existing statutes in the Oil and Gas Conservation Act, title 47, chapter, 3, Idaho Code.

Further, parties are asked to clearly identify the precedent they rely on for any assertion that a particular factor is necessary to determine whether an integration order is just and reasonable. This may include citing whether the factor is used to determine compliance with a “just and reasonable” requirement in other integration or forced-pooling proceedings. Simply asserting that a term is just and reasonable without identifying precedent supporting the assertion will be of lesser value to the Administrator in his decision.

IV. The Administrator gives Notice of a September 8, 2022 Hearing on Determining “Just and Reasonable Factors” and Setting Filing Deadlines

Based on the foregoing, NOTICE IS HERBY GIVEN that on Thursday, **September 8, 2022** at **1:00 PM (MT)** the Administrator will hold a hearing on the specific issue of the factors he will consider when he determines whether the terms and conditions of an integration order in the above-captioned spacing unit are “just and reasonable.” This hearing will only address the single issue of the factors used to determine just and reasonable in this spacing unit and should follow the guidance articulated in Section III of this order. The hearing will be held at Fruitland City Hall, 200 S. Whitley Dr., Fruitland, Idaho, with a Zoom teleconference option also available for remote attendance.

The Applicant, the Department, and any uncommitted owner in the above-captioned spacing unit may file briefs and any supporting affidavits on this topic. Idaho Code § 47-328(3). Those briefs must be filed with the Department by 5pm on the dates listed below.

Aug. 19, 2022	Deadline to file opening briefs discussing the factors the Administrator should consider to determine whether terms of an integration order are just and reasonable.
Sept. 2, 2022	Deadline to file response briefs
Sept. 7, 2022	Deadline to file reply briefs
Sept. 8, 2022	Hearing on Factors the Administrator will use to Determine Just and Reasonable Terms

Uncommitted owners may also choose to file their initial objections or responses addressing the merits of the integration application during this time period but will continue to have the opportunity to file such responses and objections up until fourteen days before the evidentiary hearing, which has not been scheduled and will be separately noticed in the future.

Pursuant to Idaho Code § 67-5242(3)(c), the Administrator will also provide an opportunity for interested persons to provide public comment at the hearing. *See* IDAPA 04.11.01.355. The

Administrator may set time limits for public comment if necessary. In addition, members of the public may file written comments with the Department before **5:00 PM (MT) on September 2, 2022**. Filing written comments is not required for a person to offer public comment at the hearing.

To ensure there is adequate space available to those appearing in-person and login information available to those appearing via Zoom, persons must sign up in advance. Those who intend to participate in-person or via Zoom should contact Kourtney Romine at kromine@idl.idaho.gov by 5:00 PM (MT) on September 2, 2022 to RSVP for the in-person testimony or to obtain the login information for Zoom participation. Please note that argument and comments via Zoom and in person will be given the same weight and consideration.

All briefs, responses, objections, and comments filed with the Department must be sent to:

Mail: Idaho Department of Lands
Attn: Mick Thomas
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720

e-mail: kromine@idl.idaho.gov

The hearing location meets the accessibility requirements of the Americans with Disabilities Act (“ADA”), in accordance with IDAPA 04.11.01.551. If a person requires assistance of the kind the agency is required to provide under the ADA in order to participate in or understand the hearing, the agency will supply the assistance upon request. Please submit any requests to IDL by 5:00 PM (MT) Thursday, September 1, 2022. Inquiries about scheduling, facilities, etc. should be directed to Kourtney Romine, Workflow Coordinator, Idaho Department of Lands, 300 N. 6th Street, Suite 103, P.O. Box 83720, Boise, ID 83720; e-mail: kromine@idl.idaho.gov; phone: (208) 334-0283.

Additional information can also be found at <https://ogcc.idaho.gov/administrative-hearings/>

ORDER

Based on the foregoing, it is HEREBY ORDERED that:

- The September 8, 2022 evidentiary hearing is vacated and will be rescheduled in the future.
- The Administrator sets a September 8, 2022 hearing on the specific issue of what factors the Administrator will consider when he determines whether the terms and conditions of an integration order are “just and reasonable.”
- Opening Briefs must be filed with the Department by 5 PM (MT) on August 19, 2022.
- Written public comments must be filed with the Department by 5 PM (MT) on September 2, 2022.
- Response briefs must be filed with the Department by 5 PM (MT) on September 2, 2022.
- Reply briefs must be filed with the Department by 5 PM (MT) on September 7 2022.

Dated this 27 day of July, 2022.



Richard “Mick” Thomas

Oil and Gas Division Administrator
Idaho Department of Lands

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2022. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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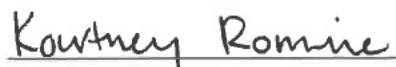
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