

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 the SE ¼ of Section 10, the SW ¼ of)
Section 11, NW ¼ of Section 14, and the NE ¼ of)
Section 15, Township 8 North, Range 5 West,)
Boise Meridian, Payette County, Idaho.)
Snake River Oil and Gas, LLC, Applicant.)
_____)

Docket No. CC-2021-OGR-01-001

**ORDER VACATING HEARING,
ORDER SETTING HEARING
TO DETERMINE “JUST AND
REASONABLE” FACTORS,
AND NOTICE OF HEARING
AND SETTING FILING
DEADLINES**

The Oil and Gas Division Administrator (“Administrator”) of the Idaho Department of Lands (“Department”) hereby: (1) vacates the May 13, 2021 evidentiary hearing; (2) sets a May 20, 2021 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 May 20, 2021 hearing. The May 20, 2021 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 March 26, 2021, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. This spacing unit was established in the Administrator’s September 28, 2020 Order in Docket No. CC-2020-OGR-01-002.

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to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02).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 May 13, 2021 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 May 13, 2021, and the 45 day deadline to submit applications for that hearing date was March 29, 2021.

Pursuant to Idaho Code § 47-328(3)(d), the Administrator for good cause vacates the May 13, 2021 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 state 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 May 20, 2021 Hearing on Determining “Just and Reasonable Factors” and Setting Filing Deadlines

Based on the foregoing, NOTICE IS HERBY GIVEN that on Thursday, **May 20, 2021** 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 II 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.

April 28, 2021	Deadline to file opening briefs discussing the factors the Administrator should consider to determine whether terms of an integration order are just and reasonable.
May 12, 2021	Deadline to file response briefs
May 17, 2021	Deadline to file reply briefs
May 20, 2021	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 May 20, 2021 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 May 12, 2021**. Filing written comments is not required for a person to offer public comment at the hearing.

The number of participants present in person may be limited to comply with any COVID-19 physical distancing requirements. As a result, in order 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 Tuesday, May 18th 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, May 13th. 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.

ORDER

Based on the foregoing, it is HEREBY ORDERED that:

- The May 13, 2021 evidentiary hearing is vacated and will be rescheduled in the future.
- The Administrator sets a May 20, 2021 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 April 28, 2021.
- Response briefs must be filed with the Department by 5 PM (MT) on May 12, 2021.
- Reply briefs must be filed with the Department by 5 PM (MT) on May 17, 2021.
- Written public comments must be filed with the Department by 5 PM (MT) on May 12, 2021.

Dated this 1 day of April 2021.



Richard “Mick” Thomas

Oil and Gas Division Administrator
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of April 2021. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Snake River Oil & Gas LLC
c/o Michael Christian
Smith + Malek
101 S. Capitol Blvd, Suite 930
Boise ID 83702

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: mike@smithmalek.com
sarah@smithmalek.com

Kristina Fugate
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Email: kristina.fugate@ag.idaho.gov

Joy Vega
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Email: joy.vega@ag.idaho.gov

Mick Thomas
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: mthomas@idl.idaho.gov

James Thum
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: jthum@idl.idaho.gov

Anadarko Land Corp
Attn: Dale Tingen
1201 Lake Robbins Dr.
The Woodlands, TX 77380

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Benjamin & Shandra Musser
PO Box 802
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

BK Construction, Inc
PO Box 802
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Brian Buffington Living Trust
2410 N. Alder Dr.
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Fruitland Capital Trust
PO Box 981
Payette, ID 83661
Steven & Michelle Cockerum
1219 NW 16th Street
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:
- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

River Ridge Estates, LLC
PO Box 2176
Tualatin, OR 97062

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Lynn & Kristina Larsen
1770 NW 24th Street
Fruitland, ID, 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Harvey Stepp & Sandra Baker
1840 NW 24th Street
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Troy & Teresa O'Dell
PO Box 1051
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Douglas & Connie Dorsing
PO Box 1005
Fruitland, ID 836169

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Kevin & Margery Clevenger
1970 NW 24th Street
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Frandonson Family Trust
2075 Killebrew Dr.
Payette, ID 83661

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Kourtney Romine
Kourtney Romine
Workflow Coordinator