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**Cc:** Michael Christian
**Subject:** Docket No. CC-2021-OGR-01-002
**Date:** Friday, May 28, 2021 04:24:15 PM
**Attachments:** 20210528.SROG Opening Brief of Applicant Fallon 1-10 Integration Application.docx.pdf

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Hello,

Attached please find the Opening Brief from Michael Christian. If you have any issues opening the document or any questions, please feel free to contact us.

Thank you,
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*Attorney for Applicant Snake River Oil and Gas, LLC*

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION**
**STATE OF IDAHO**

| | |
|---|---|
| **In the Matter of Application of Snake River Oil and Gas, LLC, for Integration of Unleased Mineral Interest Owners in the Spacing Unit Consisting of the E ½ of the SE ¼ of Section 9, SW ¼ of Section 10, N ½ of the N ½ of the NW ¼ of Section 15, and the N ½ of the NE ¼ of the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho**<br><br>**SNAKE RIVER OIL AND GAS, LLC, Applicant.** | Docket No. CC-2021-OGR-01-002<br><br>**OPENING BRIEF OF APPLICANT SNAKE RIVER OIL AND GAS, LLC** |

Applicant Snake River Oil and Gas, LLC ("Snake River"), submits its *Opening Brief* pursuant to the *Order Vacating Hearing*, *Order Setting Hearing to Determine "Just and Reasonable" Factors*, *and Notice of Hearing and Setting Filing Deadlines*, issued May 5, 2021, by the Administrator ("Order").

## I. INTRODUCTION

In the Order, the Administrator directed participants to propose factors to be used in determining "just and reasonable" terms and conditions for an integration order,[1] and to demonstrate how proposed factors: (a) comply with existing statutes; (b) comply with the

[1] Idaho Code § 47-320(1) provides that each integration order "shall be upon terms and conditions that are just and reasonable."

Commission's rules; and (c) are within the Commission's statutory authority and discretion and do not impose burdens, conditions or restrictions in excess of or inconsistent with the provisions of the Idaho Oil and Gas Conservation Act. *Order*, pp. 3-4. Additionally, the Administrator directed participants to "clearly identify the precedent they rely upon for any assertion that a particular factor is necessary to determine whether an integration order is just and reasonable," including "citing whether the factor is used to determine compliance with a 'just and reasonable' requirement in other state integration or forced-pooling proceedings." *Id.*, p. 4.

Snake River will provide an overview of the stated purposes of the Act, and the scope of the Commission's authority under the Act and the state oil and gas conservation rules at IDAPA 20.07.02 ("Rules"). It will review the salient points of the United States District Court's order in *CAIA v. Schultz*, which led to the current procedure for determining "just and reasonable" terms of integration. It will discuss how forms of agreement have developed for industry-wide use, and what courts in other jurisdictions have to say about "just and reasonable" terms in pooling or integration. Finally, it will list proposed factors to consider, in light of the previous discussion.

## II. ARGUMENT AND AUTHORITY

### A. The Administrator should utilize the form of his order regarding factors to be considered to reach just and reasonable terms in Docket No. CC-2021-OGR-01-001 in this matter, and forego further briefing and hearing on the issue.

The opening brief filed by the opposing mineral owners (and CAIA, to the participation of which Snake River objects here for the same reason as it stated in Docket No. CC-2021-OGR-01-001, namely that Idaho Code § 47-328(3) precludes it) contains the same arguments as were raised in the opening and reply briefs of the opposing mineral owners and CAIA filed in Docket No. CC-2021-OGR-01-001. Those arguments were fully addressed in the briefing and the "just and reasonable factors" hearing in that matter. Given that the arguments

are identical, and Snake River supplies the same authority here as it provided in the earlier matter, there is no need to repeat the entire procedure, causing the parties, the Department, and the Administrator to devote further time and resources, and causing further delay until the ultimate hearing of the integration application in this matter. The Administrator should vacate the June 21, 2021 hearing, enter his order listing the factors to be considered in reaching just and reasonable terms in Docket No. CC-2021-OGR-01-002, and enter the same form of order in this matter.

B. The purposes and scope of Idaho's Oil and Gas Conservation Act.

The Idaho Oil and Gas Conservation Act (the "Act") states that it is the public policy of the state "to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the State of Idaho in such a manner as will prevent waste; to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho; to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected[.]" I.C. § 47-311. All of this is to the end "that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources." I.C. § 47-311.

"Correlative rights" is defined by the Act to mean "the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste." I.C. § 47-310(4).

Meanwhile, the Act defines "waste" is as follows:

> (32) "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas

> from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil and gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.
>
> (33) "Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil and gas ultimately recoverable from a pool under prudent and proper operations.

Idaho Code 47-310(32), (33). Thus, in the Act "waste" is concerned with maximizing the ultimate production of oil or gas from a pool. The overall purpose of the Act, as expressed in the above provisions, is to promote the greatest ultimate production from a pool while protecting mineral owners' right to produce their just and equitable share from the pool.

Pursuant to this policy, voluntary integration of tracts or interests in a spacing unit is encouraged, but in the absence of an agreement and satisfaction of the conditions for integration, the Idaho Department of Lands is mandated to order integration. I.C. § 47-320 ("[U]pon the application of any owner in [a] proposed spacing unit, [the Department of Lands] shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom."). Such orders must be issued on terms and conditions that are "just and reasonable." *Id.* What is "just and reasonable" must be

viewed within the express purposes of the Act, i.e., to encourage and promote development while preventing waste and protecting correlative rights.[2]

Because the Commission was created by statute, it "has no jurisdiction other than that which the legislature has specifically granted to it." *Idaho Power Co. v. IPUC*, 102 Idaho 744, 750 (1981). The Department is the administrative arm of the Commission. Idaho Code § 47-314(7).

The Commission is "given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act, and shall have power and authority to make and enforce rules, regulations and orders, and do whatever may reasonably be necessary to carry out the provisions of" the Act. Idaho Code § 47-314(8). Similarly, the Act provides that the Commission "is authorized and it is its duty to regulate the exploration for and production of oil and gas, prevent waste of oil and gas and to protect correlative rights, and otherwise to administer and enforce this act." *Id.* § 47-315(1). The Act directs that "[i]n the event of a conflict, the duty to prevent waste is paramount." *Id*.[3] Consistent with this, the Act directs that the Commission and the Department "shall protect correlative rights by administering the provisions of this chapter in such a manner as to avoid the drilling of unnecessary wells or incurring unnecessary expense, and in a manner that allows all operators and royalty owners a

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[2] *See* Williams and Meyers, "Oil and Gas Law," Chapter C, p. 317 ("Pooling is important in preventing the drilling of unnecessary and uneconomic wells, which will result in physical and economic waste."); *Envirogas v. Con. Gas Supply*, 98 A.D.2d 119, 122 (N.Y. App. 4th Dept. 1983) (The "purposes of unitization and pooling agreements are to permit the greatest extraction of oil or gas with the least waste, to eliminate unnecessary drilling and to permit the most equitable distribution of royalties among the landowners.").

[3] This directive is key, and reflects the fundamental purpose of the Act and the Commission's role -- to encourage the maximum ultimate production of oil and gas from a pool. Terms and conditions of integration which prevent or unduly impair production, directly or indirectly, arguably create "underground waste" (by having the resource effectively be abandoned underground), and unreasonably diminish the ultimate production of oil and gas.

fair and just opportunity for production and the right to recover, receive and enjoy the benefits of oil and gas or equivalent resources, while also protecting the rights of surface owners." Idaho Code § 47-315(2). The Act then describes several specific powers of the Commission, all of which relate to regulating the operation of drilling and production of wells, and the classification of hydrocarbon pools. Idaho Code § 47-315 (5)-(7). Finally, the Act authorizes the Commission to "make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act." Idaho Code § 47-315(8).

B. The *CAIA v. Schultz* Order.

The Court in *CAIA v. Schultz*, Case No.1:17-cv-00264-BLW (August 13, 2018), recognized that "the Commission has a significant amount of discretion to decide what 'just and reasonable' means[.] *Memorandum Decision and Order* at 15. As the Court explained, due process does not require a hearing conducted according to a specific formula or a particular outcome, but only "the opportunity to be heard 'in a meaningful manner," i.e., in a manner "tailored to the capacities and circumstances of those who are to be heard." *Id.* at 17. In this context, the District Court concluded all that requires is "a clear explanation of the factors considered in applying the 'just and reasonable' standard." *Id.* at 19.[4]

C. Terms that are largely prescribed by the Act or the Rules.

[4] The Court did not direct that any particular process be created or used in order to create the list of factors to be explained. It is well established in the judicial context in Idaho that a court properly exercised its discretion where it: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187, 194 (2018). It is within the Administrator's discretion to set forth the factors he will apply, and within his discretion to apply them based on the evidence presented at the hearing of the integration application. If the Administrator acts within the confines of the Act and Rules, he acts within the outer bounds of his discretion (and exceeds it if he goes outside the Act and Rules).

Several terms and conditions of integration, and details of operations within a spacing unit, are already addressed either in the Act or in the Rules. These include:

1. Compensation for use of minerals, through payment of bonus and royalty, is addressed in Idaho Code § 47-320. The royalty is set by statute at 1/8th for those deemed leased, and at "no less than one-eighth (⅛)" for those electing to lease, and the lease bonus payment to be made is "the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application." I.C. § 47-320(3).

2. Well spacing and drilling location requirements are set out in Idaho Code §§ 47-317 and 47-318.

3. Requirements for setbacks are laid out in Idaho Code § 47-319.

4. Royalty payment and reporting requirements are provided in Idaho Code §§ 47-331 and 47-332.

5. Surface owner protections are provided in Idaho Code § 47-334.

6. Drilling, well construction, well treatments, production, reporting, reclamation, and other operational requirements are provided in IDAPA 20.07.02, Subchapters C-F.

An operator must comply with these statutory and administrative provisions in requesting integration and thereafter operating in an integrated spacing unit. For an integration order to be made on just and reasonable terms and conditions, it is unnecessary for the applicant to engage in a lengthy presentation regarding every potentially applicable statute, where these issues are already covered by existing statutes and rules. The order may simply require that the applicant comply with the Act and IDAPA 20.07.02 (although compliance is already mandatory even

without such a statement). However, it is useful as a factor in reaching just and reasonable terms to evaluate whether a proposed term or condition exceeds these requirements.

Requiring analysis of any other Idaho Code or IDAPA provision (outside the Act and the Rules) that might apply to oil and gas operations, in order to create terms and conditions for integration, would be an improper expansion of what is required for the issuance of an integration order, and exceeds the jurisdiction and role of the Commission and the Department under the Act, as described above. Moreover, it would be near impossible for operators to analyze every statute or provision of the Idaho Code or the Idaho Administrative Rules that could potentially be relevant to or affect operations in a spacing unit. Doing so would undercut the stated purposes of the Act to encourage development, protect correlative rights and prevent waste.[5] The Commission's role is described in the Act as regulating "[t]he drilling, casing, operation and plugging of wells in such manner as to prevent: (i) the escape of oil and gas out of one (1) pool into another; (ii) the detrimental intrusion of water into an oil and gas pool that is avoidable by efficient operations; (iii) the pollution of fresh water supplies by oil, gas, or saltwater; (iv) blow-outs, cavings, seepages, and fires; and (v) waste as defined in section 47-310, Idaho Code." Idaho Code § 47-315(5). As noted above, these subjects are already covered in IDAPA 20.07.02.

D. Industry standard forms developed for nationwide use.

The American Association of Professional Landman ("A.A.P.L.") provides form agreements developed for use nationwide in the oil and gas industry. *See* https://www.landman.org. The A.A.P.L. Model Form 610 Joint Operating Agreement has been in

[5] Other state agencies already regulate other areas of oil and gas operations, through their own statutory authorization and associated rules. For example, the Idaho Department of Environmental Quality regulates air quality, and well pad equipment and processing facilities are subject to its permitting and operational requirements.

use in the oil and gas industry in one form or another since 1956 and various versions of this form continue to be widely used. *See* John R. Reeves and J. Matthew Thompson, *The Development of the Model Form Operating Agreement: An Interpretative Accounting*, 54 Okla. L. Rev. 211, 213 (2001). In fact, descendants of the original form are now the most popular JOA forms in use. *See* Christopher S. Kulander, *Old Faves and New Raves: How Case Law Has Affected Form Joint Operating Agreements - Problems and Solutions (Part One)*, 1 Oil & Gas, Nat. Resources & Energy J. 1 (2015) (citing to Gary B. Conine, *Property Provisions of the Operating Agreement -- Interpretation, Validity and Enforceability,* 19 Tex. Tech L. Rev. 1263, 1273-74 (1988)). Model form joint operating agreements, including Form 610, simplify negotiations, standardize technical terms and provisions, and obtain consistency in legal interpretations. *See* Conine, 19 Tex. Tech L. Rev. at 1273. As a result of the use of model form joint operating agreements, "judicial and academic concepts developed in the context of one JOA or one dispute are increasingly viewed as generally applicable to all JOAs." Ernest Smith, *The Future of Oil and Gas Jurisprudence, Joint Operating Agreement Jurisprudence*, 33 Washburn L.J. 834, 835 (1994).

E. Authority from other jurisdictions.

Courts do not appear to have widely addressed the issue of defining factors of a "just and reasonable" analysis for integration or pooling orders. However, there are decisions from other states that provide helpful insight.

The Utah Supreme Court, in *J.P. Furlong Company v. Board of Oil, Gas and Mining*, upheld an agreement in form similar to the industry standard joint operating agreement (Form 610 from the A.A.P.L.) as "just and reasonable." 424 P.3d 858 (Utah 2018). Furlong, one of the three holdout working interest owners, agreed to participate in the costs of a well but refused to

sign the joint operating agreement. *Id.,* at 860. Furlong desired the following changes to the joint operating agreement: (1) that it not be publicly available or recorded; (2) that the operator be responsible for accounting for any future burdens; (3) that the operator accept broader liabilities for breach of contract than what is industry standard; (4) that the operator require written pre-authorizations from all non-operators for any excess expenditures; (5) that cash-call provisions be changed to expedite payment; (6) that the statute of limitations be extended for certain contract claims; and (7) that the bid process for affiliated companies be more rigorous than industry standards. *Id.,* at 860-862. The operator did not agree to the requested changes and asked the Utah Board of Oil, Gas and Mining (the "Board") to issue a forced pooling order. *Id.,* at 860. The Board adopted the joint operating agreement as written, because it was in "materially the same form as the [joint operating agreement] signed by the other participating working interest owners," and it was also "materially identical" to joint operating agreements the operator had used for the preceding seven years. *Id*. The Board found the terms of the operator's joint operating agreement to be "just and reasonable," explaining that:

> The [American Association of Professional Landmen] model-form-based JOA proposed by [the operator] is similar to other [joint operating agreements] previously adopted by this Board in prior compulsory pooling matters. The Board also notes that [joint operating agreement] terms materially the same as those proposed by [the operator] in this matter have been agreed upon and are presently in effect between other consenting owners within the subject drilling unit. Although [joint operating agreements] substantially similar to this form of operating agreement were previously deemed just and reasonable in prior matters, the Board analyzed the JOA proposed by [the operator] anew for purposes of making its determination in the present case. The Board's analysis included consideration of testimony given by the parties' witnesses regarding Furlong's proposed edits and amendments to certain provisions of the JOA as proposed by [the operator]. While legitimate disagreement can exist about the provisions at issue, and while the parties' differing proposed terms might be reasonable under certain circumstances, on balance, the Board finds that under the facts of this case, the terms of the [operator's] proposal are just and reasonable and adopts them for purposes of this matter.

*Id.,* at 862. Furlong appealed, but the Utah Supreme Court held that because the joint operating agreement was in almost the same form as the model industry agreement, and was materially the same joint operating agreement that the other leaseholders in the unit had voluntarily agreed to use, that the Board properly followed its mandate to adhere to terms that were "just and reasonable." *Id.,* at 864. The Court confirmed that the Board could justly and reasonably allow the operator to "treat all members of the drilling unit similarly" and to require the non-consenting owner "to abide by an agreement that was materially the same as the others." *Id.* The Court made it very clear that the statute did not impose an obligation on the Board "to ensure that the parties' interests are in perfect equipoise." *Id.,* at 865.

The Oklahoma Supreme Court has found that a just and reasonable pooling order does not require the evidentiary backing of or divulgence of geologic studies regarding the future returns of the proposed wells. *Home-Stake Royalty Corp. v. Corp. Comm'n,* 594 P.2d 1207, 1209-10 (Okla. 1979). Rather, the measure of compensation for forced pooling orders is the fair market value. *Miller v. Corp. Comm'n,* 635 P.2d 1006 (Okla. 1981). Requiring an operator to complete every potentially productive formation in the initial well, or engage in dual completion, is often a practical impossibility, and is therefore not just and not reasonable. *Amoco Prod. Co. v. Corp. Comm'n,* 751 P.2d 203, 206-07 (Okla. 1986).

While compulsory pooling is very limited in Texas, the Texas Supreme Court has defined a "fair and reasonable offer," as "one which takes into consideration those relevant facts existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties." *Carson v. Railroad Comm'n,* 669 S.W.2d 315, 318 (Tex. 1984).

Generally, for conditions of a pooling order to be deemed just and reasonable, it is acceptable for such terms to be based on industry standards, to be within the confines of statutorily prescribed ranges, and to provide for the protection of correlative rights. In other words, the focus is largely consistent with the purposes of Idaho's Act, i.e., to encourage development, prevent waste, and protect correlative rights. *See e.g., Matter of Western Land Servs., Inc., v. Department of Envtl. Conservation of New York,* 26 A.D.3d 15 (N.Y. App. Div. 2005) (finding that the agency has no authority to waive cost penalty imposed on nonconsenting owners without specific statutory directives); *Slawson v. North Dakota Indus. Comm'n,* 339 N.W.2d 772 (N.D. 1983) (for conditions of a pooling order to be just and reasonable, the order must afford an unleased mineral owner all that he is entitled to because of his ownership in the minerals); *In re Luff Exploration Co.,* 864 N.W.2d 4 (S.D. 2015) (finding that the South Dakota Board of Minerals and Environment erred in issuing a compulsory pooling order and risk penalty without including a time and manner in the order for nonconsenting record owners to elect to participate, or not, in the cost of drilling and developing a well).

Integration or pooling orders from other producing states with similar statutory frameworks follow the philosophy that they are concerned with ensuring parties' correlative rights are protected, i.e., they have the opportunity to receive their equitable share of production. For example, attached is a typical recent (March 2021) integration order issued by the Arkansas Oil and Gas Conservation Commission. Arkansas' statutory framework is similar to Idaho's – it provides for multiple options to uncommitted mineral owners, sets some basic economic terms (e.g., royalty), and provides that integration orders shall be on just and reasonable terms. *See, e.g.*, A.C.A. § 15-72-304. Also attached is a typical recent (March 2021) Wyoming pooling

order. The statutory framework is similar (as reflected in the order) and its scope and structure are similar.[6]

D. Proposed factors.

Keeping in mind the purposes of the Act and the Rules, and the scope of the Commission's and the Department's authority and discretion under them, Snake River suggests that at least the following factors are relevant to determining "just and reasonable terms," all as established to the hearing officer by credible evidence or authority:

1. Whether lease, joint operating agreement or other integration terms not already prescribed by the Act: (a) have been developed over time and used broadly in the oil and gas industry, and (b) have been either approved or disapproved by other governing bodies or courts;

2. Whether requested terms and conditions further the purposes and public policy of the Act, i.e., whether they encourage production, prevent waste (as defined in the Act), and protect correlative rights (as defined in the Act);

3. Whether the requested terms and conditions are within the scope of authority granted to Commission and the Department under the Act;

4. Whether requested term and conditions are reasonably similar to those agreed upon by voluntary lessors in the area;[7]

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[6] In fact, Wyoming's Oil and Gas Conservation Commission provides a template for pooling orders: *See* https://wogcc.wyo.gov/hearings/templates.

[7] This is not to suggest that the terms and conditions for integration must be equal to or better than the conditions enjoyed by voluntary lessors. In fact, given the purpose of the Act to encourage and maximize development of the resource, this should never be the basis for imposing a term or condition. To adopt this approach would be to incentivize mineral owners *not* to voluntarily lease, and instead to hold out for better terms in an integration order. This would create market distortions and unfairly reward those opposing development.

5. Whether unique or specific surface conditions in the spacing unit require the imposition of specific terms or conditions in order to prevent unreasonable impact to surface owners within the Commission's and the Department's jurisdiction to address;

6. Whether there are identified and established particular interests of owners in spacing unit that may be affected by the applicant's operations, and are within the Commission's and the Department's jurisdiction to address;

7. Whether the character and extent of the applicant's actual or planned surface and subsurface operations in the spacing unit require the imposition of specific terms and conditions in order to prevent unreasonable impact to such identified and established interests, within the Commission's and the Department's jurisdiction to address;

8. Whether a requested term or condition would actually address an alleged potential unreasonable impact to owners in the spacing unit;

9. Whether a requested term or condition is narrowly tailored to address an alleged potential unreasonable impact to mineral owners, or whether it would unreasonably impact the applicant's actual or planned operations, including by (a) unreasonably increasing the expense to the operator in comparison to the asserted potential impact to owners, or (b) effectively or operationally prohibiting the applicant's actual or planned operations by impeding or prohibiting a necessary or desirable element of the operator's activities (i.e., result in waste);

10. Whether and the extent to which a requested term or conditions would adversely impact the majority interest of voluntary lessors in the spacing unit in developing their respective minerals (i.e., their correlative rights); and

11. The likelihood of an alleged potential unreasonable impact.

Depending on the fact and circumstances regarding a particular spacing unit, not all of these factors will be necessary to consider. Each of these proposed factors is consistent with the focus of the Act and the public policy stated in it -- encouragement of production while protecting correlative rights and preventing waste. Each recognizes the limits of the Commission's and the Department's authority under the Act. Each recognizes that several subjects are already addressed in the Act or in the Rules. Each is consistent with authority from other states, consistent with the Act, indicating that the focus of a pooling or integration order is ensuring the greatest overall recovery while protecting correlative rights.

## III. CONCLUSION

The purposes of the Act, and the Commission's jurisdiction under it, should be at the forefront in considering what constitutes "just and reasonable terms and conditions" for an integration order. The Act is concerned with the promotion of development, the prevention of waste and the protection of correlative rights. Many subjects are already covered by the Act and Rules. Requiring granular evaluation of every possibly applicable statute or rule outside the Act and Rules would be beyond the Commission's jurisdiction.

DATED this 28th day of May, 2021.

SMITH + MALEK, PLLC

MICHAEL CHRISTIAN
Attorney for Applicant

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May 2021, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

| | |
|---|---|
| Mick Thomas<br>Idaho Department of Lands<br>P.O. Box 83720<br>Boise, Idaho 83720-0050 | [ ] U.S. Mail<br>[ ] Certified Mail, return receipt requested<br>[ ] Overnight Delivery<br>[ ] Messenger Delivery<br>[x] Email: mthomas@idl.idaho.gov |
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| James Piotrowski<br>Piotrowski Durand, PLLC<br>1020 W. Main St., Suite 440<br>P.O. Box 2864<br>Boise, ID 83701<br>Attorneys for:<br>Dale Verhaeghe, Linda Dernoncourt, Sharon Simmons, Alan and Glenda Grace, Edward | [ ] U.S. Mail<br>[ ] Certified Mail<br>[ ] Overnight Delivery<br>[ ] Messenger Delivery<br>[x] Email: james@idunionlaw.com<br>marty@idunionlaw.com |

and Cheryl Adair, William and Roxie Tolbert, Wendell and Normal Nierman, Cheryl and Richard Addison, Jimmie and Judy Hicks, Antonio and Danielle Anchustegui, Philip and Kathleen Hendrickson, Dawna and George Jackson, Karen Oltman, Bonnie McGehee, Lorinda Shuman, Samuel Butorovich, Tim Kilbourne, Kate Kilbourneand, and Citizens Allied for Integrity and Accountability

*/s/ Sarah Hudson*
*SARAH HUDSON*

OIL & GAS COMMISSION

**ORDER NO. 008-2-2021-02** **March 10, 2021**

**EXPLORATORY DRILLING UNIT**
*Columbia County, Arkansas*

## INTEGRATION OF A DRILLING UNIT

After due notice and public hearing in North Little Rock, Arkansas, on February 23, 2021, the Arkansas Oil and Gas Commission, in order to prevent waste, carry out an orderly program of development and protect the correlative rights of each owner in the common source(s) of supply in this drilling unit, has found the following facts and issued the following Order.

## STATEMENT OF THE CASE

**Pinnacle Operating Company, Inc.** (the "Applicant") filed its application for an Order pooling and integrating the unleased mineral interest(s) and/or uncommitted leasehold working interest(s) of certain parties named therein who have failed to voluntarily integrate their interest(s) for the development of the unit comprising of **SE/4 NE/4 & NE/4 SE/4 of Sec. 36, Township 19 South, Range 22 West; S/2 NW/4 N/2 SW/4, SW/4 NE/4, NW/4 SE/4 of Sec. 31, Township 19 South, Range 21 West, Columbia County, Arkansas.**

The Applicant presented proof that they had attempted unsuccessfully to acquire voluntary leases and/or other agreements for consideration or on terms equal to that otherwise offered and paid for similar leases or leasehold interest(s) in this drilling unit.

At the request of the Applicant, the following parties were dismissed by the Commission, regardless of whether the party or parties are listed as unleased mineral interest(s) or uncommitted leasehold working interest(s) to be integrated:

None

## FINDINGS OF FACT

From the evidence introduced at said hearing, the Commission finds:

1. That the Applicant proposes to drill a well within a drilling unit (Unit) that the Commission has previously established, consisting of **SE/4 NE/4 & NE/4 SE/4 of Sec. 36, Township 19 South, Range 22 West; S/2 NW/4 N/2 SW/4, SW/4 NE/4, NW/4 SE/4 of Sec. 31, Township 19 South, Range 21 West, Columbia County, Arkansas,** containing 320.00 acres, more or less.

2. The Applicant proposes to drill such well (the "initial wells") to test the Smackover formation and any intervening formations for the production of hydrocarbons.

3. The requested Model Form Joint Operating Agreement employed by the Applicant and proposed to the owners set out in Finding Nos. 5 and 6 (if any) below, is in the form of A.A.P.L. Form 610-1989 Model Form Operating Agreement (JOA), amended, and modified as adopted by the Commission on February 22, 2010, commonly referred to as the "Liquid Hydrocarbon JOA".

4. The requested one-year term oil and gas lease (Lease) employed by the Applicant is in the form of Exhibit "B" of the JOA.

5. The unleased mineral interest(s) to be integrated are:

   Thomas Green; Vanderbilt Mortgage & Finance, Inc.; Robert Green; Monroe Green; Mary Elizabeth Green Crain; Delores Barnes Estate; Darnell McEachern heirs.

   and any unknown spouse, heir, devisee, personal representative, successor or assigns of said owners of unleased interests.

6. The uncommitted leasehold working interest(s) to be integrated are:

   None.

7. The Applicant requests that any parties listed in Findings Nos. 5 and/or 6 (unless dismissed at the request of the Applicant in the Statement of the Case above) be integrated.

8. The alternatives for integrated parties are:

   A. Unleased Mineral Interest(s) Alternatives:

      1. Lease

         Execute a lease covering the unleased mineral interest(s) with any party upon mutually agreed terms, provided that Applicant receives notice prior to the close of the "Election Period" provided in Paragraph No. 4 of the Order below (lessee would then be bound by the terms of this order as an uncommitted working interest owner, regardless of whether such owner is listed in Finding No. 6 above); or execute and deliver to the Applicant a Lease as identified in Finding No. 4 covering their unleased mineral interest(s) in the aforementioned Unit, for a cash bonus of **$150.00 per net mineral acre** as fair and reasonable compensation in lieu of the election to participate with a working interest in said Unit and that said Lease(s) provide for a **1/5 royalty**, provided that any such owner should have the further option of a bonus of **$0.00 per net mineral acre** and retaining a **1/4 royalty** in said Lease, and that each such owner thereafter be bound by the terms of said Lease, including for purposes of subsequent operations, (whether or not such owner actually executes such Lease) for so long as there is production of hydrocarbons from within the Unit. Applicant must tender said lease bonus, subject to any applicable federal or state income tax "backup withholding" provisions, within thirty (30) days of the date an election is made; if such payment cannot be made due to issues regarding marketability of title, unknown addresses, or unknown successors in interests, then the Applicant shall pay said bonus into one or more identifiable trust accounts (which shall be accounts in a bank, savings bank, trust company, savings and loan association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government); or if payment cannot be made for any other reason, then the Applicant may appear before the Commission to request an extension of time and the Commission may condition the granting of such extension upon payment of a reasonable sum which shall be paid as an additional bonus to the unleased mineral owner.

      2. Participate in the initial wells

         Participate by paying their proportionate share in the costs of drilling, completing, equipping and operating the initial wells, subject to the terms of the JOA, and that each such owner thereafter be bound by the terms of such JOA (whether or not such owner actually executes such agreement), including for purposes of subsequent operations, for so long as there is production of hydrocarbons from within the Unit; or

3. Elect "Non-Consent"

Neither execute a lease nor participate in said costs and become a "Non-Consenting Party" under the JOA with respect to the initial wells, and be subject to all of the non-consent provisions thereunder, until the proceeds realized from the sale of such owner's share of production from the initial wells, except 1/8th thereof, shall equal the total recoupment amount described in subparagraphs (a) and (b) of Article VI.B.2 of the JOA, with the non-consent penalty under Article VI.B.2(b) being **500%** for the initial wells and/or **400**% for each subsequent well drilled on the Unit. Each such owner shall be bound by the terms of the JOA both before and after recovery of such recoupment amount and also for purposes of proposals for and the conduct of any and all subsequent operations within the Unit, for so long as there is hydrocarbon production from within the Unit. One-eighth (1/8th) of the revenue realized from the sale of such owner's share of production from the initial wells, and any subsequent well proposed under the terms of the JOA in which such owner elects not to participate, shall be paid to such mineral interest owner from the date of first production at the times and in the manner prescribed by law for the payment of royalty; or

4. Failure to Make an Election.

Unleased mineral owners who fail to affirmatively elect one of the options listed in 8A above, shall be deemed integrated into the Unit and shall be compensated for the removal of hydrocarbons by the payment of a cash bonus of **$150.00 per net mineral acre**, and a **1/5 royalty.**

Applicant must tender said lease bonus, subject to any applicable federal or state income tax "backup withholding" provisions, within thirty (30) days of the expiration period of the "Election Period," described in No. 4 of the Order below; if such payment cannot be made due to issues regarding marketability of title, unknown addresses, or unknown successors in interests, then the Applicant shall pay said bonus into one or more identifiable trust accounts (which shall be accounts in a bank, savings bank, trust company, savings and loan association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government); or if payment cannot be made for any other reason, then the Applicant may appear before the Commission to request an extension of time and the Commission may condition the granting of such extension upon payment of a reasonable sum which shall be paid as an additional bonus to the unleased mineral owner.

B. Uncommitted Leasehold Working Interest(s) Alternatives:

1. Participate in the well

Participate by paying their proportionate share in the costs of drilling, completing, equipping and operating the initial wells, subject to the terms of the JOA, and that each such owner thereafter be bound by the terms of such JOA (whether or not such owner actually executes such agreement), including for purposes of subsequent operations, for so long as there is production of hydrocarbons from within the Unit; or

2. Elect "Non-Consent"

Not participate and become a "Non-Consenting Party" under the JOA with respect to the initial wells, and be subject to all of the non-consent provisions thereunder, until the proceeds realized from the sale of hydrocarbons allocable to the mineral interest subject to said parties' leasehold interest(s) in the initial wells, exclusive of reasonable leasehold royalty, shall equal the total recoupment amount described in subparagraphs (a) and (b) of

Article VI.B.2 of the JOA, with the non-consent penalty under Article VI.B.2(b) being **500%** for the initial wells, and/or **400%** for each subsequent well drilled on the Unit; or

3. Failure to Make an Election

Uncommitted leasehold working interest(s) owners who fail to timely elect either alternative shall be deemed to have elected Alternative (B2), above.

9. Applicant requests that all parties listed in Finding Nos. 5 and/or 6 (unless dismissed at the request of the Applicant in the Statement of the Case above) be required to elect within **fifteen (15) days** after the effective date of the Order, unless, for cause shown, a shorter or longer period is approved. **ALL INTEGRATED PARTIES SHALL NOTIFY Pinnacle Operating Company, Inc., P.O. Box 52074, Shreveport, Louisiana, 71135, IN WRITING, OF THE ALTERNATIVE ELECTED.**

10. That the Applicant should be designated to be the operator of the Unit described above.

11. That no objections were filed.

## CONCLUSIONS OF LAW

1. That due notice of public hearing was given as required by law and that this Commission has jurisdiction over said parties and the matter herein considered.

2. That the land described in Finding No. 1 has been previously established as a drilling unit.

3. That this Commission has authority to grant said application and force pool and integrate the unleased mineral interest(s) and uncommitted leasehold working interest(s) of said parties under the provisions of Act No. 105 of 1939, as amended.

## ORDER

Now, therefore, it is Ordered that:

1. INTEGRATION

All of the unleased mineral interest(s) and/or uncommitted leasehold working interest(s) described in Finding Nos. 5 and/or 6 (unless dismissed at the request of the Applicant in the Statement of the Case above) within the Unit described in Finding No. 1 be and are hereby integrated into one unit for drilling and production purposes.

2. ALLOCATION OF PRODUCTION

The hydrocarbons that are produced and saved from the well or wells assigned to the above described Unit shall be allocated to each separately owned tract embraced therein in the proportion that the acreage of such tract bears to the total acreage in the Unit and shall be considered as if produced from each such tract.

3. OPERATOR TO CHARGE COSTS

The designated operator of the Unit shall have the right to charge to each participating party its proportionate share of the actual expenditures required for the costs of developing and operating the well in the manner set forth in Exhibit “C” of the JOA.

4. ELECTION OF ALTERNATIVES

The owners of the unleased mineral and/or uncommitted leasehold working interests designated in Finding Nos. 5 and/or 6 above (unless dismissed at the request of the Applicant in the Statement of the Case above), in the aforementioned Unit shall have **fifteen (15) days** from the effective date of this order (the "Election Period") to elect one of the alternatives as described in Finding No. 8 above. If no such election is made within the Election Period, the owners of unleased mineral interest(s) shall be deemed to have elected under Alternative A4 and uncommitted leasehold working interest(s) owners shall be deemed to have elected under Alternative B3, as described in Finding No. 8. Any party choosing to participate or go non-consent or, who by the terms of this Order are deemed non-consent, shall be subject to the election period set forth in the JOA with respect to all subsequent wells drilled on the Unit.

5. RECEIPT OF VALUE OF PRODUCTION

A. Unleased Mineral Interest Owner(s)

In the event the owners of the unleased mineral interest(s) elect Alternative No. A3 (Non-Consent) described in Finding No. 8 above, or are deemed to make an election under Alternative No. A4 described in Finding No. 8 above, then the value of the production proceeds attributable to such unleased mineral interest shall be subdivided and paid in accordance with the provisions of Order No. 6 as hereinafter set forth. The value of hydrocarbons produced shall be equal to the proceeds realized from the sale thereof at the well. Upon recoupment by the "Consenting Parties" (as defined in the JOA) of the total recoupment amount described in Finding No. 8A3 above, the production due the interest(s) of said parties shall be paid to them, their heirs, successors or assigns.

B. Uncommitted Leasehold Working Interest Owner(s)

In the event an uncommitted leasehold working interest owner under one or more valid lease(s) elects Alternative No. B2 (Non-Consent) described in Finding No. 8 above, the Consenting Parties shall have the right to receive the hydrocarbon production which would otherwise be delivered or paid to such uncommitted leasehold working interest owner under such lease(s) until such time as the proceeds realized from the sale of such production equals the total recoupment amount described in Finding No. 8B2 above.

The leasehold royalty payable during the recoupment period shall be calculated on the basis of the rate or rates provided in each of the leases creating the rights temporarily transferred pending recoupment.

6. SUBDIVISION OF TRACT ALLOCATION

The revenue realized by the Consenting Parties from the sale of hydrocarbons shall be allocated among the separately owned tracts within the integrated unit and, pending recoupment of the costs and additional sum described at Paragraph No. 5 of this Order, shall be paid to the integrated parties as follows:

A. Unleased Mineral Interest Owner(s)

Unleased mineral interest owners, who have elected under Alternative No. A3 (Non-Consent) described in Finding No. 8 above shall have the total allocation given to the tract subdivided into the working interest and royalty interest portions on the basis of seven-eighths ($7/8^{th}$) of the total allocation being assigned to the working interest portion and one-eighth ($1/8^{th}$) of the total allocation being assigned to the royalty interest portion.

B. Uncommitted Leasehold Working Interest Owner(s)
Leasehold royalty shall be paid according to the provisions of the valid lease(s) existing for each separately owned tract, except where the Commission finds that such lease(s) provide for an excessive, unreasonably high, rate of royalty, as compared with the royalty determined by the Commission to be reasonable and consistent with the royalty negotiated for lease(s) made at arm's length in the general area where the Unit is located, in which case the royalty stipulated in the second paragraph of Paragraph 5B of this Order shall be payable with respect to such lease(s).

7. RECORDS OF UNIT OPERATION

The designated Operator shall, upon request and at least monthly, furnish to the other parties any and all information pertaining to wells drilled, production secured and hydrocarbons marketed from the Unit. The books, records and vouchers relating to the operation of the Unit shall be kept open to the non-operators for inspection at reasonable times.

8. PAYMENT FOR PRODUCTION

During the period of recoupment, the revenue allocable to those owners of the integrated unleased mineral interest(s) who elect Alternative No. A3 (Non-Consent) and to the mineral interest(s) subject to and covered by the integrated uncommitted leasehold working interest(s) whose owners elect or shall be deemed to have elected Alternative No. B2 (Non-Consent), both described in Finding No. 8 above (collectively, the “non-consent interests”), shall be paid to those Consenting Parties that elect to acquire their proportionate share of such non-consent interests pursuant to Paragraph 9 of this Order.

9. SHARING OF NON-CONSENT INTERESTS

The designated Operator shall offer each Consenting Party in the initial well who executes the JOA, or who elects to participate under this Order, prior to the expiration of the Election Period an opportunity to acquire its proportionate share of all non-consent interests in the initial well pursuant to the terms of Article VI.B.2. of the JOA. The designated Operator shall likewise offer each Consenting Party in the initial well the opportunity to acquire its proportionate share of any leasehold interest acquired by the Applicant as the result of any unleased mineral owner’s deemed election under Alternative A4 of Finding No. 8 (collectively, the “A4 Interests”); provided, however, this Paragraph 9 shall not apply to:

(i) any A4 Interest that is not marketable; or

(ii) any A4 Interest that is less than a perpetual interest in the mineral estate (i.e. a term interest, life estate or remainder interest) and which must be integrated in order to make perpetual an existing leasehold interest in the Unit.

Any A4 Interest described in subpart (ii) of the immediately preceding sentence shall be retained by the Applicant if the Applicant is the owner of the existing leasehold interest which is made perpetual by such A4 Interest. If the Applicant is not the owner of such existing leasehold interest, the Applicant shall tender such A4 Interest to the owner(s) of the existing leasehold interest that is made perpetual by such A4 Interest.

Any Consenting Party electing to acquire a share of any A4 Interests, pursuant to this paragraph, shall notify the Applicant within five business days after receiving an offer from the Applicant indicating the amount of interest available and the cost of that interest, and immediately reimburse the Applicant for such Consenting Party’s proportionate share of the lease bonus payable with respect to

such A4 Interests.

10. UNIT OPERATION

The Unit described above shall be operated in accordance with the terms of the JOA and existing rules and regulations and any amendments thereto, of the Arkansas Oil and Gas Commission.

11. DESIGNATED OPERATOR

That Applicant is designated as operator of and authorized to operate the Unit described above.

12. SIGNED JOA

The Applicant shall provide all parties, except those parties who elect to lease under Alternative A1, described in Finding No. 8 above, with signed copies of the JOA as adopted by the Commission which shall include an Exhibit "A" showing a before payout and after payout decimal interest for the effected parties, within 30 days from the end of the election period.

This Order shall be effective from and after **March 10, 2021,** and the Commission shall have continuing jurisdiction for the purposes of enforcement, and/or modifications or amendments to the provisions of this Order. This Order will automatically terminate under any of the following conditions: well drilling operations have not been commenced within one year after the effective date; or one year following cessation of drilling operations if no production is established; or, within one year from the cessation of production from the unit.

ARKANSAS OIL AND GAS COMMISSION

Lawrence E. Bengal
Director

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION**

**OF THE STATE OF WYOMING**

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF ANADARKO E&P ONSHORE LLC FOR AN ORDER FROM THE WYOMING OIL AND GAS CONSERVATION COMMISSION FORCE POOLING ALL INTERESTS NOT VOLUNTARILY POOLED IN THE 1,280.00-ACRE DRILLING AND SPACING UNIT FOR THE DRILLING, EQUIPPING, TESTING AND PRODUCTION OF THE EH FED UNIVERSE E 3569-25-T1XH WELL (API NO. 49-009-31593) TO THE TURNER FORMATION, SAID DRILLING AND SPACING UNIT CONSISTING OF TOWNSHIP 35 NORTH, RANGE 69 WEST, 6TH P.M., SECTION 24: ALL AND SECTION 25: ALL, CONVERSE COUNTY, WYOMING. | ) | DOCKET NO. 50-2021 |

APPEARANCES:

James Mowry, Attorney representing Anadarko E&P Onshore LLC

Others in Attendance:

| | | |
|---|---|---|
| Anadarko E&P Onshore LLC | - | Edward Green<br>Anna Gorka<br>Lewis S. Wandke |
| State of Wyoming | - | Kyle Huseth |

## REPORT OF THE EXAMINER

This cause came on regularly for hearing before Kyle Huseth, duly appointed Hearing Examiner of the Wyoming Oil and Gas Conservation Commission ("Commission") at approximately 2:00 p.m. on the 8th day of February, 2021 via teleconference. Due and legal notice was given as required by law and as required by the Rules and Regulations of the Commission, to consider the matter brought on an Application by Anadarko E&P Onshore LLC ("Anadarko").

After hearing testimony from the witnesses and having considered the evidence presented, the Examiner makes the following Findings of Fact, Conclusions of Law, and recommended Order:

## FINDINGS OF FACT

1. Anadarko is an owner as defined by Wyo. Stat. Ann. § 30-5-101(v) in the following described lands located in Converse County, Wyoming ("Subject Lands"):

Township 35 North, Range 69 West, 6th P.M.
Section 24: All
Section 25: All

containing approximately 1,280.00 acres

2. In Docket No. 1368-2015 the Commission established an approximate 1,280.00-acre drilling and spacing unit in the Subject Lands, for the Turner formation. In addition, in Docket No. 1369-2015, the Commission authorized a total of four horizontal wells in the Turner formation for the Subject Lands.

3. Anadarko wishes to drill the EH Fed Universe E 3569-25-T1XH (API No. 49-009-31593) ("Subject Well") to the Turner Formation in the approximate 1,280.00-acre drilling and spacing unit comprised of the Subject Lands. Two (2) or more separately owned tracts are embraced within the drilling unit comprised of the Subject Lands. The following parties are uncommitted working interest owners in the drilling and spacing unit comprising the Subject Lands with a tract or interest that is subject to a lease or other contract for oil and gas development:

Betty Jean Rowell and Joe Paul Rowell, Trustees of the Betty Jean Rowell Trust
PO Box 1578
Vernal, UT 84078
(0.073242%)

Bissell Exploration LLC
2801 Calaw Cove
Austin, TX 78746
(0.104187%)

Charles Brandt
(0.664062%)

DNR Oil & Gas Inc.
PO Box 4507
Englewood, CO 80155
(0.312500%)

Finley Production Co., LP
PO Box 2200
Fort Worth, TX 76113
(0.76985%)

Grasslands Energy LP
5128 Apache Plume Road, Suite 300
Fort Worth, TX 76109
(0.011721%)

Harold E. Burke
PO Box 1000038
Fort Worth, TX 76185
(0.066406%)

Joe Paul Rowell and Betty Jean Rowell, Trustees of the Joe Paul Rowell Trust
163 East 2800 South
Vernal, UT 84078
(0.073242%)

Matrix Production Company
5725 Commonwealth Blvd.
Sugar Land, TX 77479-3999
(3.076854%)

Noctua Investments LLC
804 Congress Ave., Suite 300
Austin, TX 78701
(0.416750%)

OXY USA WTP LP
5 Greenway Plaza, Suite 110
Houston, TX 77046
(0.006510%)

OXY Y-1 Company
5 Greenway Plaza, Suite 110
Houston, TX 77046
(0.006510%)

Rio De Viento, Inc.
5 Greenway Plaza, Suite 110
Houston, TX 77046
(0.006510%)

Sunflower Oil Company
5964 South Kearney Street
Englewood, CO 80111
(0.146484%)

Westway Petro
Loxk Box 70
500 N. Akard St.
Dallas, TX 75201-3394
(0.130156%)

4. The following parties are uncommitted working interest owners in the drilling and spacing unit comprising the Subject Lands with a tract or interest that is not subject to a lease or other contract for oil and gas development:

B E W & Associates, L.L.C.
2964 S. Newport St.
Denver, CO 80224
(0.078342%)

Brian D. Bunch
(0.002893%)

Carrol Bennett
(0.069444%)

David M. Bunch
(0.002893%)

Donna Bunch Carpenter, f/n/a Donna Marshall Bunch
(0.001446%)

Gene R. Bunch, adopted and n/k/a Peter G. Vandevoort
(0.002893%)

Janice S. Bunch, n/k/a Janice B. Becker
(0.002893%)

Jim Rodgers
PO Box 2290
Gillette, WY 82716
(0.065972%)

John M. Bunch
(0.002893%)

Keith R. Bunch
(0.002893%)

Linda I. Bunch, n/k/a Linda B. Grosek
(0.002893%)

Matrix Production Company
5725 Commonwealth Blvd.
Sugar Land, TX 77479-3999
(0.028038%)

Michael L. Bunch
(0.002893%)

Petra Petroleum, Inc.
PO Box 319
Littleton, CO 80160
(0.210286%)

Ralph V. Bunch
(0.002893%)

Rhonda L. Bunch, n/k/a Rhonda B. Becker
(0.002893%)

Robin A. Bunch
(0.002893%)

Terrence L. Bunch, Jr.
(0.001446%)

Tommy Don Oil & Gas Investments Co., LLC
2300 S. Fairfax Dr.
Denver, CO 80222
(0.078342%)

5. The uncommitted working interest owners outlined in Paragraph Nos. 3 and 4, above, were sent a well proposal, offer to participate, and Authorization for Expenditure, all of which reflect and are consistent with the well name change to EH Fed Universe E 3569-25-T1XH and the Turner Formation.

6. Anadarko requests an Order of the Commission pooling all interests in the Subject Well in the Turner formation in the approximate 1,280.00-acre drilling and spacing unit comprising the Subject Lands. Anadarko requests the Commission assess the cost recovery provisions of Wyo. Stat. Ann. § 30-5-109(g) to the uncommitted working interest owners in Paragraph Nos. 3 and 4, above, for the Subject Well.

7. Anadarko testified that the risks associated with the drilling and completion of the Subject Well justified the requested penalty. This is the second or subsequent well drilled inside the drilling and spacing unit comprised of the Subject Lands.

8. Anadarko believes and therefore asserts that the acreage weighted average royalty interest of the leased tracts within the drilling unit is 13.092053%.

9. No one appeared in protest of Anadarko's Application.

## CONCLUSIONS OF LAW

1. Due and legal notice of time, place, and purpose of this hearing has been afforded to all interested parties in all respects as is required by law.

2. The Commission has jurisdiction over this matter and over all interested parties and has jurisdiction to make and promulgate the order hereinafter set forth.

3. This hearing was conducted in accordance with Chapter 5, Sections 13 and 15 of the Rules and Regulations of the Commission and Wyo. Stat. § 30-5-105 (f), governing hearings conducted by examiners. Wyo. Stat. Ann. § 30-5-105 (f) provides in relevant part:

> The Commission may enter orders based upon the reports and recommendations of its examiners. If such an order grants the request of an applicant, and no objection to the granting thereof has been filed or made before or during the hearing before the examiner, said order shall become effective immediately.

4. Wyo. Stat. Ann. § 30-5-109(f) provides:

> When two (2) or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon

terms and conditions that are just and reasonable. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. A pooling order issued under this subsection shall expire twelve (12) months after issuance if the person authorized to drill and operate a well fails to commence operations within twelve (12) months of issuance of the pooling order.

5. Wyo. Stat. Ann. § 30-5-109(g) provides:

Each pooling order shall provide for the drilling and operation of a well on the drilling unit, and for the payment of the cost thereof, as provided in this subsection. The commission is specifically authorized to provide that the owner or owners drilling or paying for the drilling or for the operation of a well for the benefit of all owners shall be entitled to all production from the well which would be received by the owner or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest or after payment of the royalty if required under subsection (h) of this section, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling the dispute. In the event of any disputed cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit, and may provide that each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his share of the costs, unless he has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the nonconsenting owner. Each owner who does not agree, shall be entitled to receive from the person or persons drilling and operating the well on the unit his share of the production applicable to his interest after the person or persons drilling and operating the well have recovered the following, subject to the provisions of subsection (h) of this section:

(i) One hundred percent (100%) of each such nonconsenting owner's share of the cost of any newly acquired surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping), plus one hundred percent (100%) of each such nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until each such nonconsenting owner's relinquished interest shall revert to it under other provisions in this section, it being intended that each nonconsenting owner's share of such costs and equipment will be that interest which would have been chargeable to each nonconsenting owner had it initially agreed to pay its share of the costs of said well from the beginning of the operation; and

(ii) Up to:

(A) Three hundred percent (300%) of that portion of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing, after deducting any cash contributions received and up to two hundred percent (200%) of that portion of the cost of newly acquired equipment in the well, to and including the wellhead connections, which would have been

chargeable to the nonconsenting owner if he had participated therein, if the nonconsenting owner's tract or interest is subject to a lease or other contract for oil and gas development;

(B) For the first well the person drills and operates in a drilling unit and under a pooling order, two hundred percent (200%) of that portion of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing, after deducting any cash contributions received and up to one hundred twenty-five percent (125%) of that portion of the cost of newly acquired equipment in the well, to and including the wellhead connections, which would have been chargeable to the nonconsenting owner if he had participated therein, if the nonconsenting owner's tract or interest is not subject to a lease or other contract for oil and gas development;

(C) For each subsequent well the person drills and operates in a drilling unit and under a pooling order, one hundred fifty percent (150%) of that portion of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing, after deducting any cash contributions received and up to one hundred twenty-five percent (125%) of that portion of the cost of newly acquired equipment in the well, to and including the wellhead connections, which would have been chargeable to the nonconsenting owner if he had participated therein, if the nonconsenting owner's tract or interest is not subject to a lease or other contract for oil and gas development.

6. Anadarko desires to force pool the uncommitted interest of the uncommitted working interest owners outlined in Findings of Fact Paragraph Nos. 3 and 4, above, in the Subject Well in the Turner formation in the approximate 1,280.00-acre drilling and spacing unit comprising the Subject Lands. This is the second well drilled within the drilling and spacing unit comprising the Subject Lands.

7. Wyo. Stat. Ann. § 30-5-109(h) provides:

During the time the person or persons drilling and operating a well are recovering costs from a nonconsenting owner as authorized in a pooling order issued pursuant to subsection (g) of this section, a nonconsenting owner of a tract or interest in a drilling unit that is not subject to a lease or other contract for oil and gas development shall be entitled to a cost-free royalty interest equal to the greater of:

(i) Sixteen percent (16%); or

(ii) The acreage weighted average royalty interest of the leased tracts within the drilling unit.

8. Wyo. Stat. Ann. § 30-5-109(j) provides:

Upon full payment of the recoverable costs as specified in subsection (g) of this section:

(i) Within thirty (30) days after the producer has fully recovered his costs under subsection (g) of this section, the producer shall send notice to the nonconsenting owner to offer the nonconsenting

owner the opportunity to participate under the pooling order as a working interest owner. The notice shall state that the nonconsenting owner may elect to participate in the pooling order or may elect to continue receiving the royalty specified in subsection (h) of this section;

(ii) Within sixty (60) days after receiving notice, the nonconsenting owner shall inform the producer whether he wishes to make an election to participate under the pooling order as a working interest owner or continue receiving the royalty specified in subsection (h) of this section;

(iii) If the nonconsenting owner fails to respond to the notice within the time specified in paragraph (ii) of this subsection, the nonconsenting owner shall be deemed to elect to continue receiving the royalty specified in subsection (h) of this section;

(iv) Within five (5) business days after receiving notice of election from a nonconsenting owner or upon expiration of the time specified in paragraph (ii) of this subsection, the producer shall notify the commission regarding the nonconsenting owner's election or lack thereof.

9. It is just and reasonable to pool the interests of the working interest owners identified in Finding of Fact Paragraph No. 3, above, pursuant to Wyo. Stat. Ann. § 30-5-109(g)(i) and (ii)(A).

10. It is just and reasonable to pool the interests of the working interest owners identified in Findings of Fact Paragraph No. 4, above, pursuant to Wyo. Stat. Ann. § 30-5-109(g)(i) and (ii)(C).

11. Working interest owners identified in Findings of Fact Paragraph 4, above, are entitled to a cost-free royalty interest of 16%.

12. This Order of the Commission will expire twelve (12) months after approval by the Commission under Wyo. Stat. Ann. § 30-5-105.

## ORDER

IT IS THEREFORE HEREBY ORDERED BY THE COMMISSION that Anadarko's Application to force pool the interests of the working interest owners in the EH Fed Universe E 3569-25-T1XH (API No. 49-009-31593) in the Turner Formation in the Subject Lands as described below is approved:

Township 35 North, Range 69 West, 6th P.M.
Section 24: All
Section 25: All

containing approximately 1,280.00 acres

IT IS FURTHER ORDERED that the cost to the working interest owners identified in Findings of Fact Paragraph Nos. 3 and 4, above, for its respective share of any newly acquired surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping) shall be one hundred percent (100%), plus one hundred (100%) of their respective share of the cost of operating the well commencing with the first production and continuing as provided in Wyo. Stat. Ann. § 30-5-109(g)(i);

IT IS FURTHER ORDERED that a three hundred percent (300%) charge shall be imposed for the working interest owners identified in Findings of Fact Paragraph No. 3, above, for its respective share of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing the well after deducting any cash contributions received, and that a two hundred percent (200%) charge shall be imposed for that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections) which would have been chargeable to each working interest owner if they had participated voluntarily pursuant to Wyo. Stat. Ann. § 30-5-109(g)(ii)(A);

IT IS FURTHER ORDERED that a one hundred fifty percent (150%) charge shall be imposed for the working interest owners identified in Findings of Fact Paragraph No. 4, above, for its respective share of the costs and expenses of drilling, reworking, deepening or plugging back, testing and completing the well after deducting any cash contributions received, and that a one hundred twenty-five percent (125%) charge shall be imposed for that portion of the cost of newly acquired equipment in the well (to and including the wellhead connections) which would have been chargeable to each working interest owner if they had participated voluntarily pursuant to Wyo. Stat. Ann. § 30-5-109(g)(ii)(C);

IT IS FURTHER ORDERED that during the period of time Anadarko is recovering costs from a nonconsenting owner identified in Findings of Fact Paragraph No. 4, above, Anadarko shall pay the nonconsenting owner a cost-free royalty interest of 16% pursuant to Wyo. Stat. § 30-5-109(h);

IT IS FURTHER ORDERED that within thirty (30) days after Anadarko has recovered its costs, Anadarko shall send notice to the nonconsenting owners identified in Findings of Fact Paragraph No. 4, above, to offer them the opportunity to participate in the well as a working interest owner or elect to continue to receive the royalty rate ordered above. If the nonconsenting owner fails to respond within sixty (60) days after receiving notice, the nonconsenting owner shall be deemed to elect to continue receiving the royalty specified. Within five (5) business days, Anadarko shall submit a sundry specifying the nonconsenting owner's election or lack thereof.

IT IS FURTHER ORDERED that this Order shall expire twelve (12) months after issuance if Anadarko fails to commence operations within twelve (12) months of this Order.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction in this matter to take such additional action, if any, as the Commission deems necessary and appropriate.

DATED this 9th day of March, 2021.

**WYOMING OIL AND GAS CONSERVATION COMMISSION**

Examiner
Kyle Huseth

Jenifer Scoggin
Acting Chairman-Commissioner

Approved as to form:

Micah A. Christensen
Assistant Attorney General
WSB 7-5903