

LAWRENCE G. WASDEN
ATTORNEY GENERAL

DARRELL G. EARLY
Chief of Natural Resources Division

J.J. WINTERS #10327
Deputy Attorney General
700 W. State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Email: jj.winters@ag.idaho.gov

Attorney for Idaho Department of Lands, Oil and Gas Program

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-01-002

**IDAHO DEPARTMENT OF LANDS’
OPENING BRIEF**

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, and pursuant to the ORDER VACATING HEARING AND NOTICE OF HEARING TO DETERMINE “JUST AND REASONABLE” FACTORS issued September 7, 2022, files this Opening Brief for review and utilization by the Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator”), as he deems useful or necessary, in determining whether the terms and conditions of the integration order sought by Snake River Oil and Gas, LLC (“SROG”), in Docket No. CC-2022-OGR-01-002 are “just and reasonable” as required by Idaho Code § 47-320(1).

The Administrator’s determination of “just and reasonable” terms for the integration order must be consistent with the Oil and Gas Conservation Act, Idaho Code §§ 47-309 through 47-336. The Idaho Legislature enacted statutory regulation of the development of oil and gas resources within the State of Idaho, which includes the integration of mineral interest owners to participate in the risks and rewards of such development. I.C. § 47-320. “‘Forced integration’ ... is the remedy that permits development of the drilling unit in the event that the mineral-interest owners cannot agree to pool voluntarily.” *Gawenis v. Arkansas Oil & Gas Commission*, 464 S.W.3d 453, (Ark. 2015) (citation omitted). The state’s integration procedures “constitute a proper exercise of its police power” ... to protect “property rights by requiring a just, orderly, and efficient process for neighbors to extract common resources.” *Kerns v. Chesapeake Exploration, L.L.C.*, 762 Fed. Appx. 289, 297 (6th Cir. 2019) (citations omitted). “Each landowner’s property interest in the minerals remains intact; it is simply regulated.” *Id.* (citation omitted).

The Idaho Oil and Gas Conservation Commission (“OGCC”) and IDL have the authority and obligation to protect correlative rights while preventing waste of hydrocarbon resources. I.C. §§ 47-311 through 47-315. The OGCC and IDL must enable the development of hydrocarbon resources, protecting and enforcing the property rights of owners *and* producers; and, in doing so, prevent the waste of hydrocarbon resources. I.C. §§ 47-311, 47-312. Part of the Legislature’s instructions to IDL regarding its authority to regulate all integrated owners and producers includes the following directive:

In the absence of voluntary integration, the department, upon the application of any owner in the proposed spacing unit, 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. The department, as part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated

without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.

I.C. § 47-320(1) (emphasis added).

The inclusion of “just and reasonable” is significant because it grants the Administrator discretion to enter an order based on the unique and specific facts and circumstances of each case. In an integration proceeding “it would be impracticable for statutes to cover every possible situation that an agency may encounter when carrying out its statutory duties.” *Hurd v. Arkansas Oil & Gas Comm’n*, 601 S.W.3d 100, 105 (Ark. 2020) (upholding the agency’s reduction of royalty percentages after scrutiny of private leases at issue during integration proceeding). Consequently, the authority granted by Idaho law authorizes the Administrator to ensure that all integrations orders are issued upon terms that are “just and reasonable”. The requirement that an integration order “be ‘issued upon terms and conditions that are just and reasonable’ refers to [the agency’s] responsibility to prevent waste and ensure ratable production of shared geologic resources.” *Id.* at 109 (Hart, J., dissenting) (criticizing the agency’s and majority’s, effective alteration of private business negotiations).

I. IDL recommends that the Administrator consider the following factors in determining what terms and conditions of the integration order are “just and reasonable”.

- A. Whether the proposed terms are addressed in another source of law.
- B. Whether the proposed terms and conditions are (a) consistent with industry standards; (b) consistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies; and (c) applicable to the unit and its operations.
- C. Whether the proposed terms and conditions are similar to other agreements within and nearby the unit.
- D. Whether any proposed terms, including those addressed at drilling, equipping, and operating the well, are consistent with the Oil and Gas Act and necessary given site-specific conditions.

E. Whether the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation.

F. Whether the proposed operations include use of uncommitted owners' surface estate, and if so, is the operator's compliance with I.C. § 47-334 adequate to protect the surface owner:

G. Whether the unit's circumstances and operations require additional bonding with the Department.

H. Whether the integration order ensures that integrated owners that do not choose to participate as an owner retain the private right of action against the operator for any future harms.

DATED this 23rd day of September, 2022.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



J.J. WINTERS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2022, I caused to be served a true and correct copy of the foregoing by the following method to:

Mr. Mick Thomas
IDAHO DEPARTMENT OF LANDS
PO Box 83720
Boise, ID 83720-0010

Hand Delivery
 Fax: (208) 854-8070
 Email: mthomas@idl.idaho.gov
kromine@idl.idaho.gov

Ms. Kristina Fugate
OFFICE OF THE ATTORNEY GENERAL
PO Box 83720
Boise, Idaho 83720-0010

U.S. Mail
 Hand Delivery
 Certified Mail, Return Receipt Requested
 Email: kristina.fugate@ag.idaho.gov

Mr. Michael Christian
HARDEE PINOL & KRACKE, PLLC
1487 S. David Ln.
Boise, Idaho 83705

U.S. Mail
 Hand Delivery
 Certified Mail, Return Receipt Requested
 Email: mike@hpk.law

Mr. James M. Piotrowski
PIOTROWSKI DURAND, PLLC
P.O. Box 2864
Boise, Idaho 83704

U.S. Mail
 Hand Delivery
 Certified Mail, Return Receipt Requested
 Email: james@idunionlaw.com
marty@idunionlawcom



J.J. Winters
Deputy Attorney General