BEFORE THE OIL AND GAS CONSERVATION COMMISSION
STATE OF IDAHO

In the Matter of Application of AM Idaho, LLC, for Spacing Order and Integration of Unleased Mineral Interest Owners in the SW ¼ Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho AM Idaho, LLC, Applicant.	Docket No. CC-2019-OGR-01-002 **RESPONSE BRIEF OF APPLICANT AM IDAHO, LLC**

Applicant AM Idaho, LLC ("AMI"), submits its *Response 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 July 10, 2019, by the Administrator.

I. ARGUMENT

1. The purpose of the Act is paramount.

An integration order issued by the Administrator must comply with the stated purpose of the Idaho Oil and Gas Conservation Act (the "Act"), which is to encourage and promote development, prevent waste, and protect correlative rights, as outlined by AMI's initial briefing. *See generally* Idaho Code § 47-311. The idea of "just and reasonable" terms of an integration order similarly have their foundation in statute, in industry standards, and in the policy of preventing waste and protecting correlative rights. There is no requirement that an equal balance be struck between the wishes of an interest owner (committed or not) and the wishes of an applicant/operator, nor is there a requirement that an applicant/operator analyze every possible statute or regulation that could be applicable. All that is required is that an integration order includes terms and conditions that are "just and reasonable." This does not equate to perfection,

but rather provides for the basic protection of correlative rights and the "opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste." Idaho Code § 47-310(4).

2. Briefing in this matter is limited to uncommitted owners.

The Administrator's Order allows for the "Applicant, the Department, and any uncommitted owner in the unit" to file briefs on this matter. This is consistent with Idaho Code § 47-328(3)(b), which provides that "[o]nly an uncommitted owner in the affected unit may file an objection or other response to the application." This, in turn, is consistent with the purposes of the Act, discussed above; only mineral interest owners (whether working interest or royalty interest) possess an interest in the development of the resource, prevention of waste and protection of correlative rights. Citizens Allied for Integrity and Accountability ("CAIA") is not an uncommitted owner in the proposed spacing unit.[1] Residents of the mobile home developments referenced in CAIA's brief are also not uncommitted owners. Neither is authorized by the Act to participate in this matter. Therefore, any briefing submitted on behalf of their interests should be disregarded by the Administrator per his Order.

3. The consideration of "just and reasonable" factors should not go beyond the scope of the Act.

There is no question that an applicant/operator must comply with Idaho Code and administrative provisions in requesting integration. However, in order to be made on just and

[1] The Administrator may clarify that the uncommitted owners fully understand the status, scope and responsibilities of legal representation. During a previous hearing on an integration and spacing application, counsel paid for by CAIA purported to also directly represent various uncommitted mineral interest owners, but at least one testified he was unaware that the attorney represented him. Mineral interest owners' awareness of their representation may bear on the weight to be given assertions made in favor of certain terms and conditions likely to discourage or impede development.

reasonable terms and conditions, it is unnecessary for the applicant to engage in a lengthy presentation regarding every potentially applicable statute, where various issues are already covered by existing statutes and rules. For example, compensation, through payment of bonus and royalty, is already contemplated by Idaho Code § 47-320.[2] Requirements for setbacks are laid out in Idaho Code § 47-319. Surface owner protections are provided in Idaho Code § 47-334. The order may simply require that the applicant comply with the Act and IDAPA 20.07.02.

Requiring analysis of "[a]ny other Idaho Code or IDAPA provision necessary to protect [the] interests of integrated owners and potential environmental impacts of hydrocarbon development," as requested by IDL, is an improper expansion of what is required for the issuance of an integration order, and arguably exceeds the jurisdiction of the Commission under the Act. *See* Idaho Code § 47-315(1) ("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. It has jurisdiction over all persons and property necessary for such purposes. In the event of a conflict, the duty to prevent waste is paramount."); § 47-315(2) ("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 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

[2] While the bonus amount is prescribed in the Act as the highest previously paid in the unit at the time of application, royalty is prescribed as "not less than" 1/8th. AMI has submitted with its application, and will support with testimony at hearing, evidence that the normal market royalty rate in the area given the frontier nature of the development is 1/8th.

rights of surface owners."); § 47-315(8) ("The commission is authorized 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."). Such expansion would be not only unreasonable, but likely near impossible for applicant/operators to analyze every statute or provision that could potentially be relevant to or affect any party (or non-party) to integration. Doing so would undercut the stated purposes of the Act to encourage development, protect correlative rights and prevent waste. With respect to "potential environmental impacts of hydrocarbon development," 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." These subjects are already covered in IDAPA 20.07.02.

4. Non-economic factors have not been considered by other courts or governing bodies.

No authority is submitted by either IDL nor CAIA regarding the consideration of various non-economic factors unrelated to the purposes of the Act in describing "just and reasonable" terms of an integration order. Similar terms do not appear to be included or discussed in other states' integration orders and cases. *See Opening Brief of AMI.* To the contrary, other states' integration or pooling orders are standardized and often simply incorporate the terms related to preventing waste in the development of the resource and protecting correlative rights (for example, often utilizing a JOA based on A.A.P.L. Form 610 and so long as the operator has

complied with the statutory prerequisites and scope, similar to AMI's application for integration here). For reference, a standard integration order issued by the Arkansas Oil and Gas Commission, dated March 15, 2019, is attached hereto as Attachment 1.

By way of example, AMI has discovered no instances in other states where the written authorization of uninterested third parties (i.e., a mortgage holder) is required prior to the issuance of an integration order. Giving "veto power" to unrelated parties, with no knowledge of or interest in the land, would further burden the integration process and stall the economic development encouraged by the Act. A conventional lender does not typically assess potential mineral interests when determining the value of its collateral. Most importantly, AMI does not find in the Act authority for the Commission to regulate third party contractual relationships.

Likewise, evaluation of non-mineral property values is not an appropriate consideration in determining "just and reasonable" terms of integration. It is unrealistic for operators to have to prove the future financial values of property when seeking integration (effectively, having to prove a negative in the future). Again, however, the Act does not appear to provide the Commission with authority to police private non-mineral property interests.[3]

5. Uncommitted owners are being provided with due process.

CAIA and the responding uncommitted mineral interest owners claim there is insufficient due process being provided to uncommitted owners. However, no authority is given for this position. The referenced cases in CAIA's brief (as well as the single case in IDL's brief) generally discuss the due process considerations of the interstate transfer of natural gas. These

[3] There are surface owner protections contained in the Act. *See* Idaho Code § 47-334. They include specific procedures and requirements, and do not provide authority for the Commission to vary from them.

references are not only outdated, but irrelevant to the subject of integration and the protection of correlative rights.

Appropriate parties to this matter are currently being afforded due process, not only by the procedures set forth in Idaho Code and administrative regulations, but also by particular adjustments made to the proceedings on this application specifically. For every integration application submitted, public comments can be submitted to the Department of Lands to review prior to permit approval or denial. IDAPA § 20.07.02.040. While they cannot participate in a proceeding as a party, a public witness can submit written or oral statements (or exhibits) at a hearing. IDAPA § 04.11.01.355. More importantly, for this matter specifically, the preliminary hearing on factors to be considered to reach "just and reasonable terms and conditions" has been moved from Boise to Payette. The expanded briefing schedule provided for by the Administrator allows interested parties an even greater opportunity to be heard. Ultimately, to the extent that an interested party wants to be heard, the opportunity is available to do so.

Other states have rejected the idea that integration procedures amount to an unconstitutional taking. In *Anderson v. Corporation Comm'n,* 327 P.2d 699 (Okla. 1957), W.E. Anderson, an owner of the unit well, which was not located on his land, argued that he had been subject to an unconstitutional taking because the integration order required him to either participate in the cost of the unit well or accept a bonus and royalty. The Oklahoma Supreme Court did not find an unconstitutional taking:

> The [integration] order complained of did not constitute a taking of property of Anderson in any manner. It granted him the right to participate in the production from a well on [a neighboring] property, but on condition that certain requirements were met. The limitation of one well to eighty acres was a proper exercise of the police power in furtherance of conservation of natural resources. That he was allowed to share in the production or to receive a bonus instead of that participation was a grant to him … merely because of the recognition of

> correlative rights. …. Both [Anderson and the operator] were forced to co-operate for the benefit of both and for the protection of the public generally.

Anderson, 327 P.2d at 702-03; *see also Gawenis v. Arkansas Oil & Gas Comm'n,* 464 S.W.3d 453, 457 (Ark. 2015) (finding that the integration order issued allowed an objecting owner to lease his interest in the drilling unit in exchange for compensation or to participate in the drilling of the well and receive monetary benefits, and that no taking occurred).

The Oil and Gas Conservation Commission is bound by its duty "to regulate the exploration for and production of oil and gas, [to] prevent waste of oil and gas and to protect correlative rights," which mirrors the stated purpose of the Act itself. Idaho Code § 47-315(1). The responsibility of the Commission "to prevent waste is paramount." *Id.* Due process does not equate to a free-for-all to theorize about the supposed injustices of oil and gas development in general. More appropriate venues exist for that purpose. Rather, the focus under the Act remains on issuing an integration order that promotes economic development, prevents waste, and protects correlative rights. Mineral interest owners are certainly free to present evidence regarding specific impacts to them from the proposed integration, and to propose terms and conditions related to that evidence, to the extent consistent with the Act and the Commission's jurisdiction under it.

II. 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. Several subjects discussed by the Department and the mineral owners are already covered adequately by the Act and rules, and requiring granular

evaluation of every possibly applicable statute or rule in an order would be redundant. Numerous of the areas the responding mineral interest owners wish to explore are outside the purview of the Commission and may be addressed in other fora. The due process concerns raised by the mineral owners have been adequately addressed by the procedures the Administrator has implemented and pursuant to which this briefing is submitted.

DATED this 14th day of August, 2019.

SMITH + MALEK, PLLC

MICHAEL CHRISTIAN
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2019, 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:

Kristina Fugate Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: kristina.fugate@ag.idaho.gov
Joy Vega Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: joy.vega@ag.idaho.gov
Mick Thomas Division Administrator Idaho Department of Lands P.O. Box 83720 Boise, ID 83720-0050	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: mthomas@idl.idaho.gov
James Thum Idaho Department of Lands P.O. Box 83720 Boise, Idaho 83720-0050	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: jthum@idl.idaho.gov
City of Fruitland Attn: Rick Watkins-City Clerk PO Box 324 Fruitland ID 83619	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email
Jimmie and Judy Hicks 1540 NW 6th Ave Payette, ID 83661	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email

Anadarko Land Corp. Attn: Dale Tingen 1201 Lake Robbins Dr The Woodlands, TX 77380	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email
Shady River, LLC 3500 E. Coast Hwy. Ste 100 Corona Del Mar, CA 92625	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email
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Karen Oltman 8970 Hurd Lane Payette, ID 83661	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email
Payette County Clerk 1130 3rd Ave N. Payette, ID 83661	[X] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [ ] Email

/s/ Lauren Smyser

LAUREN SMYSER

ATTACHMENT 1

ARKANSAS OIL AND GAS COMMISSION
301 NATURAL RESOURCES DRIVE
SUITE 102
LITTLE ROCK, ARKANSAS 72205

ORDER NO. 001-2-2019-01 **March 15, 2019**

EXPLORATORY DRILLING UNIT
Union County, Arkansas

INTEGRATION OF A DRILLING UNIT

After due notice and public hearing in Hot Springs, Arkansas, on February 27, 2019, 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

Goldston Oil Corp. (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 **SW/4 Section 31, Township 19 South, Range 16 West, Union 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:

Nancy Crites Thornton; Julie Crites Bissell; Mary Crites Stinnett; Hunt Oil Company

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 **SW/4 Section 31, Township 19 South, Range 16 West, Union County, Arkansas** containing 160 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:

   Ashley Linder Fairris; John Chance Linder; Sarah Marriann Linder Ray; James Clayton Edward; William Edward Willis, Jr.; James Parker; Nelson Rush Jones; John Uri Clinch; Dee Clinch; Edwina Cornish Crites; John C. Crites; Nancy Crites Thornton; Julie Crites Bissell; Mary Crites Stinnett; Cyrus D. Crites; Steve Valerius Estate; Chalfant Operating, Inc.; Chalfant, Inc.; Albertine Haslam Karsian; Unit Four Partnership; Hunt Oil Company; Peet Oil Company;

   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 **$200.00.00 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**, 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 **400%** 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 **$200.00 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 **400%** 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 Goldston Oil Corp., P.O. Box 570365, HOUSTON, TX, 77257-0365, 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 15, 2019,** 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