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| **Cc:** | Michael Christian |
| **Subject:** | Docket No. CC-2021-OGR-01-001 |
| **Date:** | Wednesday, May 12, 2021 04:18:34 PM |
| **Attachments:** | 20210512 SROG Response Brief of Applicant Fallon 1-11 Integration Application.docx.pdf |

Hello,

Attached please find the Response Brief of Applicant Snake River Oil and Gas, LLC from Michael Christian. If you have any questions or issues opening the document, please let me know.

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**

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| **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 SE ¼ of Section 10, the SW ¼ of Section 11, the NW ¼ of Section 14, and the NE ¼ of Section 15, 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-01-001**<br><br>**RESPONSE BRIEF OF APPLICANT SNAKE RIVER OIL AND GAS, LLC** |

Applicant Snake River Oil and Gas, LLC files this brief in response to the Idaho Department of Lands' Opening Brief and the Submission of Non-Consenting Owners and CAIA RE: Factors for Establishing Just and Reasonable Terms.

1. IDL's Opening Brief.

IDL's remarks in the first half of its brief appear to support the point that the Applicant raised – that the purpose of integration is to fulfill the Commission's mission to encourage production, protect correlative rights and prevent waste (with "correlative rights" and "waste" as defined in the Act). *E.g., IDL's Opening Brief*, p. 3 ("The requirement that an integration order 'be "issued upon terms that are just and reasonable" refers to [the agency's] responsibility to

prevent waste and ensure ratable production of shared geologic resources.'"). However, IDL then proposes some factors that go well beyond this purpose and would require an inquiry into, and imposition of terms and conditions regarding, subjects over which IDL and Commission lack jurisdiction. *See Idaho Power Co. v. IPUC*, 102 Idaho 744, 750 (1981) (Agency "has no jurisdiction other than that which the legislature has specifically granted to it.").

IDL takes the definition of "market value" in Idaho Code § 47-310(11) and suggests that it be converted into a requirement for lease royalty terms in an integrated unit. *IDL's Opening Brief*, p. 4. This is a request for a specific outcome, not a factor to be considered. Moreover, the term "market value" is not used anywhere in Idaho Code §47-320 – or, in fact, *anywhere* in the Act outside § 47-310(11) other than in Idaho Code § 47-332(4), which sets requirements for reporting to royalty owners. The second sentence of §47-310(11) directs only that *severance tax* cannot be reduced to account for costs of marketing, transportation, and processing. Severance tax is covered in Idaho Code § 47-330, which in its current form uses the term "gross income," which is similarly defined in that section to exclude deductions for marketing, transportation, manufacturing, and processing. Thus, the second sentence of § 47-310(11) is concerned with severance tax, is not relevant to the integration process and does not direct any outcome in it.

IDL suggests other factors which are so broad as to be beyond the Commission's purpose and authority. *IDL's Opening Brief*, p. 5. It suggests that Snake River be required to "analyze" whether its form of lease, form of JOA and other integration terms (a) "ensure compliance with Idaho Code, IDAPA and any applicable local ordinance"; (b) "ensure that no liability or duty arising from or related to any violation of law, environmental damage, injury to property, personal injury, negligence or nuisance is removed from the operator or placed on, assumed by, or assigned to an integrated owner"; and (c) "ensure that no estate in real property held by an

integrated owner can be assumed, subrogated, or redeemed by an operator, as lessee, without the integrated owner having an opportunity to recover such estate from the operator." This phrasing, on its face, suggests that Snake River should: (a) be tasked with proving that it has investigated every state law and ordinance, without limit (as opposed to simply recognizing that any operator is obligated to follow the law, and recognizing that an operator is subject to regulation and enforcement by other state agencies and local authorities); (b) that it should be made an insurer of mineral interest owners across a broad spectrum of potential (and speculative) liabilities; and (c) that, for example, if it purchases a mineral owner's property interest in a foreclosure action in order to protect its leasehold, it should be required to offer the interest back to the mineral owner even if the applicable foreclosure law contains no such requirement. These formulations are overly broad and far afield from IDL's and the Commission's mandate to encourage production while protecting correlative rights and preventing waste.

Finally, IDL asks that the Administrator consider whether terms have been "[a]ccepted and agreed to by Snake River . . . when it is an interest holder and not an operator[.]" *Id*. Again, this formulation is so broad that it is difficult to evaluate. To the extend IDL means that Snake River's contracts in other states when it is a lessor or non-operating working interest owner should be evaluated, the differing geological conditions, economic conditions, and operating conditions elsewhere that led to contact terms in another jurisdiction suggest that the relevance of those terms is remote at best.

2. Non-Consenting Owners' Brief.

Snake River objects to CAIA's participation in this proceeding. Idaho Code § 47-328(3)(b) provides, "Only an uncommitted owner in the affected unit may file an objection or other response to the application [for integration.]" While counsel for CAIA also represents two

sets of uncommitted owners in the unit, CAIA itself is not properly a party.[1] Because the integration order is addressed largely to economic aspects of integration (lease terms and JOA terms), non-mineral owners outside the unit do not have a direct interest in the proceeding in any event.

CAIA and the two sets of nonconsenting owners focus largely on specific outcomes rather than factors, e.g., they demand a 90-day minimum between the order setting factors to be considered and a final hearing, creation of subpoena power for non-consenting mineral owners, specific notice and hearing procedures apparently through the life of a well, and guarantees that they will be insulated from alleged negative impacts. All of this is both contrary to the Administrator's prehearing order, far beyond the scope of the Act, and to the extent it is not, largely redundant given existing protections and procedural requirements in the Act and Rules.

The attempt to fabricate a subpoena power, set months-long prehearing schedules, and create mandatory notice and hearing processes for all well processes (as defined outcomes, not a "factor to be considered") wildly exceed the scope and authority provided in the Act regarding integration applications. They are effectively an attempt to go around the Act. They are also far beyond what the decision in *CAIA v. Schultz* requires – it makes clear that due process requirements are satisfied as long as IDL simply provides "a clear explanation of the factors considered in applying the 'just and reasonable' standard." *Memorandum Decision and Order* at 19. The May 20 hearing, and the order that will follow it, will produce exactly that result. The hearing is being held in Fruitland. Participating uncommitted mineral owners have had multiple opportunities to file responses and briefs, over a period of several weeks, and will have an opportunity to present argument at the May 20 hearing, and to present testimony and argument at

[1] As in other proceedings, CAIA alleges that it represents the interests of other owners in the unit, but never identifies them.

a subsequent hearing based on the factors identified by the Administrator. The demand for subpoena power is prohibited by the Act, which specifically precludes discovery. *See* Idaho Code § 47-328(3)(d) ("Discovery is not permitted.").

Much of what CAIA and the objecting owners request, in terms of notice and the opportunity to be heard regarding operations, is already covered either by the Act or by the Oil and Gas Conservation Rules in any event. *See, e.g.*, Idaho Code § 47-316(c) (applications for drilling permits required to be posted for public comment); § 47-317(1) (notice and hearing opportunity required before issuance or order establishing drilling unit); §47-317(3)(d) (notice and hearing opportunity required after completion and testing of well in drilling unit); § 47-323 (notice and hearing opportunity required before commingling of production prior to metering); § 47-328(3)(c) (all applications for orders subject to objection by uncommitted mineral owners in area covered by application and opportunity for hearing); IDAPA 20.07.02.040 (Applications submitted under Sections 100, 200, 210, 230 and 330 of the Rules required to be posted for public comment); IDAPA 20.07.02.100.04, .05 (published and mailed notice required before geophysical operations); IDAPA 20.07.02.201.02 (hearing may be required for multiple zone completions); IDAPA 20.07.02.210.01.m, .n (notice of proposed well treatments required); IDAPA 20.07.02.310.05 (advance notice of well spudding required to be posted); IDAPA 20.07.02.330.04 (hearing may be required for directional drilling); IDAPA 20.07.02.404.02 (notice and hearing opportunity required regarding oil-gas ratios).

As is often the case, CAIA seeks to delay. It and the opposing mineral owners ask for a *minimum* of 90 days between the issuance of the order describing factors to be considered, and the hearing at which those factors will be applied. This would violate the Act. *See* Idaho Code § 47-328(3) ("The oil and gas administrator shall set regular hearing dates."). The process has

already been stretched beyond what the Act contemplates, with two hearings now being required and the regularly scheduled hearing date often vacated. Again, what is required is an opportunity to be heard, not a particular outcome or a particular process.

Finally, the opposing mineral owners suggest a set of requirements (beyond simply factors to be considered) that are designed on their face to provide levers to shut down oil and gas development and production, including through taking evaluation of the economics of production out of the hands of the operator. *Submission of Non-Consenting Owners*, pp. 9-10. These suggestions are based on various allegations of harm without any factual basis. Again, extensive operational regulations are already contained within the Act and Rules, and the results suggested by the opposing mineral owners would effectively rewrite them.

Given that integration involves regulation of mineral rights – an economic right – and not an outright deprivation, the substantive due process arguments of the opposing mineral owners are misplaced. *See Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012) ("[G]overnment action that 'affects only economic interests' does not implicate fundamental rights.") (quoting *Jackson Water Works, Inc. v. Pub. Utils. Comm'n*, 793 F.2d 1090, 1093 (9th Cir. 1986)). To establish a substantive due process violation, the opposing mineral owners would have to show that the integration process is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." *Id*. The state's procedures, however, are "presumed valid, and this presumption is overcome only by a clear showing of arbitrariness and irrationality." *Id*. This is an "exceedingly high burden." *Id*. It requires a showing of a departure so "egregious" as to "amount to an abuse of power lacking any reasonable justification in the service of a legitimate governmental objective." *Id.* Balancing the majority mineral owners' interest in development, and the public interest in encouraging

production, against the interest of uncommitted mineral owners in receiving their proportionate share of production, is clearly a legitimate governmental objective.

3. Other Producing States' Approach to Integration.

The scope of restrictions suggested by the opposing mineral owners is far beyond the reach of integration orders in states with similar integration statutory schemes and much longer production histories. 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. Neither of them impose terms that reflect the extraordinary breadth of the factors suggested by IDL and by the opposing mineral owners. These examples illustrate that the scope of factors sought by IDL and the opposing mineral owners, and the subjects they seek to have regulated in an integration order, go far beyond what is normal in other producing states with similar statutory frameworks.

4. Conclusion.

As Snake River discussed in its opening brief, the mission of the Commission to encourage production while protecting correlative rights and preventing waste, and the jurisdiction of the Commission and IDL in following that mission, must be kept in mind. Some of the factors (or outcomes) suggested by IDL, and almost all of those suggested by the opposing mineral owners, are well beyond the purposes and scope of the Act. This is illustrated by examples of integration and pooling orders from states with similar regimes. Most of the issues

raised by IDL and the opposing mineral owners are already addressed by the Act and the Rules, or are already regulated by other bodies. The integration process is straightforward and should not be turned into a wide-ranging, open-ended investigative or regulatory tool for the state or for those who simply oppose development.

DATED this 12th day of May, 2021.

SMITH + MALEK, PLLC

MICHAEL CHRISTIAN
Attorney for Applicant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th 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:

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/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