

From: [J. Kahle Becker](mailto:J.KahleBecker@idaho.gov)
To: [Mike Christian](mailto:Mike.Christian@idaho.gov); [Amy Hardee](mailto:Amy.Hardee@idaho.gov); [Kourtney Romine](mailto:Kourtney.Romine@idaho.gov); [Mick Thomas](mailto:Mick.Thomas@idaho.gov); [External - Kristina Fugate](mailto:External-Kristina.Fugate@ag.idaho.gov); [JJ Winters](mailto:JJ.Winters@ag.idaho.gov); [James Thum](mailto:James.Thum@idaho.gov); James@idunionlaw.com
Cc: richard@weiserbrown.email
Subject: Re: Filings for Docket No. CC-2023-OGR-01 -001
Date: Tuesday, February 21, 2023 02:45:41 PM
Attachments: [Motion to Continue Reply Brief .pdf](#)

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Dear Administrator and Counsel of Record,

Attached is a Reply to the Applicant's informal Response to our Motion to Continue below. I would appreciate a prompt resolution of our Motion to Continue in light of the expedited briefing schedule currently put in place without input from objecting property owners.

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From: Mike Christian <mike@hpk.law>
Sent: Friday, February 17, 2023 4:46 PM
To: J. Kahle Becker <kahle@kahlebeckerlaw.com>; Amy Hardee <amy@hpk.law>; kromine@idl.idaho.gov <kromine@idl.idaho.gov>; mthomas@idl.idaho.gov <mthomas@idl.idaho.gov>; kristina.fugate@ag.idaho.gov <kristina.fugate@ag.idaho.gov>; JJ.Winters@ag.idaho.gov <JJ.Winters@ag.idaho.gov>; jthum@idl.idaho.gov <jthum@idl.idaho.gov>
Cc: richard@weiserbrown.email <richard@weiserbrown.email>
Subject: RE: Filings for Docket No. CC-2023-OGR-01 -001

Dear Administrator:

I am filing this response to the Motion for Continuance filed by certain objecting mineral owners in an email because of the shortness of time. I only received the motion at 2:34 p.m. today. I apologize for the informality.

Because of the shortness of time and because the motion raises so many issues without any factual support, it is difficult to respond. However, aside from the objecting owners' new counsel's late arrival on the scene, the request for a continuance appears to be based on the following:

1. The fact that some of the objecting owners' property is "riparian" and "along the Payette River";
2. The fact that a gathering line owned by Northwest Gas Pipeline (not the Applicant here) runs across some of the objecting owners' property, necessarily as a result of those owners entering into a right of way agreement with NWGP to consent to the placement of the pipeline in exchange for compensation;
3. The fact that some of the objecting owners say they have "observed flaring" from unidentified wells at some unidentified time in the past;
4. The fact that another owner in the unit who is not represented by the objecting owners' counsel indicated in a written comment that she cannot attend the March 14 hearing in person or via Zoom, even though the Administrator's order setting the hearing clearly states that individuals may participate by phone, and the other owner lists her phone number in her written comment, making it clear she has a phone; and
5. The fact that the objecting owners cannot determine whether the rules at IDAPA 20.07.01 and IDAPA 20.07.02 have been reauthorized (the former have not been operative or used for years, and the latter were reauthorized by the legislature in March 2022, as is noted in the published rules).

The objecting owners vaguely assert that "serious issues" are raised by the first three facts that must be considered in commenting on what factors should be considered in establishing just and reasonable terms of integration, although they offer nothing beyond speculation about those issues. Based on all of this they assert that good cause exists to vacate all deadlines and continue consideration of the application, in its entirety, indefinitely.

The motion does not establish good cause to delay the proceedings. The Applicant will address each of these points in order.

1. The application states on its face that the proposed drill site is located on property in the southwest quarter of Section 24, over a half mile from the Payette River. No operations will take place on the objecting owners' property. Integration deals generally with economic terms. Issues relating to water quality are already covered in other sources of law (which the objecting owners themselves point out by their citation to IDAPA 20.07.02.001.03, which requires operators to comply with those laws and rules).
2. Pipeline operations have nothing to do with the integration process. As the objecting owners acknowledge in their motion, the gathering pipeline in question belongs to and is operated by a different entity, not the Applicant here. As between the objecting owners whose property the pipeline crosses and NWGP, issues relating to pipeline operations are a matter of contract between them based on their right of way agreement.
3. While the objecting owners' assertions regarding flaring are nearly fact-free, flaring is a well-known safety and testing mechanism in well drilling and operations. Pursuant to IDAPA 20.07.02.413, operators may flare only for a short period of time before paying royalties to affected mineral owners, and are prohibited from flaring for longer than 60 days after well completion. In other words, this subject is already covered in applicable rules. The implicit suggestion in the objecting owners' argument that the operator is committing waste solely because flaring occurs is simply misinformed. Moreover, operators are already subject to specific production reporting and royalty reporting, payment, and accounting requirements. See Idaho Code §§ 47-324, -331, -332, -333.
4. As noted above, Ms. Miller, who is not represented by the objecting owners' counsel, may participate in the March 14 hearing by phone.
5. The rules in IDAPA 20.07.02 were reauthorized on March 18, 2022, as is indicated in the rules available at <https://adminrules.idaho.gov/rules/current/20/200702.pdf>. See https://adminrules.idaho.gov/history_notes/2022%20History%20Notes.pdf, at page 11. The sine die report discussed in the objecting owners' motion specifically mentions only those rules that were *rejected*. The rules at 20.07.01 have not been operative for many years, and contested cases in the Department and before the Commission have been conducted under the AG's rules for procedure, IDAPA 04.11.01, for several years.

Finally, the concerns raised by the objecting owners are already covered in the factors that have

been used by the Administrator for the previous three integration proceedings, and which the Applicant has proposed be used here, e.g., are any proposed terms, including those addressed at drilling, equipping, and operating the well, consistent with the Oil and Gas Act and necessary given site-specific conditions?

No good cause exists to continue the briefing schedule or the March 14 hearing. In the event the Administrator concludes that the vague and speculative assertions in the objecting owners' request sufficiently raise good cause, then at most there need only be a slight compression of the briefing schedule. The Administrator could order opening briefs on the just and reasonable issues to be due March 1, and retain the remaining briefing schedule and hearing date. No further delay is warranted.

Michael Christian

Of Counsel

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From: J. Kahle Becker <kahle@kahlebeckerlaw.com>

Sent: Friday, February 17, 2023 2:34 PM

To: Mike Christian <mike@hpk.law>; Amy Hardee <amy@hpk.law>; kromine@idl.idaho.gov; mthomas@idl.idaho.gov; kristina.fugate@ag.idaho.gov; JJ.Winters@ag.idaho.gov; jthum@idl.idaho.gov

Cc: Dana Gross <danacayleengross@gmail.com>; jordan gross <idahojordan@me.com>

Subject: Filings for Docket No. CC-2023-OGR-O1 -001

Dear Hearing Officer and the Idaho Department of Lands,

Attached for filing in this matter is my Notice of Appearance as well as a Motion to Continue. In light of the fact I was just retained and the tight filing deadlines which are in place, I wanted to get these to you as soon as possible. If there is anything else I need to do in order to ensure these filings are part of the record in this matter, please let me know. I look forward to participating in this hearing.

J. Kahle Becker

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Attorney for Objecting Property Owners

Jordan A. and Dana C. Gross and Little Buddy Farm LLC

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River)	
Oil and Gas, LLC to Integrate Unleased)	Docket No. CC-2023-OGR-01 -001
Mineral Interest Owners in the Spacing Unit)	
Consisting of Section 24, Township 8 North,)	MOTION TO CONTINUE – REPLY
Range 5 West, Boise Meridian, Payette)	BRIEF
County, Idaho)	
)	
)	
)	
)	
)	

COME NOW, Objecting Property Owners, Jordan A. and Dana C. Gross and Little Buddy Farm LLC (hereinafter “The Gross’s”) by and through their attorney of record, J. Kahle Becker, and having filed a Motion to Continue pursuant to Idaho Code 47-328(d) and IDAPA 04.11.01.561, Snake River Oil and Gas (hereinafter “Snake Oil”) having informally responded thereto with an email from its counsel, and hereby files their *Reply* thereto as follows:

Snake Oil has largely not responded to the substance of the Gross’s simple request for a continuance to allow its recently hired counsel to prepare for and attend a hearing in this matter. Rather, Snake Oil has provided factually unsupported and legally inaccurate arguments regarding the underlying matters it has placed at issue with its Application. Those and other issues can be addressed at the time and place for the hearing on the merits of the Application. However, most importantly, Snake Oil has not shown any grounds whatsoever to meet its burden under the “good

cause” standard found in Idaho Code 47-328(d). Idaho Appellate Courts have discussed the term “good cause” in the context of excusable delay in serving legal papers as follows:

The determination of whether good cause exists is a factual one. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997). There is no bright-line rule for ascertaining whether good cause exists. *Martin v. Hoblit*, 133 Idaho 372, 375, 987 P.2d 284, 287 (1999). The question of whether legal excuse has been shown is a matter for judicial determination based upon the facts and circumstances in each case. *Id.* Relevant inquiries include a plaintiff’s diligence... *Brereton v. Marian*, 518 P.3d 385, 391, 2022 Ida. App. LEXIS 16, *8-9

The fact remains, upon receipt of Snake Oil’s application, my clients promptly sought out their longtime legal counsel, Givens Pursely, who had been advising them on matters related to oil and gas exploration near their home. On February 15, 2023 Givens Pursley informed them that a conflict arose in that the firm had taken on Snake Oil as a client. *See* Exhibit A attached hereto, pursuant to Rule 2.7 of the Idaho Rules of Civil Procedure and I.C. § 9-1406, which is a true and correct copy of an email my client received from Charlie Baser of Givens Pursley on February 15, 2023.¹ How Givens Pursley allowed this conflict to arise and why Snake Oil is not precluded from hiring Givens Pursley, due to the conflict created by its prior representation of the Gross’s, is still under investigation. However, the Gross’s promptly sought out legal counsel with experience in administrative law and secured new legal representation from the undersigned on February 17, 2023. In a state with a limited amount of oil and gas production, this was no small feat and shows diligence on the part of the Gross’s. A motion to continue was immediately filed following an initial review of the docket.

Snake Oil’s preferred course of action appears to be to deprive Objecting Parties of their rights to due process with expedited Application proceedings. Snake Oil clearly has no interest in

¹ The email is redacted as indicated by the ellipse “...” to remove information which is potentially attorney client privileged with respect to advice as to recommendations for alternate legal counsel.

ensuring that the hydrocarbons underlying the objecting property owners properties are extracted in a safe, reasonable, and fair manner with accurate accounting practices put in place to ensure the integrated property owners are compensated at market rate. Idaho's truncated integration proceedings have already failed to pass constitutional muster on a prior occasion.

Additionally, Defendants have an interest in ensuring that the integration hearing complies with due process in order to set an example for future hearings and thereby reduce the probability of further litigation.

This conclusion does not affect the hearing officers' ability to exclude irrelevant or unnecessary testimony or evidence, or the Commission's discretion to determine what factors should be considered when determining whether the terms and conditions of integration order are "just and reasonable." Rather, it simply recognizes that due process requires a meaningful opportunity to be heard, and in these circumstances, that Plaintiffs and other nonconsenting landowners know the standard which the hearing officer will apply in considering whether the integration order is just and reasonable.

Citizens Allied for Integrity & Accountability, Inc. v. Schultz, 335 F. Supp. 3d 1216, 1228, 2018 U.S. Dist. LEXIS 137712, *23, 2018 WL 3848397

Snake Oil's preferred fast track to a hearing, with a preordained result of utilizing the integration orders issued in other proceedings, while depriving the Gross's of their right to conduct discovery and ensure that the integration order is fair and reasonable, ensures another trip to federal court.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333. However, "due process is flexible and calls for such procedural protections as the particular situation demands," and "must be tailored to the capacities and circumstances of those who are to be heard." *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216, 1224, 2018 U.S. Dist. LEXIS 137712, *14, 2018 WL 3848397

Here, the Gross's simply ask that their concerns be heard at a meaningful time and in a meaningful manner which is tailored to the capacity of their legal counsel to actually prepare for a hearing and conduct discovery in preparation for the hearing.

EXHIBIT A

From: "Charlie S. Baser" <charliebaser@givenspursley.com>

Subject: RE: Fruitland Gas Developments

Date: February 15, 2023 at 8:18:27 AM MST

To: jordan gross <jordan.gross@littlebuddyfarm.com>

Jordan,

When we spoke yesterday (and previously about the potential lease) I had assumed that Mike Creamer had already run a conflict check on being adverse to Snake River Oil and Gas. However, when I went to confirm after our call, I found that we actually represent Snake River Oil and Gas. Representing you against them in this matter would constitute a conflict that prohibits us from helping you in this instance. I am truly sorry – I would have like to have worked with you on this and hope to get to work with you again in the future.

I would suggest that you callI would be happy to connect you with any of those attorneys if you'd like. Or if you need other recommendations, I can get you some additional names.

Again, I'm sorry we can't be of help here, and please give me a call if you'd like to discuss.

Thanks,
Charlie

CHARLIE SUZANNAH BASER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of February 2023, a true and correct copy of the foregoing **MOTION TO CONTINUE- REPLY BRIEF** was served upon opposing counsel as follows:

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and amy@hpk.law

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/s/ J. Kahle Becker
J. KAHLE BECKER
Attorney for Objecting Property Owners,
Jordan A. and Dana C. Gross and Little
Buddy Farm LLC