

From: [Molly Garner](#)
To: [Kourtney Romine](#); [Michael Christian \(mike@smithmalek.com\)](#); [Fugate, Kristina](#); [External - Joy M. Vega](#)
Cc: [James Piotrowski](#)
Subject: Submission of CAIA & Certain Non-Consenting Owners re: Factors for Establishing Just and Reasonable Terms
Dkt CC-2021-OGR-01-001
Date: Monday, May 17, 2021 03:26:08 PM
Attachments: [Reply Brief on JR Factors 2021-OGR-1-01-001 05-17-21.pdf](#)

Please find the attached for filing in Dkt. No. CC-2021-OGR-01-001, submitted on behalf of CAIA and Certain Non-Consenting Owners:

- Reply in Support of Submission re: Factors for Establishing Just and Reasonable Terms

Thank you,

-Molly Garner
Office Manager
Piotrowski Durand, PLLC

James Piotrowski, ISB # 5911
 Marty Durand, ISB # 5111
 PIOTROWSKI DURAND, PLLC
 1020 W. Main St., Suite 440
 P.O. Box 2864
 Boise, ID 83701
 Telephone: (208) 331-9200
 Facsimile: (208) 331-9201
james@idunionlaw.com
marty@idunionlaw.com

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of)	Docket No. CC-2021-OGR-01-001
)	
The Application of Snake River Oil and Gas, LLC to Integrate the Spacing Unit)	REPLY IN SUPPORT OF SUBMISSION OF NON-CONSENTING OWNERS AND
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.)	CAIA RE: FACTORS FOR ESTABLISHING JUST AND REASONABLE TERMS
)	
)	

COME NOW Kevin and Margery Clevenger, Kristina and Lynn Larsen, and Citizens Allied for Integrity and Accountability, by and through counsel of record and hereby submit their Reply to the Response of Snake River Oil and Gas (“SROG”) in which SROG opposed the non-consenting owners’ statement of position regarding the sale of their own property.

The Response by SROG makes clear that (1) it believes it has a fundamental right to force property owners to sell their property to SROG, regardless how awful a deal SROG proposes; (2) SROG wishes to avoid any inquiry that would explore the market value of the properties SROG is putting at risk or would compare those values to the value of the miserly and nearly irrelevant amounts SROG would pay the owners of those properties; and (3) SROG believes that the terms of such a forced sale are only “just and reasonable” if they ensure that

SROG can extract the maximum value from those properties it does not own, and do so while avoiding all accountability for the harms it may cause. These positions taken by SROG represent neither the law as it is, nor the law as it should be.

I. “Just and Reasonable” Must, as a Matter of Law, Require Something Other Than Maximizing Financial Return for either SROG or the Leasing Mineral Owners.

Much of SROG’s argument proceeds on the basis that the sole purpose of the Oil and Gas Conservation Act is to ensure that there is maximum production and minimum waste of hydrocarbon resources. See Response Brief of SROG at pp. 1-2. While these are stated purposes of the Act, the argument that “just and reasonable” means nothing more than whether those purposes are met is nonsensical to any lawyer.

First, it is worth noting that SROG routinely ignores the full range of the stated purposes of the Oil and Gas Conservation Act. There can be little excuse, since those purposes are expressly stated, and include:

- to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the state of Idaho in such a manner as will prevent waste;
- to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho;
- to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected;
- to encourage, authorize and provide for voluntary agreements for cycling, recycling, pressure maintenance and secondary recovery operations;

- in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources.

Idaho Code §47-311. Thus, the express goals of the Legislature were not merely to encourage maximum production in the shortest time possible, which is the transparent goal of SROG. It was instead to encourage production in ways that would not only prevent waste but would result in uniform regulation (that the citizens of Idaho can rely on); to encourage operations methods that achieve greater “production;” to protect the correlative rights both of those who wish to sell AND those who do not wish to sell; to encourage voluntary agreements rather than compelled agreements (such as is necessary in forced integration); and, to achieve, for all mineral owners, land owners, and others, the greatest possible positive good. While what constitutes “greatest possible good” is not defined, it surely must include maximum financial recovery for mineral and property owners, and due regard for the rights and interests of “the general public” who are expressly identified by the Legislature as one of the beneficiaries of the statute.

Where SROG wants the Administrator and the Commission to focus on what it claims are “only economic” interests that it wishes to take maximum advantage of, See Response Brief of SROG, p. 6, the Legislature has expressly directed the Administrator and the Commission to address and consider “production,” “waste,” “uniformity and consistency,” “ultimate recovery,” “voluntary agreements,” the “greatest possible economic recovery” (as opposed to merely the fastest or greatest volume of recovery) of hydrocarbons on behalf of mineral owners, while considering the often competing interests of mineral owners, royalty holders, operators, producers and, “the general public.”

SROG's focus on maximizing short-term production on terms it prefers actually ignores the larger portion of the Idaho Oil and Gas Conservation Act's express statement of purpose.

But it does more than that. SROG asks the Administrator to treat "just and reasonable" as if all it meant was meeting what it considers to be the sole "mission of the Commission to encourage production while protecting correlative rights and preventing waste." See Response Brief at p. 7. Not only does the language of the statute make it mandatory that the Administrator and Commission consider numerous other express legislative purposes, the U.S. Constitution requires the same as well.

It was well-established, long before the decision in *CAIA v. Schultz*, that forced integration statutes could only survive constitutional review if, in addition to addressing mineral recovery and correlative rights, they ALSO include a requirement that the terms of forced integration be "just and reasonable." *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942). If the requirement for "just and reasonable" terms requires no more than that the terms also satisfy the goal of accelerating production and protecting the rights of those who wish to sell their mineral rights, then there would literally be no point in stating that the terms must be just reasonable. Clearly, when the Supreme Court states that requiring "just and reasonable" terms is a prerequisite to a valid statute encouraging production, that requirement cannot simply be assumed away by claiming it means the same thing as encouraging production.

Neither the Constitution nor Idaho statutes can be presumed to include any meaningless words. Where the Legislature and the Constitution both require that a statute regulating forced sales of minerals must include the protection of "just and reasonable" terms, the Administrator and the Commission have a legal duty to give that phrase meaning. What SROG suggests is that as long as their proposed terms result in production of oil and gas then "just and reasonable" is

also satisfied. Such an outcome would once again violate the due process rights of property owners in this spacing unit.

II. The Submissions of the Idaho Department of Lands and the Non-Consenting Owners Contain Numerous Mutually Supported Factors.

Both the non-consenting owners and the Department of Lands share common ground in their understanding of the meaning of “just and reasonable.” The non-consenting orders concur in IDL’s argument that “just and reasonable” should include consideration of:

- Whether integrated owners will be subjected to use of the surface of their estates (non-consenting owners would also add that while protecting against drilling on non-leased sites is important, it is equally important to protect against pipeline construction and any other occupation, disturbance or interference with surface rights);
- Whether the operator will be required to meet commercially reasonable requirements for royalty calculations and payments;
- The market value of the gas and oil to be extracted;
- Whether the proposed lease terms would result in interference with any other lawful contract (such as mortgages, leases, and other interests in realty);
- Whether the terms protect property owners against predatory conduct by operators;
- Whether the terms would be, and have been, acceptable to SROG and its principals and managers in prior negotiations regardless of the operator’s position (as either operator or mineral owner) in those prior negotiations.

Where so much common ground occurs, SROG’s objections to these commonsense proposals is, at the very least, suspicious.

III. SROG's Position is Internally Inconsistent and Should be Rejected.

SROG manages to simultaneously argue that the non-consenting owners have solely economic interests in this case, and that, therefore, they have no fundamental rights at stake. SROG simultaneously argues that its own economic decision making when it operates as a leaseholder, or working interest owner, in other words, when it makes economic decisions, are entirely irrelevant to the question currently presented.

This position is internally inconsistent. If the transactions at stake in this dispute are purely economic, then SROG's economic decision making is absolutely relevant. But the interests at stake here are far more than purely economic. American law, including the law of due process, has long recognized that land is a unique commodity. "A person's home is his castle" as the old saying goes. The Constitution recognizes the unique importance of real estate in the Anglo-American traditions of the law by including numerous express and implied protections such as prohibitions on unreasonable searches, the requirement of probable cause for the issuance of warrants, the ban on compelled "quartering" of soldiers, and the requirement that any deprivation of property be accompanied by due process of law.

The Administrator must determine what factors will protect these inalienable rights of Idaho property owners. Only by doing so can the legislative purposes of encouraging production, preventing waste, maximizing economic recovery for mineral owners, and protecting the public interest be met.

Dated this 17th day of May, 2021.

PIOTROWSKI DURAND, PLLC

_____/s/ James M. Piotrowski_____
James M. Piotrowski
Attorneys for CAIA and Certain Non-
Consenting Owners

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021, I caused to be served a true and correct copy of the following item in Docket No: CC-2019-OGR-01-002: *SUBMISSION OF NON-CONSENTING OWNERS AND CAIA RE: FACTORS FOR ESTABLISHING JUST AND REASONABLE TERMS* by the method indicated below and addressed to the following:

Idaho Department of Lands	U.S. Mail	<input checked="" type="checkbox"/>
Attn: Mick Thomas	Hand Delivery	<input type="checkbox"/>
300 N. 6 th Street, Suite 103	Certified Mail	<input type="checkbox"/>
PO Box 83720	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83720		
kromine@idl.idaho.gov		

Snake River Oil and Gas	U.S. Mail	<input type="checkbox"/>
c/o Michael Christian	Hand Delivery	<input type="checkbox"/>
Smith & Malek, PLLC	Certified Mail	<input type="checkbox"/>
101 S. Capitol Blvd, Suite 930	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83702		
mike@smithmalek.com		

Kristina Fugate	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
kristina.fugate@ag.idaho.gov		

Joy Vega	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
joy.vega@ag.idaho.gov		

James Thum	U.S. Mail	<input checked="" type="checkbox"/>
Idaho Department of Lands	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0050	E-Mail	<input type="checkbox"/>

_____/s/_____
James M. Piotrowski