From:	Morgan Burr
To:	Mick Thomas; Kourtney Romine; External - Joy M. Vega; kristina.fugate@ag.idaho.gov; James Thum; james@idunionlaw.com
Cc:	Michael Christian; Sarah Hudson
Subject:	Docket No. CC-2021-OGR-01-002
Date:	Wednesday, June 16, 2021 03:35:39 PM
Attachments:	20210616 SROG Reply Brief of Applicant Fallon 1-10 Integration Application.docx.pdf

Hello All,

Attached please find the Reply Brief of SROG from Michael Christian. If you have any issues opening the document or any questions, please feel free to contact us.

Please forward all further communications and filings to me I will be taking over for Sarah as Michael's new assistant.

Morgan Burr

Legal Assistant

601 E. Front Avenue, Suite 304

Coeur d'Alene, ID 83814

p. 208.215.2411 | f. 208.215.2416 | e. morgan.burr@smithmalek.com

MICHAEL R. CHRISTIAN, ISB #4311
SMITH + MALEK, PLLC
101 S. Capitol Boulevard, Suite 930
Boise, ID 83702
P. (208) 473-7009
F. (208) 473-7661
E: mike@smithmalek.com
Attorney for Applicant Snake River Oil and Gas, LLC

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
STATE OF IDAHO

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 E ½ of the SE ¼ of Section 9, SW ¼ of Section 10, N ½ of the N ½ of the NW ¼ of Section 15, and the N ½ of the NE ¼ of the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho **SNAKE RIVER OIL AND GAS, LLC, Applicant.**	**Docket No. CC-2021-OGR-01-002** **REPLY BRIEF OF APPLICANT SNAKE RIVER OIL AND GAS, LLC**

Applicant Snake River Oil and Gas, LLC files this brief in reply to the "Response of Non-Consenting Owners and CAIA to Snake River Oil and Gas's Opening Brief."

Snake River repeats its objection 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.]" CAIA is not properly a party.

The objecting mineral owners largely avoid any discussion of the substance of Applicant's Opening Brief, but (a) argue that their briefing is directed to specifics of the Fallon 1-10 spacing unit, although they do not describe how; (b) argue that to be just and reasonable, an integration order must *exceed* other legal operating requirements; (c) continue to refer to

integration as a "forced sale" of their minerals; and (c) continue to make unfounded attacks on the Applicant and unfounded assertions of harm from the Applicant's intended operations.

The objecting mineral owners argue that their briefing in this matter is materially different from that filed in Docket No. CC-2021-OGR-01-002, but then do not explain how it is so. The only discernible difference of any significance in their briefing on the current application appears to be deletion of reference to non-mineral owner residents in a mobile home park located in the Fallon 1-11 spacing unit. The generic nature of the objecting mineral owners' briefing illustrates that a drawn-out process is not necessary.

The objecting mineral owners provide no authority for the proposition that an integration order must require the operator to exceed legal operating requirements, and there is none. In fact, operations which comply with the law are by definition just and reasonable, as standards set by the legislature are by definition its judgment of what is reasonable to require. Conversely, because the Act provides that oil and gas development is to be encouraged, provisions which would discourage development -- by requiring the operator to exceed existing legal standards -- by definition are *not* just and reasonable. As the Applicant has previously pointed out, providing benefits to objecting mineral owners beyond those established in the broader mineral leasing market is not just and reasonable to the operator or for owners who voluntarily leased and seek development, because it improperly encourages holding out, delaying development and rendering it less economically viable (thus harming the correlative rights of those owners who wish to develop their minerals).

The argument that integration is a "forced sale" of minerals – a taking -- has been roundly rejected. The Supreme Court of Oklahoma, for instance, held:

> [T]he lawful exercise of the state's power to protect the correlative rights of owners in a common source of supply of oil and gas is not a proper subject for the invocation of the provisions of either the

> State or Federal Constitution which prohibit the taking of property without just compensation or without due process of law and forbid the impairment of contract obligations. As we view it, the property here involved has not been taken or confiscated: its use has merely been restricted and qualified. This does not violate the due process clause of either Constitution.

Patterson v. Stanolind Oil & Gas Co., 77 P.2d 83, 89 (Okla. 1938). Other states have reached similar conclusions. *See, e.g*., *Gawenis v. Ark. Oil & Gas Comm'n,* 464 S.W.3d 453, 457–58 (Ark. 2015) (state's integration process did not "take" anything, but allowed mineral owners "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"). The purpose of integration is to balance correlative rights of those within a spacing unit. *See, e.g., Matter of Sylvania Corp. v. Kilborne*, 28 N.Y.2d 427, 431 n.4 (N.Y. 1971) ("Integration, whether 'voluntary' . . . or 'compulsory' . . . serves to protect the correlative rights of parties with interests in a well spacing unit, by requiring that they share proportionately the costs and profits of drilling."). The nature of the ownership of oil and gas located in a common source of supply authorizes the state to modify those ownership rights in order to prevent waste and protect correlative rights. *Gawenis*, 464 S.W.3d at 456-57.[1]

Integration is a function of well spacing. Requiring development by spacing unit leaves the possibility that objecting mineral owners may forestall development – to the detriment of the majority's ability to develop their minerals -- absent the ability of an operator to pool the minority's interests. The purpose of integration -- the proper exercise of the state's police power to balance correlative rights -- is illustrated by the examples of integration and pooling orders

[1] In the end, the objecting mineral owners' arguments that an integration order must insulate them against any "external costs" are really just an argument for additional compensation (to the extent they are not an attempt simply to inhibit exploration and production). But these kinds of arguments also have been rejected. *See, e.g.*, *Gawenis*, 464 S.W.3d at 458 ("[T]he valid exercise of the police power through land-use regulations does not constitute a compensable 'taking' because 'the owner of such property is sufficiently compensated by sharing in the general benefits resulting' from the regulations. . . . We hold that the Commission's integration of Gawenis's .69 acre mineral interest is not a compensable taking but a constitutional exercise of the State's police power.").

previously provided by the Applicant from states with similar regimes. These examples, and the approach of other states, are conspicuously avoided by the objecting mineral owners.

The objecting mineral owners' argue that the use of the word "economic" in Idaho Code § 47-311 means that an integration order must ensure that the "net outcome" to an integrated mineral owner is always positive, i.e., the law requires the Administrator in his order to ensure that integrated mineral owners suffer no "external costs" in excess of the royalty (and bonus) they receive. *Response of Non-Consenting Owners*, pp. 3-4. They offer no authority for this proposition, and it is not implemented in any other producing state. The Act already insulates integrated mineral owners, by offering them the alternative to lease and be paid a bonus and royalty without taking on the risk of the well, or to participate in the risk and cost of the well in exchange for receiving a full share of the revenue from the well, on either a working interest or non-consenting working interest basis. Idaho Code § 47-320(3).

Without integration, the state loses revenues from severance and income taxes, and, because a portion of the resource cannot be developed, the remainder of the land cannot be drilled in the most efficient manner. Integration serves as an anti-holdout measure, protecting the right of owners to develop their minerals even where their own land is of insufficient acreage to allow for extraction under the Act. This is particularly relevant where there is a minority of nonconsenting owners among many consenting owners. Absent spacing units and compulsory pooling or integration, the rule of capture would prevail, and the various ills that the objecting mineral owners allege would actually be more likely, as more wells would be drilled on smaller tracts into the same pool (what could be termed the Spindletop effect). Thus, it is more reasonable to interpret the word "economic," in the context of the Act, to mean that development is intended to be made more efficient and economically feasible (i.e., encouraged) by regulation

under the Act. Again, the Act provides that the prevention of waste is paramount. Idaho Code §47-315(1).[2]

CONCLUSION

The objecting mineral owners' briefing in this matter is not materially different from that submitted by objecting mineral owners for the application to integrate the Fallon 1-11 spacing unit. Their argument that the integration order must insulate them from any speculative "external cost" is contrary to the Act, and contrary to the established view of integration or pooling in other producing states. The same is true of their argument that "just and reasonable" means that an integration order must require an operator to not only meet but exceed legal requirements for operating. These arguments should be disregarded for purposes of establishing factors to be considered in determining just and reasonable terms and conditions of integration. The purpose of integration is to balance correlative rights, and the factors to be used should reflect that purpose.

DATED this 16th day of June, 2021.

SMITH + MALEK, PLLC

MICHAEL CHRISTIAN
Attorney for Applicant

[2] Any suggestion that the Administrator or the Commission should oversee an operator's economic decisions about when to drill and produce is flatly contrary to the Act. Idaho Code § 47-312 ("This act shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, regulation or judgment requiring restriction of production due to market demand of any pool or of any well (except as provided in section 47-315, Idaho Code, hereof) to an amount less than the well or pool can produce without waste in accordance with sound engineering practices. The waste of oil and gas or either of them as defined in this chapter is hereby prohibited.").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June 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:

Mick Thomas 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: mthomas@idl.idaho.gov
Kourtney Romine 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: kromine@idl.idaho.gov
Joy Vega Deputy Attorney General P.O. Box 83720 Boise, ID 83720	[ ] U.S. Mail [ ] Certified Mail [ ] Overnight Delivery [ ] Messenger Delivery [x] Email: joy.vega@ag.idaho.gov
Kristina Fugate Deputy Attorney General P.O. Box 83720 Boise, ID 83720	[ ] U.S. Mail [ ] Certified Mail [ ] Overnight Delivery [ ] Messenger Delivery [x] Email: kristina.fugate@ag.idaho.gov
James Thum Idaho Department of Lands P.O. Box 83720 Boise, ID 83720	[ ] U.S. Mail [ ] Certified Mail [ ] Overnight Delivery [ ] Messenger Delivery [x] Email: jthum@idl.idaho.gov
James Piotrowski Piotrowski Durand, PLLC 1020 W. Main St., Suite 440 P.O. Box 2864 Boise, ID 83701 Attorneys for:	[ ] U.S. Mail [ ] Certified Mail [ ] Overnight Delivery [ ] Messenger Delivery [x] Email: james@idunionlaw.com marty@idunionlaw.com

Dale Verhaeghe, Linda Dernoncourt, Sharon Simmons, Alan and Glenda Grace, Edward and Cheryl Adair, William and Roxie Tolbert, Wendell and Normal Nierman, Cheryl and Richard Addison, Jimmie and Judy Hicks, Antonio and Danielle Anchustegui, Philip and Kathleen Hendrickson, Dawna and George Jackson, Karen Oltman, Bonnie McGehee, Lorinda Shuman, Samuel Butorovich, Tim Kilbourne, Kate Kilbourneand, and Citizens Allied for Integrity and Accountability

/s/ Morgan Burr
MORGAN BURR