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Subject: IDL opening brief CC-2023-OGR-01-001
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[IDL J&R Opening Brief CC-2023-OGR-01-001.pdf](#)

Good morning,

Please see the attached opening brief regarding IDL's recommendations to the Administrator on just and reasonable factors for the upcoming hearing in the matter of SROG integration application, CC-2023-OGR-01-001.

Thank you,



JJ Winters | Deputy Attorney General

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BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF:

The Application of Snake River Oil and Gas,
LLC to Integrate the Spacing Unit Consisting
of Section 24, Township 8 North, Range 5
West, Boise Meridian, Payette County, Idaho.

Snake River Oil and Gas, LLC, Applicant.

Docket No. CC-2023-OGR-01-001

**IDAHO DEPARTMENT OF LANDS’
OPENING BRIEF**

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, and pursuant to the ORDER VACATING HEARING AND NOTICE OF HEARING TO DETERMINE “JUST AND REASONABLE” FACTORS issued January 31, 2023, files this Opening Brief for review and utilization by the Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator”), as he deems useful or necessary, in determining whether the terms and conditions of the integration order sought by Snake River Oil and Gas, LLC (“SROG”) in Docket No. CC-2023-OGR-01-001 are “just and reasonable” as required by Idaho Code § 47-320(1).

The Administrator’s determination of “just and reasonable” terms for the integration order must be consistent with the Oil and Gas Conservation Act, Idaho Code §§ 47-309 through 47-336. The Idaho Legislature enacted statutory regulation of the development of oil and gas resources within the State of Idaho, which includes the integration of mineral interest owners to participate in the risks and rewards of such development. I.C. § 47-320. “‘Forced integration’ ... is the remedy that permits development of the drilling unit in the event that the mineral-interest owners cannot agree to pool voluntarily.” *Gawenis v. Arkansas Oil & Gas Commission*, 464 S.W.3d 453, (Ark. 2015) (citation omitted). The state’s integration procedures “constitute a proper exercise of its police power” ... to protect “property rights by requiring a just, orderly, and efficient process for neighbors to extract common resources.” *Kerns v. Chesapeake Exploration, L.L.C.*, 762 Fed. Appx. 289, 297 (6th Cir. 2019) (citations omitted). “Each landowner’s property interest in the minerals remains intact; it is simply regulated.” *Id.* (citation omitted).

The Idaho Oil and Gas Conservation Commission (“OGCC”) and IDL have the authority and obligation to protect correlative rights while preventing waste of hydrocarbon resources. I.C. §§ 47-311 through 47-315. The OGCC and IDL must enable the development of hydrocarbon resources, protecting and enforcing the property rights of owners *and* producers; and, in doing so, prevent the waste of hydrocarbon resources. I.C. §§ 47-311, 47-312. Part of the Legislature’s instructions to IDL regarding its authority to regulate all integrated owners and producers includes the following directive:

In the absence of voluntary integration, the department, upon the application of any owner in the proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom. The department, as part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated

without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.

I.C. § 47-320(1) (emphasis added).

The inclusion of “just and reasonable” is significant because it grants the Administrator discretion to enter an order based on the unique and specific facts and circumstances of each case. In an integration proceeding, “it would be impracticable for statutes to cover every possible situation that an agency may encounter when carrying out its statutory duties.” *Hurd v. Arkansas Oil & Gas Comm’n*, 601 S.W.3d 100, 105 (Ark. 2020) (upholding the agency’s reduction of royalty percentages after scrutiny of private leases at issue during an integration proceeding). Consequently, the authority granted by Idaho law authorizes the Administrator to ensure that all integrations orders are issued upon terms that are “just and reasonable”. The requirement that an integration order “be ‘issued upon terms and conditions that are just and reasonable’ refers to [the agency’s] responsibility to prevent waste and ensure ratable production of shared geologic resources.” *Id.* at 109 (Hart, J., dissenting) (criticizing the agency’s and majority’s, effective alteration of private business negotiations).

I. IDL recommends that the Administrator consider the following factors in determining what terms and conditions of the integration order are “just and reasonable”.

- A. Whether the proposed terms are addressed in another source of law.
- B. Whether the proposed terms and conditions are (a) consistent with industry standards; (b) consistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies; and (c) applicable to the unit and its operations.
- C. Whether the proposed terms and conditions are similar to other agreements within and nearby the unit.
- D. Whether any proposed terms, including those addressed at drilling, equipping, and operating the well, are consistent with the Oil and Gas Act and necessary given site-specific conditions.

E. Whether the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation.

F. Whether the proposed operations include use of uncommitted owners' surface estate, and, if so, is the operator's compliance with I.C. § 47-334 adequate to protect the surface owner.

G. Whether the unit's circumstances and operations require additional bonding with the Department.

H. Whether the integration order ensures that integrated owners that do not choose to participate as an owner retain the private right of action against the operator for any future harms.

DATED this 28 day of February, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



J.J. WINTERS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of February, 2023, I caused to be served a true and correct copy of the foregoing by the following method to:

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