

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 30, Township 8 North,)
Range 4 West, Boise Meridian, Payette County,)
Idaho.)
)
Snake River Oil and Gas, LLC, Applicant.)

Docket No. CC-2022-OGR-01-002

**CONTINUANCE AND NOTICE
OF CONTINUED HEARING**

On August 29, 2022, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho. The Minerals, Navigable Waterways, and Oil & Gas Division Administrator (“Administrator”) of the Idaho Department of Lands (“IDL”) subsequently issued a September 7, 2022 *Order Vacating Hearing and Notice of Hearing to Determine “Just and Reasonable” Factors* that set and noticed an October 13, 2022 hearing to determine “just and reasonable factors” and established briefing deadlines for that hearing.¹

The Administrator received briefs from Snake River, IDL, Steven and Robin Bishop, Amie and Jason Echevarria, Rex Wilson, and Patricia and Greg Fleshman (collectively “Nonconsenting Owners”), and Citizens Allied for Integrity and Accountability (“CAIA”). On October 13, 2022, in Fruitland, Idaho, the Administrator held the hearing on the factors used to determine “just and

¹ The October 13, 2022 hearing to determine “just and reasonable factors” was set to comply with the United States District Court for the District of Idaho’s order to “hold a new hearing that complies with due process by explaining the factors that will be considered when determining whether the terms and conditions of an integration order are ‘just and reasonable’ under Idaho Code § 47-320(1).” *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F.Supp.3d 1216 (D. Idaho 2018). The Idaho Oil and Gas Conservation Commission decided at its April 23, 2019 meeting that prior to holding an evidentiary hearing on the merits of an integration application pursuant to Idaho Code § 47-328(3)(d), the Administrator would hold a hearing and issue a ruling identifying the factors to be considered.

reasonable” terms. The following persons appeared at the October 13, 2022 hearing: Michael Christian, attorney for Snake River, James Piotrowski, attorney for Nonconsenting Owners and CAIA, and Angela Kaufmann, Deputy Attorney General, attorney for IDL.

The Administrator issued an *Order Determining “Just and Reasonable” Factors* on November 10, 2022. He determined first that the broad requirement for an integration order to be on “just and reasonable” terms does not include authority to award additional compensation beyond statutory requirements and integration will not be denied when uncommitted owners’ economic risks exceed benefits. This was because the Legislature made integration mandatory upon meeting certain statutory requirements. Further, an integration order’s terms and conditions must be within the Commission’s statutory authority and be consistent with the Oil and Gas Conservation Act’s purposes. The Administrator then determined that he would consider the following factors:

1. Are the proposed terms addressed in another source of law?
2. Are the proposed terms and conditions (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?
3. Are the proposed terms and conditions similar to other agreements within and nearby the unit? If a proposed term is not similar, is there a reason why a different term or condition is appropriate?
4. Are any proposed terms, including those addressed at drilling, equipping, and operating a well, consistent with the Oil and Gas Act and necessary given site-specific conditions?
5. Will the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation?
6. If the proposed operation includes use of uncommitted owners’ surface estate, is the operator’s compliance with Idaho Code § 47-334 adequate to protect the surface owner?
7. Do the unit’s circumstances and operations require additional bonding?

8. Does the integration order ensure 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?

On November 10, 2022, the Administrator issued a *Notice of Evidentiary Hearing and Notice of Prehearing Conference*, which was mailed to all known and located uncommitted owners. That November 10, 2022 notice included a December 29, 2022 deadline for uncommitted owners to file objections or other responses and to file prehearing motions. Aside from the briefs submitted by Nonconsenting Owners and CAIA prior to the October 13, 2022 hearing to determine “just and reasonable” factors, no additional objections or other responses were filed.

On January 5, 2023, a telephonic prehearing conference was held. Attendance at the prehearing conference was mandatory for those who intended to participate in the evidentiary hearing. Those persons participating in the prehearing conference were Michael Christian, attorney for Snake River, James Piotrowski, attorney for Nonconsenting Owners and CAIA, JJ Winters, attorney for IDL, and James Thum, Oil and Gas Program Specialist for IDL.

On January 12, 2023, in Fruitland, Idaho, the Administrator held the evidentiary hearing on Snake River’s integration application. Michael Christian represented Snake River and appeared in person. Richard Brown, partner in Weiser-Brown Oil Company, testified via Zoom. Travis Bonney, Snake River’s landman, testified via Zoom. David Smith, Snake River’s geologist, testified via Zoom. James Piotrowski represented the Nonconsenting Owners and CAIA and appeared via Zoom. Deputy Attorney General JJ Winters represented IDL and appeared in person. James Thum of IDL testified in person.

All participating parties were provided with an opportunity to present testimony and evidence. They were also provided with the opportunity to present opening and closing statements, and cross examine witnesses. The Administrator also asked questions of witnesses. Snake River’s exhibits were admitted: Exhibit SR-1, Snake River’s integration application; SR-2, updated plat

and tract list for Section 30; SR-3, updated resume of efforts; and SR-4, proof of publication to unknown or unlocatable mineral interest owners.

The Administrator held a separate session for public witness comments at 6:00 pm on the same day as the evidentiary hearing. That session was held in Fruitland with a Zoom videoconference option. Participating in person were Joey Ishida, a Payette County resident; Stuart Grimes, Fruitland's City Administrator; and Sara Weatherspoon, a Fruitland resident.

The Administrator considered the testimony presented and the exhibits received into evidence and hereby makes the following findings of fact, conclusions of law, and continuance order in this matter. The Administrator also issues a notice of continued hearing for February 28, 2023 at 9:00am MDT to take place on Zoom videoconference, as detailed in the notice below

FINDINGS OF FACT

1. On August 29, 2022, Snake River Oil and Gas, LLC ("Snake River") filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho. The unit proposed to be integrated is approximately 640 acres.
2. Snake River is the applicant and proposed operator of the unit. SR App. 1-2.²
3. Snake River's application included a cover letter and eleven exhibits (Exhibits A-K). The cover letter contains sections addressing: (1) Snake River's name and address; (2) a description of the spacing unit; (3) geological statement concerning the likely presence of hydrocarbons; (4) statement that the proposed drill site is leased; (5) statement of proposed operations for the spacing unit and the proposed operator's name and address; (6) a proposed joint operating agreement ("JOA") and form of lease; (7) a list of the names and addresses of all uncommitted

² Snake River's Application is abbreviated with "SR App."

owners in the unit; (8) a declaration indicating that the operator has leased at least sixty-seven percent (67%) of the mineral interest acres in the unit; (9) a declaration stating that the highest bonus paid to a leased owner in the unit prior to filing the application; (10) a resume of efforts; (11) publication of application notice to unknown or unlocatable owners; (12) Snake River's proposed terms of integration. SR App. 1-9.

4. Snake River's application stated that it would mail its application, supporting documents, and notice of the hearing date to all known uncommitted owners within the spacing unit. SR App. 8. Snake River also stated that it would provide proof of the publication and mailing to the Department. *Id.*
5. Exhibit H to Snake River's Application is certified mailing receipts for "all mailings" to uncommitted owners. SR App. 4; 107-127. The application did not state whether this certified mailing showed Snake River's application was mailed to uncommitted owners.
6. Two tracts in the unit (Tract 13 and Tract 27) include mineral interests with owners who could not be located. SR App. 21. Those unlocatable owners are the unknown heirs of A.S. Capps and Florence Capps for Tract 13 and the unknown heirs of Emmett and Lucy Lee for Tract 27. *Id.* Snake River determined that neither had any further record of conveyance, all record owners were deceased between 1957 and 1987, and a probate records search found no record of disposal of either interest. *Id.* Snake River also found no probate record in its search of probate records in Clark County Washington, where the Lees may have lived. *Id.*
7. On August 17, 24, and 31, 2022, Snake River published legal notice in the Argus Observer to the unknown and unlocatable owners of Tract 13 and 27, as well as all other uncommitted owners. 9/06/23 e-mails to IDL. The notice gave the owners notice of Snake River's intent to develop and request to reach agreement regarding the lease of their mineral interest.

8. On August 24, 2022, Snake River published in the Argus Observer a notice of the application, including notice of the regularly scheduled hearing date and the deadline for filing a response. SR App. 21, 135. This notice was directed to all uncommitted mineral interest owners in the unit, including the heirs or successors of the Capps and Lees. *Id.* The notice provided that the application would be available on IDL's website after filing, that all uncommitted owners would have an opportunity to respond to the application, and that those responses should be filed no later than fourteen days before the hearing date. *Id.*
9. The August 24, 2022 legal notice had two different legal descriptions of the area Snake River requested to integrate with its application. SR App. 135. The first was for Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho. The second listed Section 30, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.
10. Snake River published another notice of the application, hearing, and response deadline in the Argus Observer on August 31, 2022. 09/06/23 e-mails to IDL. That notice was advertised for the proper legal description of Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho. It was addressed to all uncommitted owners in Section 30, including the heirs or successors of the Capps and Lees. It noted that a copy of the application was available from IDL and online at IDL's administrative hearings website. It noted the opportunity to respond, response deadline, and the October 13, 2022 hearing date. It also provided that notice of the hearing date would be available on IDL's website and at IDL's listed phone number.

CONCLUSIONS OF LAW AND ANALYSIS

A. The Administrator has authority to hear this matter

1. The Administrator is authorized to conduct this hearing pursuant to Idaho Code §§ 47-320 and 47-328. This proceeding is governed by the Idaho Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code); Idaho Administrative Procedure Act (Chapter 52, title 67, Idaho Code); Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02).
2. The Idaho Oil and Gas Conservation Act (“Oil and Gas Act”) applies to all matters affecting oil and gas development on all lands located in the state of Idaho. Idaho Code § 47-313.
3. The Idaho Oil and Gas Conservation Commission (“Commission”) is “authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.” Idaho Code § 47-315(8). IDL is the administrative instrumentality of the Commission, and the Administrator has authority over these proceedings pursuant to Idaho Code §§ 47-314(7), 47-320, and 47-328(3).

B. Snake River bears the burden of proof

1. The Applicant generally bears the burden of proof in this matter. “The customary common law rule that the moving party has the burden of proof – including not only the burden of going forward but also the burden of persuasion – is generally observed in administrative hearings.” *Intermountain Health Care, Inc. v. Bd. of County Comm’rs of Blaine County*, 107 Idaho 248, 251, 688 P.2d 260, 263 (Ct. App. 1984), *rev’d on other grounds* 109 Idaho 299, 707 P.2d 410 (1985).
2. Under Idaho law, “preponderance of the evidence” is generally the applicable standard for administrative proceedings, unless the Idaho Supreme Court or legislature has said otherwise. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 439, 926 P.2d 213, 215 (Ct. App. 1996). “A

preponderance of the evidence means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not.” *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).

3. A court shall affirm an agency’s action unless the decision is “not supported by substantial evidence on the record as a whole; or [the decision] is arbitrary, capricious, or an abuse of discretion.” Idaho Code § 67-5279(3)(d)-(e).

C. Additional evidence is necessary for the Administrator to determine whether Snake River met Idaho Code § 47-328(3)(b)’s notice requirements.

1. The Administrator needs additional information to determine whether Snake River met Idaho Code § 47-328(3)(b)’s notice requirements to known and located uncommitted and working interest owners and notice to the respective city or county where the proposed unit is located.
2. Idaho Code § 47-328(3)(b) requires that for integration applications the applicant “shall send a copy of the application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located.”
3. Snake River presented documentary evidence and testimony that it has published newspaper notice of the application to unknown owners and all uncommitted owners. However, the record is ambiguous as to whether Snake River mailed a copy of the application and supporting documents to all known and located uncommitted and working interest owners and to the city and county.
4. Snake River’s application stated that it would mail its application, supporting documents, and notice of the hearing date to all known uncommitted owners within the spacing unit. SR App. 8. Specifically, Snake River’s application provided that “Applicant will send a copy of the Application and notice of the hearing date and response deadline to known and uncommitted

mineral interest owners by certified mail within seven (7) days of filing of the Application.” Snake River’s application also states that it “will provide proof of the publication and mailing to the Department.” SR App. 8 (emphasis added). While proof of publication was submitted, it does not appear that any such proof of mailing was submitted. Exhibit H to Snake River’s application includes certified mailing receipts for “all mailings” to uncommitted owners, but neither Snake River’s cover letter nor any other evidence shows whether any of those mailings included a copy of the application. No other proof of Snake River’s application being sent to known uncommitted and working interest owners was included in Snake River’s updated Resume of Efforts at SR-3. No testimony at hearing provided that Snake River sent its application to known uncommitted and working interest owners.

5. No evidence in the record indicates whether Snake River sent a copy of the application to the respective city or county where the proposed unit is located as required by Idaho Code § 47-328(3)(b). IDL is also required to send a copy of the application to the respective city or county where the proposed unit is located by Idaho Code § 47-14(10)(a). Without further evidence, the Administrator cannot determine whether this requirement in Idaho Code § 47-328(3)(b) is met.
6. Known and located uncommitted owners have all been sent the Administrator’s notices of hearing for the October 13, 2022 hearing and the January 12, 2022 hearing. Each of those notices of hearing reference the application. No uncommitted owner has alleged that they were not mailed the application as required by Idaho Code § 47-328(3)(b).
7. Given the ambiguity in Snake River’s application, the Administrator orders a continuance of the evidentiary hearing to receive additional evidence only related to whether Snake River met

Idaho Code § 47-328(3)(b)'s notice requirements to known uncommitted and working interest owners and the respective city or county.

8. Because the Administrator will accept additional evidence related to Snake River's notice to known and located uncommitted and working interest owners as well as to the city or county, he will not make any additional decisions at this time.

ORDER

Based on the reasons stated above and pursuant to Idaho Code § 47-328(3)(d) and IDAPA 04.11.01.561, the hearing is continued for further evidentiary hearing. The evidence and argument at this further evidentiary hearing is solely restricted to the resolution of the following:

- Evidence clarifying whether Snake River complied with Idaho Code § 47-328(3)(b)'s mailing and notice requirements for known and located uncommitted owners, working interest owners, and to the respective city or county where the proposed unit is located.

NOTICE OF CONTINUED HEARING

It is hereby ordered that all parties that wish to further appear in the above captioned matter shall participate in a hearing by Zoom videoconference on February 28, 2023, at 9:00 am MDT. This is a continued evidentiary hearing, and no additional public comment will be taken. The Administrator will hold the hearing via Zoom videoconference. Idaho Department of Lands will e-mail a participation link to those parties who participated in the January 12, 2023 hearing and post that link on the IDL website prior to the hearing. The hearing location meets the accessibility requirements of the Americans with Disabilities Act ("ADA"), in accordance with IDAPA 04.11.01.551. If a person requires assistance of the kind the agency is required to provide under

the ADA in order to participate in or understand the hearing, the agency will supply the assistance upon request. Please submit any requests to IDL by 5:00 pm (MDT) on February 22, 2023.

Dated this 13th day of February 2023.

A handwritten signature in cursive script that reads "Mick Thomas".

Richard "Mick" Thomas

Division Administrator
Minerals, Navigable Waterways, Oil & Gas
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of February 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Snake River Oil & Gas LLC
c/o Michael Christian
Hardee, Pinol & Kracke PLLC
1487 S. David Lane
Boise ID 83705

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: mike@hpk.law
amy@hpk.law

Kristina Fugate
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Email: kristina.fugate@ag.idaho.gov

JJ Winters
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Email: JJ.Winters@ag.idaho.gov

Mick Thomas
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: mthomas@idl.idaho.gov

James Thum
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: jthum@idl.idaho.gov

James Piotrowski
Piotrowski Durand, PLLC
1020 W. Main St., Suite 370
P.O. Box 2864
Boise, ID 83701

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: james@idunionlaw.com

Counsel for:
Citizens Allied for Integrity and Accountability (CAIA),
Steven and Robin Bishop, Amie and Jason Echevarria,
Rex Wilson, and Patricia and Greg Fleshman

The Gerald & Darcy Mitchell Family Trust
2930 NW 3rd Ave
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

John E. & Carol A. Bennett
7470 Grande Vallejo Drive
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Mark Douglas & Yvonne M. Korthals
7450 Grand Vallejo Drive
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Randall J. & Julie M. Korthals
7447 Grand Vallejo Drive
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Gerald W. & Rebekah L. Storey
3081 NW 2 1/2 Ave
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Lloyd Coffelt & Sheryle Coffelt
7364 Custer Road
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

David W. Holm
3223 NW 3rd Avenue
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Dale Wayne Figart
3328 NW 2nd Avenue
New Plymouth, ID 83655

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Bruce L. Wilson
7242 Boise Road
Fruitland, ID 83619

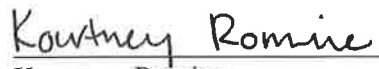
- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

Adam K. Jacobs
7240 Boise Road
Fruitland, ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:

John David Bybee
43 South I Street
Lakeview, UT 97630

- U.S. Mail, postage prepaid
- Hand Delivery
- Email:


Kourtney Romine
Workflow Coordinator