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
Subject:	Docket No. CC-2021-ORG-01-002
Date:	Wednesday, June 23, 2021 04:23:08 PM
Attachments:	20210622 SROG Fallon 1-10 answer to motion to strike.pdf

Hello All,

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

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** **ANSWER OF APPLICANT TO NON-CONSENTING MONERAL OWNERNS' MOTION TO STRIKE**

Pursuant to IDAPA 04.11.01.270.02 and 04.11.01.565, Applicant Snake River Oil and Gas submits this Answer to the "Motion of Non-Consenting Owners and CAIA to Strike Snake River Oil and Gas's Opening, Response and Reply Briefs."

It is difficult to discern any reason for the motion. As the Administrator noted at the June 21 hearing, he has already read and considered all of the parties' briefs. The hearing on just and reasonable terms that the Applicant suggested was unnecessary because no substantial new facts were introduced as compared to the Fallon 1-11 unit had already occurred literally hours before the objecting mineral owners filed their motion. Thus, the motion appears to be moot. Nevertheless, the Applicant will respond to the motion.

It was entirely appropriate to for the Applicant to point out that CAIA is not a party in this proceeding. As the Applicant has previously discussed, persons or entities are parties to a contested case only if they fall within one of several definitions.[1] Because CAIA opposes the application for an integration order, the closest definition of a party would be that of a "protestant." IDAPA 04.11.01.155 defines "protestant" as follows: "Persons who oppose an application or claim or appeal ***and who have a statutory right to contest*** the right, license, award or authority sought by an applicant or claimant or appellant are called "protestants." As the Applicant has previously discussed, Idaho Code § 47-328(3)(b) expressly provides: "***Only an uncommitted owner in the affected unit*** may file an objection or other response to the application[.]" Similarly, §47-328(3)(d) provides: "The oil and gas administrator's decision on an application or a request for an order may be appealed to the commission ***by the applicant or any owner who filed an objection or other response to the application*** within the time required." Thus, CAIA does not have a statutory right to contest the application, and as a result it is not a protestant.

To participate in this matter as a party, CAIA would have to petition to intervene. IDAPA 04.11.01.156 provides: "Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, ***who are permitted to participate as parties pursuant to Rules 350 through 354*** are called "intervenors." Rules 350 through 354 govern the process of petitioning to intervene in a contested case. IDAPA 04.11.01.350 provides: "Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a ***direct*** and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention ***to become a party***." In other words, a person or entity does not become a party until its petition to intervene has been granted, and it may petition

[1] Pursuant to IDAPA 04.11.01.150 through .156, parties to contested cases include applicants, claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors.

to intervene only if it has "a direct and substantial interest" in the proceeding. Thus, IDAPA 04.11.01.351 provides: "Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the ***direct*** and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it."

CAIA has never filed a petition to intervene, so it is not a party. Moreover, it has stated in several filings that it is participating in a "representative capacity."[2] This is a clear admission that it has no *direct* interest in the proceeding, such that it cannot become an intervenor.

Persons or entities not parties may participate in contested cases as "public witnesses." IDAPA 04.11.01.355 provides: "Persons not parties and not called by a party who testify at hearing are called 'public witnesses.' Public witnesses do not have parties' rights to examine witnesses ***or otherwise participate in the proceedings as parties.*** Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 558 and 560, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with Rule 530 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties."

CAIA is not a party. This is not affected in any way by whether the Applicant has filed a motion on the subject. It is not a subject that the Applicant (or the Department) can waive or alter in any way – if CAIA is not a party, no action or inaction by the Applicant (or the

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[2] For example, the objecting mineral owners' opening brief in this matter includes the statement: "Citizens Allied for Integrity and Accountability (hereafter "CAIA") is a non-profit, membership-based organization committed to the responsible development of natural resources in the State of Idaho. CAIA has members within the proposed spacing unit and ***appears here in its representative capacity***." This is an obviously *indirect* and generalized interest in the proceeding.

Department) will make it one. It is in no way improper for the Applicant to point out CAIA's status and object to its attempts to participate beyond its actual status. This is a matter the Administrator should be sensitive to in *all* contested cases in this area, not just the current matter.

With respect to whether new issues have been raised in this proceeding as compared to the proceedings related to the Fallon 1-11 unit, identifying that they have not is a reasonable argument for the Applicant to make in considering what factors should be established in this matter. The Applicant's view that an additional hearing in this matter is unnecessary is unremarkable, and the matter is moot in any event – the "just and reasonable" factors hearing in this matter *actually occurred*. The Motion to Strike appears to be intended merely to generate further dispute and enlarge the proceedings unnecessarily.

Finally, particularly given that all briefing has already been considered by the Administrator and a hearing was conducted regarding "just and reasonable" factors, it is well within the Administrator's discretion forego a strict requirement for motions (even if one were required here), and address CAIA's status based on the facts, argument and authority presented by the Applicant in its briefing. IDAPA 04.11.01.052 provides: "The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, ***the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest.*** Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency." This is clearly a situation where strict requirement of a motion would be "impracticable, unnecessary or not in the public interest," and requiring everything that could be possibly construed to constitute a request for some

action[3] to be addressed through a motion procedure would be contrary to the directive of securing "just, speedy and economical determination of all issues presented to the agency."[4]

The Motion to Strike is largely or entirely moot. It was appropriate for the Applicant to point out that CAIA is not a party, and it was equally appropriate for the Applicant to observe that no new substantive issues have been raised in this matter as compared to the same proceeding involving the Fallon 1-11 unit. For all of the above reasons, the Motion to Strike is a waste of the Administrator's time and resources should be denied.

DATED this 23rd day of June, 2021.

SMITH + MALEK, PLLC

MICHAEL CHRISTIAN
Attorney for Applicant

[3] The logical extension of the Motion to Strike is that virtually *anything* in a brief that resembles urging a result could be subject to being stricken from the record because it was not presented in the form of a motion. This is an absurd result, because the fundamental purpose of a brief is to urge an outcome. Indeed, the objecting mineral owners' own briefing sought affirmative relief, urging the creation of a new and expanded procedure for integration, the creation of subpoena power, and more. It presented none of these in the form of a motion.

[4] Alternatively, given that the Applicant's briefing stated (a) the facts upon which it based its arguments, (b) the legal basis for its position, and (c) the "relief" it could be said to have advocated – restricting CAIA's participation to that properly allowed under the rules, and eliminating unnecessary proceedings where no new substance is provided – its briefing complied with IDAPA 04.01.11.260 and could be treated as a motion – to which the objecting mineral owners and CAIA had a full opportunity to respond.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd 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:
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

[ ] U.S. Mail
[ ] Certified Mail
[ ] Overnight Delivery
[ ] Messenger Delivery
[x] Email: james@idunionlaw.com
marty@idunionlaw.com

/s/ Morgan Burr
MORGAN BURR