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 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PROCEDURAL BACKGROUND

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,

[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 "explain [] 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, 1230 (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.

in Fruitland, Idaho, the Administrator held the hearing on the factors used to determine "just and 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, the City of Fruitland's City Administrator, and Sara Weatherspoon, a Fruitland resident.

Given ambiguity in Snake River's application, the Administrator ordered 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. The Administrator held that continued hearing via Zoom on February 28, 2023.

The Administrator considered the testimony presented and the exhibits received into evidence and hereby makes the following findings of fact, conclusions of law, and order in this matter.

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.
3. On September 2, 2022, Snake River sent known and locatable uncommitted owners by certified mail a copy of the application and hearing date and deadlines. 2/13/23 Letter and Mailing Receipts; Cont. Hr'g. On the same day, Snake River also sent the Payette County a copy of the

application by certified mail. 2/13/23 Letter and Mailing Receipts. As to working interest owners, all current working interest owners in the unit are already working interests with Snake River and therefore noticed through Snake River. Cont. Hr'g Recording.

4. On September 8, 2022, IDL acknowledged that it received Snake River's application and did not request any additional information.
5. Snake River's application requested that IDL publish notice on its website. SR App. 8.
6. Nonconsenting Owners are uncommitted owners in the unit who filed an objection or other response to Snake River's application. They filed a September 23, 2022 opening brief on just and reasonable factors related to the appropriate factors to be addressed in establishing just and reasonable lease terms for mineral rights owners. They did not submit any additional objection or response after the Order Determining Just and Reasonable Factors was issued.
7. Nonconsenting Owners participated in the evidentiary hearing through their attorney. They argued that the application should be denied because they contended that Snake River did not meet its burden of proof to establish just and reasonable terms. Tr. 145:20-151:17.[2] Nonconsenting owners also argued that if the Administrator granted the integration application, he should only integrate one well to Sand C and the sands below it and should specify that there will be neither surface nor subsurface trespass. Tr. 151: 9-17. Nonconsenting owners did not propose any additional alternate terms.
8. CAIA does not own property within the spacing unit or lease any mineral interest in the spacing unit. Tr. 140:12-17.

[2] Tr. refers to the Transcript of the January 12, 2023 evidentiary hearing. The numbers following refer to page and line numbers in that transcript in this format (Page:line).

9. 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 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.

10. Snake River's proposed terms of integration included a request for:

    - A 300% risk penalty for nonconsenting working interest owners
    - A 1/8 royalty for those leased and deemed leased
    - A bonus payment of $100 per net mineral acre for those leased and deemed leased
    - A four-year primary term;
    - 15 days for uncommitted owners to make the election; and
    - The integration order applies to any unknown spouse, devisee, personal representative, successor or assign of all parties subject to the order.

11. Snake River's Exhibit A is a plat map of the unit with uncommitted owners' tracts identified and a number that corresponds with their name and address listed on the resume of efforts.[3] Exhibit B is a declaration from David Smith, geologist for Snake River. Exhibit C is a

[3] Snake River submitted an updated plat map for the hearing as Exhibit SR-2.

declaration of Travis Boney, Landman for Snake River. Exhibit D is the proposed JOA. Exhibit E is the proposed lease form. Exhibit F is a list of tract owners indexed to the plat. Exhibit G is the resume of efforts.[4] Exhibit H is the certified mailing receipts to uncommitted owners. Exhibit I is the form of offer letter. Exhibit J is confirmation of the publication order of the notice of intent to develop. Exhibit K is confirmation of the publication order of the intent to file application.

12. The Application describes the proposed operations as drilling an exploratory vertical well in the SW1/4 of the NW 1/4 of Section 30. The drill site has been leased from Mayo Dairy. SR App 2.

13. A gathering line has been constructed in the vicinity of the proposed vertical well that connects to processing facilities for production. The application states that operations may be similar to existing wells in the area, and that all operations will comply with IDAPA 20.07.02.

14. Snake River's application contains a geologic statement that refers to seismic data for Section 30 and the interpretation of that data. The proposed well is targeting Sand "C", expected to be encountered at a depth of approximately 3600' Measured Depth (MD). Snake River expects to encounter multiple secondary objective sands below Sand C.

15. Exhibit G is Snake River's resume of efforts. It identifies uncommitted mineral interest owners in the unit with their corresponding parcel numbers and acreages. Uncommitted owners listed in Exhibit G are: the Gerald and Darcy Mitchell Family Trust; unknown heirs of A.S. Capps; unknown heirs of Emmett and Lucy Lee; John and Carol Bennett; Mark and Yvonne Korthals; Randall and Julie Korthals; the Cherry S. Holm Family Trust, Gerald and Rebekah Storey; Lloyd and Sheryle Coffelt; Gary Kelley; David Holm; M & D Farms, LLC; Steven Bishop;

[4] Snake River submitted an updated resume of efforts for the hearing as Exhibit SR-3.

Jason Echeverria; the Rex and Karen Wilson Family Trust; Gregory Fleshman; Dale Figart; Bruce Wilson; Adam Jacobs; and John Bybee.

16. Several of the owners listed in Exhibit G signed leases after the application was filed and are no longer uncommitted owners. These owners were Summertime Residential Properties (83.04 acres); Cherry S. Holm Family Trust (2 parcels - 1.02 acres and 18.74 acres); and Gary B. Kelly (1.0 acre). SROG 09/06/22 e-mail to IDL; SROG 11/9/22 e-mail to IDL.
17. At the time of the evidentiary hearing, Snake River had leased approximately ninety-one percent (91%) of the mineral acres in the spacing unit. Tr. 12:25
18. Mr. Boney's declaration attested that Snake River "made good faith efforts to lease the mineral interests" in Section 30. SR Appl 20. Snake River made at least two contact attempts to each of the uncommitted mineral interest owners before the application was filed. Tr. 18:24 – 19:2. Some of those efforts began in October 2021 and continued through August 2022. SR-3 Resume of Efforts. At least one contact attempt was made by certified mail. SR App. 20, 108-127; Tr. 19:3-6. Some owners did not respond to attempted contacts by mail and phone. Tr. 25:1-3.
19. Two tracts in the unit (Tract 13 and Tract 27) include mineral interests with owners who could not be located. SR App. 21. For Tract 13, a 12.5% mineral interest for approximately 4.87 net mineral acres was conveyed to A.S. Capps and Florence Capps in 1952. *Id.* For Tract 27, a 50% mineral interest, for approximately 23.61 net mineral acres, was reserved to Emmett and Lucy Lee in 1945. *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.*

20. 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 and requested that the owner owners contact Snake River. *Id.*
21. 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 A.S. and Florence Capps and Emmet W. and Lucy Lee. *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.*
22. The August 24, 2022 legal notice included 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.
23. 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 A.S. and Florence Capps and Emmet W. Lee and Lucy Lee. 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.

24. Snake River received one response to the published notices from a person that said she was a daughter of a daughter of the Capps and that the first-generation daughter had passed away. Tr. 24: 5-8. Mr. Boney spoke with her and told her he would follow up. Tr. 24: 8-9. He reached out to her three or four times, but she never responded or supplied documentation that she had an interest. Tr. 24: 10-14.

25. The highest bonus payment paid to leased mineral interest owners in the unit is $100 per net mineral acre for all tracts over one acre. SR App. 19; Tr. 13: 10-21. For all tracts one acre or less, Snake River paid a pro rata bonus based on $100 per net mineral acre. SR App 19-20; Tr. 27: 10-19.

26. Snake River's predecessor in interest paid a flat $100 bonus for tracts under one acre. SR App. 19-20. Snake River did not pay a flat $100 bonus for voluntary leases of tracts under one acre. Tr. 26:19-27:4.

27. Mr. Boney testified that Snake River has paid a $50 an acre bonus in the area when he previously worked in the area, which was 2011 through 2014. Tr. 28:8-14; 12:4-7. He did not remember paying the $50 bonus in this unit. Tr. 29:1-10.

28. No existing lessor in the unit has signed a lease with a bonus greater than $100 an acre. SR App. 20.

29. No existing lessor in the unit has signed a lease with a royalty more than 1/8. SR App. 20.

30. Mr. Boney testified that how well established a field is, access to markets, and competition for leases are all factors that may impact royalty rates. Tr. 29:11 – 30:2; 33:6-8.

31. Mr. Brown testified that Snake River has voluntarily leased somewhere between 400 and 500 mineral interest owners in the basin. Tr. 85:10-14. Some of those tracts were leased four or five years ago for a bonus of $25. Tr. 76: 9-12.

32. No lease in the unit has a primary term of less than three (3) years with an option to extend for an additional three (3) years. Several leases have primary terms of five (5) years with an option to extend for an additional three (3) years. SR App. 20.

33. Voluntary leases in this unit and elsewhere in the basin are not currently limited by formation, depth, or well. Tr. 39:1-8; 52:14-17.

34. Snake River's proposed JOA is the American Association of Professional Landmen ("AAPL") Form 610, the 1989 version. Tr. 46. The AAPL Form 610, 1989 version has been used by many participants in the oil and gas industry in many states, including by Weiser-Brown Oil Company, the company who is the sole member of Snake River Oil and Gas. Tr. 42, 46. The proposed JOA is a similar form to the JOA used in prior integrations in this area by the previous operator. Tr. 47:8-11. Snake River has used a similar JOA as a working interest owner for over 1,000 wells and has used this form in other states. Tr. 46:18-25. The rate of supervision in the JOA is similar to what Weiser-Brown pays in JOAs in operations in other states. Tr. 51:21 – 52:1-5.

35. Mr. Brown testified that Arkansas's oil and gas commission has used AAPL Form 610 as a JOA for use in integrations. Tr. 47:1-6.

36. Mr. Brown testified that Snake River's JOA with its working interest owner operating partners provides a 500% risk penalty for working interest owners. Tr. 48:2-7. Snake River's proposed JOA in its application requested a 300% risk penalty. SR. App.

37. Mr. Brown could not remember ever participating in a unit with a risk penalty less than 300% in any state he has operated in. Tr. 65:10–66:4.

38. Mr. Brown testified that there was nothing about this unit that led him to conclude that using the proposed JOA would not be appropriate. Tr. 47:12-15.

39. Snake River's proposed lease has special terms and conditions attached in Exhibit B to the lease. SR App. 83-84. One condition is a "no drill clause" that provides "no drilling operations shall occur on the leased premises." SR App, 83; Tr. 49:20-25. Another condition is that "surface operations on lands leased herein will be mutually agreed upon by Lessor and Lessee" and "shall require a separate Surface Use Agreement to be entered into by and between Lessor and Lessee prior to any surface operations being conducted." SR App. 83; Tr. 50:3-9. These terms were not normally included in voluntary leases in the basin. Tr. 50:10-14.

40. Snake River's proposed form of lease is similar to the form of lease used elsewhere in this unit and across the basin, with the exception of the "no drill clause" and a condition providing for no surface operations without a surface use agreement. Tr. 15:20-23; 48:18-25. Aside from those exceptions, the proposed lease is also similar to the form of lease used in other states. Tr. 15:24-25, 48:18-21; 54:3-6. The exceptions are also not commonly found in leases in the unit. Tr. 50:10-17.

41. Mr. Brown testified that Snake River's proposed lease did not affect the private right of action against the operator for owners who choose not to participate in the well. Tr. 50:22- 51:2.

42. Snake River's form offer letter to mineral interest owners stated that it "desires to reach an agreement with you pertaining to mineral rights owned by you with the intention to develop them within a gas or oil unit." The offer provided a four-year primary term, a $100 per net mineral acre one-time signing bonus payment, a 1/8 royalty on marketable gas and oil for the life of the well, and an option to extend the primary term for three years at $100 per net mineral acre. The offer letter was included in a mailing from Snake River to uncommitted owners. SR App.

43. Mr. Smith testified that the initial well is a "wildcat" well in an area with limited knowledge and experience with the geology and lack of proven production, which has a higher degree of risk for Snake River. SR App. 15-16; Tr. 29:18-20, 105:15-21.

44. Mr. Smith testified that it was possible additional wells could be needed to access other secondary sources of supply under their initial primary objective target. Tr. 92-93. While the secondary objectives appear to be weak, this is a frontier basin and drilling the primary well may uncover additional information that uncover whether the secondary objective has economic merit. Tr. 92-95, 102, 110-113. Accessing secondary objectives may require an additional well. Tr. 113:10-18.

45. Based on Mr. Smith's experience in the area and review of data from the area, he did not expect drainage of nearby sections. SR App. 15.

46. The well will be drilled to target a conventional sand with stratigraphic variability, which makes targeting more complex and higher risk. SR App 16.

47. The well will have additional mobilization and operating expense because well service contractors are largely unavailable locally and drilling rigs are sourced from outside the area. SR App. 16.

48. Three public witnesses testified at the January 12, 2023 evening hearing session: Joey Ishida, Stuart Grimes (on behalf of City of Fruitland), and Sara Weatherspoon. Mr. Ishida asked questions about wells and production in the area. Ms. Weatherspoon noted that she came for more information and had concerns and questions about wells and their effects on the environment and community. Mr. Grimes notes that the city is concerned about oil and gas activity close to its infrastructure, including a water treatment plant and wastewater treatment plant, as well as maintaining reasonable setbacks from residences.

49. This Findings of Fact, Conclusions of Law, and Order incorporates by reference the entire record in this matter and accompanying exhibits, comments from mineral owners and public witnesses, correspondence with IDL personnel, notices, pleadings, responses, and the hearing recordings and transcripts.

CONCLUSIONS OF LAW

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. Notice to uncommitted owners

1. 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." Snake River mailed its application and supporting documents to all uncommitted owners within the spacing unit, as well as the respective county. There are no current working interest mineral interest owners outside Snake River's partner group within the unit. Thus, this requirement in Idaho Code § 47-328(3)(b) is met.

2. Idaho Code § 47-328(3)(b) also requires that for "any uncommitted owners and working interest owners who cannot be located, an applicant shall publish notice of any application for an order, notice of hearing and response deadline once in a newspaper of general circulation in the county in which the affected property is located,

3. and request the department publish notice on its website within seven (7) calendar days of filing of the application." Here, Snake River's application requested that IDL publish notice on its website. The Administrator takes official notice pursuant to IDAPA 04.11.01.602 that IDL published notice of the application, notices of hearing, and response deadlines on its website. Snake River also published notice of the application, hearing, and response deadline in the Argus Observer on August 31, 2022. That advertised notice had the proper legal description of Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho. Thus, Idaho Code § 47-328(3)(b) is met.

D. Idaho Code § 47-320(4)(a)-(j)'s requirements are met

1. Idaho Code § 47-320(4) requires that an integration application substantially contain: (a) applicant's name and address; (b) a description of the spacing unit to be integrated; (c) a geologic statement concerning the likely presence of hydrocarbons; (d) a statement that the proposed drill site is leased; (e) a statement of the proposed operations for the spacing unit, including the name and address of the proposed operator; (f) a proposed JOA and a

proposed lease form; (g) a list of all uncommitted owners in the spacing unit to be integrated, including names and addresses; and (h) an affidavit indicating that at least sixty-seven percent (67%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner.

2. Snake River's application contains Snake River's name and address, described the spacing unit; included a geologic statement concerning the likely presence of hydrocarbons; stated the drilled site was leased from Mayo Dairy; included proposed operations; included a JOA and lease form; contained a list of uncommitted owners, and included a declaration from Mr. Boney stating that at least 67% of acres were leased. Therefore, the application substantially contains the information required by Idaho Code § 47-320(4)(a)-(h).
3. Idaho Code § 47-320(4)(i) requires an affidavit stating the highest bonus payment paid to a leased owner in the spacing unit prior to filing the integration application. The application includes a declaration from Mr. Boney stating that the highest bonus payment Snake River paid in the unit was $100 per net mineral acre for tracts over one acre. For tracts one acre or less, Snake River paid a pro rata bonus based on $100 per acre. The Application also states that leased taken by the applicant's predecessor in interest included a bonus of a flat $100 for tracts under one acre. Thus, the application substantially meets Idaho Code § 47-320(4)(i)'s requirement.
4. Idaho Code § 47-320(4)(j) requires that the resume of efforts document "the applicant's good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit." At least one contact must be by certified U.S. mail

sent to an owner's last known address. Idaho Code § 47-320(4)(j). If an owner is unknown or cannot be found, the applicant must publish a legal notice of its intention to develop in a newspaper of general circulation in the county where the unit is located and request that the owner contact the applicant. *Id.* If any owner requests no further contact from the applicant, the applicant is "relieved of further obligation to attempt contact to reach agreement with that owner." *Id.*

5. Snake River made at least two contacts with each of the uncommitted mineral interest owners in the months before the application was filed. At least one contact attempt to the known and located uncommitted owners was made by certified mail. Some of these efforts began as early as October 2021 and continued through August 2022. As to the unknown owners, on August 17, 24, and 31, 2022, Snake River published notice of its intent to develop in the Argus Observer, a newspaper of general circulation in Payette County. That notice also requested that the unknown owners contact Snake River. Thus, the resume of efforts meets Idaho Code § 47-320 (4)(j)'s requirements.

E. Integration is required to be granted upon terms and conditions that are just and reasonable as required by Idaho Code § 47-320.

1. Idaho Code § 47-320(1) provides that upon the application of any owner in a proposed spacing unit, the Administrator:

> shall order integration of all tracts of interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom.

It further provides that an integration order "shall be upon terms and conditions that are just and reasonable." Idaho Code § 47-320(1).

2. The operations of a well upon any portion of a spacing unit under an integration order "shall be deemed for all purposes the conduct of such operations upon each separately owned tract in

the spacing unit by the several owners thereof." Idaho Code § 47-320(2). The "portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon." *Id.*

3. 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 because the Legislature has 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 purposes of the Oil and Gas Conservation Act ("Oil and Gas Act"). The Administer 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 the 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 with the Department?

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?

4. An integration order "shall authorize the drilling, equipping and operation, or operation, of a well on the spacing unit; shall designate an operator for the integrated unit; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest." Idaho Code § 47-320(3).

5. Each integration order shall provide for four participation options: (1) working interest owner; (2) nonconsenting working interest owner; (3) leased; (4) deemed leased. Idaho Code § 47-320(3) articulates those options as follows:

> **(a) Working interest owner.** An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into a joint operating agreement approved by the department in the integration order.
>
> **(b) Nonconsenting working interest owner**. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner, is a nonconsenting working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well, and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved by the department in the integration order.

(c) Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive no less than one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.

(d) Deemed leased. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.

F. Idaho Code § 47-320(3)'s economic terms of integration are determined and are just and reasonable.

1. The Administrator is required by Idaho Code § 47-320 to establish certain economic terms. As to the JOA, the term is the risk penalty that applies to the nonconsenting working interest owners. Idaho Code § 47-320(3)(b). As to those leased or deemed leased, the terms are the bonus payment and royalty amount. Idaho Code § 47-320 (3)(c), (d). The risk penalty, bonus payment, and royalty payment terms are discussed below.

2. Risk Penalty for Non-consenting Working Interest Owners.

    a. An operator "shall be entitled to recover a risk penalty of *up to* three hundred percent (300%)" of a nonconsenting working interest owner's share of the cost of drilling and operating the well under the integration order's terms. Idaho Code § 47-320(3)(b) (emphasis added). Snake River's application proposes a 300% risk penalty for nonconsenting working interest owners.

    b. Nonconsenting owners appeared to argue that Snake River's proposed risk penalty was not reasonable because does not take into account risks to their property. However, nonconsenting owners did not present evidence about any risks to their property or propose what risk penalty should be used.

c. The Administrator determines that a 300% risk penalty is appropriate for several reasons. The 300% risk penalty requested is lower than the 500% risk penalty provided in the JOA for Snake River's current working interest owners. This means that a 300% risk penalty gives nonconsenting owners more favorable terms that those who are currently working interest owners. The well is exploratory as it is located in an area with limited knowledge and experience with the geology and lack of proven production, which has a higher degree of risk for Snake River. Snake River plans to drill the vertical well to target a conventional sand, which makes targeting more complex and higher risk. Mr. Brown additionally testified that he could not recall having participated in a unit with a risk penalty less than 300% anywhere, not just Idaho. Also, there are additional mobilization and operating expenses because well service contractors are largely unavailable locally and drilling rigs are sourced from outside the area. For these reasons, the Administrator determines that the 300% risk penalty is appropriate and just and reasonable.[5]

3. Bonus payment for leased and deemed leased. Leased and deemed leased owners shall receive the "highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application." Idaho Code § 47-320(3)(c), and (d). This is supported by the application requirement of an "affidavit stating the highest bonus payment paid to a leased owner in the spacing unit . . . prior to filing the integration application." Idaho Code § 47-320(4)(i). Snake River's application requests a $100 bonus payment per net mineral acre for leased and deemed leased owners. Snake River paid $100 per net mineral acre for all

[5] Nonconsenting owners argued that the cost of possible litigation was not a risk that should be considered. The Administrator did not consider the possible cost of litigation in his decision on the appropriate and just and reasonable risk penalty.

tracts larger than one acre and $100 per net mineral acre for lots smaller than one acre. However, the application's cover letter also mentioned that the previous operator had made $100 flat bonus for lots smaller than one acre. Idaho Code § 47-320 (3)(c) and (d) expressly state that bonus will be the highest payment the operator paid. The statute does not extend to previous operators, and Snake River did not pay a $100 flat fee to any leased mineral interest owners who owned less than one acre. Thus, it is determined that the bonus payment for those leased and deemed leased shall be $100 per net mineral acre for all tracts.

4. Royalty Payments for Leased Owners.

   a. Idaho Code § 47-320(3)(c) gives uncommitted owners the option to enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The statute dictates that royalty paid to a leased owner shall be "no less than one-eighth (1/8) royalty." Idaho Code § 47-320(3)(c). This allows the Administrator to set a royalty higher than 1/8 for uncommitted owners who elect to sign the lease, but he cannot set a royalty lower than 1/8. Those deemed leased are always paid a 1/8 royalty. Idaho Code § 47-320(3)(d).

   b. Based on the evidence in the record regarding royalties paid to others leased in the same unit and the royalty paid to those in nearby units, the Administrator determines that those selecting the "leased" option shall be paid a 1/8 royalty. A royalty of 1/8 was paid to all other voluntarily leased mineral interest owners in the unit. Nonconsenting owners argued that the royalty should be adjusted to reflect their risks, but did not provide any evidence of those risks. While nonconsenting argued that limited competition affects royalty rates and there is a lack of competition in this unit, nonconsenting owners did not explain or provide evidence as to why awarding a royalty

higher than 1/8 is justified in this particular unit given that the unit is exploratory and all voluntary lessors agreed to a 1/8 royalty. Therefore, the Administrator finds that a 1/8 royalty is appropriate and a just and reasonable term to include for leased owners.

G. Factors Used to Determine Just and Reasonable Terms

Snake River proposed terms in its submitted JOA and form of lease, in addition to several terms listed in its application cover letter. Nonconsenting owners argued Snake River had not met its burden of proof. Other than that argument, nonconsenting owners proposed only the following specific alternate terms: that the integration should be limited to one well, that the integration should be limited to Sand C and sands below it produced from one well, and that there should be no surface or subsurface occupation. All factors used to determine just and reasonable terms are listed below and used to evaluate the proposed JOA and proposed lease in general and several specific terms in the proposed lease.

Factor 1: Are the proposed terms addressed in another source of law?

The Administrator may consider whether a proposed term is already addressed by another entity and whether proposed terms are already addressed by a IDL permit. No evidence was presented about whether a term proposed was already addressed by another entity, including any local ordinances to protect public health, safety, and order. As to IDL permits, Snake River has not yet filed an application for permit to drill ("APD") in this unit. APDs typically include the details of how the well will be equipped, drilled, and operated as well as any conditions for the protection of freshwater supplies. At that time, IDL evaluates the operator's specific plan, potential impacts, and specific location for a well and only grants an APD after such analysis. For example, an APD requires "an accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey." IDAPA 20.07.02.200.04.a. Rule also provides that applications for permits to drill must address the location of the nearest water supply; the type of

tools and logging program; the proposed target depth and target formations; details on casing and cement; the drilling plan; erosion and sediment control; reclamation plan; and additional information for well treatments if applicable. IDAPA 20.07.02.200.04.b-j. Thus, the permit to drill will include additional details related to drilling, operating, and equipping the well. No evidence or argument was provided that these terms, including whether the integration order should be limited to one well, are addressed in another source of law besides the Oil and Gas Act, which is discussed in Factors 3 and 4, below. As a result, applying this factor to the evidence leads to the conclusion that this integration order does not need to specify additional details as to drilling, equipping, and operating the well because those details will be addressed in a permit to drill.

Factor 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?

The Administrator will consider industry standards terms and conditions, the consistency of those standards, and how those standards apply to this particular unit.

Proposed JOA

Snake River's proposed JOA is the AAPL Form 610, the 1989 version, which has been used in the oil and gas industry in many states. This JOA has been used in other states by Weiser-Brown Oil Company, a company affiliated with Snake River. Further, Mr. Brown testified that the Arkansas Oil and Gas Commission had adopted AAPL Form 610, the 1989 version of a model form JOA.

The proposed JOA is a similar form to the JOA used in prior integrations in this area by the previous operator. Also, Snake River uses a similar JOA with its working interest partners, indicating Snake River itself finds these terms to be just and reasonable in its own transactions. Mr. Brown testified that there was nothing about this unit that let him to conclude that using the

proposed JOA would not be appropriate. Those who choose this option would be able to participate on the same basis as the existing working interests, except with a more favorable risk penalty of 300%, versus the higher 500% risk penalty used with Snake River's partners.

Aside from arguing the risk penalty should consider their risks, nonconsenting owners did not propose alternate terms to the JOA or present any evidence that the JOA differed from industry standards. They did not present any evidence that the JOA was inconsistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies. They also did not claim the JOA was not applicable to the unit or its operations or present any related evidence.

Thus, applying this factor to the evidence presented weighs towards to the conclusion that Snake River's proposed JOA is just and reasonable because the proposed JOA is (a) consistent with industry standards, both in Idaho and other states; (b) employs similar terms that Snake River has agreed to as a working interest owner and (c) has terms applicable to the unit and its operations.

Proposed Lease

Overall, Snake River's proposed lease is also similar to a form of lease used in other states. Snake River's proposed lease is also similar to other voluntary leases that Snake River has taken in the area and unit, with a few exceptions. Those exceptions are a "no drill clause" and a condition that provides that there will be no surface operations without surface use agreement. Those exceptions are not normally included in leases in the proposed unit. Evidence in the record establishes that other than those exceptions, the proposed leased terms are commonly used in the industry and applicable to this unit, which weighs towards finding that these commonly used terms are just and reasonable. The applicability of the uncommon lease terms to the unit and its operations are discussed further in Factors 3 and 4, below.

Factor 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?

Proposed JOA

Snake River's witnesses testified that the proposed JOA was similar to the JOA it uses with its working interest partners except for the proposed JOA had a lower risk penalty of 300%. This lower risk penalty is within the statutory limit, and appropriate for the reasons discussed above. Thus, this factor also weighs towards determining the JOA is just and reasonable.

Proposed Lease

Snake River's witnesses also testified that overall, the proposed lease was similar to other voluntary leases signed in the unit and surrounding area. This includes that the terms of voluntary leases in this unit and elsewhere in the basin are not currently limited by formation or depth. The terms in Snake River's proposed leases were similar to other voluntary leases in the unit, as well as leases in the surrounding area, except for the no drill term and requirement for a surface use agreement. This weighs towards finding those terms just and reasonable.

Nonconsenting owners proposed that the integration be limited to one well and that the integration prohibit surface and subsurface occupation. As to whether the integration should be limited to one well, they did not present any evidence that this was a term similar to voluntary leases in the unit or to leases in the surrounding area. Conversely, as to the number of wells, all evidence in the record indicates that leases in the unit and area do not contain limits on the number of wells. Instead, voluntary leases are not limited by formation, depth, or well. Because the JOA and lease contain terms that are similar to many other voluntary agreements in the unit and surrounding area, this factor weighs towards no limit on wells, depth, or formation as a just and reasonable term.

As to surface occupancy, evidence in the record indicates that most voluntary leases do not have the proposed no drill clause or the proposed requirement for a surface use agreement. Although this term is not similar to other voluntary leases in the unit, it is appropriate as a just and reasonable term because Snake River has proposed a more favorable term to nonconsenting owners in that surface use will not occur on their properties without their consent and agreement. Indeed, this is a term that nonconsenting owners requested.

As to subsurface occupation, the proposed lease does not prohibit such use. Nonconsenting owners propose that the lease should include a term prohibiting subsurface use. Snake River did not present any evidence as to the need for subsurface occupation to occur on the tracts of uncommitted owners. Snake River has proposed a vertical well and did not indicate that any later directional wells might need to cross uncommitted owners' subsurface. While Mr. Brown testified that he believes the lease gave it the right to run pipelines under the surface of uncommitted owners,[6] Snake River did not establish any current or future need to do so in this unit. Thus, while allowance for subsurface occupation is similar to other voluntary agreements in the unit, nonconsenting owners' proposed term to prohibit subsurface occupation is appropriate because Snake River has not established any need in this particular unit that would require subsurface occupation to protect correlative rights and develop the unit. Thus, this factor weighs towards finding just and reasonable a term that prohibits subsurface occupation.

Factor 4: Are any proposed terms, including those addressed at drilling, equipping, and operating the well, consistent with the Oil and Gas Act and necessary given site-specific conditions?

[6] It is possible that running pipelines underground may not be a subsurface activity as it may involve some surface use. Given that Snake River has not established the need for subsurface use, the Administrator does not address that question now.

Nonconsenting owners argued in their just and reasonable factors brief that Idaho Code § 47-320 required the Administrator to articulate "whether a well is authorized to be drilled, and which precise well ("a well" in the terms of the statute) is authorized"; how the well will be drilled, by what methods; how the well will be equipped once drilled; and how the well will be operated. After this factor was included in the just and reasonable factors order, nonconsenting owners provided no additional proposed terms regarding drilling, equipping, and operating the well, except for arguing that the order should provide for only one well and not permit surface or subsurface occupation.

Authorizing additional wells

Nonconsenting owners propose that the integration order should include a term that limits the integration to one well. Snake River's application did not expressly request that that the integration order should provide for wells beyond the one well proposed, but its proposed lease did not limit the minerals leased to a certain formation or depth. Snake River clarified through testimony at hearing that the integration should not be limited to one well and it was possible Snake River would drill additional wells in this unit while complying with spacing laws.

Indeed, Idaho Code § 47-320(1) leaves open the possibility an integration order may be for more than one well when it provides that integration can be ordered "for drilling or a well or wells, development and operation thereof and for the sharing of production therefrom." This statutory language directly refutes nonconsenting owners' claim that the integration is always limited to only one well. Instead, integration is for "the development and operation of *the spacing unit*." Idaho Code § 47-320(1) (emphasis added). Indeed, this spacing unit is a state-wide spacing unit composed of a single governmental section. *See* Idaho Code § 47-317. While statewide spacing does not permit drilling more than one well to the same source of supply, statewide spacing does

not prohibit additional wells to additional sources of supply within a statewide spacing unit. Other than statewide spacing, there is no spacing order for this unit. Indeed, the Oil and Gas Act permits integration of a statewide spacing unit to apply to more than one well to different sources of supply.[7]

As discussed above, the proposed lease commonly agreed to by voluntary lessors in this spacing unit and elsewhere is not limited by formation or depth or well. Additionally, Mr. Smith testified that it was possible additional wells could be needed to access other secondary sources of supply under their initial primary objective target. While Mr. Smith testified that the secondary objectives appeared to be weak, this is a frontier basin and drilling the primary well may uncover additional information that uncovers whether the secondary objective has economic merit. Accessing secondary sources may require an additional well or wells. Snake River has therefore established that additional sources of supply may exist given the circumstances in this unit, and that additional wells may be required to access oil and gas in this state-wide spacing unit. Thus, not limiting this integration order to only one well will protect the correlative rights of mineral interest owners by allowing access to additional sources of supply within the spacing unit they are already a part of, prevent waste of the resource, and permit the development and operations of a spacing unit as a whole.

Nonconsenting owners argue the integration order should be limited to one well because of uncertainty, specifically uncertainty as to risks, operations, and future circumstances. However, as explained already, nonconsenting owners did not present any evidence as to the risks of one well or multiple wells or of certain operations. While it is possible that the circumstances may

[7] If Snake River decided it needed to drill another well to the same source of supply in this same unit, then it would need to make a request through the appropriate administrative process to do so and obtain authorization. However, that action is not proposed or authorized in this case.

change in the future, including that the unit may at some point no longer be exploratory, this order includes terms explained below in the shut-in royalty section that direct how the order may terminate following cessation or drilling operations or production. Because a lease that is not limited by formation, depth, and well in a state-wide spacing unit is consistent with the Oil and Gas Act, protects correlative rights in this unit as explained above, and is supported by other factors as explained above, the Administrator determines it would not be a just and reasonable term to limit the integration order to one well.

How the well will be drilled, equipped; and operated

Snake River's application notes that all operations will be conducted in compliance with IDAPA 20.07.02. The lease also provides that "all operations conducted under this Lease, including permitting, drilling, production, pooling, and unitization, plugging and abandonment of wells, and surface reclamation, shall be done pursuant to and in accordance with applicable federal, state, and local rules and regulations." SR App. 72. Thus, both the lease and Snake River's application acknowledge the necessity of compliance with the Oil and Gas Act and rules, which establishes basic requirements of operations.

In addition, a JOA dictates how the working interest owners for a well interact, including how the well is operated. For example, the JOA includes provisions that outline notice and reporting for drilling and testing operations, the priority of operations, and how expenses and revenues from the well are shared. A JOA governs those who choose to be a working interest owner or a nonconsenting working interest owner. Thus, those that choose to participate by agreeing to the JOA can be involved in operational decisions pursuant to the JOA.

While nonconsenting owners asked Snake River's witnesses several questions about operations, they did not propose any alternate terms for how the well will be drilled, equipped, or

operated or present any evidence to support any possible alternate terms. Because the lease and JOA address subsequent operations that comply with Idaho law and no evidence was presented indicating a reason for additional detail, this factor weighs towards finding the terms regarding operations, drilling, and equipping the well to be just and reasonable.

Four-year primary term

Snake River's proposed lease includes a four-year primary term with no renewal option. SR App. 80. Mr. Boney testified that most leases he has taken in the basin have a four-year primary term with a three-year option. Tr. 13:10-17. His declaration stated that no voluntary lessor signed a lease with a primary term less than three years with an option to extend for three years. SR App 20. During the hearing Snake River clarified that the proposed form of the lease is for the whole declaration, as opposed to one of the leases (where) the primary term is three years with no option to extend. Tr. 144:16-19. Because most leases in the unit and area have a similar four-year primary term, as well as the fact that this is an exploratory field that may take additional time and resources to initiate development, the Administrator determines that four years for a primary term is a just and reasonable term.

Shut-in royalty clause

Snake River's proposed lease includes a shut-in royalty clause in paragraph 4. SR App. 69. That paragraph provides:

> Where Gas from a well capable of producing Gas, or from a well in which dewatering operations have commenced, is not sold or used after the expiration of the primary term, Lessee shall pay or tender as royalty to Lessor at the address set forth above One Dollar ($1.00 per year per net mineral acre, such payment or tender to be made on or before the anniversary date of this Lease next ensuing after the expiration of ninety (90) days from the date such well is shut in or dewatering operations are commenced and thereafter on or before the anniversary date of this Lease during the period such well is shut in or dewatering operations are being conducted. If such payment or tender is made, it will be considered that Gas

> is being produced within the meaning of this lease. Failure to properly or timely pay or tender such shut in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

This provision essentially allows the lease to be held in perpetuity after the primary term for $1.00 a year per net mineral acre without any production. In addition, the operator's failure to timely pay does not operate to terminate the lease.

In the Administrator's experience, operators can use a term like this to hold a lease during times of economic uncertainty when market prices decline, and production is not economic. Other leases in the unit and area have a similar term. Additionally, this is an exploratory field that may require additional time and resources to best produce the well and do so efficiently. For these reasons, the Administrator determines that having a shut-in royalty is a just and reasonable term.

However, to foster, encourage, and promote the development, production, and utilization of oil and gas consistent with Idaho Code § 47-311, to ensure production is resumed in a reasonable time, and to ensure certainty in the term of the order for both IDL and mineral interest owners, the Administrator determines it is just and reasonable in this exploratory unit to limit the term of the shut-in royalty to one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit. After either of the above time periods is reached the integration order will be terminated.

Factor 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?

Surface

Snake River's application provides that no drilling operations will occur on the surface of the integrated acres. SR App. 2. It also provides that surface operations on integrated acres "will be mutually agreed upon by Lessor and Lessee" and "shall require a separate Surface Use Agreement to be entered into by Lessor and Lessee prior to any surface operations being

conducted." In other words, Snake River will not physically occupy the surface of integrated owners without their permission, for drilling or otherwise. Thus, nonconsenting owners request for a term prohibiting surface occupation is already included in Snake River's proposed lease. However, given nonconsenting owners' questions and potential confusion about conflicting language in the lease,[8] the Administrator will include a term in the integration order to clarify that no physical occupation will occur on the surface estate of uncommitted owners without a surface use agreement. Given Idaho Code § 47-420(4)(d)'s requirement to have the "drill site" leased and that Snake River does not propose any surface use without a surface use agreement in place, the Administrator determines that it would be just and reasonable to include a condition in the integration order that no drilling activities or physical occupation will occur on the surface or subsurface of any deemed leased owners without a surface use agreement.

Subsurface

Nonconsenting Owners propose a term prohibiting subsurface occupation of deemed leased tracts. Snake River's proposed lease does not put any limit on subsurface use of a property.

Idaho Code § 47-320's statutory language requires that after integration, all tracts are treated as a common interest for drilling, development, operation, and sharing of production. Idaho Code § 47-320(1) provides that upon meeting certain requirements, the Commission "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.*" Idaho Code § 47-320(1) (emphasis added). Idaho Code § 47-320(2) explains the implications of forced pooling further,

[8] The first paragraph of Snake River's proposed lease provides Lessor grants the oil, gas, and hydrocarbons "with easement for laying pipelines and telecommunications lines, and construction of roadways and structures thereon . . . . and the exclusive surface and subsurface rights and privileges related in any manner to any and all such operations."

stating "all operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, *shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof.*" In other words, operations on one tract in the unit are the same as operations on another tract in the unit owned by a different owner. Functionally, the statute "deems" every tract in the unit as having a common interest in drilling and operating the unit. Idaho Code § 47-320(2) goes on to explain how that applies to production of oil and gas from the unit. It provides that "[t]hat portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes to have been actually produced from such tract by a well drilled thereon." These statutory requirements indicate that after the unit has been pooled as a common interest, the Legislature has allowed for the crossing of a subsurface wellbore within all tracts, including those tracts of uncommitted owners.

Further, the Oil and Gas Conservation Act's statutory framework creating a common interest in the unit is consistent with holdings of courts in other states analyzing similar circumstances. *See Cont'l Res., Inc. v. Farrar Oil Co.*, 559 N.W.2d 841, 846 (N.D. 1997) (holding subsurface occupation was not a trespass when a pooling state provided the that oil and gas operations on forced pooled units are "deemed, for all purposes" to be the proper "conduct of such operations upon each separately owned tract" in the unit "by the several owners thereof."; *Nunez v. Wainoco Oil & Gas Co*, 488 So.2d 955, 963 (1986) (forced pooling "convert[s] separate interests within the drilling unit into a common interest with regard to the development of the unit and the drilling of the well" and "protect[s] private property interests, or 'correlative rights' of nondrilling landowners").

This statutory approach to establish a common interest in all tracts for the development of oil and gas in a unit ensures the fulfillment of the correlative rights of each owner within the unit. Indeed, the Commission's duty is to "prevent waste of oil and gas and to protect correlative rights." Idaho Code § 47-315(1). Correlative rights are "the opportunity of each owner in a pool to produce his just and equitable share of oil and gas without waste." Idaho Code § 47-310(4).

However, in this case Snake River has not established that there is any need for the proposed wellbore or any future wellbore to cross uncommitted tracts to protect the correlative rights of all owners within the unit. Snake River proposes a vertical well on a leased tract. While Snake River's witnesses testified that there was a possibility that subsequent wells could be directional, they did not identify any specific need to occupy the subsurface of uncommitted owners' properties. Snake River has not established that if a no subsurface occupation condition were placed on deemed leased tracts, then one owner could prohibit all other owners from having the opportunity to produce their just and equitable share of oil and gas in the unit. Thus, weighing all the factors, the Administrator determines that a condition prohibiting subsurface occupation would be a just and reasonable term and condition for the unit.

Factor 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?

As explained above, Snake River's proposed lease term prohibits drilling operations and requires a surface use agreement for any use of an uncommitted owner's surface. Hence, these terms prohibit physical occupation on the surface of any deemed leased owners and are more favorable to nonconsenting owners than voluntary leases in the unit. Therefore, a term prohibiting

surface occupation without a surface use agreement is a just and reasonable term. Thus, this factor does not apply.[9]

Factor 7: Do the unit's circumstances and operations require additional bonding with the Department?

Nonconsenting owners presented no evidence that the unit's circumstances and operations required additional bonding. Indeed, at the evidentiary hearing no party presented any evidence of unusual conditions, horizontal drilling, or other circumstances that suggest this well has potential risk or liability in excess of that normally expected. For those reasons, no bonding is required in this order.

Factor 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?

Mr. Brown testified at hearing that he believed that Snake River's proposed lease did not affect the private right of action against the operator for owners who choose not to participate in the well. Several terms in the proposed lease address terms associated with liability, including: Exhibit B, paragraph 7, Liability; Exhibit B, paragraph 8: Liability Insurance; Exhibit B, paragraph 12, Cumulative Remedies. However, to ensure the proposed lease does not affect the private right of action against the operator for integrated owners that do not choose to participate as an owner, the Administrator determines it is just and reasonable to include a term that a deemed leased owners retain any private right of action they have in law against the operator for any future harms.[10]

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[9] Idaho Code § 47-334(2)'s grant of permission to enter and use surface land does "not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations." Idaho Code § 47-334(5).

[10] The Administrator does not determine whether such a private right of action exists in law for certain situations with certain facts. Instead, the intent is to limit any liability limits imposed in the proposed lease.

H. Summary of Terms and Conditions Established in this Order

Based on the just and reasonable factors analysis articulated above, the Administrator establishes the following additional terms and conditions:

- The proposed JOA is approved as just and reasonable with a 300% risk penalty of a nonconsenting working interest owner's share of the cost of drilling and operating the well under the integration order's terms.
- The proposed lease is adopted as just and reasonable as modified by the following conditions:
    - 1/8 royalty for those leased and deemed leased.
    - $100 bonus per net mineral acre for those leased and deemed leased
- The following terms are adopted as just and reasonable for those deemed leased:
    - No surface or subsurface physical occupation by the operator is permitted on the lands of deemed leased owners.
    - A four-year primary term is approved; no renewal term to extend the primary term is permitted.
    - Well drilling operations must begin within three years
    - The order will be terminated one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit. After either of the above time periods is reached the integration order will be terminated.
    - The operator must comply with Idaho Code §§ 47-331 (Obligation to pay royalties as essence of contract); 47-332 (Reports to Royalty Owners); and 47-333 (Action for Accounting for Royalty).

- Deemed leased owners retain any private right of action they have in law against the operator for any future harms.
- This integration order itself does not limit the operator to one well. In other words, the integration order applies to additional wells that are drilled within the spacing requirements of this unit.

- Nothing in this integration order alters any duty of care owed to uncommitted mineral interest owners and their property, and nothing in this order shall be interpreted to relieve the operator of any such duty or to shift to uncommitted mineral interest owners any risk of injury arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance by the operator.
- This order is applicable to successors or assignees of all parties, except that this order is only applicable to successor / assignees of operator when the current operator's files notice with the Administrator and the Administrator grants approval.

ORDER

Based on the reasons stated above and based on the evidence in the record, pursuant to Idaho Code §§ 47-320 and 47-328, the Administrator hereby APPROVES the integration application in Docket No. CC-2022-OGR-01-002 according to the terms and conditions requested by the Applicants as modified by the terms and conditions contained herein. To the extent that any terms and conditions in this order conflict with the terms and conditions in the proposed lease, the order's terms and conditions control.

A. Integration.

All separate tracts within the 640-acre spacing unit in Section 30, Township 8 North, Range 4 West, Boise Meridian, Payette County, Idaho, are HEREBY INTEGRATED for the

purposes of drilling, developing, and operating wells in the spacing unit, and for the sharing of production therefrom, in accordance with the terms and conditions of this order.

B. Designated Operator.

Snake River Oil and Gas, LLC, is the designated operator of wells to be drilled within this spacing unit and has the exclusive right to drill, equip, and operate the well.

C. Operations.

Operations on any portion of the spacing unit will be deemed for all purposes the conduct of operations each separately owned tract in the spacing unit.

D. Production Allocation.

Production allocated or applicable to a separately owned tract included in the spacing unit shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on that tract. From and after this date all production from this spacing unit is integrated and allocated among the interest owners therein according to the proportion that each mineral interest owners' net mineral acreage bears.

E. Participatory Options.

Consistent with Idaho Code § 47-320(3), the available participatory options for this spacing unit are:

(1) Working Interest Owner. An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner' interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into the joint operating agreement approved in this order.

(2) Nonconsenting Working Interest Owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of 300% of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have

been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective share of the production of the well and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting owners shall enter into a joint operating agreement approved in this order.

(3) Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive a 1/8 royalty and $100 bonus per net mineral acre.

(4) Deemed Leased. If an owner fails to make an election within the 30 days set forth in this order, such owner's interest will be deemed leased under the terms and conditions in this order. The owner shall receive 1/8 royalty and a $100 bonus per net mineral acre.

F. Election Procedure.

All uncommitted owners in the spacing unit are hereby notified that they have 30 days from and after the date of the issuance of this order to make known to the operator, Snake River Oil and Gas, LLC, which of the options above they select to participate in the integrated spacing unit. This selection shall be made in writing, and mailed to the following address:

Snake River Oil & Gas, LLC
P.O. Box 500
Magnolia, AR 71754-0500

A failure to notify Snake River Oil & Gas, LLC, within 30 days of this order shall result in that owner's interest being deemed leased.

G. Idaho Code § 47-331

As provided in Idaho Code § 47-331:

- The operator shall make payments in legal tender unless written instructions for payment in kind have been provided.
- Royalty shall be due on all production sold from the leased premise except on that consumed for the direct operation of the producing wells and that lost through no fault of the operator.

- If an operator fails to pay oil and gas royalties to the royalty owner or the owner's assignee within 120 days after the first production of oil and gas under the lease is marketed, or within 60 days for all oil and 90 days for all gas produced and marketed thereafter, the unpaid royalties shall bear interest at the maximum rate of interest authorized under Idaho Code § 28-22-104(1) from the date due until paid. Provided, however, that whenever the aggregate amount of royalties due to a royalty owner for a 12-month period is less than $100, the operator may remit the royalties on an annual basis without any interest due.

H. Idaho Code § 47-332

Each royalty payment shall be accompanied by an oil and gas royalty check stub that includes the following information, as provided in Idaho Code § 47-332: (a) Lease or well identification; (b) Month and year of sales included in the payment; (c) Total volumes of oil, condensate, natural gas liquids or other liquids sold in barrels or gallons, and gas in MCF; (d) Price per barrel, gallon, or MCF, including British thermal unit adjustment of gas sold; (e) Severance taxes attributable to said interest; (f) Net value of total sales attributed to such payment after deduction of severance taxes; (g) Owner's interest in the well, expressed as a decimal to 8 places; (h) Royalty owner's share of the total value of sales attributed to the payment before any deductions; (i) Royalty owner's share of the sales value attributed to the payment, less the owner's share of the severance taxes; (j) An itemized list of any other deductions; and (k) An address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered. If information is requested by certified mail, an answer must be mailed by certified mail within 30 days of

receipt of the request. All revenue decimals shall be calculated to at least 8 decimal places and all oil and gas volumes shall be measured by certified and proved meters.

Additionally, the operator must maintain, for a period of 5 years, and make available to the integrated owners upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the integrated owners may require to verify the gross production, disposition and market value.

I. Idaho Code § 47-333

As provided in Idaho Code § 47-332, whenever an owner of a royalty interest makes a written demand for an accounting of the oil and gas produced, but no more frequently than once every 24 months, and makes written demand for delivery or payment of his royalty as may then be due upon the person or persons obligated for the delivery or payment of the royalty, and the obligated persons then fail to make the accounting demanded and the payment or delivery of the royalty due within a period of 90 days following the date upon which the demand is made, then the royalty owner may file an action in the district court of the county wherein the lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated. In such an action, the prevailing party or parties shall be entitled to reasonable attorney's fees to be allowed by the court, together with the costs allowed to a prevailing party, pursuant to Idaho Code § 12-120.

J. Additional Terms for those Deemed Leased

- No surface occupation by the operator is permitted on the lands of those deemed leased without a surface use agreement consistent with the lease terms.

- A four-year primary term is approved, but no renewal term to extend the primary term is permitted.
- Deemed leased owners retain any private right of action they have in law against the operator for any future harms.

K. Duty of Care

Nothing in this integration order alters any duty of care owed to uncommitted mineral interest owners and their property, and nothing in this order shall be interpreted to relieve the operator of any such duty or to shift to uncommitted mineral interest owners any risk of injury arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance by the operator.

L. Escrow Funds for Unknown or Unlocatable Owners

Proceeds attributable to production for unknown or unlocatable owners shall be paid into an interest-bearing account administered by a third party, escrow agent, or similar fiduciary; and shall be available for release for payment if the appropriate party is located.

M. Applicability

This order is applicable to any successor or assign of all parties subject to the order, except that this order is only applicable to any successor or assign of operator when the current operator files a notice with the Administrator and obtains Administrator approval for the transfer.

N. Termination

This order will automatically terminate one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit.

PROCEDURES AND REVIEW

Pursuant to Idaho Code § 47-328(3)(e), the above-captioned order shall not be subject to any motion to reconsider or further review, except for appeal to the Idaho Oil and Gas Conservation Commission. Pursuant to Idaho Code § 47-328(4), this 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. An appeal must be filed with the Administrator within fourteen (14) calendar days of the date of issuance of the Administrator's written decision. The date of issuance shall be March 10th, 2023, which is three (3) calendar days after the Administrator deposits the decision in the U.S. mail. Such appeal shall include the reasons and authority for the appeal and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings below, by certified mail, or by personal service. Any person who participated in the proceeding below may file a response to the appeal within five (5) business days of service of a copy of the appeal materials. The appellant shall provide the Administrator with proof of service of the appeal materials on other persons.

If no appeal is filed within the required time, this decision shall become a final order. Idaho Code § 47-328(6).

Dated this 7th day of March 2023.

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 _7th_ day of March 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 *Counsel for:* *Citizens Allied for Integrity and Accountability (CAIA), Steven and Robin Bishop, Amie and Jason Echevarria, Rex Wilson, and Patricia and Greg Fleshman*	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ Email: james@idunionlaw.com
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
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Randall J. & Julie M. Korthals
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Kourtney Romine
Kourtney Romine
Workflow Coordinator