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All –

Attached is the Opposition of Applicant Snake River Oil and Gas, LLC to Motion for Disqualification.

Thank you.

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BEFORE THE IDAHO DEPARTMENT OF LANDS

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

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

OPPOSITION OF APPLICANT SNAKE RIVER OIL AND GAS, LLC TO MOTION FOR DISQUALIFICATION

SNAKE RIVER OIL AND GAS, LLC, Applicant.)

Applicant Snake River Oil and Gas, LLC (“Applicant”) opposes the Motion for Disqualification by objecting mineral owners Jordan and Dana Gross and Little Buddy Farms, LLC (collectively, “Gross”), included in their response brief on just and reasonable factors.

The motion is untimely. A request to disqualify a hearing officer pursuant to Idaho Code § 67-5252 must be made within 14 of days “after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later.” IDAPA 04.11.01.412; Idaho Code § 67-5252(2). Here, notice of the Administrator’s participation came via his January 31, 2023 *Order Vacating Hearing and Notice of Hearing to Determine “Just and Reasonable” Factors* (“*Notice of Hearing*”).

Gross asserts that the Motion to Disqualify is filed in part pursuant to “the late disclosure of the conflict of interest of the Gross’ prior counsel.” *Motion for Disqualification*, p. 4 n. 1. The *Notice of Hearing* reflects that it was mailed to Gross and Little Buddy Farms, LLC on January 31, 2023. Neither Gross’ motion nor Gross’ counsel’s notice of appearance, filed February 17, 2023, discloses when Gross received the *Notice of Hearing*. The motion was filed well after 14 days passed following the mailing of the *Notice of Hearing*, but also more than 14 days after the

appearance by Gross' counsel. Thus, the late appearance of Gross' counsel here makes no difference.

The remaining ground Gross asserts is "conflict of interest." Specifically, Gross alleges that a conflict of interest exists in "[t]he use of an IDL employee as a hearing officer, who also administers state leases for minerals and navigable waterways, by IDL, in integration proceedings where IDL and the State of Idaho have a direct (and perhaps adverse) pecuniary interest to other parties named herein[.]" *Motion for Disqualification*, p. 4. Gross does not elaborate or provide evidence of this conclusion beyond (a) the State's leasing of minerals; (b) the presence of navigable waters in Section 24, and (c) the Administrator's title and LinkedIn job summary referring to navigable waters.

The motion contains no evidence establishing when any of this was "discovered," making it impossible to invoke § 67-5252(2)(b). Gross had already made three separate filings in this matter before making the motion. All of the information Gross relies upon – the Administrator's title and LinkedIn job summary, the existence of navigable waters in Section 24, and the existence of state oil and gas leasing – have been publicly available for years.

Beyond that, the Administrator's title is displayed on the first page and the signature page of the *Notice of Hearing*, so it was known to Gross directly from the time the *Notice of Hearing* was delivered. Gross owns property along the Payette River in Section 24 (as has been discussed by Gross in a previous filing) so the presence of navigable waters in the section was known to Gross before the Application in this matter was filed. The Application in this matter expressly states that uncommitted tracts were highlighted on the plat included as its Exhibit A, and the portion of the Payette River in Section 24 was not highlighted, indicating it has been leased. *See Application*, p. 1. The Application states that a list of uncommitted (unleased) owners is attached

to the Application as its Exhibit F, and that a resume of efforts for all uncommitted owners is attached as its Exhibit G. Neither exhibit lists the State as an uncommitted owner. *See Application*, p. 3. It is obvious from the Application and its exhibits that the riverbed in Section 24 is leased. All of this information was in Gross' possession from the time the Application and its supporting materials were mailed to Gross in the week after the Application was filed on January 23, 2023. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/003_20230130_SROG-affidavitsNOI-mailing-receipts.pdf, p. 28 (certified mailing receipt). Thus, essentially everything Gross claims to have recently discovered was in fact known to Gross when the Application was delivered, well over a month before the motion was filed. A delay of over a month does not comply with the promptness requirement of Idaho Code 67-5252(2)(b).

Even ignoring the untimeliness of the motion, Gross makes no claim, and provides no evidence, that the Administrator has any personal interest or bias. Idaho Code §67-5252 includes in the definition of "cause" for disqualification "substantial prior involvement in the matter other than as a presiding officer," but Gross provides no evidence of this. The mere fact that the State has leased minerals in Section 24 does not indicate that the Administrator has a personal conflict of interest. Likewise, the mere fact that there are navigable waters in the section does not indicate that the Administrator has a personal conflict of interest.

Navigable waters are not involved in oil and gas exploration or production in any way. Gross provides no explanation of how their presence is relevant.

Contrary to Gross' unsupported allegation, the Administrator does not supervise and is not involved in oil and gas leasing. *See* <https://www.idl.idaho.gov/leasing/oil-gas-leasing/>. The employee overseeing oil and gas leasing, Mike Murphy, is not under the supervision of the Administrator, but under the supervision of Land Bureau Chief for Real Estate Services, who is

under the supervision of Division Administrator for Trust Land Management. *See* <https://www.idl.idaho.gov/wp-content/uploads/sites/2/land-board/about-idl/IDL-Org-Chart.pdf>,


p. 3. This is consistent with the division of authority between the State Land Board, which administers State public trust lands, including through oil and gas leasing (*see* Idaho Code § 58-104(1), §47-801), and the Oil and Gas Conservation Commission, which is responsible for regulation of oil and gas activities (*See* Idaho Code § 47-314(8)). The presence of a State lease in Section 24 creates no conflict for the Administrator.

Additionally, Idaho Code § 47-328(3)(d) expressly provides that the “oil and gas administrator shall hear the application and make a decision on the application’s merits.” It makes no exception for cases where the State owns minerals in the affected spacing unit. It also does not provide for any other person to decide an application for an integration order. The logical extension of Gross’ argument is that in any section or unit where the State owns minerals, integration of the mineral interests is impossible. This result would violate the correlative rights of all other mineral owners who wish to develop their minerals directly or through leasing, and run contrary to the stated purposes of the Act.

The Motion for Disqualification is untimely. It presents no substantial evidence of any potential conflict of interest. Its assertion that the Administrator is involved in State mineral leasing is wrong. It should be denied.

DATED this 10th day of March, 2023.

HARDEE, PIÑOL & KRACKE, PLLC



MICHAEL CHRISTIAN
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed as follows:

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