From:	Sarah Hudson
To:	Kourtney Romine; Mick Thomas; hearing.officer@ag.idaho.gov
Cc:	James Thum; kristina.fugate@ag.idaho.gov; External - Joy M. Vega; james@idunionlaw.com; molly@idunionlaw.com; edinst@tds.net; steve.rapanos@trendwellenergy.com; sherrygordon5@gmail.com; mc@fmtc.com; bushmurphy@hotmail.com; Michael Christian
Subject:	Re: Docket No. CC-2020-OGR-01-003
Date:	Thursday, February 25, 2021 04:18:46 PM
Attachments:	20210225.SROG Motion for Summary Disposition Final.pdf

Hi Ms. Romine,

Sorry, I had a typo in the first PDF that I sent, please use this one and disregard the other.

Thank you!
Sarah Hudson
Legal Assistant

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On Thu, Feb 25, 2021 at 4:12 PM Sarah Hudson <sarah@smithmalek.com> wrote:

> Hello Ms. Romine,
>
> Attached please find a filing for Docket No. CC-2020-OGR-01-003 from Michael Christian. If you have any issues opening it or questions, please feel free to contact us.
>
> Thanks!
> Sarah Hudson
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Attorney for Snake River Oil and Gas, LLC

BEFORE THE OIL AND GAS CONSERVATION COMMISSION

In the Matter of:	)	**Docket No. CC-2020-OGR-01-003**
	)	
Determining whether the integration order in Docket No. CC-2016-OGR-01-001 applies to the proposed Barlow #2-14 well	)	**MOTION BY SNAKE RIVER OIL AND GAS, LLC FOR SUMMARY DISPOSITION OF CONTESTED CASE**

I. Introduction.

Pursuant to IDAPA 04.11.01.260 and .565, Snake River Oil and Gas, LLC ("Snake River") submits this motion for summary disposition of the contested case as a matter of law, with the declaratory ruling that the August 5, 2016 Final Order entered in Docket No. CC-2016-OGR-01-001 ("the 2016 Integration Order") applies to the permitted Barlow #2-14 well, such that the mineral interest in Section 14, Township 8 North, Range 5 West has been integrated as to any production from that well.[1]

This case is not about well spacing or well location. The Commission's decision to grant Snake River's application for a drilling permit for the Barlow #2-14 well already concluded that the well location complies with the setbacks in a default spacing unit, i.e., at least 660' away from the unit boundary. Thus, this case has nothing to do with the potential drainage

[1] If the hearing officer denies the motion, this may alternatively be treated as Snake River's prehearing brief.

area of the well, or indeed any aspect of the well permit, which the Commission concluded complied with IDAPA 20.07.02.200. Nor does this case have anything do to with whether the 2016 Integration Order was fashioned properly. The only issue raised in the Notice of Initiation of Contested Case is whether the 2016 Integration Order "applies to" the well. This necessitates only a reading of the 2016 Integration Order, the forms of lease and Joint Operating Agreement approved in it, and those portions of the Act relating to integration.

The Commission's Notice initiating this case expressly states that the contested case is "the procedural mechanism to determine the applicability of the prior integration order to the Barlow #2-14, under the terms of Idaho statutes, the Commission's rules, and the prior integration order itself." In other words, the Commission understood that determining the applicability of the 2016 Integration Order to the proposed well need involve only review of the Commission's orders, the Act, the applicable rules of the Commission. A review of those items together makes clear that the 2016 Integration Order does, in fact, apply to the permitted Barlow #2-14 well.

II. Background of oil and gas regulation in Idaho.

A. Introduction.

Two significant issues in oil and gas development are addressed by state regulation: First, how many wells may be drilled to a reservoir of hydrocarbons, and second, who owns the revenue derived from oil and gas extracted from a well (where the reservoir to which the well is drilled covers a large area, but the well itself is located on a single tract). Historically, in most jurisdictions the common law "rule of capture" governed oil and gas extraction. Under the rule of capture, a landowner on whose property a well was drilled owned all the oil or gas extracted, even

if some of it was drained from beneath a neighboring property. The neighbor's remedy was to drill their own well into the same pool, or risk losing out on revenue from the oil and gas underlying their property. Id. The result could be dozens of wells drilled to the same pool, in close proximity, on different properties.[2] This resulted in waste and reduced production.

To prevent this, state legislatures adopted oil and gas conservation laws. Under these laws, mineral owners no longer have an absolute right to all the oil they can produce from their property. Instead, they have "correlative rights," defined in Idaho as "the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste." Idaho Code § 47-310(4). Protection of correlative rights is accomplished through (a) the spacing of wells through statutory definition or commission orders (for example, allowing only one well produce from a reservoir, or allowing only one gas well for each separate reservoir in a 640 acre section), and (b) the pooling (in Idaho, "integration") of mineral rights through integration orders, with the effect that integrated mineral owners in a defined area share the revenue from the well on a pro rata basis based on acreage. *See* Idaho Code §47-319 (covering spacing), and Idaho Code § 47-320 (covering integration of mineral interests). Thus, for example, if 640-acre section is integrated, the owner of 64 acres in the section would be entitled to 10% of the revenue from a well producing anywhere in that section, even if the well is not drilled on that owner's property.

B. <u>Spacing</u>.

In 2016, well spacing was covered in part by the then-current version of the Commission's oil and gas conservation rules, IDAPA 20.07.02. At that time, Rule 120 provided

[2] The classic historical example of this was Spindletop oil field, located in Beaumont Texas, in the early 1900s. *See, e.g.*, https://www.lamar.edu/spindletop-gladys-city/spindletop-history.html.

in pertinent part that "[i]n the absence of an order by the Commission setting spacing units for a pool . . . the following rules shall apply":

> Wells Drilled For Gas; Standard Spacing Unit and Well Location: Every well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. A gas well must have a minimum setback of three hundred thirty (330) feet from the governmental section line.

Thus, absent an order from the Commission otherwise, standard spacing unit for a gas well was a 640-acre section, a well drilled in the unit must be located at least 330' from the section line, and only one well could be drilled to a pool.[3] The rule effectively contained a legal presumption that a well drilled in compliance with the setback from the section line will not drain outside the unit, and that one well may be drilled to each pool within the spacing unit.

The concept of default spacing in Rule 120 was eventually absorbed into the Act. Currently, Idaho Code § 47-317(3) provides in pertinent part:

> In the absence of an order by the department establishing drilling or spacing units, or authorizing different well density patterns for particular pools or parts thereof, the following requirements shall apply:
> * * * *
> (b) Vertical gas wells. Every vertical well drilled for gas shall be located in a drilling unit consisting of either a one hundred sixty (160) acre governmental

[3] A "pool" is defined as "an underground reservoir containing a common accumulation of oil and gas," in other words, a common source of supply. Each zone of a structure that is completely separated from any other zone in the same structure is a pool. Idaho Code § 47-310(25).

> quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, or a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto. A vertical gas well located on a one hundred sixty (160) acre drilling unit shall have a minimum setback of three hundred thirty (330) feet to the exterior boundaries of the quarter section. A vertical gas well located on a six hundred forty (640) acre drilling unit shall have a minimum setback of six hundred sixty (660) feet to the exterior boundaries of the governmental section.
> (i) No gas well shall be drilled less than nine hundred ninety (990) feet from any other well drilling to and capable of producing gas from the same pool; and
> (ii) No gas well shall be completed in a known pool unless it is located more than nine hundred ninety (990) feet from any other well completed in and capable of producing gas from the same pool.

The statute actually created more flexibility, by providing for two different sizes of gas units, and creating the presumption that, in the absence of an order otherwise, within a gas unit, more than one well may be drilled to a pool so long as it is at least 990 feet from any other well completed in that same pool.

C. Idaho's integration statute in 2016.

At the time of the 2016 Integration Order, integration of mineral interests in a spacing unit was governed by Idaho Code § 47-322, which provided:

> 47-322. Integration of tracts -- Orders of department. (a) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the department, upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom. The department, as a part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.
> (b) 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. That 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.

(c) Each such 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. Each such integration order shall provide for the five following options:

(i) 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.

(ii) 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. Nonconsenting working interest owners are entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until the operator of the integrated spacing unit has recovered 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.

(iii) 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 one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order.

(iv) Objector. If an owner objects to any participation or involvement of any kind in the unit, such owner may elect to be an objector. An objecting 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. Provided however, an objecting owner may elect to have any funds to which he would otherwise be entitled transferred to the STEM action center.

(v) 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 same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order.

If one or more of the owners shall drill, equip, and operate, or operate, or pay the costs of drilling, equipping, and operating, or operating, a well for the benefit of another person as provided for in an order of integration, then such owners or owner shall be entitled to the share of production from the spacing unit accruing to the interest of such other person, exclusive of a royalty not to exceed one-eighth (1/8) of the production, until the market value of such other person's share of the production, exclusive of such royalty, equals the sums payable by or charged to the interest of such other person. If there is a dispute as to the costs of drilling, equipping, or operating a well, the department shall determine such costs. In instances where a well is completed prior to the integration of interests in a spacing unit, the sharing of production shall be from the effective date of the integration, except that, in calculating costs, credit shall be given for the value of the owner's share of any prior production from the well.

(d) An application for an order integrating the tracts or interests in a spacing unit shall substantially contain and be limited to only the following:

(i) The applicant's name and address;

(ii) A description of the spacing unit to be integrated;

(iii) A geologic statement concerning the likely presence of hydrocarbons;

(iv) A statement that the proposed drill site is leased;

(v) A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator;

(vi) A proposed joint operating agreement and a proposed lease form;

(vii) A list of all uncommitted owners in the spacing unit to be integrated under the application, including names and addresses;

(viii) An affidavit indicating that at least fifty-five percent (55%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner;

(ix) An affidavit stating the highest bonus payment paid to a leased owner in the spacing unit being integrated prior to filing the integration application; and

(x) A resume of efforts documenting 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. Provided however, if any owner requests no further contact from the applicant, the applicant will be relieved of further obligation to attempt contact to reach agreement with that owner. At least one (1) contact must be by certified U.S. mail sent to an owner's last known address. If an owner is unknown or cannot be found, the applicant must publish a legal notice of its intention to develop and request that the owner contact the applicant in a newspaper in the county where the proposed spacing unit is located. The resume of efforts should indicate the applicant has made reasonable efforts to reach an agreement with all uncommitted owners in the proposed spacing unit. Reasonable efforts are met by complying with this subsection.

An application shall not be required to be in any particular format. An application shall not be denied or refused for incompleteness if it complies substantially with the foregoing informational requirements.

(e) At the time the integration application is filed with the department, the applicant shall certify that, for uncommitted owners who are unknown or cannot be found, a notice of the application was published in a newspaper in the county where the proposed spacing unit is located. Each published notice shall include notice to the affected uncommitted owner of the opportunity to respond to the application, and the deadline by which a response must be filed with the department.

(f) The information supplied by the applicant pursuant to subsection (d)(vii) of this section and the names and addresses of the uncommitted owners pursuant to subsection (d)(x) of this section shall be deemed trade secrets and kept confidential by the department until the well is producing in the proposed spacing unit, and thereafter shall be subject to disclosure pursuant to chapter 1, title 74, Idaho Code, provided that the information regarding an uncommitted owner shall be subject to disclosure to that owner.

(g) An application for integration shall be subject to the procedures set forth in section 47-324, Idaho Code.

The statute provided for multiple wells within an integrated spacing unit, by providing in subsection (a) to an order for "integration of all tracts or interests in the spacing unit for drilling of a well *or wells*," and by directing in subsection (b) that "*[a]ll operations* . . . 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." The Act's integration provisions were later moved to Idaho Code § 47-320, where they reside today, but the relevant language remains the same.

III. Procedural history.

A. The 2016 Integration Application and Order.

It is in this context that the mineral interests in Section 14 were integrated. On May 18, 2016, pursuant to what was then Idaho Code § 47-322 and § 47-324, AM Idaho, LLC and Alta Mesa Services, LP submitted an application for an order integrating the mineral interests in the unit consisting of Section 14, Township 8 North, Range 5 West in Payette County, in Docket No. CC-2016-OGR-01-001 ("the 2016 Integration Application"). The application expressly described, per then Idaho Code § 47-322(d)(ii), that the "[d]escription of the spacing unit to be integrated" was Section 14, without stating any limitation to a pool, depth or well. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/1.-20160518_ApplicationforIntegration-001.pdf (integation application), p. 1. The application was supported by approximately 78.4% of the mineral interest in the unit, by acres, through voluntary leasing. In other words, the application sought to integrate only about 138.2 out of 640 acres, and about 501.8 mineral acres in the unit sought integration and development of the unit. *Id.*, pp. 3-8.

On August 5, 2016, an order entitled "Orders for Integration" ("the 2016 Integration Order") for Sections 14 and 19 (which the same applicants had separately applied to integrate in Docket No. CC-2016-OGR-01-002) was issued. The 2016 Integration Order followed a hearing on June 16, 2016. While four mineral owners of two tracts in Section 14 filed written responses to the 2016 Integration Application, neither of the responses related to the requirements of Idaho

Code §47-322(d), and "provided no evidentiary basis to challenge the integration elements alleged by the Applicants." None of the mineral owners appeared at the hearing. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/2018/02/8.-CC-2016-OGR-01-001002_20160805_OrdersForIntegration-AM_PTS.pdf (2016 Integration Order), p. 2, FOF 18, p. 7.

The 2016 Integration Order, signed by the hearing officer and by the Director of the Department, set forth Findings of Fact and Conclusions of Law. Relevant findings of fact and conclusions of law include the following:

1. "Each Application contains a geologic statement regarding the likely presence of hydrocarbons. This geologic statement describes the porosity and permeability evidence in the target formations and references seismic data and geologic interpretation identifying a potential trap at a depth of about 3,400 feet subsurface. There is great reliance on seismic data since the wells proposed to be drilled are exploratory or 'wildcat' wells." *Id.*, FOF 5, p. 4.

2. "Based on the current evidence available and provided in these Applications, establishing the state-wide spacing units for gas wells consisting of approximately 640 acres in Section 14, Township 8 North, Range 5 West, Boise Meridian, and approximately 640 acres in Section 19, Township 8 North, Range 5 West, Boise Meridian, both in Payette County, Idaho are, by operation of law, deemed to result in the most efficient and economic drainage of a common pool or source of supply. *Id.*, COL 3, p. 8.

3. "Establishing and accepting this initial spacing of 640 acres best protects the correlative rights of mineral owners in the spacing unit, absent further information gained from drilling these exploratory wells." *Id.*, COL 4, p. 9.

4. "Based on the substantial evidence within the hearing record and Applications, the Director concludes that the Applications clearly and substantially comply with all the elements of Idaho Code § 47-322(d." *Id.*, COL 6, p. 10.

5. "Based on substantial evidence in the record, the Director concludes it is appropriate to integrate the uncommitted mineral interest owners the Applicants have named for the development and operation of the unit pursuant to Idaho Code §47-322." *Id.*, COL 7, p. 10.

6. "The five alternatives for these uncommitted mineral interest owners to participate in the spacing unit are just and reasonable. The Applicants' proposed form of lease contains reasonable terms to govern the relationship between the Applicants and uncommitted mineral interest owners who lease, fail to make an election, or choose to be objectors. The joint operating agreement contains just and reasonable terms to govern the relationship between the Applicants and the uncommitted mineral interest owners who elect to participate as working interest owners or nonconsenting working interest owners." *Id.*, COL 8, p. 10.

Based on the Findings of Fact and Conclusions of Law, the Director granted the integration application and ordered, in pertinent part:

1. "[A]ll separate tracts within the respective spacing units are HEREBY INTEGRATED for the purpose of drilling, developing, and operating a well in each spacing unit, and for the sharing of all production therefrom within each spacing unit, in accordance with the terms and conditions of the above-captioned Integration Orders." *Id.*, p. 11.

2. "Operations on any portion of a spacing unit will be deemed for all purposes the conduct of operations upon each separately owned tract in the spacing unit." *Id.*

3. 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." *Id.*

4. "IT IS HEREBY ORDERED that from and after this date all production from each respective spacing unit be integrated and allocated among the interest owners therein according to the proportion that each mineral interests owners' net mineral acreage bears to the total mineral acreage of each respective spacing unit. All royalty interests in each respective spacing unit shall, in the absence of any voluntary agreement, be deemed to be integrated as of the date of the above-captioned Integration Orders without the necessity of any subsequent separate order." *Id.*

The language of the Order is unambiguous. It integrates "all separate tracts" without restriction by depth, pool or well. It orders that "all production" is integrated and allocated among the mineral interest owners in the unit.

This concept is not limited to Act and the text of the 2016 Integration Order itself. The documents approved by the Director as part of the 2016 Integration Order – the form of lease and form of joint operating agreement -- make clear that the integration was not limited by depth or pool, or to a single well, but applies to *any* well drilled in Section 14. The form of lease, for integrated mineral interest owners that either elect to lease or are deemed leased by failing to make an election, provides that the owner "grants, demises, leases and lets exclusively to said Lessee the lands hereinafter described for the purpose of prospecting, exploring by geophysical and other methods, drilling, mining, operating for and producing oil or gas, or both," without limitation to a particular depth or pool, or to a single well. *See* Application for Integration

(https://ogcc.idaho.gov/wp-content/uploads/sites/3/1.-20160518_ApplicationforIntegration-001.pdf), p 71.

Likewise, the approved form of joint operating agreement ("JOA") (which applies to those integrated mineral owners who wish to become either participating working interest owners or nonparticipating working interest owners in any well drilled in the spacing unit) specifically addresses not only the "initial well" drilled in the unit, but also "subsequent operations" (i.e., additional wells), in its Article VI, Sections A ("Initial Well") and B ("Subsequent Operations"). *See Id.*, pp. 23-24. Section B(1) provides in pertinent part:

> If any party hereto should desire to drill any well on the Contract Area other than the Initial Well . . . the party desiring to drill … such a well shall give written notice of its proposed operation to the parties who have not otherwise relinquished their interested in such objective Zone[4] under this agreement . . . specifying the work to be performed, the location, proposed depth, objective Zone and the estimated cost of the operation. The parties to whom such a notice is delivered shall have thirty (30) days after receipt of the notice within which to notify the party proposing to do the work whether they elect to participate in the cost of the proposed operation.

Id., p. 24.

Elsewhere, the JOA directs in Section VI(B)(7) that "no wells shall be proposed to be drilled to or Completed in or produced from a Zone from which a well located elsewhere on the Contract Area is producing, unless such well conforms with the then-existing well-spacing pattern for such Zone or has been approved as an exception to the then-existing spacing pattern for such zone by the appropriate agency." *Id.*, p. 27. In other words, the JOA expressly contemplates that

[4] "Zone" is defined in the JOA as "a stratum of earth containing or though to contain a common accumulation of Oil and Gas separately producible from any other common accumulation of Oil and Gas," i.e., a common source of supply. *Id.*, p. 18.

additional wells may be drilled in the unit so long as they comply with the well spacing established for the unit. As to Section 14, that means an additional well must: (a) be drilled to separate source of supply from the initial well or be the appropriate distance from the initial well; (b) comply with the unit boundary setback requirements. The permitted Barlow #2-14 well complies with both these requirements.

These are not the only places in the JOA where it clearly expresses that multiple wells may be drilled in the integrated unit. *See Id.,* p. 37, Article XVI(B)(1)("Subsequent Well Proposals") ("Other than the Initial Well, any party may submit a proposal to drill a well in the Contract Area."); (B)(2) ("No more than four (4) well proposals may be outstanding at any one time, unless it is necessary to sooner commence drilling operations on another well to preserve one or more leases, to satisfy an express off-set well obligation, or farmout."). Thus, approved form of JOA expressly provides, over and over, for multiple wells in the integrated spacing unit.

B. The Barlow #1-14 well.

The Department approved the permit to drill the Barlow #1-14 on October 26, 2017. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/20171026_1107520033-APD-Barlow-1-14_posted2021-REDACTED-ltrs-PTS.pdf (well permit file). The well was spudded on January 17, 2018 and completed on February 10, 2018. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/2020.12.01_1107520033_Barlow1_14_COMP04_PTS.pdf (completion report). However, for lack of a gathering pipeline to produce into, the well did not begin producing until December 2020.

C. The Barlow #2-14 APD.

Snake River filed its application for a permit to drill the proposed Barlow #2-14 well on June 14, 2020. The Barlow #2-14 well targets a different sand, and different source of

supply, than the Barlow #1-14 well was drilled and completed into. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/20200715_Barlow2-14_APDComplete_PTS.pdf (application for permit to drill), p. 6 ("The Barlow 2-14 is a Sand "B" test, the Barlow 1-14 is completed in Sand "D", a separate source of supply."). The Department accepted the application as complete on June 26, 2020. The department denied the permit on September 11, 2020. Snake River appealed the denial to the Commission on September 25, 2020. At the conclusion of the hearing of the appeal on October 20, 2020, the Commission voted to reverse the denial and grant the drilling permit. By its Final Order dated October 26, 2020, the Commission reasoned that the drilling permit complied with the requirements of IDAPA 20.07.02.200 for an application for a permit to drill, and that the well was not prohibited by the 2016 Integration Order. *See* https://ogcc.idaho.gov/wp-content/uploads/sites/3/20201026_FinalOrder-Barlow2-14.pdf (Final Order), pp. 8-9.

In rejecting the Department's conclusion that the Barlow #2-14 well would "violate correlative rights," the Commission expressly acknowledged in its appeal decision regarding the Barlow #2-14 APD that the revenue from the proposed well *will be allocated to the mineral owners in Section 14*. Final Order, p. 12 ("The well . . . allows the mineral interest owners within Section 14 the opportunity to produce the well and recover their interest in oil and gas. Thus, state-wide spacing allows them production of a just and equitable share of oil and gas without waste."). This indicates that the Commission understood that Section 14 was integrated for all purposes, as the reference to the recovery by all mineral owners in Section 14 of their just and equitable share of production from a well would only make sense if those interests were integrated and production was allocated across all mineral ownership in the unit.

D. Initiation of the Contested Case.

Despite the clear language in its appeal order, the Commission then issued a Notice of Special Meeting and Final Agenda for a special meeting on December 9, 2020. The sole agenda item for the special meeting was listed as a "Regular (Action)" item and described as follows: "Commission Review of Issues Relating to Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14 (Possible Action)." The Final Agenda indicated that no public comment would be taken on the agenda item, but that the Commission would go into executive session for the purpose of receiving legal advice before considering the agenda item. The Commission then decided at its December 9, 2020 meeting to commence this contested case at the request of the Department, because, according to the Commission's December 16, 2020 Notice of Initiation of Contested Case, "[s]ome mineral interest owners have raised concerns over the position of Snake River that this prior integration order applies to the Barlow #2-14." This "position," of course, was not merely Snake River's, but had already been stated by the Commission in its order granting Snake River's appeal regarding the Barlow #2-14 APD. The allegedly concerned mineral interest owners were not identified in the Notice, nor, to Snake River's knowledge, were they identified at the December 9, 2020 meeting of the Commission. The Department then mailed notice of the contested case to every uncommitted mineral interest owner in Section 14 (but not to leased mineral interest owners, apparently on the basis that those owners are effectively represented by the operator), and twice published notice of the case in the local newspaper, the Argus-Observer.

IV. Argument.

A. The 2016 Integration Order applies by its plain terms to the Barlow #2-14 well.

The 2016 Integration Order does not limit the integration of the mineral interest to any particular pool. The applicant for an integration order was only required to provide a "geologic statement concerning the likely presence of hydrocarbons." *See* Idaho Code § 47-320(4)(c). This does not mean the applicant was required to provide proof regarding every potential source of hydrocarbons in the unit (or even the definite presence of any hydrocarbons), nor does it mean that the integration would be limited to the hydrocarbons discussed in the statement. Nothing in the Act indicates that this will be the case.

The 2016 Integration Order instead contains express indications that it is *not* limited to a particular pool, and that it *does* contemplate that multiple wells may be drilled in the spacing unit it covers. It describes the spacing unit to be integrated as all of Section 14, not some subpart of it. By expressly retaining default spacing, the Order necessarily acknowledges that there may be multiple wells drilled to separate sources of supply. Second, the Order makes plain in multiple places that the order is intended to cover all development in the unit. 2016 Integration Order, p. 10 ("[T]he Director concludes it is appropriate to integrate the uncommitted mineral interest owners the Applicants have named for *the development and operation of the unit*[.]"); p. 11 (Ordering that the designated operator "has the exclusive right to drill, equip, and operate *each well* within each respective spacing unit," that "[o]perations on any portion of a spacing unit will be deemed for all purposes the conduct of operations upon each separately owned tract in the spacing unit," and that "all production from each respective spacing unit be integrated and allocated among the interest owners therein[.]"). None of this language is limited to one pool or well (which makes sense, given the wildcat nature of the area). As the Commission noted in its appeal order, the proposed well is in a legal location within the unit, offset appropriately from the unit boundary and separated from the existing well in the unit.

Consistent with the broad language of the 2016 Integration Order, the forms of lease and JOA approved by the Director under it also contain no limit to a particular pool or well. Instead, as discussed above, the JOA is replete with provisions for the drilling of multiple wells in the integrated unit, subject only to the requirement to comply with spacing requirements, i.e., no more than one well may be drilled to each separate source of supply. As the permitted Barlow #2014 well targets a different source of supply than the completed Barlow #1-14 well, it is plainly within the allowable scope of the approved JOA.

B. <u>The Commission's Final Order granting Snake River's application for a permit to drill the Barlow #2-14 well clearly acknowledged tha the well is covered by the 2016 Integration Order</u>.

The Commission's references in its Final Order granting Snake River a permit to drill the Barlow #2014 well, to "the mineral owners within Section 14" having "the opportunity to produce the well and recover their interest in oil and gas" and "production of a just and equitable share of oil and gas without waste," are clear and obvious references to allocation of production among mineral interest owners within the spacing unit. The Commission can only have made these statements if the mineral interests in Section 14 are integrated as to *all* operations, including the permitted Barlow #2-14 well. Allocation of production and revenue is one of the key elements of integration of the mineral interest in a unit. *See* Idaho Code § 47-320(2) ("All operations . . . 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. That 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.").

On the other hand, allocation of production and revenue is *not* part of an order establishing a spacing or drilling unit. *See* Idaho Code §§ 47-317, 47-318. Spacing is concerned with just that – spacing of wells to facilitate efficient development and production of reservoirs. The *only* reason for the Commission to mention in its appeal decision the ability of all the mineral owners in Section 14 to "recover their interest in oil and gas" and to allow them "production of a just and equitable share of oil and gas without waste" was to acknowledge that the 2016 Integration Order applies to the permitted Barlow #2-14 well.

C. <u>The Act clearly contemplates multiple wells in an integrated unit</u>.

The reference in Idaho Code §47-320(2) (and in former § 47-322(b)) to "all operations" upon "any portion" of the spacing unit being deemed for all purpose operations on each separately owned tract makes clear that, absent limiting language in an integration order, the order covers every well drilled in the unit. "All" and "any" are not ambiguous. Similarly, Idaho Code § 47-320(1) (as with former § 47-322(a)) provides that the Commission, "upon the application of any owner in that proposed spacing unit, shall order integration of *all tracts or interests* in the spacing unit for drilling of *a well or wells*, development and operation thereof and for the sharing of production therefrom" (emphasis added). By its plain terms the statute contemplates the drilling of multiple wells in an integrated unit. The statute's plain language indicates an integration order covers "all operations" anywhere in the unit, absent some specific limitation in an order.

While the 2016 Integration Order (and the statute) contain provisions for approving the drilling of "a well" in the integrated spacing unit, nothing in the order or the statute prohibits additional wells in the spacing unit or limits the integration of the mineral interest to a single well

– the integration is as to the spacing unit, not as to the production from a particular well. Moreover, the provisions of the statute relating to spacing and that relating to integration must be read together. It is a fundamental rule that sections of statutes relating to the same subject matter must be read together to determine the legislature's intent. *County of Bannock v. City of Pocatello*, 110 Idaho 292, 715 P.2d 962 (1986); *Union Pacific Railroad Co. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982). The statute's provisions as to spacing units makes clear that the only prohibition is against multiple wells drilled to *the same source of supply*. As a result, the Act necessarily contemplates the drilling of additional wells in an integrated unit to a *separate source of supply*, absent an express limitation in the integration order (which does not exist here).

V. Summary.

The issue in this case, as described in the Notice of Initiation of Contested Case, is quite narrow: "TO DETERMINE WHETHER THE INTEGRATION ORDER IN DOCKET NO. CC-2016-OGR-01-001 APPLIES TO THE PERMITTED PROPOSED BARLOW #2-14 WELL." The relevant facts –the 2016 Integration Order, the JOA and form of lease approved under it, the Barlow #2-14 APD appeal order, and the applicable statute and rules, are not dispute. No additional evidence is necessary to determine that the 2016 Integration Order applies to the permitted well. The answer, based on a plain reading of the Order, the forms of agreement approved under it, the Act, and the previous order the Commission granting the permit to drill the Barlow #2-14 well, is yes. Snake River respectfully requests that the hearing officer issue a declaratory ruling accordingly.

RESPECTFULLY SUBMITTED this 25th day of February, 2021.

SMITH+MALEK, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2021, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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