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Subject: Docket No. CC-2023-OGR-01-001
Date: Monday, March 13, 2023 02:54:23 PM
Attachments: 20230313.Applicant"s Reply Brief re Just and Reasonable Factors.pdf

All –

Attached is the Reply Brief of Applicant Snake River Oil and Gas, LLC re: Just and Reasonable Factors.

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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 **SNAKE RIVER OIL AND GAS, LLC, Applicant.**	)	Docket No. CC-2023-OGR-01-001 **REPLY BRIEF OF APPLICANT SNAKE RIVER OIL AND GAS, LLC RE: JUST AND REASONABLE FACTORS**

Only objecting mineral owners Jordan and Dana Gross and Little Buddy Farms, LLC (collectively, "Gross") filed a brief in response to the Applicant's opening brief. Gross does not refute any of the Applicant's discussion of the effects of the Rule of Capture and the advent of spacing and pooling to counter its effects, or the persuasive decisions from other jurisdictions discussing the intent behind forced pooling and integration. Gross asserts they are irrelevant because Applicant has not provided a detailed side-by-side analysis of every state's pooling or integration law. This misses the point. As the authority the Applicant provided discusses, integration serves a purpose: To balance the rights of those who have committed to development in a unit and the rights of those who have not committed, in order to protect correlative rights and prevent waste. Gross continues to ignore this purpose and the correlative rights of the Applicant and the majority of owners who have committed to development in Section 24.

Otherwise, Gross attaches a copy of an advocacy article from a group called "Taxpayers for Common Sense," surveying royalty payments in selected "major oil and gas producing states." Gross asserts that the article establishes "none are as low as the 1/8th royalty Snake Oil [sic] proposes here." *Gross Response Brief*, p. 2. Based entirely on this article, Gross

argues a 1/8th royalty is "neither fair nor just," and argues broadly that "Snake Oil [sic] is taking the citizens of Idaho (and their legislators and other elected officials who were convinced to use 1/8 when enacting I.C. 47-320(d)) for suckers." *Id.* Gross engages in no further discussion of the factors proposed by the Applicant.

Again, the purpose of this briefing process and the hearing on March 14 is to arrive at *factors to consider* in establishing terms and conditions of integration, not the terms themselves. Gross' assertions amount to an argument that a 1/8th royalty should not be adopted. This is not responsive to the Administrator's *Notice of Hearing.*

The article attached to Gross' brief is irrelevant. First, as Gross notes it deals with "major" producing states. Idaho is not a major producing state by any measure. Gross makes no attempt to connect the markets in the surveyed states with the market in Idaho. States with substantial established and historical production have more available and less expensive infrastructure, more available and less expensive services, more production, better information about geology and operating conditions, and more operators.

Second, Gross misrepresents the article. The royalty rates Gross references only involve leasing of state lands in a small number of selected states. They do not involve royalty rates for those electing to lease or deemed leased or otherwise treated as a nonparticipant under a pooling or integration order. Also, the survey acknowledges that for "Private Lands Generally", lease royalties range from 12.5-25 percent (1/8th to 1/4), while federal onshore lands are leased at a 1/8th royalty or less. *Gross Reply Brief,* Ex. A, p. 3. In other words, it is entirely possible that the royalty rate proposed by the Applicant for owners electing to lease is consistent with the market royalty rate. The Applicant has already supplied affidavit testimony in support of its application

establishing that the proposed lease rate is consistent with that in hundreds of voluntary leases in the basin.[1]

Finally, to the extent Gross complains about the royalty rate for deemed leased owners under an integration order, the target for any demand for change is the legislature, not the Administrator. The Administrator has no authority to change the statutorily prescribed royalty rate. Gross is free to suggest factors to consider in determining whether a given royalty rate for owners who elect to lease is just and reasonable.

As has been discussed in orders by the Administrator, the factors proposed by the Applicant and IDL are within the Commission's statutory authority. They do not impose burdens, conditions, or restrictions in excess of or inconsistent with existing statutory provisions. They comply with Commission rules. They are consistent with the Act's purposes.

DATED this 13th day of March, 2023.

HARDEE, PIÑOL & KRACKE, PLLC

MICHAEL CHRISTIAN
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[1] This is also consistent with the pooling or integration rates provided in other producing states. *See, e.g.* Utah Code § 40-6-6.5(6)(a)(i) ("the acreage weighted average landowner's royalty based on each leased fee and privately owned tract within the drilling unit"); Arkansas Code § 15-72-304(d) (1/8th royalty); N.M Stat. § 70-2-17(C)(1/8th royalty).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th 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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