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 the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. Snake River Oil and Gas, LLC, Applicant.	Docket No. CC-2021-OGR-01-001 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PROCEDURAL BACKGROUND

On March 26, 2021, Snake River Oil and Gas, LLC ("Snake River") filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The Minerals, Public Trust, and Oil & Gas Division Administrator ("Administrator") of the Idaho Department of Lands ("Department") subsequently issued an April 6, 2021 *Order Vacating Hearing, Order Setting Hearing to Determine "Just and Reasonable" Factors, and Notice of Hearing and Setting Filing Deadlines* that set and noticed a May 20, 2021 hearing to determine "just and reasonable factors" and established briefing deadlines for that hearing.[1]

[1] The May 20, 2021 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 "hold a new hearing that complies with due process by explaining 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 (D. Idaho 2018). The 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

Briefs were received from Snake River; the Department; and nonconsenting landowners Kevin and Margery Clevenger and Kristina and Lynn Larsen (collectively "Nonconsenting Owners") and Citizens Allied for Integrity and Accountability ("CAIA"). Additional written comments were received from Connie and Doug Dorsing, Nancy Bankhead, and Susan Havlina. On May 20, 2021, the Administrator held a hearing in Fruitland, Idaho on the factors used to determine "just and reasonable." The following persons argued at the May 20, 2021 hearing: Michael Christian, attorney for Snake River, Deputy Attorney General Joy Vega, attorney for the Department; and James Piotrowski, attorney for CAIA and Nonconsenting Owners.

The Administrator issued an *Order Determining "Just and Reasonable" Factors* on June 21, 2021. 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 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?
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> 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?
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> 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?

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pursuant to Idaho Code § 47-328(3)(d), the Administrator would hold a hearing and issue a ruling identifying the factors to be considered.

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?

On June 23, 2021, the Administrator issued a *Notice of Evidentiary Hearing and Notice of Prehearing Conference*, which was mailed to all uncommitted owners. On August 4, 2021, a telephonic prehearing conference was held. Attendance at the prehearing conference was mandatory for those who intended to participate in the hearing. The following persons participated in the Prehearing Conference: Michael Christian, attorney for Snake River; James Piotrowski, attorney for CAIA and Nonconsenting Owners; Joy Vega, Deputy Attorney General for the Department; and James Thum, Oil and Gas Program Manager for the Department.

Prior to the evidentiary hearing, the Administrator granted Snake River's *Motion for Order Determining CAIA is Not a Party*. CAIA had responded to Snake River's motion and also petitioned to intervene as a party. The Administrator determined that Idaho Code § 47-328(3)(b) did not allow those who were not uncommitted owners to participate as a party, but CAIA could participate as a public witness. Therefore, he denied CAIA's petition to intervene.

On August 12, 2021, the Administrator held the evidentiary hearing on Snake River's integration application at 9:00am in Fruitland, Idaho with Zoom videoconference appearances

available. Michael Christian represented Snake River and appeared in person. Richard Brown, partner in Weiser-Brown Oil Company,[2] testified in person. Wade Moore III, Snake River's Landman, testified by videoconference. James Piotrowski represented the Nonconsenting Owners and appeared via videoconference. Deputy Attorney General Joy Vega represented the Department and appeared in person. All participating parties were provided with an opportunity to present testimony and evidence. They were also provided the opportunity to present opening and closing statements, and cross examine witnesses. The Administrator also asked questions of the witnesses. During the hearing, the Administrator admitted Exhibit SR-1, which was Snake River's integration application, and IDL-1, which was a demonstrative map of the field.

The Administrator also held a separate session for public witness testimony at 6:00pm the same day as the evidentiary hearing. That session was held in Fruitland with a Zoom teleconference option. No public witnesses attended in person. Wild Idaho Rising Tide was the only public witness to attend via Zoom teleconference but decided not to testify due to their audio feedback issues. Due to these audio feedback issues, the Administrator stated that he would allow written public comments to be submitted by 5:00pm on Friday, August 15, 2021. No written public comments were received by the deadline. Following the hearing, the Administrator received information correcting a portion of Richard Brown's testimony.

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

[2] Weiser-Brown Oil Company is the sole member of Snake River Oil and Gas.

1. On March 26, 2021, Snake River filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The proposed unit is approximately 640 acres.
2. Snake River is the applicant and proposed operator of the unit. SR-1 p. 1.
3. Snake River mailed its application, supporting documents, and notice of the hearing date to all uncommitted owners within the spacing unit on April 5, 2021. *4/5/21 Proof of Mailing*.
4. Snake River corrected an error in its application regarding the planned well location by filing a *Notice of Errata* on April 12, 2021. The notice stated that the planned well will be located in the southwest quarter of Section 11, not the southeast quarter of Section 10. The *Notice of Errata* was mailed to all uncommitted mineral interest owners in the spacing unit.
5. Nonconsenting Owners are uncommitted owners in the unit who filed an objection or other response to Snake River's application. Their April 28, 2021 filing was a statement of position regarding the appropriate factors to be addressed or considered 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. They participated in the evidentiary hearing through their attorney.
6. Douglas and Connie Dorsing filed a request to be admitted as a party, stating that if they were admitted their position would be that Snake River' lease is not "just and reasonable." *4/29/21 Request for Admission as a Party*. They also stated that they would be "prepared to present other lease terms that are "just and reasonable" to replace the lease terms in Exhibit D." The Administrator explained at the May 20, 2021 hearing that the Dorsings were admitted as a party. *Order Determining "Just and Reasonable Factors"* p. 2. The Dorsings did not

participate in the prehearing conference or evidentiary hearing or file any additional documents.

7. Snake River's application included a cover letter and six exhibits (Exhibits A-F.)

(1) The cover letter contains sections addressing (1) the applicant'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 lease form; (7) a list of the names and addresses of all uncommitted owners in the unit; (8) an affidavit indicating that at least 67% of mineral interests support the application by leasing or participating as working interest owners; (9) an affidavit stating the highest bonus paid to a leased owner in the unit prior to filing the application; (10) a resume of efforts; and (11) Snake River's proposed terms of integration. SR-1 pp. 1-8. The Applicant's proposed terms of integration included a request for:

- a 300% risk penalty for nonconsenting owners;
- a 1/8 royalty for those leased and deemed leased;
- a $100 bonus payment per net mineral acre;
- a 3-year primary term with a three-year renewal option to extend the 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 this order.

(2) Exhibit A is a plat map of the unit with uncommitted owners' tracts identified with shading and a number that corresponds with their name and address on the resume of efforts. SR-1 p. 9.

(3) Exhibit B is an Affidavit from Wade Moore III, Landman for Snake River. SR-1 pp. 10-13.

(4) Exhibit C is the proposed JOA, and Exhibit D is the proposed lease form. SR-1 pp. 14-68; 69-72.

(5) Exhibit E is the Resume of Efforts. SR-1 pp. 73-76.

(6) Exhibit F is a sample form letter that is similar to letters Snake River sent to uncommitted mineral interest owners as part of its offer to lease. SR-1 p. 77.

8. Snake River's application contained a geologic statement paragraph that referred to the September 28, 2020 *Finding of Fact, Conclusions of Law, and Order* ("*Spacing Order*") in Docket No. CC-2020-OGR-01-002 and to the Affidavit and Supplemental Affidavit of David M. Smith submitted in that matter. SR-1 p. 2. The *Spacing Order* found that Snake River was targeting a presumed structural trap called Sand D with porosity of 24 – 28% and permeability of 2900-3200 millidarcies. p. 6. The trap was located in a separate fault block from the Sand D reservoir seen in the Barlow #1-14. *Id.*

9. The *Spacing Order* determined that there was sufficient evidence to determine that Sand D could be efficiently and economically drained by one well. The order also determines that "Sand D is the common source of supply for this proposed spacing unit and that only one (1) well may be drilled to and produced from Sand D." *Spacing Order* p. 13. Thus, the Administrator concluded that the spacing unit in Docket No. CC-2020-OGR-01-002 was established for only one source of supply: Sand D. (*See id*. p. 16 "Snake River's proposed

spacing unit is for Sand D" and a one well limit per spacing unit is "for a common source of supply, not a common surface area").

10. The application describes the proposed operations as an exploratory wildcat well with a gathering line already constructed in the vicinity that can connect to processing facilities for production. SR-1 p. 2. While the application states that specific subsequent operations are unknown, it goes on to describe that the operations may be similar to existing wells in the Little Willow area and that all operations will comply with IDAPA 20.07.02. *Id.* It states that there "may be limited surface equipment at the well location." *Id.*

11. Exhibit E is Snake River's resume of efforts. It identifies uncommitted mineral interest owners in the unit. Transcript of 8/12/21 Evidentiary Hearing ("Hr'g Tr.") p. 61. Uncommitted owners listed in Exhibit E are: Anadarko Land Corp. (.74 acres); Benjamin Musser and Shandra Musser (2.59 acres); BK Construction, Inc. (2.6 acres); Brian Buffington Living Trust (.43 acres); Fruitland Capital Trust (.65 acres); Steven Cockerum and Michelle Cockerum (1.05 acres); River Ridge Estates, LLC (11.81 acres); Lynn Larsen and Kristina Larsen (1.01 acres); Harvey Stepp and Sandra Baker (13.29 acres); Troy Odell and Teresa Odell (10.25 acres); Douglas Dorsing and Connie Dorsing (13.4 acres); Kevin Clevenger and Margery Clevenger (1.4 acres); and Fradonson Family Trust (4.43 acres). SR-1 pp. 73-76.

12. No mineral owners were unknown or could not be located. SR-1 p. 11.

13. Benjamin Musser and Shandra Musser signed a lease with Snake River after the application was filed. Hr'g. Tr. p. 14, ll. 17-25, p. 62, ll. 3-11; *5/14/21 Snake River Letter*.

14. Snake River leased over 90% of the mineral acres in the spacing unit. SR-1, pp. 7, 10; Hr'g Tr. p. 15, ll. 2-9. Snake River made at least two contacts with each of the uncommitted mineral interest owners in the two months before the application was filed. Hr'g Tr. p. 62, ll.

12-24; p. 72, ll. 4-14; SR-1 pp. 73-76. These efforts started around December 2020, and carried over about four months until April, including contacts in February and March. *Id.* At least one contact attempt was made by certified mail on December 28, 2020. SR-1, pp. 73-77. Some owners did not respond to attempted contacts by mail and phone. Hr'g Tr. p. 63, ll. 2-6.

15. Snake River's form offer letter to mineral interest owners (Exhibit F) 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." SR-1 p. 77. The offer provided a 5-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 3 years at $100 per net mineral acre. *Id.* The offer letter was included in a mailing from Snake River to uncommitted owners. Hr'g Tr. p. 63, ll. 14-17.
16. The proposed well pad location has been leased from Fallon Enterprises, and Snake River has a surface use agreement with Fallon Enterprises. Hr'g Tr. p. 49, ll. 22-25.
17. All current surface use in this unit is on leased properties. Hr'g. Tr. pp. 57-58. Gathering lines for the proposed well will be placed on leased ground. Hr'g Tr. p. 69, ll. 18-25.
18. The proposed well is planned to be directionally drilled to the south. Hr'g Tr. p. 65, ll. 12-18. The anticipated path of the well bore will cross land that is all currently leased. Hr'g Tr. p. 65, ll. 19-22.
19. The highest royalty paid in the spacing unit was 1/8, and no voluntarily leased owner in the spacing unit was paid a royalty other than 1/8. Hr'g Tr. p. 21, ll. 1-7.
20. Snake River's application requested a $100 bonus be paid to leased and deemed leased owners. SR-1 pp. 3, 5. Mr. Moore's affidavit stated that Snake River paid $100 per net

mineral acre for all tracts larger than one acre and a flat bonus of $100 for lots smaller than one acre. SR-1 p. 11. However, the application also mentioned that Rita Lockner, an owner of a one-acre tract, was paid $250 due to an "erroneous departure."[3] SR-1 p. 3. At hearing, Mr. Moore testified that Ms. Locker was paid a bonus of $250 for an acre, but Ms. Lockner's companies that also owned mineral interests leased in the unit were leased at $100 an acre. Hr'g Tr. pp. 63-64.

21. The highest bonus payment per acre paid to a leased owner in the spacing unit was $250.

22. Snake River's proposed JOA uses the American Association of Professional Landmen ("AAPL") standard form. Hr'g Tr. pp. 17-18. That form has been in use in the oil and gas industry in different forms since the 1950s. *Id.*

23. Snake River's proposed JOA is the AAPL Form 610, the 1989 version. Hr'g Tr. p. 17, ll. 17-25. 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. Hr'g Tr. p. 18, ll. 7-13, p. 12 ll.11-13. The proposed JOA is a similar form to the JOA used in prior integrations in this area by the previous operator. Hr'g Tr. p. 17, ll. 5-8. Snake River was a working interest owner with the prior operator and used a similar JOA. Hr'g Tr. p. 17, ll. 9-12. Mr. Brown testified that he believed the strikethrough deletions and additions in Snake River's proposed JOA were materially the same as the JOAs signed with Snake River's working interest partners. Hr'g Tr. pp. 42-43.

24. Mr. Brown testified that Arkansas has used AAPL Form 610, the 1989 version, as a model form JOA. Hr'g Tr. p. 18, ll. 18-21.

[3] The application stated that "[e]conomic terms varied depending on the owner and tract size." SR-1 p. 4. However, the evidence presented at hearing indicated that except for this one circumstance, bonus terms did not vary.

25. Mr. Brown testified that Snake River's JOA with its working interest owner operating partners provides a 500% risk penalty for working interest owners. Hr'g Tr. p. 19, ll. 11-16. Snake River's application states that a 300% risk penalty is consistent with Snake River's JOA with its operating partners. SR 1 p. 5. Snake River's proposed JOA in its application requested a 300% risk penalty. *Id.*

26. Mr. Brown testified that there was nothing about this unit that led him to conclude that using the proposed JOA would not be appropriate. Hr'g Tr. p. 18, ll. 22-25.

27. A JOA dictates how the working interest owners for a well interact, including how the well is operated and how expenses and revenues from the well are shared. Hr'g Tr. pp. 15-16. For an integration application, a JOA would govern those who choose to be a working interest owner or a nonconsenting working interest owner. Tr. p. 19, ll. 7-10.

28. Snake River has taken approximately 100 voluntary leases in the units it has produced thus far. Hr'g Tr. p. 24, ll. 11- 15. Snake River's proposed lease form (Exhibit D, SR-1 pp. 69-72) is similar to other leases that are used in the area and this unit. Hr'g Tr. p. 20, ll. 1-5; p. 21, ll. 13-15. Similar versions of this proposed form of lease are also used in operations Mr. Brown has been involved with in other states. Hr'g Tr. p. 21, ll. 23-25; 22, ll. 1-12.

29. Snake River's proposed lease has special terms and conditions attached. SR-1 p. 72. One condition is that Snake River "shall not engage in drilling operations on the surface" of tracts five acres or smaller in size. SR-1, p. 72; Hr'g Tr. p. 22, ll. 20-24. Some voluntary leases in the unit also have that condition. Hr'g Tr. p. 23, ll. 1-5.

30. At hearing, Snake River proposed three changes to the lease submitted with its application.

(1) On SR-1, p. 69, the number ninety is written out, but the number 120 appears in parenthesis after it. Snake River clarified that the word ninety should be deleted and replaced with the word one-hundred-twenty. Hr'g Tr. p. 25, ll. 6-16.

(2) On SR-1, p. 69, the term "200 feet" should be changed to "300 feet" in reference to the setback requirements. Hr'g Tr. p. 25, ll. 17-22.

(3) On SR-1, p, 72, Snake River initially proposed a $50 per net mineral acre payment for an extension of the primary term in its proposed lease. SR-1, p. 72, ¶ 6; Hr'g Tr. p. 21, ll. 18-22. Mr. Brown corrected that request in his testimony after reviewing the sample letter mailed to uncommitted owners, which provided for an offer of $100 for the extension option. Mr. Brown testified that $100 per acre for the extension option was the correct amount and was offered to voluntarily leased owners. Hr'g Tr. pp. 45-46.

31. Mr. Moore testified that the 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-1 p. 12; Hr'g Tr. p. 71, ll. 3-18.

32. The well will be drilled to target a conventional sand defined by seismic data, which makes targeting more complex and higher risk. SR-1 p. 12.

33. 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-1 p. 12.

34. No public witnesses testified at the August 12, 2021 evening hearing session. No additional public comments were submitted by the Administrator's extended deadline of August 13, 2021.

35. 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.

CONCLUSIONS OF LAW

A. The Administrator has jurisdiction over 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).
4. 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 on April 5, 2021. While Snake River has working interest owner partners, it does not have working interest mineral interest owners within the unit. While there is no evidence in the record of Snake River mailing the application to the respective city or county where the unit is located, the Administrator takes official notice pursuant to IDAPA 04.11.01.602 that IDL sent a copy of the application to the respective city or county where the proposed unit is located as required by Idaho Code § 47-314(10)(a). Thus, Idaho Code § 47-328(3)(b) is met.

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. <u>Idaho Code § 47-320(4)(a) – (j)'s requirements.</u>

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; stated the drilled site was leased by Fallon Enterprises; included proposed operations; included a JOA and lease form; contained a list of uncommitted owners, and included an affidavit stating that at least 90% 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 to a leased owner in the spacing unit prior to filing the integration application. The application includes an Affidavit from Wade Moore III stating that the highest bonus payment in the unit was $100 per net mineral acre for tracts over one acre. It stated that for tracts smaller than one acre a flat bonus of $100 per acre was paid. This sworn statement was included in Mr. Moore's affidavit despite the application's cover letter indicating that an owner of a one-acre tract was paid $250 due to an "erroneous departure." Mr. Moore's clarified at hearing that $250 was the highest bonus payment to a leased owner in the unit. Hence, the application meets this 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 (1) contact must be by certified U.S. mail sent to an owner's last known address. Idaho Code § 47-320(4)(j). 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 was made by certified mail on December 28, 2020. SR-1, pp.73-77. These efforts started around December of 2020, and contacts carried over about four months until April, including contacts in February and March. Hr'g Tr. p. 62, ll. 12-24; p. 72, ll. 4-14. The one exception was the Dorsings, who mailed written notice to Snake River in January that they were not interested in leasing. SR-1, p. 76. Thus, the resume of efforts meets Idaho Code § 47-320(4)(j)'s requirements.

D. <u>Integration is granted upon "terms and conditions that are just and reasonable" as required by Idaho Code § 47-320.</u>

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 June 21, 2021. 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. 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."

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 (⅛) 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 (⅛) 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.

E. Idaho Code § 47-320(3)'s terms of integration

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.

a. Risk penalty for non-consenting working interest owners

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. SR-1 pp. 4-6. 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. Mr. Moore also testified that the well is a "wildcat" well in an area with limited knowledge and

experience with the geology, which has a higher degree of risk for Snake River. The well will be drilled to target a conventional sand defined by seismic data, which makes targeting more complex and higher risk. 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."

b. 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), (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 acre for leased and deemed leased owners. SR-1 pp. 3, 5. It was accompanied by an affidavit from Mr. Moore stating that Snake River paid $100 per net mineral acre for all 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 an owner of a one-acre tract was paid $250 due to an "erroneous departure." Mr. Moore's testimony indicated that $250 was the highest bonus payment to a leased owner in the unit.

Idaho Code § 47-320 (3)(c),(d) does not have an "erroneous departure" exemption from the requirement that those leased and deemed leased are paid the "highest bonus payment" the operator "paid to another owner in the spacing unit prior to the filing of the integration application." Idaho Code § 47-320 (3)(c),(d). Here, the highest bonus payment was $250 per acre.

Thus, the Administrator sets the bonus payment at $250 per mineral acre for those leased or deemed leased with a $100 minimum payment for tracts less than one acre.

c. Royalty Payments for Leased owners

Idaho Code § 47-320(3)(c) provides uncommitted owners with 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).

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 leased mineral interest owners in the unit. Further, mineral interest owners in surrounding areas also have leased their oil and gas rights for a 1/8 royalty. Nonconsenting owners did not request a different royalty rate or present any evidence of differing royalty rates nearby or unique circumstances in this unit that would indicate that the royalty rate should be adjusted. Therefore, the Administrator finds that a 1/8 royalty is appropriate and a "just and reasonable" term to include for leased owners.

F. Factors Used to Determine "Just and Reasonable"

In this case, all terms proposed came from Snake River, the proposed operator. Snake River proposed these terms in its submitted JOA and lease form, in addition to several terms listed in the application cover letter and as amended in testimony at hearing. Nonconsenting owners did not

propose any specific alternate terms at the evidentiary hearing or evidence of alternate terms.[4] All factors used to determine "just and reasonable" terms are listed below and used to evaluate the proposed JOA and proposed lease in general along with several specific terms in the proposed lease.

a. 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 Department 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 Department 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. The Department 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. Applications for permits to drill also 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.

[4] Nonconsenting Owners argued that the *"Just and Reasonable" Factors Order* established "that there is zero additional compensation to be made available to anybody no matter what comes up at [the] hearing." Hr'g Tr. p. 10, ll. 11-15. They explained that given that therefore they would not offer any evidence of "the market value of the leases" at issue. Hr'g. Tr. p. 10, ll. 17-20.

Nonconsenting owners did not propose any evidence related to a need to include in this integration order specific terms related to drilling, equipping, and operating the well in addition to those that the Department will address in an APD. 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 an APD.

b. 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. Snake River was a working interest owner with the prior operator, which also indicates that Snake River itself found these terms to be reasonable. Also, Snake River uses materially the same JOA with its working interest partner as the JOA proposed for this unit, further 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 500% risk penalty used with Snake River's partners.

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 terms that are materially the same that the operator had agreed to when it was a working interest owner and (c) has terms applicable to the unit and its operations.

Proposed Lease

Snake River's proposed lease is similar to other voluntary leases that Snake River has taken in the area and unit. Similar versions of this proposed lease are also used in operations Mr. Brown has been involved with in other states. This indicates that these lease terms are industry standards. However, when Mr. Piotrowski questioned Mr. Brown about why several terms were included in the proposed lease,[5] he was not able to explain the purpose of those terms about how and why they

[5] The specific terms Mr. Brown was asked about include that the lease was for "$10 and other valuable consideration," but the actual bonus payment was not referenced; Paragraph 8's choice of a 1% penalty for when a lessee fails to make timely payments; Paragraph 9's provision that lessee shall pay for damages caused by its operations to growing crops on the premises and why crops are treated differently than other damages; Lease addendum, paragraph 1's provisions regarding damages and why certain types of damages are enumerated and why certain types of operations are listed; the payment for a renewal; and Lease addendum paragraph 9: Hold Harmless Clause. Hr'g Tr. pp. 27-39

would apply to this particular unit. In spite of that, all evidence in the record establishes that these terms are commonly used in the industry, which weighs towards finding that these terms are "just and reasonable."

c. 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 materially the same as 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 the proposed lease was similar to other voluntary leases signed in the unit and surrounding area. While nonconsenting owners did not offer specific alternate terms, they did question Mr. Brown about certain terms. *See footnote 6*. However, the terms in these leases were similar to other voluntary leases in the unit, as well as leases in the surrounding area. 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 finding the proposed terms "just and reasonable."

d. 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?

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 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. *NC Owners Br.* p. 3. 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 one well.

Authorizing Additional Wells

Snake River stated that the integration order should provide for additional wells to be drilled beyond the one well currently proposed. 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." However, the spacing order for this unit does not authorize additional wells. The *September 28, 2020 Spacing Order* established the spacing unit Snake River proposes to integrate. That order determined that that "Sand D is the common source of supply for this proposed spacing unit and that only one (1) well may be drilled to and produced for Sand D." *Spacing Order* p. 13. Thus, the Administrator established the spacing unit in Docket No. CC-2020-OGR-01-002 for only one source of supply: Sand D. *See Spacing Order* p. 16 ("Snake River's proposed spacing unit is for Sand D.").

While additional sources of supply may be discovered later, Snake River will have to establish spacing units for those sources of supply. This is because the spacing unit is not a state-wide spacing unit composed of a pre-established single governmental section. *See* Idaho Code § 47-317. Instead, this unit is made up of four quarter sections from different statewide units, which necessitated a spacing order unique to this unit and a certain common source of supply. Further, 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. Either way, neither is proposed or authorized at this time: this spacing unit only relates to one well drilled to Sand D. Thus, the integration order is limited to one (1) well in the spacing unit and the Administrator determines it would not be a "just and reasonable" term to authorize any additional wells in the integration order at this time.

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-1 p. 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 some 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.

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."

Three-year primary term with a three-year renewal option.

Snake River's proposed lease includes a three-year primary term with a three-year renewal option to extend the primary term. Mr. Brown testified that some leases in the area have a longer term of 5 years for the primary term with a two-year extension. Hr'g Tr. p. 20, ll. 15-25. Because other leases in the unit and area have a similar primary term, as well as the fact that this is a exploratory field that may take additional time and resources to initiate development, the Administrator determines that three years for a primary term is a "just and reasonable" term.

However, the three-year renewal term is not a "just and reasonable" term given the particular circumstances of this unit. The renewal term Snake River requests provides that it can extend the primary term to six years with a payment of $100 per mineral acre. If Snake River chooses to exercise this option "it shall be considered for all purposes as though this Lease originally provided for a Primary Term of **Six** (6) years." SR-1 p. 72. Snake River requests the option for this longer term despite the fact that its intent is to drill a well and develop this unit as soon as possible. Hr'g Tr. p. 52, ll. 24-25. If development will take place in the next three years, there does not need to be a need for a renewal option that would extend the primary term to 6 years. Further, a renewal option also makes it more difficult to discern whether the primary term has expired because the renewal is at Snake River's discretion and payment. Additionally, certainty of when a primary term expires is important for the Department as well as those uncommitted owners. Thus, the Administrator determines that a renewal term to extend the primary term is not "just and reasonable."[6]

Shut-in Royalty Clause

[6] This determination does not alter the operator's ability under the lease to hold the unit by production.

Snake River's proposed lease includes a shut-in royalty clause in paragraph 4. SR-1 p. 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 the Department 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.

e. 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?

Snake River's application provides that no drilling activities will occur on the surface of the integrated acres. SR-1 p. 2. However, the proposed lease does not broadly address all integrated acres, but instead limits drilling operations on only integrated acres of a certain size. The lease provides that "if Leased parcels are 5.0 acres or smaller in size, Lessee shall not engage in drilling operations on the surface of the leased premises." SR-1, p. 72.[7] Otherwise, the proposed lease provides that Snake River "shall have the right to use only so much of the Leased Premises as is reasonably necessary for the full exercise of the purpose of this Lease."

Despite Snake River's proposed lease allowing surface use for parcels greater than five acres owned by uncommitted owners, Snake River testified at hearing that its planned surface and subsurface uses would not need to physically occupy or use the surface of unleased parcels. Instead, those activities would take place on parcels that are already leased. Given Idaho Code § 47-420(4)(d)'s requirement to have the "drill site" leased and that Snake River does not identify a current need to physically occupy the surface or subsurface of uncommitted owners, 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.

f. 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?

[7] Several integrated parcels are greater than 5 acres in size.

As explained above, the Administrator has determined that a "just and reasonable" term would be one that prohibits drilling activities and physical occupation on the surface or subsurface of any deemed leased owners. Thus, this factor does not apply.[8]

g. 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.

h. 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. Hr'g Tr. p. 24, ll. 16-20. Several terms in the proposed lease address terms associated with liability, including: Exhibit B, paragraph 3: Liability Insurance, Exhibit B, paragraph 7: Indemnification Clause, and Exhibit B, paragraph 9: Hold Harmless Clause. Nonconsenting owners asked Mr. Brown about whether Exhibit B, paragraph 9's Hold Harmless provision would allow liability only if the operator's conduct was negligent or otherwise wrongful. Hr'g Tr. p. 33-35. Mr. Brown testified that he would not accept liability for a decline in property values. Hr'g Tr. p. 35. Regardless, Mr. Brown's opinion on whether Snake River would or would not accept liability is not relevant here as the operative question is whether an owner would retain any private

[8] 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).

right of action they have against the operator, not whether the operator would be successful in defending any litigation. However, to ensure that is clear, 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.[9]

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 proposed in the integration order 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.
    - $250 bonus per mineral acre for those leased and deemed leased, with a $100 minimum payment.
- 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 three-year primary term is approved, but no renewal term to extend the primary term is permitted.
    - Well drilling operations must begin within three years

[9] 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.

- 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.
- 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.
- Only one (1) well is authorized consistent with the spacing order in Docket No. CC-2020-OGR-01-002.

  If Snake River decides to drill additional wells in spacing unit, it must use the appropriate administrative process to make that request.

- 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 / assignee of operator when the current operator files notice with the Administrator and with Administrator 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-2021-OGR-01-001 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 the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho, are HEREBY INTEGRATED for the purposes of drilling, developing, and operating one (1) well 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 the well 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 $250 bonus per net mineral acre with a $100 minimum payment.

(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 $250 bonus per net mineral acre with a $100 minimum payment.

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 direction 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

a. No surface or subsurface physical occupation by the operator is permitted on the lands of those deemed leased.

b. A three-year primary term is approved, but no renewal term to extend the primary term is permitted.

c. 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. 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.

M. Termination

This order will automatically terminate under any of the following conditions: (a) well drilling operations have not been commenced within three years after the effective date; or (b) one year following cessation of drilling operations if no production is established; or (c) 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 September 16, 2021 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 13th day of September 2021.

Richard "Mick" Thomas

Division Administrator
Minerals, Public Trust, Oil & Gas
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of September 2021, 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 Smith + Malek 101 S. Capitol Blvd, Suite 930 Boise ID 83702	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ Email: mike@smithmalek.com morgan.burr@smithmalek.com
Kristina Fugate Deputy Attorney General PO Box 83720 Boise ID 83720-0010	☒ Statehouse Mail ☐ Hand Delivery ☒ Email: kristina.fugate@ag.idaho.gov
Joy Vega Deputy Attorney General PO Box 83720 Boise ID 83720-0010	☒ Statehouse Mail ☐ Hand Delivery ☒ Email: joy.vega@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
Anadarko Land Corp Attn: Dale Tingen 1201 Lake Robbins Dr. The Woodlands, TX 77380	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
BK Construction, Inc PO Box 802 Fruitland, ID 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Brian Buffington Living Trust 2410 N. Alder Dr. Fruitland, ID 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:

Fruitland Capital Trust PO Box 981 Payette, ID 83661	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Steven & Michelle Cockerum 1219 NW 16th Street Fruitland, ID 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
River Ridge Estates, LLC PO Box 2176 Tualatin, OR 97062	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Lynn & Kristina Larsen 1770 NW 24th Street Fruitland, ID, 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Harvey Stepp & Sandra Baker 1840 NW 24th Street Fruitland, ID 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Troy & Teresa O'Dell PO Box 1051 Fruitland, ID 83619	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
Douglas & Connie Dorsing PO Box 1005 Fruitland, ID 836169	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ Email: ddorsing@fmtc.com
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Frandonson Family Trust 2075 Killebrew Dr. Payette, ID 83661	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Email:
James Piotrowski Piotrowski Durand, Pllc 1020 W. Main St., Suite 440 P.O. Box 2864 Boise, ID 83701	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ Email: james@idunionlaw.com Molly@idunionlaw.com

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Kourtney Romine

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Workflow Coordinator