

From: [Kourtney Romine](#)
To: [Mike Christian](#); [Mick Thomas](#); [JJ Winters](#); [External - Joy M. Vega](#); [J. Kahle Becker](#); [James Thum](#); [James Piotrowski](#); [Marty@idunionlaw.com](#)
Subject: RE: Docket No. CC-2023-OGR-01-001
Date: Monday, May 01, 2023 10:06:00 AM
Attachments: [20230430.Applicant's Response to Motion for Issuance of Subpoenas.pdf](#)
[image001.png](#)

Good morning,

Not all parties were copied on the email below so I have copied them on here now.

Thanks,

Kourtney Romine

Workflow Coordinator

Idaho Department of Lands

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From: Mike Christian <mike@hpk.law>
Sent: Sunday, April 30, 2023 08:12 PM
To: Kourtney Romine <kromine@idl.idaho.gov>; Mick Thomas <mthomas@idl.idaho.gov>; JJ Winters <jj.winters@ag.idaho.gov>; External - Joy M. Vega <joy.vega@ag.idaho.gov>; J. Kahle Becker <kahle@kahlebeckerlaw.com>
Subject: Docket No. CC-2023-OGR-01-001

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All:

Attached please find the *Response of Applicant Snake River Oil and Gas, LLC to Motion for Issuance of Subpoenas*.

Michael Christian

Of Counsel

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BEFORE THE IDAHO DEPARTMENT OF LANDS

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

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

RESPONSE OF APPLICANT SNAKE RIVER OIL AND GAS, LLC TO MOTION FOR ISSUANCE OF SUBPOENAS

SNAKE RIVER OIL AND GAS, LLC,)
Applicant.)

Applicant Snake River Oil and Gas, LLC (“Applicant”) submits this response to the *Motion for Issuance of Subpoenas* filed April 18, 2023 by objecting mineral owners Jordan and Dana Gross and Little Buddy Farms, LLC (collectively, “Gross”).

Gross’ motion for issuance of subpoenas should be denied for the following reasons:

1. Gross repeats the argument made in briefing in advance of the hearing to determine just and reasonable factors – that the Court of Appeals decision in *Hawkins v. Idaho Transp. Dep’t*, 161 Idaho 173 (Ct. App. 2016) purportedly requires discovery in every contested case. This remains wrong. The Applicant previously briefed the reasons why. *See Response Brief of Applicant Snake River Oil and Gas, LLC re: Just and Reasonable Factors* (March 8, 2023), pp. 4-7.

As the Applicant previously pointed out, the Idaho Administrative Procedure Act and the AG’s procedural rules only allow for discovery when otherwise provided by law. IDAPA 04.11.01.521 provides that “no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered.” This follows the directive in the IAPA

that the Attorney General promulgate rules for contested cases including “[p]rocedures for the issuance of subpoenas, discovery orders, and protective orders *if authorized by other provisions of law.*” Idaho Code § 67-5206(4)(f) (emphasis added). Again, Idaho Code § 47-328(3)(d) expressly provides that “[d]iscovery is not permitted” in integration proceedings, and contains no provision for issuance of subpoenas.

Hawkins does not state that discovery is required in every contested case and did not involve a contested case under the IAPA. It dealt with a hearing following a driver’s license suspension for failure of a blood alcohol test, a proceeding governed by an entirely different statute and administrative rules which expressly provide for certain discovery. Idaho Code § 18-8002a(1)(f) (providing that a hearing officer has authority to issue subpoenas); IDAPA 39.02.72 (rules governing hearings pursuant to Idaho Code § 18-8002(7)); Idaho Code § 67-5240 (defining a contested case governed by the IAPA as a “proceeding by an agency *other than . . . the Idaho transportation department's driver's license suspension contested case hearings[.]*”). Only judicial review of orders in license suspension proceedings is governed by the IAPA. Idaho Code § 67-5270.

The scenario discussed in *Hawkins* was that a subpoena *authorized under the applicable statute* was issued by the hearing officer with a return of after the hearing date. The decision does not state that discovery is required in all contested cases. Moreover, even the portion of *Hawkins* cited by Gross is dicta. Immediately after that passage, the Court of Appeals stated: “However, in the case at hand, we need not reach the issue of the purported due process violation or whether Hawkins invited the error, as Hawkins has failed to establish that he was prejudiced by the agency's actions.” 161 Idaho at 177. The case does not come close to standing for the proposition Gross cites it for, and no other court appears to have relied upon it for that proposition.

2. Gross relies upon IDAPA 04.11.01.525 for issuance of subpoenas for attendance of witnesses at hearing, and production of documents before hearing (which is merely discovery expressly prohibited by Idaho Code §47-328(3)(d)). However, Gross omits to mention, even while quoting it, that Rule 525 allows for issuance of subpoenas only “as authorized by statute,” which is consistent with Idaho Code § 67-5206(4)(f). Gross cites no statutory authority for issuance of subpoenas by the Administrator or a party in this proceeding. Idaho Code § 47-328 contains no provision for issuance of subpoenas by the Administrator in integration proceedings. Idaho Code §47-329(1) provides: “The *commission* shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation *conducted by the commission.*” This is the only reference in the Act to issuance of subpoenas. The hearing in this proceeding will be conducted by the Administrator, not the Commission. Idaho Code §47-328(3)(d) (“The oil and gas administrator shall hear the application and make a decision on the application’s merits.”). There is no authority for the Administrator to issue subpoenas, the controlling rule provides to the contrary, and Gross’ motion should be denied.

Gross’ counsel supplied a Zoom link in the email serving the motion and the related *Request for Official Notice* and asserted that they were “to be heard and discussed at the pre-hearing conference in this matter set for May 2, 2023.” There is no authority for Gross to self-schedule a motion for hearing. Rather:

- IDAPA 04.11.01.270.02 and IDAPA 04.11.01.565 provide that a party opposing a motion has fourteen days to file a responsive brief. Fourteen days from April 18, the date Gross filed the motion, is May 2, the date of the prehearing conference. The Applicant’s

response to the motion is technically not due until the end of that day, after the prehearing conference.

- IDAPA 04.11.01.260.03 provides: “If the moving party desires oral argument or hearing on the motion, it must state so in the motion.” Gross did not state in the motion that oral argument was requested.

- Rule 565 further provides: “The presiding officer may consider and decide prehearing motions with or without oral argument or hearing.” If oral argument is requested, IDAPA 04.11.01.563 provides: “The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances.” It is for the Administrator, not Gross, to set the motion for hearing if he deems it necessary, even if oral argument was requested (it was not).

Based on the foregoing, the Applicant objects to the assertion that the motion will be heard at the prehearing conference. The motion is flatly contrary to IDAPA 04.11.01.521 and .525, and Idaho Code § 67-5206(4)(f). The *Hawkins* decision does not stand for the proposition that discovery is required, and certainly does not provide authority for issuance of subpoenas. The motion may be decided without oral argument and should be denied.

DATED this 30th day of April, 2023.

HARDEE, PIÑOL & KRACKE, PLLC




MICHAEL CHRISTIAN
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed as follows:

Joy Vega Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: joy.vega@ag.idaho.gov
JJ Winters Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: jj.winters@ag.idaho.gov
Mick Thomas Division Administrator Idaho Department of Lands P.O. Box 83720 Boise, ID 83720-0050	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: mthomas@idl.idaho.gov
James Thum Idaho Department of Lands P.O. Box 83720 Boise, Idaho 83720-0050	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: jthum@idl.idaho.gov
J. Kahle Becker 223 N. 6 th St., Suite 325 Boise, ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: kahle@kahlebeckerlaw.com
James Piotrowski Piotrowski Durand, PLLC P.O. Box 2864 Boise, ID 83704	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail, return receipt requested <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Messenger Delivery <input checked="" type="checkbox"/> Email: james@idunionlaw.com , marty@idunionlaw.com

A handwritten signature in blue ink, appearing to read "Michael Christian", with a long horizontal flourish extending to the right.

MICHAEL CHRISTIAN