From: Mike Christian
To: Kourtney Romine; Mick Thomas; James Thum; JJ Winters; External - Joy M. Vega; J. Kahle Becker; james@idunionlaw.com; Marty Durand
Subject: Docket No. CC-2023-OGR-01-001
Date: Tuesday, May 02, 2023 01:24:09 PM
Attachments: 20230502.Applicant"s Response to Request for Official Notice.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

All:

Attached please find the *Response of Applicant Snake River Oil and Gas, LLC to Request for Official Notice.*

Michael Christian
Of Counsel
HARDEE, PIÑOL & KRACKE, PLLC
1487 S. David Lane
Boise, ID 83705
(208) 433-3913
mike@hpk.law

CONFIDENTIALITY NOTICE: This e-mail is intended only for the personal and confidential use of the individual(s) named as recipients and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents or take any action in reliance on the information it contains.

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 **RESPONSE OF APPLICANT SNAKE RIVER OIL AND GAS, LLC TO REQUEST FOR OFFICIAL NOTICE**

Applicant Snake River Oil and Gas, LLC ("Applicant") submits this response to the *Request for Official Notice* filed April 18, 2023 by objecting mineral owners Jordan and Dana Gross and Little Buddy Farms, LLC (collectively, "Gross"). While styled a "request," Applicant will treat it as a motion, as it is within the definition of a "motion" contained in IDAPA 04.11.01.260.01 (defining a motion to include "[a]ll other pleadings requesting the agency to take any other action in a contested case" other than the relief sought in an application, claim, appeal, petition, complaint, or protest).

While official notice is available when appropriate, at least some of the items for which Gross seeks official notice are well outside the proper scope of official notice, and others are irrelevant. Gross seeks official notice of:

1. Applicant's lease with the State in Section 24.

2. Unredacted records of payments made by Applicant pursuant to its lease with the State in Section 24.

3. A Congressional Budget Office ("CBO") report from April 2016 regarding "how the Federal Government could increase its income from the extraction of oil and gas on Federal Lands by increasing royalty rates."

4. The laws and regulations of Colorado, Montana, Utah, New Mexico, Texas, and Wyoming regarding lease rates for competitive[1] leasing of state lands for oil and gas exploration and production.

Applicant does not object to the Administrator taking official notice of the State lease, as it is a lease within the subject unit and an official act of the state in its private capacity, but Applicant reserves the right to present testimony and argument regarding the relevance of the lease under the "just and reasonable" factors to be applied. *See* IDAPA 04.11.01.602 ("Parties must be given an opportunity to contest and rebut the facts or material officially noticed."). There are significant differences among a lease with the State that is subject to different statutory requirements and is not negotiated, a lease that is voluntarily negotiated between an operator and a private mineral owner, and lease or deemed lease status in an integration proceeding.

Applicant objects to the taking of official notice regarding payments by Applicant to the State pursuant to the State lease. Applicant has no direct interest in Gross' apparent dispute with the State over its response to Gross' public records request regarding the payments. The Administrator has no jurisdiction to decide that dispute. Also, evidence of payments under the State lease adds nothing to the information that may already be gleaned from the lease itself and is irrelevant to the terms and conditions of integration. Finally, payment by Applicant to the State

[1] Gross includes in the *Request for Official Notice* references only to the portions of the various state statutes or rules relating to the royalty rates paid, but not those portions relating to the process by which state lands are leased.

is an action by Applicant, not an "official act of . . . this state," and not the subject of judicial notice under Idaho Code § 9-101(3).

Applicant objects to official notice being taken of the laws of other states. Generally, judicial notice is taken of foreign law for the purpose of applying that law in a case in Idaho. Obviously, foreign state laws regarding leasing of state minerals cannot be directly applied in an integration proceeding in Idaho. Moreover, those laws are the subject of policy decisions by selected other state legislatures regarding competitive leasing of state lands, not integration of uncommitted mineral interests in Idaho where a large majority of the mineral acres in a unit in are committed (by leasing) to development. They are irrelevant to establishing just and reasonable terms in an Idaho integration proceeding. Gross has selectively requested notice of the law in states with major and long-established production, with different competitive, infrastructure, product marketing, and private lease market conditions, and where their legislatures have made different policy choices regarding royalty rates, presumably based at least in part on those differences. The text of the laws Gross requests to be noticed contains none of that context. They have nothing to do with the "market" in southwest Idaho.[2]

While pooling or integration statutes in other states (of which Gross has not requested official notice) might be marginally relevant, they are also the result of policy choices not made by the Idaho legislature, are subject to the same underlying industry development differences as discussed above, and they may not include the same option structure as Idaho's integration statute.

Applicant objects to official notice being taken of the CBO report. The only facts arguably contained in it are (a) that all federal lands are leased with a royalty of 1/8th, the same rate as is included in most voluntary leases and all state leases in Idaho, and (b) that a few selected state

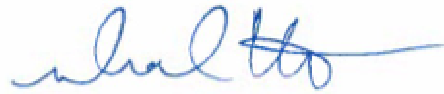
[2] Gross also supplies no explanation regarding the difference between the laws of the six states referenced in the *Request* and the similar laws of the other 44 states.

legislatures have imposed royalty rates higher than 1/8th for leases of state minerals. However, the report itself (including virtually all of its content) is not a "fact[]generally known within the trial court's territorial jurisdiction," or that "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." *See* IRE 201. Nor is the report an "official act" of the legislative branch of the United States. *See* Idaho Code §9-101(3). Idaho Code § 9-101(3) "requires an official publication of a definite governmental act or declaration creating or recognizing the fact being judicially noticed." *State v. Kellogg*, 102 Idaho 628, 635 (1981). The CBO report is nothing more than a policy analysis document. It notes in its conclusion that it was prepared at the request of one member of Congress. It is not an official congressional act.

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." The Applicant notes that Gross did not state in the motion that oral argument was requested.

DATED this 2nd day of May, 2023.

HARDEE, PIÑOL & KRACKE, PLLC

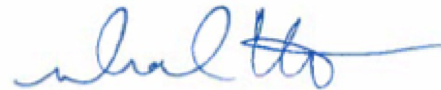


MICHAEL CHRISTIAN
Attorney for Applicant

<u>**CERTIFICATE OF SERVICE**</u>

I HEREBY CERTIFY that on this 2nd day of May, 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	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: joy.vega@ag.idaho.gov
JJ Winters Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: jj.winters@ag.idaho.gov
Mick Thomas Division Administrator Idaho Department of Lands P.O. Box 83720 Boise, ID 83720-0050	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: mthomas@idl.idaho.gov
James Thum Idaho Department of Lands P.O. Box 83720 Boise, Idaho 83720-0050	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: jthum@idl.idaho.gov
J. Kahle Becker 223 N. 6th St., Suite 325 Boise, ID 83702	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: kahle@kahlebeckerlaw.com
James Piotrowski Piotrowski Durand, PLLC P.O. Box 2864 Boise, ID 83704	[ ] U.S. Mail [ ] Certified Mail, return receipt requested [ ] Overnight Delivery [ ] Messenger Delivery [X] Email: james@idunionlaw.com, marty@idunionlaw.com



MICHAEL CHRISTIAN