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To: [Kourtney Romine](#)
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Subject: Filings in Case No. CC-2-23-OGR-01-001
Date: Friday, May 26, 2023 10:36:06 AM
Attachments: [Motion to Disqualify.pdf](#)
[Motion for Issuance of Subpoenas.pdf](#)

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Ms. Romine,

For filing in the above number case please review the two attached motions.

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BEFORE THE IDAHO DEPARTMENT OF LANDS

In the matter of the Application of Snake)	
River Oil and Gas, LLC to Integrate a)	Case No. CC-2023-OGR-01-001
Spacing Unit Consisting of Section 24,)	
Township 8 North, Range 5 West, Boise)	MOTION FOR ISSUANCE
Meridian)	OF SUBPOENAS
)	
)	
)	
)	

COME NOW Joey Ishida, Brenda Ishida, Juanita Lopez, Sarah Weatherspoon, David George, Jessica Ishida Sanchez, Juan Sanchez Jr, Gary Hale, Ryan Gentry, Mark Vidlak, Mark and Melanie Mullins, Jessica and Andrew Cogburn, Yvonne Smith, Richard Lancaster and Mary Ann Miller, by and through counsel and hereby move for the issuance of subpoenas in this proceeding, as set out below.

The issuance of subpoenas is authorized by the Rules of Practice and Procedure including:

IDAPA 04.11.01.525. SUBPOENAS (RULE 525). The agency may issue subpoenas as authorized by statute, upon a party’s motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms.

The Commission, and by necessary implication its secretary, has express statutory power to compel the attendance of witnesses and production of documents. I.C. §47-329. The power to issue the same is also a necessary prerequisite to providing due process of law as guaranteed to the Non-Consenting Owners by the Idaho and U.S. Constitutions.

Where, Non-Consenting owners request issuance of subpoenas as follows:

A) For Attendance at the Evidentiary Hearing:

- 1) Richard Brown, Snake River Oil and Gas;
- 2) David M. Smith, Snake River Oil and Gas;
- 3) Travis Boney, Snake River Oil and Gas;
- 4) A representative of Snake River Oil and Gas knowledgeable about Snake River Oil and Gas's accounting practices;
- 5) A representative of Snake River Oil and Gas knowledgeable about Snake River Oil and Gas's leases and royalty rates paid to landowners in Payette County, Idaho;
- 6) A representative of Snake River Oil and Gas knowledgeable about Snake River Oil and Gas's costs for drilling, completing and equipping wells in Payette County, Idaho;
- 7) A representative of Idaho Department of Lands knowledgeable about the terms of IDL's leases with Snake River Oil and Gas, including but not limited to the lease for the public trust grounds in the unit which is subject to the current integration proceedings;
- 9) A representative of Idaho Department of Lands knowledgeable about the payments made to IDL pursuant to any leases IDL has that are operated by Snake River Oil and Gas;

B) For Production of Documents:

Subpoenas are also requested for Production of Records prior to the Evidentiary Hearing.

Alternatively, if these records are not produced prior to the hearing these records should, at a bare minimum, be produced at the commencement of the Evidentiary Hearing in this matter:

- 1) To the Idaho Department of Lands and the Idaho State Land Board for all records of payments made to or received by IDL pursuant to any leases IDL has with Snake River Oil and Gas or any other oil and gas operator under which Snake River Oil and Gas is exercising lessee rights or otherwise serving as well operator;

- 2) To Snake River Oil and Gas for all leases Snake River Oil and Gas has entered into for or related in any way to the extraction of hydrocarbons underneath lands in the subject integration unit.
- 3) To Snake River Oil and Gas for all leases Snake River Oil and Gas has entered into with landowners in Payette County, Idaho for mineral rights;
- 4) To Snake River Oil and Gas for records related to the anticipated costs of drilling the well(s) Snake River Oil and Gas intends to drill in the subject integration unit;
- 5) To Snake River Oil and Gas for records related to Snake River Oil and Gas' profits in 2022;
- 6) To Snake River Oil and Gas for Snake River Oil and Gas' tax returns for 2020, 2021, and 2022;
- 7) To Snake River Oil and Gas for Snake River Oil and Gas's records related to the costs of drilling the Barlow, Irvin, and Fallon Wells referenced in its Application (See Application at p. 2) and any other well in Payette County, Idaho;
- 8) To Snake River Oil and Gas for Snake River Oil and Gas's production records for the Barlow, Irvin, and Fallon Wells referenced in its Application (See Application at p. 2) and any other well in Payette County, Idaho for the year 2020 to the present.
- 9) To Snake River Oil and Gas for Snake River Oil and Gas payroll and other records reflecting its monthly or other periodic costs of operation and maintenance of wells in Payette County.
- 10) To Snake River Oil and Gas for Snake River Oil and Gas records regarding the location, depth, size, density, longevity of the pool of hydrocarbons underneath the unit, including all analyses or reports reflecting the same.

Dated this 26th day of May, 2023.

PIOTROWSKI DURAND, PLLC

 /s/ James M. Piotrow0ski
James M. Piotrowski
Attorneys for CAIA and Certain Non-
Consenting or Uncommitted Owners

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be served on the parties indicated below, via electronic mail, this 26th day of May, 2023.

Idaho Department of Lands
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Spacing Unit Consisting of Section 24,)	
Township 8 North, Range 5 West, Boise)	MOTION TO DISQUALIFY
Meridian)	HEARING OFFICER
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COME NOW Joey Ishida, Brenda Ishida, Juanita Lopez, Sarah Weatherspoon, David George, Jessica Ishida Sanchez, Juan Sanchez Jr, Gary Hale, Ryan Gentry, Mark Vidlak, Mark and Melanie Mullins, Jessica and Andrew Cogburn, Yvonne Smith, Richard Lancaster and Mary Ann Miller, by and through counsel and hereby move for the replacement of Mick Thomas as hearing officer in this matter.

The non-consenting mineral owners have a property interest in their real estate holdings specifically including their mineral rights, but also extending to all of the surface and subsurface rights related to their property. In this case, the Hearing Officer will be either recommending or deciding how those rights will be diminished, and at what price. The Haring Officer will recommend or decide on the terms under which the applicant, an oil and gas company that is successor to a prior bankrupt oil and gas company, may take hydrocarbons from their owners,

what price they will pay for taking those hydrocarbons, whether and under what terms this oil company can invade the surface estates of the owners, and what measures will be required to ensure that this successor in bankruptcy actually pays its bills, protects the surface estates, protects the groundwater estates, and otherwise behaves as a responsible citizen (something almost unheard of for oil companies).

The Oil and Gas Commission is an appointed body subject to and within the Idaho Department of Lands. Idaho Code §47-314. The Commission relies on a secretary who is statutorily identified as the “the oil and gas administrator for the Department of Lands.” I.C. §47-314(6). That person is currently Mick Thomas. Mr. Thomas is, according to the Idaho Department of Lands “the Minerals, Navigable Waters, and Oil & Gas Division Administrator at the Idaho Department of Lands.” (<https://ogcc.idaho.gov/program-administration/>, last viewed on May 25, 2023). The Idaho Department of Lands is a party to this proceeding, having appeared in this case by filing a brief and appearing at hearings in this matter. (See, e.g., Idaho Department of Lands Opening Brief, filed February 28, 2023). The Department’s perspective and interests in this matter are represented by James Thum who is also identified as an employee within the supervision of both the Oil and Gas Commission and the IDL, and holds a title of “Program Specialist” within “Idaho Department of Lands – Oil & Gas Program.” (<https://ogcc.idaho.gov/contact-us/>, last viewed on May 25, 2023).

The Oil and Gas Commission itself consists of the Director of the IDL and several others. I.C. §47-314(1). The Idaho Department of Lands exercises the State of Idaho’s ownership rights with respect to the beds of lakes, rivers and streams in Idaho. *Byrd v. Idaho State Bd. of Land Comm’Rs*, 169 Idaho 922, 928, 505 P.3d 708, 714 (2022); I.C. §58-104. This power also extends to land and minerals underlying other state-owned land, all of which is ultimately controlled and

directed by a State Board of Land Commissioners. Thus the IDL exercises the rights of an owner of property, including mineral rights, within the spacing unit which Snake River Oil proposes to integrate in this proceeding.

The IDL's power, on which the power of the Commission and of Administrator Thomas relies, is in turn reliant on the power of the State Board of Land Commissioners. That Board of Land Commissioners has constitutional authority to direct and control the use and disposition of all of the public lands of the State of Idaho. Idaho Constitution, Article 9, Section 7. That Board, and its members, each has a constitutional, statutory and common law duty to manage those lands so as to achieve economic returns for the State of Idaho. The State Board of Land Commissioners consists of "The governor, superintendent of public instruction, secretary of state, attorney general and state controller." Id. Const., Art. 9, Sec. 7. The Governor appoints three of the five members of the Oil and Gas Commission. I.C. §47-314(1)(b). The Land Commissioners appoint the Director of the Department of Lands, who also serves as a fourth member of the Oil and Gas Commission. I.C. §§58-104(2), 47-314(1).

The Idaho Attorney General serves as a member of the State Board of Land Commissioners. As such, the Attorney General directs the work of the Director of the Department of Lands, who in turn appoints and directs the efforts of IDL staff including administrators and program specialists in the oil and gas division. I.C. §58-104A.

All of the above presents irreconcilable conflicts of interest. Property owners, for whom their home is typically the largest, single investment they will ever make, are entitled to a decision maker who is free from either the reality or the appearance of bias. Such neutrality is required by the guarantee of due process in the federal constitution, *Withrow v.*

Larkin, 421 U.S. 35 (1975), as well as under well-established Idaho law. *Miller v. Ririe Joint School District*, 132 Idaho 385 (1999).

The appearance of impropriety and bias is only strengthened by the multiple appearances in this case of lawyers from the same office, the office of the Attorney General. Deputy Attorney General Joy Vega works for, is employed by, and serves at the pleasure of the Attorney General. As noted above, the Attorney General has a statutory duty to serve the interests of the State of Idaho as a property owner and, in this case, as a mineral rights owner with a stake in the outcome of this proceeding. On multiple other occasions, D.A.G. Vega has represented the Department of Lands and its various employees, many of whom also have an official interest in the outcome of this case. Yet, the appearance of the same lawyer in multiple roles is more than adequate, even in the absence of actual bias, to require disqualification of a decision maker charged with protecting and providing the due process required by the law. *Id.* The present conditions can be viewed, quite accurately, as one in which a member of a law firm previously represented a party with an interest before a particular judge, but is now representing the judge, while her associates in the same law firm continue to represent the parties before that judge. These circumstances do not pass even a “smell test,” let alone a detailed analysis of conflict of interest.

Based on all of the above, the only reasonable and adequate course is for the Hearing Officer and the Attorney General’s office to be disqualified from participation in this proceeding. The filing parties so move for disqualification of Hearing Officer Mick Thomas, and disqualification of the Attorney General or his Deputies from representing, counseling, advising or assisting any substitute Hearing Officer or the Oil and Gas Commission in relation to this proceeding.

Dated this 26th day of May, 2023.

PIOTROWSKI DURAND, PLLC

 /s/ James M. Piotrowski
James M. Piotrowski
Attorneys for CAIA and Certain Non-
Consenting or Uncommitted Owners

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be served on the parties indicated below, via electronic mail, this 26th day of May, 2023.

Idaho Department of Lands
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