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Cc: [James Thum](#)
Subject: IDL response brief - CC-202OGR-01-001
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Attachments: [image001.png](#)
[IDL Response Brief CC-2023-OGR-01-001.pdf](#)

Ms. Romine,

Please file in the record of this case the attached Idaho Department of Lands' Response Brief which is also being served upon the parties who appeared in this matter to date.

Thank you,



JJ Winters | Deputy Attorney General

Idaho Department of Lands | Energy and Natural Resources Division

Office of the Attorney General | State of Idaho

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Attorney for Idaho Department of Lands, Oil and Gas Program

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 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

**IDAHO DEPARTMENT OF LANDS’
RESPONSE BRIEF**

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, and pursuant to the ORDER SETTING PREHEARING BRIEFING SCHEDULE issued May 3, 2023, files this Response Brief in response to the Motions for Issuance of Subpoenas, Motion to Disqualify Hearing Officer, and Request for Official Notice filed by the objecting property owners in the above-captioned matter.

The Idaho Legislature enacted statutory regulation of the development of oil and gas resources within the State of Idaho, which includes the integration of mineral interest owners to participate in the risks and rewards of such development. I.C. § 47-320. The state’s integration procedures “constitute a proper exercise of its police power” ... to protect “property rights by requiring a just, orderly, and efficient process for neighbors to extract common resources.” *Kerns v. Chesapeake Exploration, L.L.C.*, 762 Fed. Appx. 289, 297 (6th Cir. 2019) (citations omitted). “Each landowner’s property interest in the minerals remains intact; it is simply regulated.” *Id.* (citation omitted).

The Idaho Oil and Gas Conservation Commission (“OGCC”) and IDL have the authority and obligation to protect correlative rights while preventing waste of hydrocarbon resources. I.C. §§ 47-311 through 47-315. The OGCC and IDL must enable the development of hydrocarbon resources, protecting and enforcing the property rights of owners *and* producers; and, in doing so, prevent the waste of hydrocarbon resources. I.C. §§ 47-311, 47-312.

I. The Administrator should deny the motions for subpoenas.

Both objecting parties have filed motions for the Administrator to issue subpoenas for attendance at the evidentiary hearing, and for production of documents. As a threshold matter, Idaho Code unambiguously states that discovery is not permitted for integration proceedings. I.C. § 47-328(3)(d). The motions cite to IDAPA 04.11.01.525, which states, in pertinent part, “[t]he agency *may* issue subpoenas *as authorized by statute . . .*” IDAPA 04.11.01.525 (emphasis added). In this case however, Idaho law provides no such authorization in integration proceedings.

Further, neither objecting party has provided any stated purpose or need for the subpoenas, nor stated with any specificity what the subpoenas are expected to provide. Integration proceedings require the Applicant to show that it has met the conditions stated in Idaho Code § 47-320(6) to obtain an order for integration. The request for issuance of subpoenas and production of documents appears

to be nothing more than a fishing expedition and without a basis in law or actual need.

II. IDL has no authority to address public records request denials.

The motion for issuance of subpoenas and request for official notice filed by objecting parties Jordan and Dana Gross and Little Buddy Farms, LLC (“Gross”) inappropriately refers to denials of public records requests as “unlawfully redacted” and implies that IDL intentionally “sought to shield its records from public disclosure.” IDL objects to Gross’s representation of both. Regardless of legal merit, integration proceedings are not the proper venue to adjudicate such concerns.

The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency to make the information available for public inspection in accordance with the provisions of this chapter. The petition contesting the public agency’s decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency. In cases in which the records requested are claimed as exempt pursuant to section 74-107(1) or (24), Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request.

I.C. § 74-115(1). The Administrator lacks jurisdiction or authority to hear disputes about public records requests. If Gross feels that any or all public records requests were unlawfully denied, the proper venue to institute proceedings is the district court of the county where the records are located.

III. IDL has no authority to address the constitutionality of the Oil and Gas Conservation Act.

For similar reasons stated in the above section, integration hearings are not the appropriate venue to address the constitutionality of the statute. The Oil and Gas Conservation Act provides the parties with legislative guidance and processes to follow in order “to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho, to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights

of all owners be fully protected . . .” I.C. § 47-311.

Both parties’ motions reference various parts of the Act as “unconstitutional” and violative of their due process and rights. Regardless of whether or not such a legal attack would withstand judicial scrutiny, administrative hearings are not the proper avenue to pursue such a remedy. “It is generally presumed that legislative acts are constitutional, that the state legislature has acted within its constitutional powers, and any doubt concerning interpretation of a statute is to be resolved in favor of that which will render the statute constitutional.” *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 522 P.3d 1132, 1197 (2023).

The Oil and Gas Commission is a separate body from the Land Board, created by statute (I.C. § 47-314(1)). The Act further provides that “[t]he attorney general shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it . . .” I.C. § 47-314(12). Mr. Thum does not present to the Land Board, nor does the Land Board give directives to Mr. Thum. The appointed State actors maintain the required separation and any “appearance of impropriety and bias” is strictly a conjured misrepresentation of reality.

For the reasons stated above, the Idaho Department of Lands requests the motions for subpoenas, request for official notice, and motion for disqualification be denied.

DATED this 7th day of June, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



J.J. WINTERS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2023, I caused to be served a true and correct copy of the foregoing by the following method to:

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