

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil) and Gas, LLC to Integrate Unleased Mineral) Interest Owners in 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 ORDER ON PREHEARING MOTIONS
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On May 2, 2023, pursuant to the April 13, 2023 *Notice of Prehearing Conference for Evidentiary Hearing*, a prehearing conference was held in the above-captioned matter, as provided for in IDAPA 04.11.01.510. Applicant Snake River Oil and Gas LLC was represented by Michael Christian. Objectors Jordan A. and Dana C. Gross and Little Buddy Farm (collectively the “Grosses”) were represented by their attorney, J. Kahle Becker, with Mr. Gross also present. Objector Yvonne Jane Smith personally appeared and was represented by attorney James Piotrowski, who also appeared on behalf of Joey Ishida, Brenda Ishida, Jessica Ishida Sanchez, Juan Sanchez Jr., Juanita Lopez, Sarah Weatherspoon, David George, Gary Hale, Ryan Gentry, Mark Vidlak, and Mary Ann Miller (collectively “Nonconsenting Owners”). Mr. James Thum, as agency staff with the Idaho Department of Lands, was present and represented by Deputy Attorney General JJ Winters. Mick Thomas, in his official capacity as the Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator” or “hearing officer”), conducted the proceeding as the hearing officer under the authorities vested in his position by Idaho Code § 47-328(3) and IDAPA 04.11.01.000 *et seq.* Deputy Attorney General Joy Vega attended as the agency attorney assigned to advise and assist the Administrator.

Following the Prehearing Conference, the hearing officer issued the May 3, 2023 *Order Setting Prehearing Briefing Schedule*. This order was to facilitate the orderly submission of non-evidentiary topics for determination by the hearing officer, to provide an opportunity for response

and reply briefs, and to facilitate a reasonable timeframe for the hearing officer to provide a written decision on such matters prior to the evidentiary hearing.

PRE-EVIDENTIARY HEARING MOTIONS AND BRIEFS

Pursuant to IDAPA 04.11.01.564 and 565, the hearing officer allowed prehearing motions and briefing. The May 3, 2023 *Order Setting Prehearing Briefing Schedule* did not provide for oral argument on any filed prehearing motion or brief, and no party objected to the schedule or sought to modify the schedule through a petition for review of the interlocutory order under IDAPA 04.11.01.711. All motions and briefs received have been added to the record and are available for review on the docket website at: [Docket No. CC-2023-OGR-01-001, Application for Integration | Oil & Gas Conservation Commission \(idaho.gov\)](https://docket.oilgas.idaho.gov/Case/CC-2023-OGR-01-001). Such filings are, as follows:

- 05/23/2023 the Grosses – Motion for Issuance of Subpoenas
- 05/23/2023 the Grosses – Request for Official Notice Reply Brief
- 05/26/2023 the Nonconsenting Owners – Motion for Issuance of Subpoenas
- 05/26/2023 the Nonconsenting Owners – Motion to Disqualify Hearing Officer
- 06/07/2023 Applicant Snake River Oil and Gas – Response to Motions for Issuance of Subpoenas
- 06/07/2023 Applicant Snake River Oil and Gas – Response to Motion to Disqualify Hearing Officer
- 06/07/2023 Idaho Department of Lands – Response Brief
- 06/12/2023 the Nonconsenting Owners – Reply Brief in Support of Motion for Issuance of Subpoenas
- 06/12/2023 the Nonconsenting Owners – Reply Brief in Support of Motion to Disqualify Hearing Officer

These motions and briefs having been timely filed and served, and the hearing officer having had an adequate opportunity to review and consider the arguments presented, hereby renders the following decisions:

MOTION FOR DISQUALIFICATION OF HEARING OFFICER

The Nonconsenting Owners argue that the organizational structures of the Idaho Department of Lands (“IDL”), the Idaho Oil and Gas Conservation Commission (“OGCC”), the Idaho State Board of Land Commissioners, and the Office of the Attorney General present irreconcilable conflicts of interest and the appearance of impropriety and bias. Based on their arguments, the Nonconsenting Owners moves for the disqualification of the hearing officer, and the Office of the Attorney General, from participation in this statutorily mandated integration proceeding.

The Grosses have previously made many of the same or similar arguments in their March 6, 2023 *Response Brief and Motion to Disqualify the Hearing Officer*. After briefing and oral argument (during which Mr. Piotrowski spoke on behalf of the Nonconsenting Owners), the hearing officer verbally denied that motion and then issued the March 22, 2023 *Order Denying Motion to Disqualify Administrator*, both of which are incorporated herein, in their entireties, by this reference.

The multi-faceted roles that certain state government employees are obligated to fulfill do occasionally cause confusion for members of the public. When faced with regulation or governmental imposition, citizens might assume that an employee’s job title renders bias in the hearings and procedures that facilitate public involvement and provide due process under the law. However, the obligations of government employees do not inherently result in conflict or bias. Indeed, to promote the public’s understanding of its government, the Idaho State Legislature has repeatedly codified such statutory obligations and ratified regulatory duties.

The first controlling combination of legislatively established roles is that the hearing officer, in the role as “the oil and gas administrator for the department of lands shall be the secretary

for the commission.” Idaho Code § 47-314(6). Because he is the Administrator, the hearing officer “shall hear the application [for an order regarding integration of a spacing unit] and make a decision on the application’s merits.” Idaho Code § 47-328(3)(d). After the hearing, the Administrator “shall issue a written decision on any such application within thirty (30) calendar days of the hearing. The oil and gas administrator's decision shall not be subject to any motion for reconsideration or further review, except for appeal to the commission as provided in subsection (4) of this section.” Idaho Code § 47-328(3)(e); *see also* Idaho Code § 47-328(1) (authorizing the OGCC with exclusive appellate review from the Administrator’s decision on an application).

The second controlling combination of legislatively established roles is that of the Office of the Attorney General. The Attorney General, through the appointment of Deputy Attorneys General (“DAGs”), is statutorily designated to “perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions, and other state entities in all courts and before all administrative tribunals or bodies of any nature.” Idaho Code §§ 67-1401(1) and (13). Consistently, the Attorney General through appointed DAGs shall represent IDL in “all suits, actions, contests or controversies.” Idaho Code § 58-120. And, the Attorney General through appointed DAGs “shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it” Idaho Code § 47-314(12). Whether by representation as an IDL employee, or acting as the statutory designee of the OGCC, the Administrator is entitled to legal representation from the Office of the Attorney General. Similarly, IDL staff is entitled to legal representation from the Office of the Attorney General. The fact that two attorneys within the Office of the Attorney General are designated to represent their respective clients is not an imputed conflict of interest.

This leads to the third controlling combination of Idaho law existing in the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA04.11.01.000, *et seq*, most recently ratified in 2022 (“rules”). In addition to the statutory procedures governing every application for integration, Idaho Code § 47-328, the rules provide the hearing officer with additional administrative authorities. The rules must be utilized by “[e]ach state board, commission, department or officer authorized by law to ... determine contested cases ...” where that agency has not adopted its own procedural rules. IDAPA 04.11.01.005.02; *see also* 04.11.01.001. The parties were advised of the application of the rules in the January 31, 2023 *Order Vacating Hearing and Notice of Hearing to Determine “Just and Reasonable” Factors*. The rules govern the rights of IDL staff to participate and be represented by an agency attorney – IDAPA 04.11.01.157, 201, 202, 420.01; the scope of authority of the hearing officer – IDAPA 04.11.01.410-415, 417, 420.02, and 424; and the right of the hearing officer to have the assistance of an agency attorney to advise and assist him – 04.11.01.420.02 and 424. Each of these cited subsections are additional grounds for the denial of the pending motion for disqualification.

Finally, the OGCC is a distinct decision-making body, separate from the State Board of Land Commissioners. The organic acts of each distinct commission establish an obvious and intentional separation. *See e.g.* Idaho Code §§ 47-314 and 315, 58-104. When compared, there are no connections between the scope of decision-making authorities between the two commissions. While no evidence of involvement by the State Board of Land Commissioners (or the OGCC, at this point in the proceeding) exists in the record, any claim by another state agency that it has authority over the regulation of production of oil and gas within the state of Idaho has expressly been “rescinded and withdrawn and such authority is hereby unqualifiedly conferred upon the commission” Idaho Code § 47-314(8).

The arguments presented by the Nonconsenting Owners for disqualification of the hearing officer and the agency attorneys involved in this statutory procedure are inconsistent with the laws of Idaho. Moreover, there is no evidence of a conflict of interest, bias, or prejudice in this matter. For the aforementioned reasons, the Nonconsenting Owners' Motion to Disqualify Hearing Officer is DENIED.

MOTIONS FOR ISSUANCE OF SUBPOENAS

Both the Grosses and the Nonconsenting Owners filed motions for the issuance of subpoenas. Through such motions the objectors seek to subpoena the attendance of specific individuals at the evidentiary hearing and the production of specific documents before the evidentiary hearing. Idaho Code specifically states that in proceedings on an application for integration: "Discovery is not permitted." Idaho Code § 47-328(3)(d) (emphasis added). In turn, IDAPA 40.11.01.520.01 lists the kinds of discovery recognized by the rule, including production of documents and subpoenas. The Nonconsenting Owners argue, on reply, that subpoenas are not a form of discovery – under the Idaho Rules of Civil Procedure. This argument ignores the applicable rule defining what discovery is in administrative procedures and the statute disallowing discovery.

Both motions cite to IDAPA 04.11.01.525 as authority for the hearing officer to issue the requested subpoenas. That subsection states, in pertinent part, that "[t]he agency may issue subpoenas as authorized by statute" IDAPA 04.11.01.525. However, in citing that subsection, the objectors ignore the statute that prohibits discovery in this case. Similarly, the objectors ignore IDAPA 04.11.01.520.02, which only allows the application of the Idaho Rules of Civil Procedure in administrative proceedings where the scope of discovery is not otherwise provided in statute, rule, order or notice and only when discovery is authorized before the administrative agency. The

governing statute provides no authorization for discovery in proceedings on an application for integration. Idaho Code § 47-323(3)(d).

Both motions also cite Idaho Code § 47-329(1) as applicable statutory authority for subpoenas to be issued in this case. While both motions discuss this authority being with the OGCC, they fail to acknowledge that this administrative proceeding is not, currently, before the OGCC. As discussed, above, it is the Administrator who “shall hear the application and make a decision on the application’s merits.” Idaho Code § 47-328(3)(d). In comparison, the OGCC “shall have authority to hear ... appeals from the oil and gas administrator’s decision on an application filed pursuant to this chapter” Idaho Code § 47-328(1). Simply stated, the OGCC does not have jurisdiction over this matter at this point in the proceedings. And therefore, does not have the subpoena power that the objectors claim exists.

The constitutionality of the statute’s prohibition on discovery is also challenged by the objectors. That argument is beyond the scope of authority of the hearing officer. “A hearing officer in a contested case has no authority to declare a statute unconstitutional.” IDAPA 04.11.01.415. Instead, the hearing officer is guided by the judicial opinion affirming the State’s police power and statutory procedure regarding integration applications. *CAIA v. Schultz*, 335 F.Supp.3d 1216 (U.S Dist, Idaho, 2018). The eventual evidentiary hearing is the administrative hearing where the hearing officer may begin to consider the statutory compliance and merits of the integration application. The applicant will be required to show that it has met the conditions stated in Idaho Code § 47-320(6) in order to obtain an order for integration. And with the issuance of the April 13, 2023 *Order Determining “Just and Reasonable” Factors*, the parties have the opportunity to focus their arguments on the factors that would affect the determination of “just and reasonable” terms of the integration order – if the applicant satisfies its burden of proof. The

hearing officer is authorized to exclude irrelevant or unnecessary testimony or evidence at hearing, IDAPA 04.11.01. 562, 600, but he is not authorized to enable the party's collection of their prospective evidence prior to the hearing.

For the aforementioned reasons, the Nonconsenting Owner's and the Grosses Motions for Issuance of Subpoenas are DENIED.

MOTION FOR OFFICIAL NOTICE

The Grosses initially filed their *Request for Official Notice* on April 18, 2023, the briefing on which was carried over into the prehearing briefing schedule. The Grosses request for official notice contends that the hearing officer should take official notice of some items as evidence in their entirety, while allowing "unlawfully redacted" forms to be accepted as well. Each party may determine what evidence best supports their positions and arguments and present the same for admission into evidence at the hearing. However, the hearing office denies the request that certain documents be "officially noticed" and accepted into the record prior to the hearing. For the following reasons, the Grosses request is DENIED.

All parties have the ability to submit evidence, testimony, or other data as exhibits during the hearing. IDAPA 04.11.01.157, 202, 559, 600, 601, 606. Witness testimony will be given under oath and subject to cross-examination by other parties. IDAPA 04.11.01.157, 202, 559. Proffered physical exhibits must be admissible, relevant, and not unduly repetitious and will be subject to objection by other parties. IDAPA 04.11.01.600-602, 606. While the rule may allow the hearing officer to take official notice of any fact that could be judicially noticed in the courts of Idaho, IDAPA 04.11.01.602, in this matter, the most appropriate venue for the presentation of such facts is at the hearing.

The next component of the Grosses request is related to their public records requests to the Department of Lands regarding oil and gas leases on state endowment lands with Snake River Oil and Gas. The hearing officer does not have any authority to obtain or cause the production of public documents in the custody and control of the lessor of those leases. Similarly, the hearing officer has no jurisdiction over the denial or partial denial of a public records request. The adjudication of such dispute is established in Idaho Code § 74-115, which provides that:

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. . .

Idaho Code § 74-115(1).

With respect to public records that may be relevant to an integration application, Idaho Code § 47-326 clearly provides what public data is to be provided without the submission of a public records request. Idaho Code § 47-326 lists the following:

- (a) All reports required under section 47-324(1) through (5), Idaho Code;
- (b) All well plats; and
- (c) All state-required permits, except seismic data.

Idaho Code § 47-326(1). Additionally, subject to confidentiality designations in Idaho Code § 47-327, operators have strict reporting requirements under Idaho Code § 47-324. And Idaho Code § 47-320 governs the minimum information that must be proven for an order of integration to be granted. It is for the parties to determine what evidence may establish and further their position.

ORDER

For the reasons stated above, the Objectors in Nonconsenting Owners Group's Motion to Disqualify is DENIED.

For the reasons stated above, both Objector parties' Motion for Issuance of Subpoenas are DENIED.

For the reasons stated above, Objectors Gross' Request for Official Notice is DENIED.

Dated this 30th day of June, 2023.

A handwritten signature in black ink, appearing to read "Mick Thomas", written in a cursive style.

Richard "Mick" Thomas
Hearing Officer

Division Administrator
Minerals, Navigable Waterways, Oil & Gas
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of June 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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