

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil)
and Gas, LLC for Spacing Order Consisting of the)
SE ¼ of Section 10, the SW ¼ of Section 11, NW)
¼ of Section 14, and the NE ¼ of Section 15,)
Township 8 North, Range 5 West, Boise Meridian,)
Payette County, Idaho.)
Snake River Oil and Gas, LLC, Applicant.)
_____)

Docket No. CC-2020-OGR-01-002

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

Snake River Oil and Gas, LLC (“Snake River”) filed an application on May 26, 2020, to establish a 640-acre spacing unit consisting of the SE ¼ of Section 10, the SW ¼ of Section 11, NW ¼ of Section 14, and the NE ¼ of Section 15, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. (hereinafter “proposed spacing unit”).

The Minerals, Public Trust, Oil & Gas Division Administrator, Richard “Mick” Thomas, (“Administrator”) of the Idaho Department of Lands (“IDL”) subsequently issued a June 5, 2020 *Order Vacating Hearing; Order Setting Deadline for Prehearing Motions; & Notice of Prehearing Conference* (“*Notice of Prehearing Conference*”). The *Notice of Prehearing Conference* (1) vacated the July 9, 2020 evidentiary hearing due to the COVID-19 emergency and rapidly changing guidelines; (2) set a June 25, 2020 deadline for prehearing motions; and (3) scheduled a telephonic prehearing conference for July 13, 2020, at 1:30pm (MT).

On July 13, 2020, the Administrator held a telephonic prehearing conference, as provided for in IDAPA 04.11.01.510. The following individuals participated in the Prehearing Conference: Michael Christian, attorney for Snake River; Deputy Attorney General Joy Vega, attorney for the Idaho Department of Lands; and James Thum, Oil and Gas Program Manager for the Idaho

Department of Lands. No additional uncommitted mineral interest owners appeared or made their attendance known by telephone at the prehearing conference.

The Administrator subsequently entered a *Prehearing Order and Notice of Hearing* on July 21, 2020, which set a hearing for August 27, 2020 at 9:00 am, via Zoom. The Administrator also set a deadline for the receipt of objections or other responses.¹ The *Prehearing Order and Notice of Hearing* provided that at the spacing evidentiary hearing, the Administrator would not consider evidence related to integration or “just and reasonable” terms and conditions of an integration order provided in Idaho Code § 47-320.

James Piotrowski filed an objection on behalf of Kevin and Margery Clevenger and Citizens Allied for Integrity and Accountability (“CAIA”). In addition, the Administrator received many written responses from members of the public.² No motions to intervene were filed or granted in this matter.

The Administrator held the hearing via Zoom on August 27, 2020 at 9:00 am. Michael Christian represented Snake River at hearing, and Mr. David Smith provided testimony. James Piotrowski represented Kevin and Margery Clevenger and CAIA. Deputy Attorney General Joy Vega represented IDL, and James Thum provided testimony. No other uncommitted mineral interest owners appeared at the 9:00 am evidentiary hearing.

¹ The *Prehearing Order and Notice of Hearing* contains conflicting deadlines for objections and responses: Paragraph 9 of the Prehearing Order states the deadline is August 13, but the Notice of Hearing states that the deadline is August 27, 2020. Due to this conflict, the Administrator considered all responses that were filed before 5:00pm on August 27.

² Written public comments were received from Mr. & Mrs. Taylor, Jeanne Hurd, Lauren Burnett, Julie Fugate, Dana Gross, Adam & Holly Fugate, Ernie & Loretta Neuberger, Susan Havlina, Clint & Susan Traw, Robbie and Bonnie McGehee, Gail MacDonald, James Johnson, Cookie Atkins, David & Linda Mihalic, Alan & Glenda Grace, Kay McPheeters, Charles Otte, William & Roxie Tolbert, Beverly & James Smith, Joey & Brenda Ishida, Tim & Kate Kilbourne, Nancy Wood, Sue Bixby, Sharon Simmons, Dale Verhaeghe & Linda Dernoncourt, and JoAnn Higby.

The parties participating in the hearing were given the opportunity to present testimony and evidence, as well as opening and closing statements, cross examine witnesses, and offer rebuttal testimony. The Administrator also asked questions of witnesses and attorneys. Snake River presented Exhibits SR-1 and SR-2. IDL presented Idaho Department of Lands Exhibit 1. No objections to those exhibits were received and they were admitted into record.

Additionally, interested persons had the opportunity to present public testimony as public witnesses at a separate evening session of the hearing on August 27, 2020 at 6:00 pm, pursuant to Idaho Code § 67-5242(3)(c) and IDAPA 04.11.01.355.³ The public witnesses that testified at this session were: Charles Otte, Julie Fugate, Roxie Tolbert, and Sue Bixby. Comments filed after August 27, 2020, were not considered in this decision.

FINDINGS OF FACT

1. Two previous administrative proceedings have addressed lands included in the proposed spacing unit. One matter is Docket No. CC-2016-OGR-01-001, a request by Alta Mesa Services, LP to establish and integrate a 640-acre spacing unit consisting of Section 14, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The second matter is Docket No. CC-2016-OGR-01-005, which was a 2016 application by operator Alta Mesa Services, LP and AM Idaho, LLC (collectively “Alta Mesa”) for a 640-acre spacing unit consisting of the same area as Snake River’s proposed spacing unit in the current matter. The Administrator took official notice of all documents filed in Docket No. CC-2016-OGR-01-005 and Docket No. CC-2016-OGR-01-001. Rec 2:36:00.⁴

³ Public witness testimony was held via Zoom videoconference with an in-person testimony option also available in Fruitland. The *Notice of Hearing* noted that comments via Zoom and in-person comments will be given the same weight and consideration regardless of the method used to testify.

⁴ The hearing was recorded pursuant to IDAPA 04.11.01.651. A hearing transcript has not been prepared. The agency or any party may have a transcript prepared at its own expense. All

2. In Docket No. CC-2016-OGR-001-001, the Director issued an August 5, 2016 order that concluded that establishing and accepting the 640-acre state-wide spacing in Section 14 was appropriate.⁵ Snake River's proposed spacing unit in the current matter also includes the northwest quarter of Section 14.
3. In Docket No. CC-2016-OGR-01-005, the IDL Director issued a January 17, 2017 *Findings of Fact, Conclusions of Law, and Order* ("January 17, 2017 Order") that established a 640-acre temporary spacing unit made up of quarter sections from four different sections: the same four quarter sections in Snake River's currently proposed spacing unit. Docket No. CC-2016-OGR-01-005's unit included the NW ¼ of Section 14, so the January 17, 2017 *Order* limited production to the stratigraphic zone identified as Sand D encountered between 3650' and 3690'MD to differentiate its source of supply from Docket No. CC-2016-OGR-001-001. In April 2018, Alta Mesa filed a petition to amend the Docket No. CC-2016-OGR-01-005 spacing and integration order, requesting an eighteen (18) month extension. The Administrator granted the petition with certain modifications on July 16, 2018. However, Docket No. CC-2016-OGR-01-005's July 16, 2018 temporary spacing order expired in January 2020.
4. Snake River's proposed spacing unit in the current matter covers the same area as the spacing unit that expired in Docket No. CC-2016-OGR-01-005. Thus, there is not an active spacing order in effect that covers the entire proposed spacing unit.

references to the hearing recording in this Order will be described by reference to the recording number and the minute(s) and second(s) location on that recording. For example: Rec #, hh:mm:ss.

⁵ A map of these spacing units is found in IDL Exhibit 1, which shows the Harmon Field in the Payette area with existing spacing units, previously proposed spacing units, and currently proposed spacing units. Ex 1, IDL 002.

5. Snake River filed its application for the proposed spacing unit in the above-captioned matter on May 26, 2020. *IDL 5/26/20 e-mail confirmation*. Snake River's application included a Declaration of geologist David Smith, who had previously interpreted Idaho seismic data for the proposed spacing unit. *Smith Declaration*, ¶1. Snake River filed a Supplemental Declaration of David Smith on June 2, 2020. *Suppl. Smith Declaration*. That Supplemental Declaration contained well log excerpts from nearby wells. *Suppl. Smith Declaration* ¶ 1, 2.
6. On June 2, 2020, pursuant to Idaho Code § 47-328(3)(a), IDL requested additional information to clarify parts of Snake River's application. *IDL 6/2/20 Letter*. IDL requested that Snake River be prepared to present ten additional items at hearing, including structure maps in subsea depth, pressure test results, porosity and permeability of net pay, thickness of net pay, water saturation of net pay, reservoir temperature, gas analysis and gas oil ratio, gas formation volume factor, estimated original gas in place and expected recovery, and reservoir drive mechanism.
7. On June 2, 2020, Snake River mailed a copy of the May 26, 2020 application and David Smith's June 2, 2020 Supplemental Declaration by certified mail to all uncommitted mineral interest owners within the proposed spacing unit. *Proof of Mailing 6/2/20*.
8. James Piotrowski filed an objection on behalf of Kevin and Margery Clevenger and Citizens Allied for Integrity and Accountability ("CAIA") (collectively, "Objectors"). The Objection asked the Administrator to deny Snake River's application. Objectors argued that the application failed to meet the Idaho Oil and Gas Conservation Act's purposes and that the mineral estates in the proposed spacing unit are already included in at least one spacing unit. They also argued it "violates requirements to ensure the most efficient development of existing resources" as the proposed spacing unit is both over and under inclusive. Finally, Objectors

assert that Snake River's application fails to reflect existing uses of surface estates and minimize impacts on pre-existing surface uses.

9. Snake River's proposed spacing unit is targeting a presumed structural trap defined by seismic data called Sand D. Smith Declaration ¶ 10, Rec 56:20.
10. The porosity of 24-28% combined with a permeability of 2900-3200 millidarcies SR Ex. 1.
11. The gas/water contact of the pool in the proposed unit is at a different subsea than that of the Barlow #1-14 Sand D. The gas/water contact depth of approximately -1650' subsea for the Sand D pool within this unit is lower than the approximately -1335' subsea depth of the gas/water contact in the Barlow #1-14 Sand D.
12. One quarter mile to the west of the proposed spacing unit, AM Idaho drilled the Fallon #1-10 well to 5434' Measured Depth ("MD").⁶ This well logged and tested gas condensate pay in Sand B at 3815'-3835' MD. Sand D was encountered water bearing at 4180-4244' MD. *Smith Declaration* ¶ 8.
13. One half mile to the south of the proposed spacing unit's targeted Sand D, AM Idaho drilled the Barlow #1-14 well to 4150' MD. This well logged pay and tested gas condensate from Sand D at 3503'-3512.' Smith Declaration ¶ 9.
14. Exhibit SR1, page five, is Snake River's structure map. The map indicates the prospective Sand D area is isolated on the south by a fault, isolated on the north and east by a fault, and limited by a gas/water contact on the west along the -1650' subsea ("SS") contour line. Rec 54:00. Mr. Smith, Snake River's geologist, testified that this structural system isolates this Sand D pool from the proven Sand D pool that was reached via the Barlow #1-14 well within

⁶ Measured Depth (MD) is the depth measured from top of the well, along the well bore.

the CC-2016-OGR-01-001 unit. Rec 56:20. Mr. Smith stated that the constraints for the proposed spacing unit are faults and a gas/water contact at -1640' subsea.

15. Seismic data indicates that the target Sand D reservoir is located in a separate fault block from the Sand D reservoir seen in the Barlow #1-14 well. The two reservoirs are separated by a down to the north fault with approximately 150' to 200' of throw, as clearly delineated by 3-D seismic. *Smith Declaration* ¶ 11.
16. Mr. Smith referenced Exhibit SR1 and indicated that -1350' subsea is top of Sand D in the proposed spacing unit and is 16 feet lower than the well bore for the Barlow #1-14. Rec 56:20. Mr. Smith indicated the 16 feet between the structural top of Sand D in the proposed spacing unit and base of the Barlow #1-14 confirms well separation between the zones to be reached via a Fallon #1-11 well and the Barlow #1-14. Rec 56:20.
17. Mr. Smith indicated that the Fallon #1-11 would be the proposed well in this unit. Rec 50:20.⁷ Snake River anticipates filling an application to drill a well similar to the previous operator's proposal for a Fallon #1-11 upon spacing and any necessary integration of the proposed spacing unit area. *Spacing Application* ¶ 3. Snake River has not yet applied for a proposed well in the proposed spacing unit. Rec 2:24:00. Mr. Smith testified that 3-D seismic data shows faults separate the wells that are depicted by the map on SR1, page 6. The proposed Fallon #1-11 well in the proposed spacing unit will come in low compared to the Barlow #1-14. Rec 1:08:20. This means the hydrocarbon bearing zone will be reached at a lower depth than the similar zone in the Barlow #1-14 well.

⁷ Mr. Smith's Declaration stated that the "proposed well in the SE ¼ of Section 10 is a wildcat test targeting presumed sands in the Idaho Group." *Smith Declaration* ¶ 4. However, at hearing Mr. Smith testified that this statement in the Declaration was incorrect and that the proposed well was planned to have a surface location in the SW ¼ of Section 11 and a bottom hole location in the NW ¼ of Section 14. Rec 1:50:00.

18. In cross examination, Mr. Piotrowski asked Mr. Smith whether the Fallon 1-11 could drain outside the area marked on exhibit SR-1 as the prospective area for Sand D. Mr. Smith stated that drainage outside the prospective area was extremely unlikely because the seismic data and amplitude of reflections show these faults interrupt the reservoir. Rec 1:27:00.
19. Exhibit SR1 pages 5-9, and 15, shows Sand D's structural top trends upward from the northwest to the southeast. These pages indicate the pool terminates due to faults at a high point in the southeast. The proposed bottom hole location of the Fallon #1-11 is located within this high point.
20. Mr. Smith testified that the gas/water contact is the termination of the pool to the west. Rec 54:00. The gas/water contact indicates a water drive system. Since hydrocarbons float on the top of a water drive system, placing the well bottom hole near the high point should provide for the economic and efficient draining of the pool.
21. Mr. Thum testified that Snake River's maps provided in their exhibits and application depicted the likely geographic extent of the Sand D pool, and that the proposed 640-acre unit appeared to be the appropriate size. IDL Ex 1.
22. Mr. Thum testified that well completion and test information indicated it would be appropriate to form a spacing unit limited to gas and condensate in Sand D.. IDL Ex. 1.
23. Mr. Thum recommended that if a future well is drilled within a spacing unit limited to the Sand D reservoir and any other productive sand is encountered, then no production should be allowed from any sand other than Sand D without a new spacing application and order. IDL Ex. 1.
24. Mr. Thum testified that the proposed spacing unit's size and location was appropriate for the Sand D. Rec 2:13:25.

25. Written public comments were received in response to Snake River's application. Many of those comments were filed by Fruitland residents opposed the application. However, no one who responded asserted that they were uncommitted owners within the proposed spacing unit.⁸ Several commenters asserted that they lived nearby, but they did not argue that they should be included in the proposed spacing unit. They also did not present or refer to any specific evidence that the spacing unit should be of a different size, shape, or location.
26. Written public comments addressed a range of topics, including general opposition to drilling and fracking, as well as concerns about potential environmental harms, potential health and safety risks, private property rights, potential liability, forced pooling, overlap with an existing spacing unit, the possibility of multiple wells, and the proximity of residential areas to oil and gas development.
27. Public witnesses testified at the August 27, 2020 evening hearing session in opposition to the application. Their testimony covered many subjects, including concerns of potential environmental harms, private property rights, potential liability, forced pooling, the application's overlap with an existing spacing unit, the proximity of residential areas to oil and gas development, multiple wells, and general opposition to drilling.
28. This *Findings of Fact, Conclusions of Law, & Order* incorporates by reference the entire record in this matter and accompanying exhibits, comments from mineral owners and public witnesses, correspondence from IDL personnel, notices, pleadings, responses, and the hearing recordings.

⁸ Several commenters filed the same comments they filed in Docket No. CC-2020-OGR-01-001. Their filings represent that they are uncommitted owners but reference the proposed spacing unit in Docket No. CC-2020-OGR-01-001, not the proposed spacing unit in the above-captioned matter. Some of the comments also focus on details of the application in Docket No. CC-2020-OGR-01-001 that are not included in the application in this matter.

CONCLUSIONS OF LAW AND ANALYSIS

A. The Administrator has jurisdiction over this matter.

1. The Administrator is authorized to conduct this hearing pursuant to Idaho Code §§ 47-318 and 47-328. This proceeding is governed by the Idaho Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code); the Idaho Administrative Procedure Act (Chapter 52, title 67, Idaho Code); Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02).
2. The Idaho Oil and Gas Conservation Act applies to all matters affecting oil and gas development on all lands located in the state of Idaho. Idaho Code § 47-313.
3. The Idaho Oil and Gas Conservation Commission (“Commission”) is “authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.” Idaho Code § 47-315(8). IDL is the administrative instrumentality of the Commission and the Administrator has authority over these proceedings pursuant to Idaho Code §§ 47-314(7), 47-318, and 47-328(3).

B. Snake River bears the burden of proof

1. The Applicant generally bears the burden of proof in this matter. “The customary common law rule that the moving party has the burden of proof – including not only the burden of going forward but also the burden of persuasion – is generally observed in administrative hearings.” *Intermountain Health Care, Inc. v. Bd. of County Comm’rs of Blaine County*, 107 Idaho 248, 251, 688 P.2d 260, 263 (Ct. App. 1984), *rev’d on other grounds* 109 Idaho 299, 707 P.2d 410 (1985).

2. Under Idaho law, “preponderance of the evidence” is generally the applicable standard for administrative proceedings, unless the Idaho Supreme Court or legislature has said otherwise. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 439, 926 P.2d 213, 215 (Ct. App. 1996). “A preponderance of the evidence means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not.” *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).
3. A court shall affirm an agency’s action unless the decision is “not supported by substantial evidence on the record as a whole; or [the decision] is arbitrary, capricious, or an abuse of discretion. Idaho Code § 67-5279(3)(d)-(e).

C. The proposed spacing unit is established as a spacing unit under Idaho Code § 47-318.

1. A spacing unit order in Idaho “shall specify the size, shape and location of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole [T]he size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained by one (1) well.” Idaho Code § 47-318(2). Thus, Snake River must show sufficient evidence to establish that the proposed spacing unit can be efficiently and economically drained by one well.

Here, there is sufficient evidence to determine the area that can be efficiently and economically drained by one well. Snake River’s exhibits and Mr. Smith’s testimony indicate the pool is bounded by faults to the north, east and south. The pool terminates along the gas/water contact point to the west at a depth of -1648’ subsea. Ex. SR 1. The fault boundaries and gas/water contact confine this Sand D pool within the proposed unit. The porosity of 24-28% combined with a permeability of 2900-3200 millidarcies indicate that hydrocarbons flow with relative ease through this confined pool. Ex. SR 1. Based on the Administrators technical expertise hydrocarbons are lighter than water and naturally gather toward the top of a trap.

Placing a well toward the top of this pool as indicated by Exhibit SR 1 would optimize recovery of hydrocarbons from this pool.

Mr. Smith also testified that water levels on either side of the southern fault are not the same. Rec 1:32:22. This means that the gas/water contact is at different subsea depths as indicated by the gas/water contact depth of approximately -1650' subsea for the Sand D pool within this unit and the approximately -1335' subsea depth of the gas/water contact in the Barlow #1-14 Sand D. Further, Snake River's seismic data does not show gas amplitude to the north of the northern fault, which indicates that measurable hydrocarbons were not apparent. Rec 1:32:45. All of this geologic evidence is sufficient evidence that the pool is within the proposed spacing unit's area and can be efficiently and economically drained by one well.

Given that the proposed well location is near the top of the Sand D pool in this unit and the above-described boundaries of this unit, the Administrator determines that the unit is not smaller than the maximum area that can be efficiently and economically drained by one well.

Objectors argues that the spacing order would not result in the "*most* efficient and economical development of the pool as a whole." Rec 3:02. However, the word "most" does not appear in statute. Instead, Idaho Code § 47-318(2) simply states that it must result in "efficient and economical development of the pool as a whole." Here, based on the evidence described above and for the reasons described above, the Administrator concludes that the proposed spacing unit will result in efficient and economical development of the pool as a whole.

2. Idaho Code § 47-318(4) provides:

An order establishing spacing units shall direct that no more than one (1) well shall be drilled to and produced from the common source of supply on any unit, and shall specify the location for the drilling of a well thereon, in accordance with a

reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the filing of the application.

Thus, Idaho Code § 47-318(4)'s mandate as to a spacing order is twofold: (1) no more than one well be drilled to and produced from the common source of supply and (2) specify the location for drilling on the proposed spacing unit.

3. As to the mandate for one well to the common source of supply, Snake River proposes only one well to the source of supply it calls Sand D. Sand D is located at approximately -1650' subsea to approximately -1350' subsea. SR Ex. 1. No evidence was offered into the record that Sand D is connected to another source of supply nearby. Instead, it was shown that the gross thickness of approximately -1650' subsea to approximately -1350' subsea is different than the approximately -1335' to approximately -1200' subsea thickness found in the Barlow #1-14 well. Thus, the Administrator concludes that Sand D is the common source of supply for this proposed spacing unit and that only one (1) well may be drilled to and produced from Sand D.
4. As to the location of a well, Mr. Smith's testimony referred several times to a possible future Fallon #1-11 well. Snake River's application confirmed that it would submit a permit to drill in the future. Objectors argue that Snake River has not met the requirement to "specify the location for the drilling of a well" on the spacing unit because they do not give an exact location for their well in the application.

Idaho Code § 47-318(4)'s requirement to "specify the location of a well" does not refer to a specific surface and bottom hole location. Instead, the location requirements are the setbacks from the unit boundaries and from other nearby wells that may exist in other units. An oil and gas treatise summarizes these type of location requirements as "lineal spacing":

Well spacing is concerned with the location of wells and the density of drilling into a reservoir. Spacing rules are of two types, and both may be present in one state. Rules or orders of the state conservation agency may limit the proximity

of wells to property lines and to other wells; these are sometimes referred to as lineal spacing rules. . . . Lineal limitations may be found in association with density spacing rules that specify the area within which a single well will be allowed. Wyoming, for example, provides a density rule of 40 acres for an oil well and 40 or 160 acres for a gas well; it has lineal rules that an oil well cannot be closer than 460 feet to the exterior boundaries of a 40-acre subdivision with the same requirement for a 40-acre gas well, and a requirement that a gas well on a 160-acre density location be at the center of the 160 acres with a 200-foot tolerance.’

Spacing regulations have the effects of protecting correlative rights in areas of diverse ownership and of limiting the number of wells that may be drilled into a reservoir in a given area. This avoids the drilling of unnecessary wells. Well-spacing is done both by statewide order and by individual field or reservoir rules.

Bruce M. Kramer and Patrick H. Martin, *The Law of Pooling and Unitization*, § 5.02 Well Spacing pp. 5-57-58 (Lexis Nexis Matthew Bender 2016).

Additionally, Idaho Code § 47-317’s direction for the location of wells in statewide vertical gas well drilling units provides guidance in discerning what Idaho Code § 47-318(4) means by “specify the location for the drilling of a well” on a spacing unit. Idaho Code § 47-317(3)(b) sets forth that, in the absence of a spacing order otherwise, a gas well’s location in a 640-acre governmental section unit shall be (1) no closer than 660 feet to the section line. Similar “location requirements” exist for oil wells and horizontal wells. Idaho Code § 47-317(3)(a), (c), (d). Thus, Idaho Code § 47-317(3) is referring to a well’s “location” in terms of its set-back from section lines and other wells, not as an exact mark on a map where a well must be drilled.

Also, the specific coordinates of a well location have never been required in prior Commission orders. That is true for both individual spacing unit orders and for field-wide spacing orders. *See* Docket Nos. CC-2016-OGR-01-001 and 002, 2014-OGR-01-002; 2014-OG-01-01; 2013-04-16; 2011-04-19. That makes sense from a broader perspective. Requiring an exact proposed well location for every spacing unit within a field-wide order would not

make sense when each well drilled may potentially incorporate information from prior wells in the operator proposing the best location to drain a pool.

Finally, the exact coordinates of a well location are required in a different application: and Application for Permit to Drill “APD.” Specifically, an APD requires a specific location for a well as it requires “an accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey.” IDAPA 20.07.02.200.04.a. Indeed, a permit to drill is when the Department evaluates the operator’s specific plan and potential impacts for a specific location for a well and only grants that permit after such analysis. Therefore, the Administrator concludes that the order can specify a well location without a proposal for the specific coordinates of a well location.

5. Idaho Code § 47-317(3)(b) also provides guidance for what well location requirements are generally appropriate for a 640-acre spacing unit. In this case, there are no facts or circumstances in the record that support changing the location requirements used for these state-wide spacing units. Therefore, the Administrator specifies that only one (1) well shall be drilled to Sand D in this spacing unit and the location of the well drilled to Sand D shall be no closer than 660 feet to the unit’s perimeter boundary.
6. Objectors argue that the Administrator must deny the application because there is an existing spacing order, Docket No. CC-2016-OGR-01-001, that already covers part of the proposed spacing unit, specifically the northwest quarter of Section 14.

However, the law requires the Administrator “shall promptly establish spacing units for each *pool*.”⁹ Idaho Code § 47-318(1) (emphasis added). A pool is “an underground

⁹Idaho Code § 47-318(1) provides in full: “The department shall promptly establish spacing units for each pool except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.”

reservoir containing a common accumulation of oil and gas. Each zone of a structure that is completely separated from any other zone in the same structure is a pool.” Idaho Code § 47-310(25). Snake River’s proposed spacing unit is for Sand D. Docket No. CC-2016-OGR-01-001 was a spacing unit established for Sand B. Based on Mr. Smith’s testimony about the geological circumstances that separate the pools, including that Sand B condensate pay base was at 3835’ measured depth while Sand D was encountered between 4180’ and 4244’ measured depth, the Administrator determines that sufficient evidence shows Sand D is completely separated from Sand B. Further, Idaho Code 47-318(4)’s limit of no more than one (1) well is for wells “drilled to and produced from *the common source of supply*,” not a common surface area. Thus, the law does not preclude the Administrator from establishing a spacing unit for a different pool that overlaps with an existing pool.

7. Objectors argue the unit is “overinclusive” because it does not follow the exact outline of the underground pool and thus contains lands that are not underlaid by hydrocarbons in this pool. However, the Idaho Oil and Gas Conservation Act requires “any unit established by the department shall be geographic.” Idaho Code § 47-318(2). Boundaries of such units “shall be described in accordance with the public land survey system.” *Id.* The public land survey system uses rectangular surveys; therefore, a proposed unit should be rectilinear and sized appropriately using those rectangular shapes and boundary lines to incorporate the area that can be effectively drained by one well. The law does not mandate that the spacing unit follow the exact outline of the pool, with all its curves and shapes. In this case, the proposed spacing

Public witness Julie Fugate argued that it would be impracticable and unreasonable to establish a well for Sand D because Snake River not yet determined where the gas is. However, if it were unreasonable to drill without definitive data there could never be oil and gas development because without a well an operator could never determine where the oil and gas is. In contrast, the Legislature directs the Administrator to act “promptly” to establish spacing units over pools.

unit is geographic because it is drawn using the quarter section boundaries of the public land survey system.

The Administrator also concludes that it is appropriate in this instance to use the proposed spacing unit even though it appears to contain acreage outside the productive area because the Act requires “spacing units shall be of approximately uniform size and shape for the entire pool” and that wells are drilled “on a reasonably uniform spacing pattern.” Idaho Code § 47-318(3). The exceptions to spacing units of “reasonably uniform size and shape” are “circumstances, geologic or otherwise, affecting the orderly development of a pool.” *Id.*

Here, the Administrator concludes there are not circumstances that would require deviation from the 640-acre spacing unit, which is reasonably uniform spacing for this wildcat area. Snake River has provided well logs and geologic details for the Barlow #1-14, Fallon #1-10, and May #1-13 that, when combined with the seismic data, is sufficient evidence of the maximum area that can be efficiently and economically drained. However, there is not a well drilled to Sand D in this spacing unit. Mr. Smith’s testimony also indicated that while he believed it was “extremely unlikely” the unit would drain beyond the faults, there was no well control data to the north and they would not know for sure there would be gas in this area until they drilled a well. Rec 1:27:40; 1:28:30; 1:33:45.

Absent further information gained from drilling an exploratory well, establishing the proposed spacing unit of 640 acres best protects the correlative rights of mineral owners in the spacing unit because it offers assurance that the pool is within the proposed spacing unit. Courts in other states have erred on the side of the inclusion of any questionable acreage when confronted with claims of barren acreage within a spacing unit. In *Amoco Production Co. v. Ware*, 602 S.W.2d 620 (Ark. 1981) the Arkansas Supreme Court reviewed whether Arkansas

law imposed an implied covenant to take favorable administrative action upon a Lessee to exclude allegedly unproductive acreage from a unit for the benefit of its Lessor. The Court held that no such implied covenant existed in Arkansas and observed that:

It is suggested that no one holding an interest outside the geological perimeter of the field should be permitted to share in the proceeds. That is a nice concept. However, drilling units and unitization are normally, if not always, determined by acreage and not by geographical lines that indicate whether oil may or may not be under the surface. What lies underneath the ground cannot be determined exactly unless wells are drilled. We cannot review the Commission's findings in this appeal; we cannot say it was absolutely wrong for the Commission to allow Murphy to share in the production.

Id. at 624.

Without additional geologic information, including that from drilling a well in this unit, it is possible that the pool's location may deviate somewhat and drain a slightly different area than Snake River's prospective area marked in SR-1. Given that and the statute's emphasis on uniform sizes and shapes and orderly development, the Administrator chooses to keep this unit at 640 acres to ensure it is orderly and contains the maximum area that can be efficiently and economically drilled.

8. Objectors' argument that the unit is "underinclusive" focuses on a small piece of the shaded prospective area along the northern boundary of the proposed spacing unit that appears to cross the proposed unit's boundary on Exhibit SR-1, page 2.¹⁰ The Idaho Oil and Gas Conservation Act provides "An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool." Idaho Code § 47-318(5). In this case, the proposed spacing unit covers all lands the Administrator believes are underlaid by Sand D. While the map shown in SR Ex. 1 seems to indicate a potential extension of the pool to the north, it's

¹⁰ Objectors present no evidence that they are the mineral interest owners of that land.

important to realize that this apparent extension is located the furthest from the westernmost seismic profile. Based on the technical experience of the Administrator, the accuracy of a seismic profile diminishes the further you are from the line. The small area just north of the section line may not contain the volume of hydrocarbon indicated in the map. Also, this extension is based on a pre-drill estimate and there would be a small portion drained if the amplitude perfectly reflected what Snake River finds upon drilling. Rec 1:48:10. This area is also farthest from the proposed well location for the Fallon #1-11 and includes the gas/water contact. The length from the proposed well bore, location of the seismic data, and proximity to the gas/water contact give a degree of uncertainty as to whether or if this area would be drained. Extending the unit to cover this potential segment would require additional data including either seismic imagery or drilling logs to establish that drainage occurred. Thus, based on the Administrator's technical experience and for the facts and reasons above, expanding the unit to include this area is not warranted given the current information.

9. Further, IDL may modify a spacing order "from time to time to include additional lands determined to be underlaid by such pool or to exclude lands determined to not to be underlaid by such pool." Idaho Code § 47-318(5). If, after the well is drilled, geologic evidence is such that additional lands are determined to be underlaid by the pool or not underlaid by the pool, then the Administrator can add or remove those lands while following all of the spacing statutes mandates, including that of a reasonably uniform spacing pattern.

ORDER

Based on the reasons stated above, For the reasons stated above, pursuant to Idaho Code § 47-318 and 47-328 and based on the evidence in the record, the Administrator HEREBY GRANTS

the Spacing Request in Docket No. CC-2020-OGR-01-002 according to the terms and conditions requested by the Applicants as modified by the terms and conditions contained herein.

- A. Only one (1) well shall be drilled to Sand D in this spacing unit.
- B. The location of the well drilled to Sand D shall be: (1) no closer than 660 feet to the unit's perimeter boundary; (2) drilled no less than 990 feet from any other well drilling to and capable of producing gas from the same pool; and (3) completed no less than 990 feet from any other well completed in and capable of producing gas from the same pool.
- C. Within 90 days after drilling any future permitted well, Snake River also shall submit to the Department sufficient geologic evidence that the stratigraphic limitation referred to in the Application will adequately protect the other stratigraphic zones in Section 14 from drainage in contravention of the existing spacing unit established in Docket No. CC-2016-OGR-01-001. This evidence should include triple combo well logs and mud logs indicating the structural depths of the formation, seal layers, and pay intervals.
- D. Such evidence must be more than merely asserting conclusions based on summaries of evidence not provided to IDL.

PROCEDURES AND REVIEW

Pursuant to Idaho Code § 47-328(3)(e), the above-captioned order shall not be subject to any motion to reconsider or further review, except for appeal to the Idaho Oil and Gas Conservation Commission. Pursuant to Idaho Code § 47-328(4), this order may be appealed to the Commission by the applicant or any owner who filed an objection or other response to the application within the time required. An appeal must be filed with the Administrator within fourteen (14) calendar days of the date of issuance of the Administrator's written decision. The date of issuance shall be October 1, 2020 which is three (3) calendar days after the Administrator

deposits the decision in the U.S. mail. Such appeal shall include the reasons and authority for the appeal and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings below, by certified mail, or by personal service. Any person who participated in the proceeding below may file a response to the appeal within five (5) business days of service of a copy of the appeal materials. The appellant shall provide the Administrator with proof of service of the appeal materials on other persons.

If no appeal is filed within the required time, this decision shall become a final order. Idaho Code § 47-328(6).

Dated this 28 day of September, 2020.



RICHARD "MICK" THOMAS

Division Administrator Minerals, Public Trust, Oil & Gas

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September 2020, I caused to be served a true and correct copy of the following item in Docket No: CC-2020-OGR-01-002:
Findings of Fact, Conclusions of Law, and Order, by regular mail unless indicated otherwise and addressed to the following:

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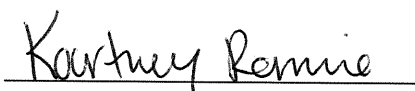
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