BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

In the Matter of:	)	Docket No. CC-2020-OGR-01-003
	)	
Determining whether the integration order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well	)	**FINAL ORDER**

The Idaho Oil and Gas Conservation Commission ("Commission") initiated and noticed a contested case on December 16, 2020, for the following purpose:

TO DETERMINE WHETHER THE INTEGRATION ORDER IN DOCKET NO. CC-2016-OGR-01-001 APPLIES TO THE PERMITTED PROPOSED BARLOW #2-14 WELL.

The Commission appointed Lincoln Strawhun as a hearing officer on December 22, 2020. The hearing officer held a hearing on March 9, 2021.

The Hearing Officer's Recommended Order in this matter was issued on April 6, 2021. No parties filed exceptions to the Recommended Order. On May 25, 2021, the Commission held a meeting to review the Recommended Order. At the meeting, the Commission adopted the Recommended Order as its decision in this matter by majority vote.

IT IS HEREBY ORDERED that the Recommended Order is adopted as the Final Order of the Commission pursuant to Idaho Code § 67-5246 and IDAPA 04.11.01.740. The Recommended Order is attached to this order and incorporated by reference.

PROCEDURES FOR FINAL ORDERS

This is a final order of the Commission. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Commission will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) a hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days (1) of the service date of this final order, (2) of an order denying petition for reconsideration, or (3) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 28 day of May, 2021.

BETTY COPPERSMITH

Chairman
Idaho Oil and Gas Conservation Commission

CERTIFICATE OF MAILING

I hereby certify that on 28th day of May 2021. I caused to be served a true and correct copy of the following documents in Docket No: CC-2020-OGR-01-003: Final Order and Recommended Order. I served these documents by the method indicated below, and addressed to the following:

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BEFORE THE IDAHO OIL AND GAS CONSERVATION OGCC

In the Matter of:	)	Case No. 20-72167
	)	Docket No. CC-2020-OGR-01-003
Determining whether the integration order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well	)	**RECOMMENDED ORDER**

After hearing this contested case, the hearing officer finds and recommends that the integration order in Docket No. CC-2016-OGR-01-001 *applies* to the permitted proposed Barlow #2-14 well.

Background Summary. In May 2016, an application for integration of unleased mineral interest owners in Section 14, Township 8 North Range 5 West, Boise Meridian, Payette County, Idaho was filed with the Idaho Department of Lands ("IDL") by companies AM Idaho, LLC and Alta Mesa Services, LP. IDL granted the application and issued Orders for Integration Docket CC-

2016-OGR-01-001. The 640-acre unit is a standard spacing unit for a gas well per IDAPA 20.07.02.120.03, and is referred to as the "Barlow Unit."

Alta Mesa Services, LP then filed with IDL an Application for Permit to Drill a well within the Barlow Unit—referred to as "Barlow #1-14." IDL approved the permit for the Barlow #1-14 well in October 2017.

In January 2020, AM Idaho, LLC and Alta Mesa Services, LP sold the operating interest of their Idaho wells and production to Snake River Oil and Gas, LLC ("SROG"). IDL approved the transfer of the well permits to SROG, including the Barlow #1-14 well.

Permit for Second Well Denied. In June 2020, SROG applied for a permit to drill a second well ("Barlow #2-14") within the existing 640-acre Barlow Unit. IDL initially denied the application for Barlow #2-14 because—although it was in a legal location and had a separate source of supply from Barlow #1-14—there was a concern of waste under IDAPA 20.07.02.200.05.d in that the second well had a drainage area that extended beyond the Barlow Unit boundaries; and that per Idaho Code § 47-317(3)(b), the state-wide default spacing of drilling units only applied when there was not an order affecting the unit, but according to IDL, the 2016 integration order established the spacing constraints and did not authorize a second well on the Barlow Unit.

Second Well Granted on Appeal. SROG appealed the denial of the Barlow #2-14 well to the Idaho Oil and Gas Conservation Commission ("OGCC"). On appeal, OGCC granted SROG the permit finding that the drainage area did not extend beyond that Barlow Unit and that the 2016 integration order did not establish unique spacing constraints to the Barlow Unit that were any different than the default state-wide spacing scheme established by rule. OGCC found that SROG's application to drill a second well on the Barlow Unit complied with IDAPA 20.07.02.120.02—now Idaho Code §§ 47-317(3)(b) and 318—which allows a second well on a drilling unit as long as the

second drill has a different source of supply or pool than the first well, and as long as the unit is not less than 600 surface acres and the minimum setback from the section is 330 feet.

Contested Case: The above background brings us to this case after some mineral interest owners raised concerns to OGCC over SROG's position that the 2016 integration order applied to the Barlow #2-14 well. OGCC filed a *Notice of Initiation of Contested Case* (Docket No. CC-2020-OGR-01-003) and appointed the hearing officer to schedule a hearing and serve as the presiding officer at hearing. On February 10, 2021, the hearing officer conducted a Pre-Hearing Conference (30 minutes) with the parties to set the hearing date and discuss procedural matters.

On March 9, 2021, the hearing officer held a telephonic hearing (2 hours; 26 minutes). The parties listed below called in and provided arguments and testimony. IDL participated as a neutral party to offer technical information if needed. Exhibits were admitted as part of this appeal's record.

Citizens Allied for Integrity and Accountability (CAIA)	Legal counsel/representative: James Piotrowski Witnesses: Larry Vaughn, Dave Lockner, Mel Person Exhibits: none.
Snake River Oil and Gas, LLC (SROG)	Legal counsel/representative: Michael Christian Witnesses: Richard Brown Exhibits: *May 18, 2016 Application for Integration and supporting materials* (SROG Exhibit A); In addition to Exhibit A, SROG also filed a pre-hearing *Motion by Snake River Oil and Gas, LLC for Summary Disposition of Contested Case,* admitted as part of the record.
Idaho Department of Lands (IDL)	Legal counsel/representative: Joy Vega Exhibit: *IDL Report re: Timeline and Applicable Law* (IDL Exhibit 1)

After considering the evidence, this Recommended Order is issued per IDAPA 04.11.01.720, and is organized by the following sections: *Issue, Findings of Fact, Discussion, Conclusion of Law and Recommended Order*.

ISSUE

Whether the integration order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well.

FINDINGS OF FACT

The hearing officer finds the following facts:

1. The integration order in Docket No. CC-2016-OGR-01-001 ordered that *"all production from each respective spacing unit be integrated among the interest owners…"*

2. The integration order in Docket No. CC-2016-OGR-01-001 granted the application for integration according to the terms and conditions requested by the applicants; did not limit the Section 14 Barlow Unit to one well; and did not require a new integration application process for a second well; integrated all separate tracts without restriction by depth, pool or well.

3. The integration order in Docket No. CC-2016-OGR-01-001 concluded that

    a. *"All separate tracts within the respective spacing units are hereby integrated for the purpose of drilling, developing and operating a well in each spacing unit, and for the sharing of all production therefrom within each spacing unit, in accordance with the terms and conditions of the above-captioned Integration Orders.*

    b. *Based on the current evidence available and provided in these Applications, establishing the state-wide spacing units for gas wells consisting of approximately 640 acres in Section 14, Township 8 North, Range 5 West, Boise Meridian…are, by operation of law, deemed to result in the most efficient and economic drainage of a common pool or source of supply.*

    c. *Establishing and accepting this initial spacing of 640 acres best protects the correlative rights of mineral owners in the spacing unit, absent further information gained from drilling these exploratory wells.*

    d. *The applications clearly and substantially comply with all the elements of Idaho Code § 47-322(d).*

    e. *…it is appropriate to integrate the uncommitted mineral interest owner the Applicants have named for the development and operation of the unit pursuant to Idaho Code § 47-322."*

4. Uncommitted mineral interest owners had the opportunity to participate in the integration application process and hearing for Docket No. CC-2016-OGR-01-001. Four uncommitted mineral interest owners filed written responses to the integration application of the Barlow Unit. None of the four uncommitted mineral interest owners appeared at the integration hearing to oppose the application. Their written submissions provided no evidentiary basis to address or challenge the integration elements alleged by the applicants.

5. The Joint Operating Agreement ("JOA") was approved by the OGCC/IDL and expressed that multiple drills could be drilled in the integrated Barlow Unit as long as the subsequent well was drilled to a separate source of supply from the initial well or be the appropriate distance from the initial well and comply with unit boundary setback requirements.

6. The permit to drill the Barlow #1-14 well was approved by OGCC/IDL on October 26, 2017. The well was completed on February 10, 2018 and began producing in December 2020.

7. SROG filed its application for a permit to drill the proposed Barlow #2-14 well on June 14, 2020. The Barlow #2-14 targets a different source of supply than the Barlow #1-14 well. After initial denial on September 11, 2020, on appeal OGCC granted the drilling permit of Barlow #2-14 on October 26, 2020.

8. The Barlow #2-14 well complies with Idaho Code § 47-317 location and § 318 spacing requirements.

    a. The location of Barlow #2-14 is at least 600 feet from the section line of the Barlow Unit and more than 990 feet from any other well completed in and capable of producing gas from the same pool. The proposed well is 803 feet from the west section line and 670 feet from the south section line. There is no other well completed in or drilling to Sand B within 990 feet of the proposed target.

9. Legislative changes in 2017 (via House Bill 64 and 301) to the Oil & Gas Conservation Act ("Act"), found in Idaho Code, Chapter 47, section 300 *et seq.* were not retroactive legislation.

    a. Idaho Code § 47-322 from 2016 is now § 47-320.

    b. 2016's IDAPA 20.07.02.120.02 regarding unit and drilling location was removed from the chapter. Drill location and spacing requirements are in Idaho Code §§ 47-317 and 318.

10. Current Idaho Code § 47-320 and 2016's Idaho Code § 47-322 provide integration is of *"all tracts or interest in the spacing unit for drilling of a well or wells."*

DISCUSSION

Citizens Allied for Integrity and Accountability's position. CAIA asserts that this case is mainly a question of law, not of fact; that the law of the United States is that mineral rights are a property right as a matter of law; that the 2016 laws were inadequate to meet requirements; that one well is what was expressed; that it is not just and reasonable to add a second well without a second integration process; that constitutional rights must be protected; that the hearing officer does not have the authority to make a constitutional ruling; that the hearing officer cannot tell IDL what the law is; that in 2016, people didn't know what the law meant.

That the law requires just and reasonable terms in a lease; that the paperwork received for the Barlow Unit was confusing; that one mineral interest owner consulted an attorney to help understand the paperwork, and even the attorney could not figure it out; that the biggest concern was that if a mineral interest owner leases a property right, and if there is damage to other properties, it is unclear who compensates the damaged property owners; that if a mineral interest owner did not sign the paperwork, integration would be approved if a majority of the owners approved; that one property owner assumed that the state would ensure terms were fair and reasonable; that he did not attend the integration hearing; and that there was no notice of multiple wells.

That uncommitted mineral interest owners are not necessarily against oil and gas but there needs to be a process that protects property interests; that property owners are unaware of the lease terms; that just and reasonable terms were never defined; that their mineral rights were assigned; that the district court found the process inadequate; that historically, the presumption of an application for a permit to drill was for one well; that the 2016 integration order was for one well;

that SROG claims OGCC allowed SROG to take all they want; that while the rules seem to allow that, it is the hearing officer's job to determine if the law is right.

That SROG has gone way beyond the scope of the notice to owners; that a second well has not met reasonable expectations; that it is not reasonable and goes against a matter of law that SROG would take everything; that CAIA accepts that there should be a process, but that there should be a fair process; that in six years, there have been no payments to the people who own the mineral rights; and that SROG has not paid a dime to Idaho.

That the 2016 Integration Order should not be extended to two wells; that there is a disconnect between the application to permit to drill Barlow #2-14 and the integration order; that the hearing officer's job is to determine if the application applies to the second well; that CAIA is not asking the hearing officer to invalidate a statute; that it is established federal law that property rights cannot be deprived unless there is due process; that interests must be weighed; that this case does not meet the due process requirements to have notice of time and place and does not afford meaningful opportunity to be heard; that SROG does not care; that we should do what's fair and moral; that it is not fair to suggest that the 2016 integration order applies forever; and that the recommended order should be a new integration process that is just and reasonable.

Snake River Oil and Gas, LLC's position. SROG asserts that the concerned mineral interest owners had the opportunity to submit questions and comments and participate in the integration hearing but did not; that other mineral interest owners did; that the scope of this contested case is narrow and limited to the stated issue of whether the 2016 integration order applies.

That the integration order does apply to the permitted proposed Barlow #2-14 well such that the mineral interest in the Section 14 Barlow Unit has been integrated as to any production

from that well; that any other interpretation would be contrary to statute; that requiring a separate integration order for each well puts Idaho at odds with the rest of the developed world; that CAIA is relitigating 2016's integration order; that SROG understood that the 2016 integration order applied when it the acquired drilling rights in 2020, otherwise it would not have applied for a permit to drill the second well.

That this case is not about well spacing or well location; that OGCC's decision to grant SROG's application for a drilling permit for the Barlow #2-14 well already concluded that the well location complies with the setbacks in a default spacing unit (i.e,, at least 660 feet away from the unit boundary).

That this case has nothing to do with the potential drainage area of the well or any aspect of the well permit—which OGCC concluded complied with IDAPA 20.07.02.200; that this case does not have anything to do with whether the 2016 integration order was fashioned properly; that the only issue raised in the *Notice of Initiation of Contested Case* is whether the 2016 integration order applies to the Barlow #2-14 well; that this necessitates only a reading of the 2016 integration order, the forms of lease and JOA approved in it, and those portions of the Act relating to integration.

That OGCC's notice initiating this case stated that the contested case is the procedural mechanism to determine the applicability of the prior integration order to Barlow #2-14, under the terms of Idaho statutes, OGCC rules and the prior integration order itself; that OGCC understood that determining the applicability of the 2016 integration order to Barlow #2-14 only required a review of the OGCC's orders, the Act and applicable rules of the OGCC; that a review of those items together makes clear that the 2016 integration order does apply to the Barlow #2-14 well.

That state regulations address first, how many wells may be drilled to a reservoir of hydrocarbons and second, who owns the revenue derived from oil and gas extracted from a well; that historically the rule of capture governed oil and gas extraction; that that this common law rule resulted in waste and reduced production because different property owners would drill their own well into the same pool of supply; that to prevent this waste, states adopted conservation laws giving mineral owners correlative rights—as defined under Idaho Code § 47-310(4).

That protecting correlative rights is accomplished through spacing and pooling (known as "integration" in Idaho) of mineral rights through integration orders under Idaho Code §§ 47-319 (spacing) and 320 (integration of mineral interests); that integrated mineral owners in a defined area share the revenue from the well on a pro rata basis based on acreage; that AM Idaho, LLC and Alta Mesa Services, LP's 2016 application for integration was supported by 78% of the mineral interest in the unit, by acres, through voluntary leasing; that the application sought to integrate only about 128 out of the 640-acre unit, and about 501 mineral acres in the unit sought integration and development of the unit.

That the default spacing rules in 2016's IDAPA 20.07.02.120 were adopted into Idaho Code § 47-317 and allowed for more flexibility; that in the absence of an order otherwise within a gas unit, more than one well may be drilled to a pool as long as it is at least 990 feet from any other well completed in that same pool.

That at the time of the 2016 integration order, integration of mineral interests in a spacing unit was governed by Idaho Code § 47-322 (now in § 320); that the statute provided for multiple wells within an integrated spacing unit; that it is in this context that the mineral interests in the Barlow Unit were integrated; that the 2016 integration order was unambiguous; that it integrated

all separate tracts without restriction and that all production is integrated and allocated among the mineral interest owners in the unit.

That the subsequent lease and approved JOA expressly contemplated additional wells could be drilled as long as they complied with (a) the well spacing established for the unit; that as to the Barlow Unit, that meant an additional well must be drilled to separate source of supply from the initial well or be the appropriate distance from the initial well; and (b) to comply with the unit boundary setback requirements; and that the permitted Barlow #2-14 well complies with both requirements.

That IDL approved the permit to drill Barlow #1-14; that Barlow #2-14 targets a different source of supply; that the Barlow #2-14 is a Sand "B" test and the Barlow #1-14 is completed in Sand "D," a different source of supply; that while IDL denied the Barlow #2-14 well permit, OGCC granted the permit on appeal and concluded that the drilling permit complied with the requirements of IDAPA 20.07.02.200 and that the Barlow #2-14 well was not prohibited by the 2016 integration order.

That OGCC acknowledged that the revenue from the Barlow #2-14 well would be allocated to the mineral owners in the Barlow Unit and allow them the opportunity to produce the well and recover their interest in oil and gas; that the state-wide spacing allows them production of a just and equitable share of oil and gas without waste; that OGCC's statements indicate that the Barlow Unit was integrated for all purposes and all operations; that OGCC's reference would only make sense if those interests were integrated and production was allocated across all mineral ownership in the unit, including the Barlow #2-14 well.

That OGCC only initiated this contested case because some mineral interest owners raised concerns over SROG's position that the 2016 Integration Order applied to Barlow #2-14; that this

position was not only SROG's but was stated by the OGCC in its order granting SROG's appeal and approving the Barlow #2-14 well permit.

That the 2016 integration order applies by its plain terms to the Barlow #2-14 well because covers all development in the unit; that the 2016 integration order does not limit the integration of the mineral interest to any particular pool; that instead the 2016 integration order expressly indicates that it is not limited to a particular pool and does contemplate that multiple wells may be drilled in the spacing unit it covers (all of Section 14, not some sub-part); that the Director concluded that it was appropriate to integrate the uncommitted mineral interest owners for the development and operation of the unit; that the Director ordered that the operator has the exclusive right to drill, equip, and operate each well with each respective spacing unit; that "each" does not mean "the"; that the OGCC concluded that the Barlow #2-14 well is in a legal location within the unit, offset appropriately from the unit boundary and separated from the existing well in the unit.

That the lease forms and JOA approved by the Director contain no limit to a particular pool or well; that the JOA has provisions for the drilling of multiple wells in the integrated unit, subject only to the requirement to comply with spacing requirements; that the Barlow #2-14 well is within the scope of the approved JOA because it targets a different supply than Barlow #1-14.

That the OGCC's conclusions regarding the mineral interest owners having the opportunity to produce the well and recover their interest in the oil and gas are consistent with Idaho Code § 47-320(2)'s allocation of production and revenue; that allocation of production and revenue is not part of an order establishing a spacing or drilling unit; that per Idaho Code §§ 47-317 and 318, spacing is only concerned with the spacing of wells to facilitate efficient development and production of reservoirs; that the only reason for the OGCC to mention in its appeal decision is the ability of all Section 14 Barlow Unit mineral interest owners to recover their interest in oil and

gas and allow them production of a just and equitable share without waste was to acknowledge the 2016 integration order applied to the Barlow #2-14 well.

That the Act clearly contemplates multiple wells in an integrated unit per Idaho Code § 47-320(2)—formerly Idaho Code § 47-322(b); that absent limiting language in an integration order, the order covers every well drilled in the unit; that "all" and "any" are unambiguous; that Idaho Code § 47-320(1), formerly Idaho Code § 47-322(a), provides that the OGCC—upon application by any owner in the proposed spacing unit—shall order integration of all tracts or interest in the spacing unit for drilling of a well or wells, including development and operation and sharing of production; that by its plain terms the statute contemplates multiple wells in an integrated unit; that the statute's plain language indicates an integration order covers all operations anywhere in the unit—absent specific limitation in an order.

That the 2016 integration order does not prohibit additional wells in the spacing unit or limit the integration of mineral interest to a single well; that the integration is as to the spacing unit, not as to the production from a particular well; that per case law, statutory provisions relating to spacing and integration must be read together; that sections of statutes relating to the same subject matter must be read together to determine legislative intent.

That the spacing statute's only prohibition is against multiple wells drilled to the same supply; that as a result, the Act necessarily contemplated the drilling of additional wells in an integrated unit to a separate source of supply, absent express limitation in the integration—which does not exist in the 2016 integration order.

Public comment. The hearing officer received sixteen written public comments. Twelve of the comments supported SROG's application for the Barlow #2-14 well. Three comments were against SROG's application for the Barlow #2-14 well. One comment was inconclusive.

Hearing officer's reasoning and analysis. The issue in this contested case is limited to whether or not the 2016 integration order in Docket No. CC-2016-OGR-01-001 applies to the Barlow #2-14 well. OGCC already concluded that it does with its *Final Order* of October 26, 2020, finding that SROG's application for the second well on the Barlow Unit would not result in a waste of oil or gas; did not violate correlative rights; that 2016's IDAPA 20.07.02.120.02 (regarding unit and well location requirements) did not prohibit a second well from being drilled to a second supply pool under state-wide spacing; that the integration order did not depart from the default state-wide space scheme of 640-acre units; that 2020's Idaho Code § 47-318(4) is consistent with 2016's IDAPA 20.07.02.120.02 in that it allows more than one well to be drilled on a spacing unit as long as the second drill is to a second source of supply. (OGCC's Final Order, pages 7 – 9, 12).

OGCC's *Notice of Initiation of Contested Case* prompting this matter gave little detail as to why this proceeding was necessary other than—after approving SROG's permit—a question may remain as to whether the 2016 integration order applied to the Barlow #2-14 well after "*some mineral interest owners"* raised concern of SROG's position that it did and this case was the procedural mechanism to determine if it did. (OGCC Notice, page 1). OGCC's notice did not specify a legal basis raised by the mineral interest owners as to why the 2016 integration order would not apply to the Barlow #2-14 well.

IDL's Exhibit 1 timeline provided no further explanation. In the timeline date entry for October 26, 2020, OGCC approved SROG's permit for the Barlow #2-14 well. The very next date entry is December 16, 2020 when OGCC filed the *Notice of Initiation of Contested Case* (and did not list OGCC's reason for doing so).

CAIA asserted that this case is a matter of law, not of fact. (Hearing Record). However, CAIA did not cite any part of Idaho Code § 47-300 *et seq.* or IDAPA 20.07.02 that prohibited a

second well on the integrated Barlow Unit. CAIA did not cite language in the law that requires a new, second integration order for a second well on an existing integrated unit. (Hearing Record.) The 2016 integration order in Docket No. CC-2016-OGR-01-001 is 15 pages long. CAIA did not point to a specific part of the text in the integration order to support its argument that the integration order should not apply to the permitted Barlow #2-14 well. (Hearing Record).

While CAIA asserted that the 2016 integration order should not be extended to two wells, and in 2016, people did not know what the law meant, the spacing law in 2016—IDAPA 20.07.02.120.02, unit and well spacing location requirements—and the current law under 2020's Idaho Code §§ 47-317 and 318 is clear that it allows more than one well to be drilled on a spacing unit as long as the second well is to a second source of supply and meets boundary setback requirements. The facts are not in dispute that the Barlow #2-14 well targets a different source of supply than Barlow #1-14 and there is no assertion that the placement of Barlow #2-14 violates boundary requirements in the Barlow Unit. (Hearing Record). This was OGCC's conclusion of law. CAIA did not identify how OGCC's conclusion was wrong regarding spacing and location.

Regarding integration, Idaho Code § 47-320 (47-322 in 2016) specify integration requirements. CAIA did not reference text in the statute that would limit an integrated tract to one well or prompt a new integration application for a second well. (Hearing Record). There does not appear to be significant changes of the statutes between 2016 and the current version that would make the 2016 integration order inapplicable to the Barlow #2-14 well.

Today's Idaho Code § 47-320(6)(a) and then Idaho Code § 47-322(d)(viii) require at least 55% support of the mineral interest acres in the spacing unit. CAIA provided witness testimony that the 2016 integration process was not just and reasonable however did not allege less than 55% support or other unmet terms. Both versions have payment formulas to support working interest

owners and nonconsenting owners. Neither version prohibits more than one well on an integrated tract or requires a new integration process/application for a second well. Except for the requirement that integration terms must be just and reasonable, CAIA did not specify what part of today's Idaho Code § 47-320 was violated by SROG or the 2016 integration order's applicability to the Barlow #2-14 well. (Hearing Record).

CAIA asserted that the statute requires terms to be just and reasonable and that "just and reasonable" were never defined by the integration order. (Hearing Record). However, page 5 (paragraph 13) of the 2016 integration order specifies that each application reflects five options for participation by property owners in the spacing unit as provided by then Idaho Code § 47-322 (now § 320). Further, paragraphs D – H (pages 11 – 14) provided terms and options for uncommitted owners, nonconsenting working interest owners, and objectors and determined the terms to be just and reasonable. There is nothing in Idaho Code § 47-320 that requires the integration order to define what just and reasonable means given that the statute specifies what the payment formula is for mineral interest owners.

And from the Findings of Fact of the integration order (page 7, paragraph 18), uncommitted mineral interest owners had the opportunity to participate in the integration application process and hearing for Docket No. CC-2016-OGR-01-001. The findings noted that four uncommitted mineral interest owners filed written responses to the integration application of the Barlow Unit; that none of the four uncommitted mineral interest owners appeared at the integration hearing to oppose the application; and that their written submissions provided no evidentiary basis to address or challenge the integration elements alleged by the applicants.

Idaho Code § 47-310's definitions do not define "just and reasonable" however they do define correlative rights as the opportunity of each owner in a pool to produce their just and

equitable share of oil and gas in a pool without waste. The section also defines owner, waste, tract and 30 other terms. Idaho Code § 47-320(6)(c) mandates that uncommitted owners in the affected unit shall receive from the operator mineral lease terms and conditions that are no less favorable to the lessee than those listed in § 47-331(2). Idaho Code § 47-333 further gives protections of royalty owners to seek a remedy for failure to make payments by bringing an action in district court or filing a complaint with OGCC. It is unclear how a new integration application process for the Barlow #2-14 well would result in any significant changes in conditions and statutory protections that already exist under the 2016 integration order. While CAIA asserted that it is a matter of law that the 2016 integration order does not apply to the Barlow #2-14 well, CAIA did not identify what part of the law requires a new integration process for a second well on the integrated Barlow Unit tract that would result in different conditions and protections that presently exist.

In contrast, SROG's arguments are consistent with OGCC's *Final Order* of October 26, 2020 that SROG's application for the Barlow #2-14 well complied with all the elements of Idaho Code § 47-322(d) and met IDAPA 20.07.02.200 requirements. In other words, SROG's application did not violate IDAPA 20.07.02.200.05.d's reasons to deny a permit—the Barlow #2-14 well would not result in a waste of oil or gas, or a violation of correlative rights, or the pollution of fresh water supplies.

If SROG's application for the second well did not violate correlative rights—the opportunity of each owner to produce his just and equitable share of oil and gas in a pool without waste—then the 2016 integration order applies to the Barlow #2-14 well because it targets a different pool than the Barlow #1-14 well. The integration order in Docket No. CC-2016-OGR-01-001 ordered that *"all production from each respective spacing unit be integrated among the*

interest owners…" and concluded that *"All separate tracts within the respective spacing units are hereby integrated for the purpose of drilling, developing and operating a well in each spacing unit, and for the sharing of all production therefrom within each spacing unit."* (*Orders of Integration,* page 11).

The hearing officer agrees with SROG's counsel that "each" does not mean "the." "Each" means that the operator may drill, equip and operate each well within each respective spacing unit—not the entire 640-acre integrated unit. Additionally, the JOA was approved by the OGCC/IDL and expressed that multiple wells could be drilled in the integrated Barlow Unit as long as the subsequent well was drilled to a separate source of supply from the initial or was the appropriate distance from the initial well and complied with unit boundary setback requirements. The Barlow #2-14 well complies with Idaho Code § 47-317 location and § 318 spacing requirements.

The integration order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well because it does not violate current Idaho Code § 47-320 or 2016's Idaho Code § 47-322. Both section versions of the statute say integration is of *"all tracts or interest in the spacing unit for drilling of a well or wells."*

Procedural notes: During the hearing, there were objections regarding testimony and cross-examination of witnesses by CAIA and SROG counsel. Per IDAPA 04.11.01.600, evidence is not excluded to frustrate development of the record; the hearing officer is not bound to the Idaho Rules of Evidence; and no informality invalidates this recommended order. In writing this order, the hearing officer gave proper weight to evidence according to its relevance to the stated issue in this case. Regarding SROG's *Motion by Snake River Oil and Gas, LLC for Summary Disposition of Contested Case*, per SROG's request should it be denied, it is treated as a pre-hearing brief (not

because it is denied but because practically, it does not make procedural sense to rule on it after conducting a hearing; the hearing date occurred during the timeframe when parties could still respond to the motion; CAIA noted toward the end of the hearing that it would not submit a response to SROG's motion).

CONCLUSION OF LAW

In accordance with Idaho Code § 47-320 (and 2016's Idaho Code § 47-322), the integration order in Docket No. CC-2016-OGR-01-001 applies to the permitted proposed Barlow #2-14 well.

RECOMMENDED ORDER

The hearing officer finds and recommends that the integration order in Docket No. CC-2016-OGR-01-001 *applies* to the permitted proposed Barlow #2-14 well.

DATED: April 6, 2021.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By */Lincoln Strawhun/*
LINCOLN STRAWHUN
Hearing officer

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Per IDAPA 04.11.01.720.02, **a.** this is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21)

days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee of the agency head) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April, 2021, I caused to be served a true and correct copy of the foregoing by the following method to:

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/s/ Sam McCue
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FAIR HEARINGS UNIT