BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application of Snake River Oil and Gas, LLC, for Order Establishing a Spacing Unit Consisting of the NE ¼ of Section 9 and the NW ¼ of Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho **SNAKE RIVER OIL AND GAS, LLC, Applicant.**	Agency Docket No. CC-2024-OGR-01-001 OAH Case No. 24-320- OG-01 **PREHEARING STATEMENT OF APPLICANT**

On April 29, 2024, pursuant to Idaho Code §47-317 (addressing the establishment of spacing units) and Idaho Code §47-328(3)(b) (addressing procedural requirements for spacing order applications), Applicant Snake River Oil and Gas, LLC ("Applicant") filed its application for an Order establishing a spacing unit consisting of the NE ¼ of Section 9 and the NW ¼ of Section 10, in Township 8 North, Range 5 West, Payette County. *See* Ex. SR-01 (application materials and notice).

A "spacing unit" is an area defined by an order of the Administrator to be "the area that can be efficiently and economically drained by one (1) well for the orderly development of [a] pool" of hydrocarbons. Idaho Code § 47-317(2). Spacing units must be described by reference to geographic subdivision under the public land survey system (i.e., by portions of a 640-acre section or sections). *Id.* "Efficient and economical" includes the concepts of preventing the waste of oil and gas or drilling of unnecessary wells, and protection of correlative rights. *Id.*, § 47-317(1).

As set forth in the Declaration of Richard Brown included as Exhibit C to the application materials, Applicant is an "interested person" for purposes of Idaho Code § 47-317(1) by virtue of currently holding approximately 83.6875% of the net mineral acres in proposed spacing unit area

by lease. Applicant is an "owner" as defined by Idaho Code § 47-310(27) as to each tract leased by it in the proposed spacing unit area, as by virtue of each lease Applicant is "the person who has the right to drill into and produce from a pool and to appropriate the oil and gas that he produces therefrom, either for himself or for himself and others." See Ex. SR-01, p. 8 (Declaration of Richard Brown).

A copy of the application materials and a notice of the regularly scheduled hearing date and deadline for filing an objection was mailed via certified mail to uncommitted mineral owners in the proposed unit area on May 6, 2024, as required by Idaho Code §47-238(3)(b). The materials were also mailed to all uncommitted mineral owners for properties adjacent to the proposed unit area (to the extent not already noticed by virtue of being included in the proposed unit area), although not required by § 47-328(3)(b). *See* Ex. SR-02 (certified mailing receipts).

At the hearing of this matter, Applicant will provide testimony of geologist David Smith, consistent with his Declaration filed in support of the Application and the exhibits to his Declaration, that the proposed unit area reasonably describes the area economically and efficiently drainable by one well and is an appropriate configuration for a spacing unit. Applicant will provide, as necessary, testimony from Richard Brown, manager of Applicant Snake River Oil and Gas, LLC, and Wade Moore, landman for Applicant, as necessary regarding Applicant's interested party status and Applicant's mailing of notice to uncommitted mineral owners.

One uncommitted owner in the proposed spacing unit area, the City of Fruitland, filed an objection to the application on May 15, 2024, through its City Administrator, Stuart Grimes. One owner of property adjacent to the proposed spacing unit area, Karen Oltman, filed an objection on May 23, 2024. Ms. Oltman does not appear to object on the basis that her property should be included in a spacing unit (i.e., that her property is being wrongfully excluded from the unit).

Joining with Ms. Oltman's objection was Citizens Allied for Integrity and Accountability ("CAIA"), a group that opposes oil and gas development. CAIA does not own any mineral interest either in or adjacent to the proposed spacing unit area, and Applicant has moved separately for an Order determining that CAIA is not a protestant party to this proceeding pursuant to Idaho Code § 47-328(3)(b) and IDAPA 04.11.01.155 but may be a public witness pursuant to IDAPA 04.11.01.355. Similar orders have been granted denying CAIA party status in previous spacing and integration proceedings, as set forth in Applicant's motion.

Applicant previously applied for and obtained orders establishing non-standard spacing units as part of development of oil and gas resources in the area. *See Findings of Fact, Conclusions of Law, and Order,* Docket No. CC-2020-OGR-01-002 (September 28, 2020)[1]; *Findings of Fact, Conclusions of Law, and Order,* Docket No. CC-2020-OGR-01-001 (November 5, 2020).[2] Applicant respectfully refers the hearing officer to these prior orders, as the arguments raised by objectors here were raised and rejected in those proceedings.

The May 15, 2024 objection filed by Mr. Grimes on behalf of the City of Fruitland states in pertinent part that the City "is opposed to the department of lands establishing the above referenced spacing unit" because of the proximity to the City's wastewater treatment plant. Mr. Grimes' letter asserts "concern that location of a gas/oil well nearby could potentially interfere with that infrastructure," and asserts that "[i]f directional drilling takes place under these critical pieces of equipment, there is always a possibility that damage could result." These arguments are

[1] https://ogcc.idaho.gov/wpcontent/uploads/046_20200928_FindingsofFactConclusionsofLawOrder.pdf.

[2] https://ogcc.idaho.gov/wp-content/uploads/104_20201105_FindingsofFactConclusionsofLawandOrder.pdf.

not the proper subject of a spacing application proceeding.[3] The sole purpose of a spacing application proceeding is to determine the area economically and efficiently drainable by a single well. Idaho Code § 47-317(2). The issues raised in the City of Fruitland's objection relate to the siting, drilling, construction, and operation of a well. They are more appropriately raised in response to an application for a permit to drill a well, *see* Idaho Code § 47-316(c) (drilling permit applications "shall be posted on the department of lands' website for ten (10) business days for a written comment period"), or in some cases in response to an application for an order integrating the mineral interests in a spacing unit. *See* Idaho Code § 47-320. Previous orders on applications for integration orders have, for example, restricted or prohibited use of the surface of uncommitted tracts.

The application filed by Ms. Oltman asserts, in pertinent part: (a) "The proposed spacing unit is smaller than is necessary and thus would result in the construction of more wells than is necessary and appropriate. The proposed spacing unit is smaller than the statutory default spacing unit."; (b) "The proposed spacing unit manages to be both under-inclusive and over-inclusive, thus excluding some mineral owners whose mineral interests will simply be taken by any eventual well operator, while including other owners who have no demonstrable mineral interest."; and (c) "The proposed spacing unit is not an appropriate unit for siting a well." The objection includes no supporting evidence or reference to any supporting evidence.

The first objection refers to the fact that, in the absence of an Order establishing different spacing, the "default" spacing unit for a gas well is a standard 640-acre section. Idaho Code §47-317(3)(b). This is not a basis for objecting to a smaller spacing unit, if an application is supported

[3] In any event, the currently planned surface location for the well is about 6/10ths of a mile north (and downstream) of the City's water intake facility, further away than the existing Fallon #1-10 well surface location. The pasture where the surface location is currently planned is separated from the river by a levee. The wellbore will not be drilled under the City's wastewater facilities.

by evidence that smaller spacing is appropriate for the economic and efficient drainage of a well and orderly development of a pool. *See* Idaho Code §47-317(2). Applicant has supplied such evidence in the Declaration of David Smith and the exhibits to his declaration and will further support it through testimony at the evidentiary hearing. While Ms. Oltman did not supply any evidence with her objection, she will have the opportunity to present any evidence she may have at the evidentiary hearing.

The second objection, that the proposed unit is "both under-inclusive and over-inclusive," is the same as raised by objectors to previous spacing applications and rejected by the Administrator. In short, the objection seems to be that a spacing order must exactly describe the outlines of a pool located several thousand feet underground. The Administrator rejected this argument in previous spacing proceedings, reasoning, for example:

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

* * * *

> 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 statute's mandates, including that of a reasonably uniform spacing pattern.

Findings of Fact, Conclusions of Law, and Order, Docket No. CC-2020-OGR-01-002 (September 28, 20200, pp. 16-19). This application should be treated the same.

The third, unexplained objection regarding the siting of a well, is not an appropriate objection in a spacing proceeding. As discussed above, Idaho Code § 47-317 is not concerned with establishing a future well's surface or bottom hole locations. Indeed, even when the statute in its previous form directed that a spacing order "specify the location of a well," the Administrator concluded this meant only that the order must establish the setbacks from the unit boundary within which a well must be drilled, since setback distances for nonstandard spacing units are not established in the statute. *See Findings of Fact, Conclusions of Law, and Order,* Docket No. CC-2020-OGR-01-001 (November 5, 2020), p. 29 (The "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.").

To the extent Ms. Oltman seeks to raise objections based on the alleged rights of others, she likely lacks standing to do so. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125 (2004) (noting third-party standing is normally not allowed, and to raise it a litigant must ordinarily have a close relationship with the right holder and the right holder must face obstacles to suing on their own behalf).

DATED this 6th day of June, 2024.

HARDEE, PIÑOL & KRACKE, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2024, I caused to be served a true and correct copy of the foregoing by the following method to:

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