

IDAHO OIL AND GAS CONSERVATION COMMISSION OPEN MEETING CHECKLIST

FOR MEETING DATE: December 9, 2020

Regular Meetings

	Notice of Meeting posted in prominent place in IDL’s Boise Headquarters office five (5) calendar days before meeting.
	Notice of Meeting posted in prominent place in IDL’s Coeur d’Alene Headquarters office five (5) calendar days before meeting.
	Notice of Meeting posted in prominent place at meeting location five (5) calendar days before meeting.
	Notice of Meeting emailed/faxed to list of media and interested citizens who have requested such notice five (5) calendar days before meeting.
	Notice of Meeting posted electronically on the OGCC public website https://ogcc.idaho.gov/ five (5) calendar days before meeting.
	Agenda posted in prominent place in IDL’s Boise Headquarters office forty-eight (48) hours before meeting.
	Agenda posted in prominent place in IDL’s Coeur d’Alene Headquarters office forty-eight (48) hours before meeting.
	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
	Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ forty-eight (48) hours before meeting.
11/21/19 09/30/20	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA <ul style="list-style-type: none"> • Revised Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA

Special Meetings

12/04/2020	Notice of Meeting and Agenda posted in a prominent place in IDL’s Boise Headquarters office twenty-four (24) hours before meeting.
12/04/2020	Notice of Meeting and Agenda posted in a prominent place in IDL’s Coeur d’Alene Headquarters office twenty-four (24) hours before meeting.
12/04/2020	Notice of Meeting and Agenda posted at meeting location twenty-four (24) hours before meeting.
12/04/2020	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
12/04/2020	Notice of Meeting and Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Notice of Meeting or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

Executive Sessions *(If only an Executive Session will be held)*

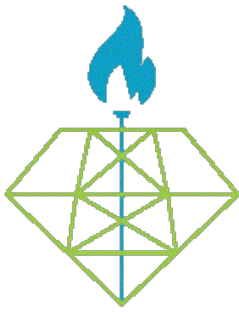
	Notice of Meeting and Agenda posted in IDL’s Boise Headquarters office twenty-four (24) hours before meeting.
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	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on the OGCC public website https://ogcc.idaho.gov/ twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Kourtney Romie

12/04/2020

RECORDING SECRETARY

DATE



IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chairman
Marc Shigeta, Vice Chairman
Jim Classen, Commissioner
Dustin T. Miller, Commissioner

Mick Thomas, Secretary to the Commission

NOTICE OF PUBLIC MEETING DECEMBER 2020

IDAHO OIL AND GAS CONSERVATION COMMISSION TO HOLD A SPECIAL MEETING ON WEDNESDAY, DECEMBER 9, 2020

The Idaho Oil and Gas Conservation Commission will hold a Special Meeting on **Wednesday, December 9, 2020**, at the **Idaho Department of Lands, Garnet Conference Rooms, 300 N 6th Street, Suite 103, Boise, Idaho**. The meeting is scheduled to begin at **2:30 pm (MT)**.

Topic: Commission Review of Issues Relating to Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14

The Commission will resolve into Executive Session upon commencement of the meeting pursuant to Idaho Code § 74-206 (1)(f) - to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.

The Oil and Gas Conservation Commission will conduct this meeting by virtual means; at least one Commission member will attend the meeting at the physical location.

This meeting is open to the public. Due to the Governor's [Stage 2 Stay Healthy Order](#), dated 11/13/2020, gatherings, including public meetings, are limited to 10 persons or less in physical attendance. Individuals are highly encouraged to listen to the meeting via teleconference.

The Idaho Oil and Gas Conservation Commission is established by Idaho Code § 47-314.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702

This notice is published pursuant to § 74-204 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.

All in-person attendees must comply with current COVID-19 safety protocols for public gatherings in the City of Boise, including but not limited to wearing face coverings and observing physical distancing. Physical distancing measures reduce the meeting room's normal attendance capacity.¹

Contingent upon safety protocols, the public may attend the meeting in person or via teleconference. Members of the public may listen to the meeting via teleconference, using the following:

Dial toll-free: 1-877-820-7831

Enter passcode: 4608991, followed by (#) key

There will be no public comment nor testimony taken at this meeting, therefore the passcode is for listening only.

First Notice Posted: 12/04/2020-IDL Boise; 12/04/2020-IDL CDA

IDAHO OIL & GAS CONSERVATION COMMISSION

¹ www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/ AND www.cdhd.idaho.gov/dac-coronavirus

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IDAHO OIL AND GAS CONSERVATION COMMISSION

Betty Coppersmith, Chairman
Marc Shigeta, Vice Chairman
Jim Classen, Commissioner
Dustin T. Miller, Commissioner

Mick Thomas, Secretary to the Commission

Final Agenda

Idaho Oil and Gas Conservation Commission Special Meeting

December 9, 2020 – 2:30 PM (MT)

Idaho Department of Lands, Garnet Conference Rooms, 300 N 6th Street, Suite 103, Boise, Idaho

The Commission will resolve into Executive Session upon commencement of the meeting.

- **EXECUTIVE SESSION**

- A. Idaho Code § 74-206 (1)(f) - to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. [TOPIC: Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14]

- **REGULAR (ACTION)**

1. **Commission Review of Issues Relating to Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14 (Possible Action)**

The Oil and Gas Conservation Commission will conduct this meeting by virtual means; at least one Commission member will attend the meeting at the physical location.

This meeting is open to the public. Due to the Governor's [Stage 2 Stay Healthy Order](#), dated 11/13/2020, gatherings, including public meetings, are limited to 10 persons or less in physical attendance. Individuals are highly encouraged to listen to the meeting via teleconference.

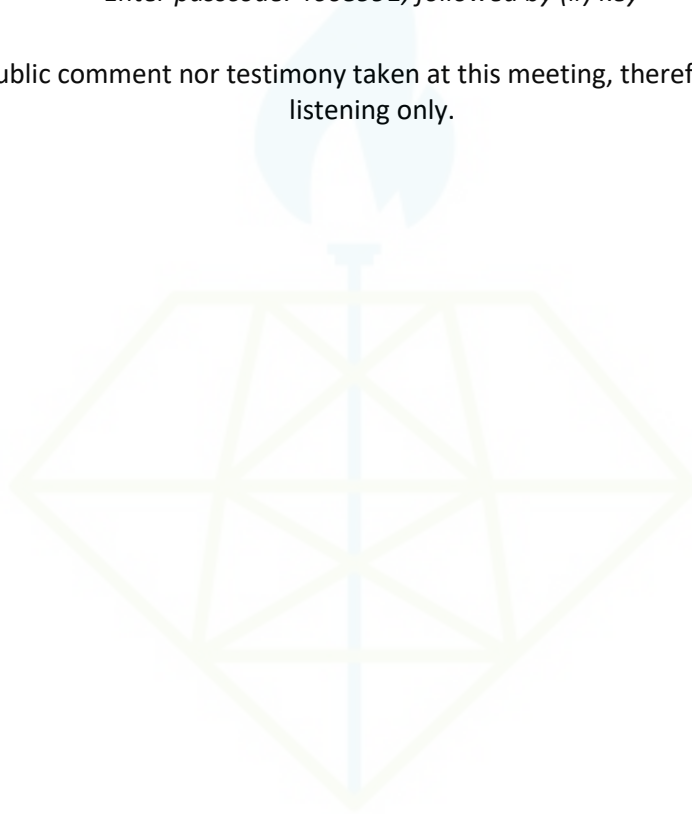
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IDAHO OIL & GAS CONSERVATION COMMISSION



Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT
CHAPTER 2
OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To acquire an interest in real property not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- (g) By the commission of pardons and parole, as provided by law;
- (h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;
- (i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of

a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this chapter to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

How current is this law?

Search the Idaho Statutes and Constitution

IDAHO OIL & GAS
CONSERVATION COMMISSION

IDAHO OIL AND GAS CONSERVATION COMMISSION
December 9, 2020
Regular Agenda

SUBJECT

Commission Review of Issues Relating to Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14 (Possible Action)

BACKGROUND

The Administrator received a November 10, 2020 letter from Mr. James Piotrowski on behalf of Citizens Allied for Integrity and Accountability (CAIA) and mineral interest owners in the Fruitland area (Attachment 1). In that letter, Mr. Piotrowski questions the constitutionality of the integration order in Docket No. CC-2016-OGR-01-001 and argues that the Oil and Gas Conservation Commission (Commission) should vacate the integration order in Docket No. CC-2016-OGR-01-001 based on the decision in *CAIA v. Schultz*, Case No. 1:17-cv-264. He asserts that it appears that Snake River intends to rely on that prior integration order for the Barlow #2-14. In Snake River's appeal of the Barlow #2-14 application for permit to drill, Snake River claimed that Docket No. CC-2016-OGR-01-001 integrated the unit "to all depths." The Administrator received a November 13, 2020 letter from Snake River's counsel, Mr. Michael Christian, disputing Mr. Piotrowski's claims (Attachment 2). The Administrator received an additional letter from Mr. Christian on December 7, 2020 (Attachment 3).

DISCUSSION

This is listed as an action item to allow the Commission to discuss issues relating to Docket No. CC-2016-OGR-01-001 and the Barlow #2-14 application for permit to drill and determine what additional proceedings, if any, are necessary to address the issues.

COMMISSION ACTION

ATTACHMENTS

1. November 10, 2020 – Letter from Mr. James Piotrowski
2. November 13, 2020 – Mr. Michael Christian's response
3. December 7, 2020 – Mr. Michael Christian's letter to the Commission

PIOTROWSKI ✦ DURAND, PLLC

November 10, 2020

Mick Thomas, Administrator
Minerals, Public Trust and Oil & Gas Division
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83702
Via Electronic Mail: MThomas@IDL.Idaho.gov

Re: “Barlow 1-14” Integration Order

Dear Mr. Thomas,

I am writing on behalf of CAIA and a considerable group of interested parties including mineral rights owners in the Fruitland area.

In 2017, the OGCC approved an integration order for subsurface estates underlying property owned by the Barlow family, as well as the surrounding acreage, in case number 2016-OGR-01-01 (what I will refer to as the “Barlow 1-14” tract). That tract has become the subject of a new effort to drill a second well, to be known as the Barlow 2-14 well. The operators of the Barlow 2-14 have not sought an integration order, and it appears they intend to rely on the prior integration order which was entered for the purpose of integrating a different pool of hydrocarbons. CAIA and its members (which includes multiple property owners in the Barlow 1-14 tract including mineral owners who previously objected to the integration order) had hoped that oil and gas operators would respect the rule of law, and forego reliance on invalid and illegal integration orders.

The Barlow 1-14 integration order was entered prior to the ruling of the United States District Court in *C.A.I.A v. Schultz*, Case No. 1:17-cv-264. In that ruling the District Court found that

The Director’s Order failed to meet these minimum due process requirements. It stated that the terms of the integration order were just and reasonable because the terms of the proposed lease and JOA were “reasonable and standard in the industry throughout the greater geographic region.” *Director’s Order* at 21-22, Dkt. 24-5. In part, this statement shows circular reasoning by suggesting that the terms are “just and reasonable” because they are reasonable. The statement that the terms were “standard in the industry throughout the greater geographic region,” on the other hand, may be a valid reason to find the terms to be just and reasonable. However, Plaintiffs were not granted a meaningful opportunity to be heard on this issue.

James M. Piotrowski • Marty Durand

1020 W. MAIN, SUITE 440, P.O. BOX 2864, BOISE, IDAHO 83701 • (208) 331-9200 • Fax (208) 331-9201

MEMORANDUM DECISION AND ORDER, August 13, 2018, pp. 17-18.

The Court continued its explanation of what it was about the process that ultimately violated the Constitution's requirement of due process of law:

At no point in the December hearing did the hearing officer indicate that her decision on whether the integration order's terms were just and reasonable would be based on standards used in the industry and in the greater geographic region. Neither did the Commissioners do so in the March 8 hearing. The notice of hearing also lacked any mention of this. As a result, there was no way for Plaintiffs to know what evidence would be relevant to the hearing officer's decision. If the standards to be used in the hearing officer's decision had been clear, Plaintiffs could have focused their arguments on those factors that would actually affect the determination of "just and reasonable" terms. Because this was not clearly spelled out, Plaintiffs were deprived of a meaningful opportunity to be heard.

Id.

The exact same infirmities were present when the OGCC considered and ultimately issued an integration order over the Barlow 1-14. Because the mineral owners in that Barlow 1-14 tract could not possibly know what legal standards would govern whether and under what terms an integration order would be entered, they had no meaningful opportunity to be heard on those matters. That integration order thus violated the requirement for due process of law.

Now that SROG has made clear that it intends to rely on the prior integration order to justify its new work on the Barlow property, additional action is required. The IDL and OGCC should immediately vacate the integration order on the Barlow 1-14. If there are parties with an adequate interest, they can, of course, file a new application and the IDL and OGCC can follow the law, with the guidance provided by the District Court, and observe and protect the Constitutional rights of all Idahoans. This is what respect for the law demands.

If IDL and OGCC are not willing to do that, my clients intend to file suit in the United States District Court challenging the existing integration order. While we would prefer to give OGCC ample time to consider and address our demands, it appears to us the SROG has no intention of waiting, and is instead moving ahead with its drilling and pipeline plans with no regard for the illegality of the prior integration order. While we do not believe that SROG could honestly claim that it had reason to rely on the prior order, given the litigation history here in Idaho, its predecessor has demonstrated that they prefer to ask forgiveness rather than permission. Time is, thus, at a premium.

I am providing a copy of this letter to SROG's counsel so that company cannot later claim that it detrimentally relied on what is an unconstitutional order.

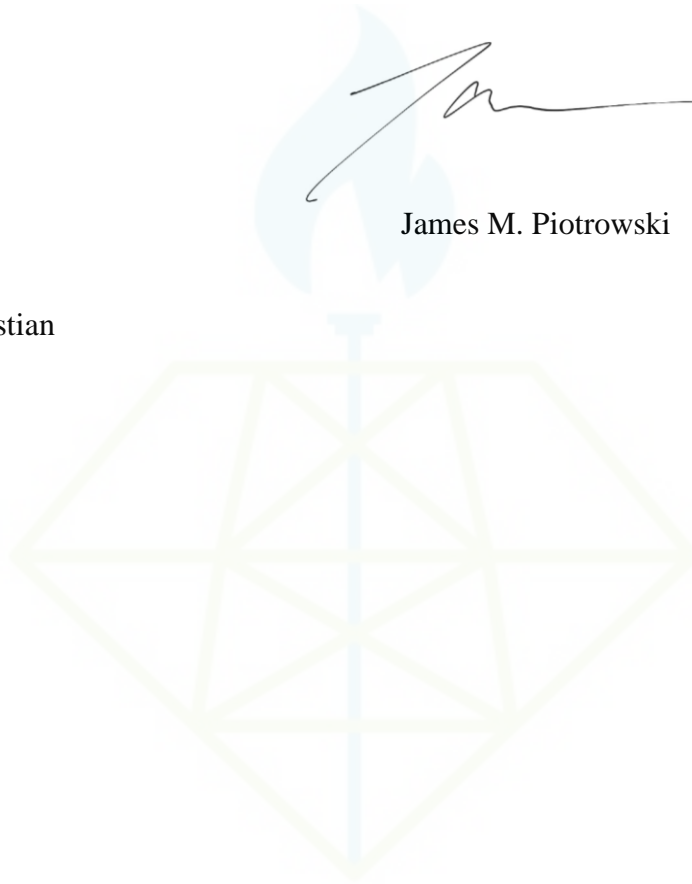
Please let us know as soon as possible how OGCC and IDL plan to address this problem.

Sincerely,



James M. Piotrowski

cc: Michael Christian
James Thum



IDAHO OIL & GAS
CONSERVATION COMMISSION

SMITH + MALEK
ATTORNEYS

MICHAEL R. CHRISTIAN
Attorney at Law
mike@smithmalek.com
Admitted in Idaho

November 13, 2020

Via Email: mthomas@idl.idaho.gov

Mick Thomas, Administrator
Oil and Gas Program
Minerals, Public Trust and Oil and Gas Division
Idaho Department of Lands
300 N. 6th St., Suite 103
Boise, ID 83702

Dear Administrator Thomas:

I write on behalf of Snake River Oil and Gas, LLC (“Snake River”) to respond to the November 10, 2020 letter to you from James Piotrowski, in which he purports to write on behalf of CAIA and “a considerable group of interested parties including mineral rights owners in the Fruitland area,”¹ and threatens a lawsuit in federal court in an effort to coerce you into vacating the “Orders for Integration” entered on August 5, 2016² in Docket No. 2016-OGR-01-001 and Docket No. 2016-OGR-01-002 (“Orders”).³ Mr. Piotrowski seeks to apply the United States District Court’s August 13, 2018 decision in *CAIA v. Schultz* to the Orders (at least with respect to Section 14), even though the Orders were entered more than two years before then, and irrespective of the process that occurred before entry of the Orders.

Mr. Piotrowski’s threat is frivolous, for at least three reasons:

1. A claim under 42 U.S.C. § 1983 based on an assertion of denial of procedural due process, which was the basis for the decision in *CAIA v. Schultz*, is time-barred. 42 U.S.C § 1983 does not contain any provision regarding limitation of actions. The United States Supreme Court has held that the state limitation period applicable to personal injury actions should be applied to all actions brought pursuant to 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261 (1985). Idaho Code § 5-219(4) provides for a two-year limitations period for claims for injury to person or property. Idaho Code § 5-201 provides that “[c]ivil actions can only be commenced within the

¹ CAIA has no direct interest in mineral rights in Section 14 affected by the Order. Owning mineral rights “in the Fruitland area” does not equate to an actual interest.

² Mr. Piotrowski’s letter incorrectly states that the Orders were entered “[i]n 2017.”

³ Mr. Piotrowski’s letter incorrectly identifies a “case number 2016-OGR-01-01.”

periods prescribed in this chapter after the cause of action shall have accrued.” Thus, an action asserting a claim under §1983 would have to be commenced within two years after the cause of action accrued. The Orders were entered on August 5, 2016, and any cause of action under 42 U.S.C. § 1983 accrued by then (at the latest).⁴ More than four years have passed since then. Any action filed by Mr. Piotrowski will be clearly time-barred.

2. At least as importantly, *no* affected uncommitted mineral owner from Section 14 participated in the hearing that resulted in the issuance of the Orders, which hearing Mr. Piotrowski now claims was deficient. As the Orders reflect, four mineral owners of two tracts filed written objections to the applications which led to the Orders, but none appeared at the hearing to oppose the applications, and their written objections provided no evidentiary support for any challenge to the applications. Orders, p. 7. Failure to participate in the hearing which is the subject of the due process challenge constitutes a waiver of the challenge. “[A] state cannot be held to have violated due process requirements when it has made procedural protection available and the plaintiff has simply refused to avail himself of them.” *Dusanek v. Hannon*, 677 F.2d 538, 543 (7th Cir. 1982); *see also Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)(“A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance[.]”) By failing to attend the hearing, mineral owners “gave up [their] right to test the correctness of the . . . decision.” *Pitts v. Bd. of Educ.*, 869 F.2d 555, 557 (10th Cir. 1989). “If there is a process on the books that appears to provide due process, the plaintiff cannot skip that process and use the federal courts as a means to get back what he wants.” *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000).⁵

3. Additionally, the relevant mineral interest owners’ failure to participate in an available hearing process prevents them from obtaining standing to pursue a claim that the hearing process was constitutionally deficient. To satisfy Article III standing, a plaintiff must show: (1) it “ha[s] suffered an ‘injury in fact’” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) a “causal connection between the injury” and the challenged action of the defendant; and (3) that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted). CAIA’s position must rest on the assertion that, had

⁴ Claims under § 1983 generally accrue when the plaintiff knows or has reason to know of the injury which is the basis of the claim. *See, e.g., Calero-Colon v. Betancourt-Lebron*, 68 F.3d 1, 3 (1st Cir. 1995); *Harris v. Hegmann*, 198 F.3d 153, 157 (5th Cir. 1999). In employment termination cases, for example, the Supreme Court has held that the § 1983 claim accrues when the employee is notified of the termination, not when the termination became effective. *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981). Given that Mr. Piotrowski’s claim is based on the assertion that unidentified mineral owners’ procedural due process rights were violated by the conduct of the hearing on the application, arguably the cause of action accrued at the completion of the hearing, not upon issuance of the Orders. However, because of the amount of time that has passed this distinction is irrelevant.

⁵ In his decision in *CAIA v. Schultz*, Judge Winmill decided only that the integration statute was unconstitutionally applied in the Fallon #1-10 matter. *Memorandum Decision and Order*, p. 7, n. 9. In other words, he concluded that it was possible to have conducted a hearing under the statute with due process. Having waived the process entirely, affected mineral interest owners may not now challenge how it hypothetically may have occurred as to Section 14.

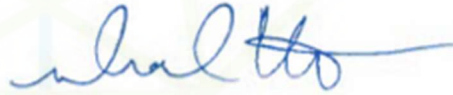
November 13, 2020

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any directly affected mineral owner actually participated in the available hearing process rather than waiving it: (a) it would have proceeded in identical fashion to the hearing for the Fallon #1-10 unit; (b) the relevant facts and circumstances regarding the unit would have been established as identical to those in the Fallon #1-10 unit; and (c) they would not have obtained an integration order with “just and reasonable terms,” different from or additional to those actually ordered. This is entirely speculative, particularly given the acknowledged wide discretion afforded the Department in determining “just and reasonable terms” for a given spacing unit. Injury in fact cannot be established through speculation. A theory of injury “which relies on a highly attenuated chain of possibilities” does not support standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013).⁶

Because the claim Mr. Piotrowski threatens to pursue is meritless, further pursuit of the claim would serve no purpose other than to harass or cause unnecessary delay. As a result, he and CAIA are subject to the imposition of sanctions by the District Court should he go forward with litigation. *See* F.R.C.P. 11(b), (c).

Very truly yours,



MICHAEL R. CHRISTIAN
ATTORNEY AT LAW

cc: Richard Brown, Snake River Oil and Gas, LLC

⁶ As noted, CAIA only claimed, and Judge Winmill only ruled, that the statute was unconstitutionally applied in the Fallon #1-10 unit integration hearing process. *Memorandum Decision and Order*, p. 7, n. 9. It is entirely speculative to assert that a process which never occurred, because the affected mineral interest owners elected to waive it, hypothetically would have occurred in the same manner as the hearing process that actually took place in an entirely different matter.

SMITH + MALEK
ATTORNEYS

MICHAEL R. CHRISTIAN
Attorney at Law
mike@smithmalek.com
Admitted in Idaho

December 7, 2020

Via Email:

mthomas@idl.idaho.gov

Idaho Oil and Gas Conservation Commission
300 N. 6th St, Suite 103
Boise, Idaho 83702
Attn: Commissioners, Administrator

Re: December 9, 2020 Special Meeting

Dear Commissioners and Administrator Thomas:

I received the Notice of Special Meeting and Final Agenda for the Commission's upcoming special meeting on Wednesday, December 9. The sole agenda item for the special meeting is directly of interest to my client, Snake River Oil & Gas, LLC. It is listed as a "Regular (Action)" item, and described as follows: "Commission Review of Issues Relating to Docket No. CC-2016-OGR-01-001 and Application for Permit to Drill, Barlow #2-14 (Possible Action)." The Final Agenda indicates that no public comment will be taken on the agenda item, but that the Commission will go into executive session for the purpose of receiving legal advice before considering the agenda item. Because of the lack of opportunity for public comment, I am compelled to write on behalf of Snake River with my concerns.

While the description of the agenda item is cryptic, I surmise that the intent is for the Commission to review whether the Barlow #2-14 APD recently granted by the Commission is within the scope of the integration order issued in Docket No. CC-2016-OGR-01-001 for Section 14. I speculate that the advice to be given to the Commission in executive session will be a suggestion that the integration order for Section 14 may not cover the Barlow #2-14 APD. The timing creates the appearance that the Department is attempting to overcome the Commission's order overturning the Department's denial of the APD.

I respectfully suggest there is no basis or need for the Commission to take any action, for the following reasons:

December 7, 2020

Idaho Oil and Gas Conservation Commission

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1. A decision taking the Barlow #2-14 well out of the 2016 integration order (which was sought by a majority of the committed mineral interest) would require the operator to incur substantial additional expense and loss of time to “re-integrate” the unit, and it would deny the mineral interest owners the opportunity to realize on their interest in the meantime. It would effectively reverse the Commission’s appeal order regarding the Barlow #2-14 APD. It will make Idaho an outlier among producing states, which only increases the perceived risk to operators.

2. The Commission expressly acknowledged in its appeal decision regarding the Barlow #2-14 APD that the revenue from the proposed well will be allocated to the mineral owners in Section 14. Final Order, p. 12 (“The well . . . allows the mineral interest owners within Section 14 the opportunity to produce the well and recover their interest in oil and gas. Thus, state-wide spacing allows them production of a just and equitable share of oil and gas without waste.”).

3. The Commission’s recognition that revenue from the well will be allocated across the mineral ownership of Section 14 was an acknowledgement that the proposed well is subject to the 2016 integration order for the unit. Allocation of production and revenue is one of the key elements of integration of the mineral interest in a unit. *See Idaho Code § 47-320(2)* (“*All operations . . . upon any portion of a spacing unit for which an integration order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon.*”).

4. On the other hand, allocation of production and revenue is not part of an order establishing a spacing or drilling unit. *See Idaho Code §§ 47-317, 47-318*. Spacing is concerned with just that – spacing of wells to facilitate efficient development and production. The only reason for the Commission to mention in its appeal decision the ability of the mineral owners in Section 14 to “recover their interest in oil and gas” and to allow them “production of a just and equitable share of oil and gas” was to acknowledge that the 2016 integration order applies to the proposed well (or any well in the unit).

5. The reference in §47-320(2) to “all operations” upon “any portion” of the spacing unit being deemed for all purpose operations on each separately owned tract makes clear that, absent limiting language in an integration order, the order covers every well drilled in the unit. “All” and “any” are not ambiguous. Similarly, Idaho Code § 47-320(1) provides that the Commission, “upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a *well or wells*, development and operation thereof and for the sharing of production therefrom.” By its plain terms the statute contemplates the drilling of multiple wells in an integrated unit. The statute’s plain language indicates an

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integration order covers “all operations” anywhere in the unit, absent some specific limitation in an order.

6. The August 5, 2016 Order for Section 14 entered in Docket No. CC-2016-OGR-01-001 does not limit the integration of the mineral interest to any particular pool. Recall that the integration application only required that the applicant provide a “geologic statement concerning the likely presence of hydrocarbons.” *See* Idaho Code § 47-320(4)(c). This does not mean the applicant was required to provide proof regarding every potential source of hydrocarbons in the unit (or even the definite presence of any hydrocarbons), nor does it mean that the integration would be limited to the hydrocarbons discussed in the statement.

7. The integration order contains express indications that it is not limited to a particular pool. It describes the spacing unit to be integrated as all of Section 14, not some subpart of it. By expressly retaining default spacing (as discussed at length in the Commission’s order on the APD appeal), the Order necessarily acknowledges that there may be multiple wells drilled to separate sources of supply. Second, the Order makes plain in multiple places that the order is intended to cover all development in the unit. Order, p. 10 (“[T]he Director concludes it is appropriate to integrate the uncommitted mineral interest owners the Applicants have named for the development and operation of the unit[.]”); p. 11 (Ordering that the designated operator “has the exclusive right to drill, equip, and operate each well within each respective spacing unit,” that “[o]perations on any portion of a spacing unit will be deemed for all purposes the conduct of operations upon each separately owned tract in the spacing unit,” and that “all production from each respective spacing unit be integrated and allocated among the interest owners therein[.]”). None of this language is limited to the pool discussed in the geologic statement (which makes sense, given the wildcat nature of the area). As the Commission noted in its appeal order, the proposed well is in a legal location within the unit, offset appropriately from the unit boundary and separated from the existing well in the unit.

The 2016 integration order plainly and unambiguously applies to the Barlow #2-14 well. The Commission need not take any action, because it was already decided in the 2016 integration order that the mineral interest was integrated for every well drilled in the unit. The Commission’s appeal order regarding the Barlow #2-14 APD correctly acknowledged that revenue from the well will be allocated across the unit as a result. Interpreting the appeal order and integration order otherwise would be contrary to both the plain language of the orders and the plain language of the statute.

I appreciate your consideration of the above.

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Very truly yours,



MICHAEL R. CHRISTIAN
Attorney at Law

cc: Richard Brown, Chris Weiser



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