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BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil and Gas, LLC for an 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, Payette County, Idaho

Snake River Oil and Gas, LLC, Applicant.

Docket No. CC-2024-OGR-01-001

OAH Case No. 24-320-OG-01

**IDAHO DEPARTMENT OF LANDS'  
POST HEARING STATEMENT**

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, hereby submits the following Post Hearing Statement following the contested case hearing held on Thursday, June 13, 2024 at 1:00 p.m. MST.

**I. BACKGROUND**

On June 13, 2024, the Hearing Officer in the above-captioned matter held an evidentiary hearing to consider the merits of Snake River Oil and Gas, LLC’s (“Snake River”) application for a spacing unit. At the hearing, Snake River geologist, Mr. David Smith, appeared and testified regarding his interpretation of the geologic data appended to Snake River’s application and his

conclusion that the spacing unit proposed was the appropriate size to efficiently and economically drain the identified subsurface hydrocarbon pool using one well.

IDL Oil & Gas Program Manager Mr. James Thum appeared and testified concerning his independent evaluation of Snake River's application and the geologic evidence therein. Among other things, Mr. Thum testified that Snake River's proposed spacing unit was based on a reasonable interpretation of the geologic data, the unit was an appropriate size to efficiently and economically drain the subsurface hydrocarbon pool identified in the application using one well, and recommended that Snake River's application be approved.

Objectors Citizens Allied for Integrity and Accountability ("CAIA") and Ms. Karen Oltman appeared through counsel. Objectors cross-examined Mr. Smith and Mr. Thum but did not offer any evidence disputing the geologic data in Snake River's application or Mr. Smith's and Mr. Thum's interpretation of that data. Likewise, CAIA did not offer any evidence or argument to establish that it was an uncommitted owner in the affected unit entitled to raise objections in these proceedings.

IDL now submits this post hearing statement addressing the outstanding issues in this matter following the evidentiary hearing.

## **II. ARGUMENT**

### **A. Idaho Code § 47-317(1) and (2) control these proceedings.**

Objectors questioned Mr. Thum about whether IDL had found that the proposed spacing unit would prevent waste, avoid unnecessary wells, or protect correlative rights. This questioning is based on language in Idaho Code § 47-317(5). Any reference to that subsection is irrelevant to these proceedings because that provision governs an application to *amend* an existing spacing unit,

not an application to *establish* a new spacing unit.<sup>1</sup> Applications to establish a new spacing unit are governed by Idaho Code § 47-317(1) and (2). Snake River’s application clearly states that it is seeking an order establishing a spacing unit under those provisions of law. SR-01 at 2-3.

Idaho Code § 47-317 does not require an order establishing a new spacing unit to contain findings regarding waste, unnecessary wells, or correlative rights. Subsections (1) and (2) of Idaho Code § 47-317 control the application for and establishment of a new spacing unit. Subsection (1) provides a right for either IDL or an interested person to apply for the establishment of a spacing unit and lists the general purposes served by establishment of such a unit or units. Subsection (2), in turn, provides the substantive requirements for an order establishing a spacing unit, which, if complied with, serve those purposes listed in subsection (1). The only requirements for an order establishing a new spacing unit are those listed in Idaho Code § 47-317(2). Notably, subsection (2), unlike subsection (5), does not contain an explicit requirement for a finding that the spacing unit “would assist in preventing the waste of oil and gas, avoid drilling of unnecessary wells, or protect correlative rights.” *Compare* Idaho Code § 47-317(2), *with* Idaho Code § 47-317(5). Instead, subsection (2) provides that an order establishing a spacing unit must (i) “specify the location, size, and shape of the unit, which, in the opinion of the department, shall result in the efficient and economical development of the pool as a whole”; (ii) list the geographic boundary of the unit “in accordance with the public land survey system”; and (iii) “determine the area that can be efficiently and economically drained by one (1) well for the orderly development of the pool.”

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<sup>1</sup> Moreover, even if subsection (5) applied to this application, making a “finding” is the province of the hearing officer and, ultimately, IDL’s Oil and Gas Division Administrator. Since no recommended order or final order has been issued in this matter, is unremarkable that a finding on the subject of waste, unnecessary wells, or correlative rights has yet to be made and the lack of any such finding certainly does not weigh on the completeness or sufficiency of the application being considered.

Idaho Code § 47-317(2). Any suggestion that IDL is required to make a finding concerning waste, unnecessary wells, or correlative rights in reference to Snake River's current application is misplaced, as Idaho Code § 47-317(2) – the only statutory provision containing substantive requirements for an order establishing a new spacing unit – contains no such requirement.

**B. IDL recommends that Snake River's application be granted.**

In its Prehearing Statement, IDL recommended that Snake River's application for a spacing unit should be granted "unless relevant conflicting evidence or testimony [was] presented" at the evidentiary hearing. IDL Prehearing Statement at 5. Objectors did not present any exhibits or testimony to refute the geologic data and interpretations of that data presented by Mr. Smith and Mr. Thum. Accordingly, IDL recommends that Snake River's application be granted because the geologic data presented shows the likely presence of a subsurface hydrocarbon pool consisting of Sands A and B and that the productive limits of that pool rest within the boundaries of the proposed 320-acre spacing unit. In short, the proposed unit is appropriately located, shaped, and sized to allow for the efficient and economic development of the pool, that pool can be efficiently and economically drained by one well, and the boundaries of the proposed unit are properly described using the Public Land Survey System ("PLSS"). *See* Idaho Code § 47-317(2).

Objectors' argument that the boundaries of a spacing unit could be drawn in a non-rectangular fashion to perfectly capture the expected productive limits of a pool is contrary to statute and, even if possible, would be so impractical that it would be inconsistent with the statutory directive to issue spacing orders that promote the efficient, economic, and orderly development of a pool. Idaho Code § 47-317(2) requires a spacing unit to be described "in accordance with the [PLSS]." Accordance is defined as being in "agreement" or "conformity" with something. *Accordance*, MERRIAM-WEBSTER, available at <https://www.merriam->

*webster.com/dictionary/accordance* (last accessed June 17, 2024). The PLSS, in turn, is a rectangular survey system that uses a system of meridians and base lines “to create a checkerboard of identical squares covering a given area.” Alan C Morganfield & Charles Carpenter, *The Ins and Outs (And Zigs and Zags) of Legal Descriptions*, 102A ROCKY MOUNTAIN MINERAL LAW SPECIAL INSTITUTE 11 (1998). A fundamental building block of the PLSS is a one-mile square unit called a section, which can be divided into smaller, fractional units (NE  $\frac{1}{4}$ , S  $\frac{1}{2}$ , etc.). *Id.* Describing a spacing unit using a curved line would certainly not be in agreement or conformity with the fundamentally rectangular PLSS.

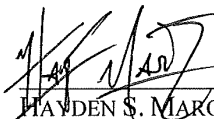
Indeed, even if a non-rectangular spacing unit could be established consistent with the PLSS, doing so would be contrary to the express directives for spacing to promote the efficient, economic, and orderly development of a pool. Idaho Code § 47-317(2). The exact subsurface boundaries of a pool cannot be established through seismic data alone and would require extensive drilling. Surely this would be a less economic and efficient process than simply establishing a rectangular unit that may include some acreage not underlaid by hydrocarbons. For this reason, other oil and gas jurisdictions routinely uphold spacing units that include acreage that may not be underlaid by hydrocarbons. *See Amoco Prod. Co. v. Ware*, 602 S.W.2d 620, 624 (Ark. 1980); *Mfrs. Nat. Bank of Detroit v. Dir., Dep’t of Nat. Res.*, 270 N.W.2d 550, 552-53 (Mich. Ct. App. 1978).

**C. If Snake River’s application is granted, the spacing order should specify setbacks.**

Historically, spacing orders have included a provision defining well setbacks within the unit. Snake River did not request a variance from the statutory default setback in its application. Absent any request from Snake River to the contrary which IDL can evaluate, IDL would recommend that any spacing order issued in this matter clarifies that the statutory default setback of 660 feet applies to the unit. *See* Idaho Code § 47-317(3)(b).

DATED this 17<sup>th</sup> day of June, 2024.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL



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HAYDEN S. MAROTZ  
Deputy Attorney General  
for Idaho Department of Lands

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> 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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