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 **APPLICANT'S POST-HEARING STATEMENT**

Applicant Snake River Oil and Gas, LLC respectfully submits this post-hearing statement.

A. <u>Applicant is an interested party eligible to file a spacing application</u>.

Applicant is an "interested party" under Idaho Code § 47-317(1) by virtue of leasing about 83.7% of the net mineral acres in the proposed unit area. As a lessee it is an "owner" and has the right to develop the leased minerals. *See* Idaho Code § 47-310(27)(defining "owner" as "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."); *Declaration of Richard Brown*, Ex. SR-01, p. 8. The parties stipulated Applicant's interested party status at the prehearing conference.

B. <u>Applicant provided notice as required by Idaho Code §47-328(3)(b).</u>

As is set forth in Exhibits A and B to the application, which are included at pages 6 and 7 of Ex. SR-01, and as illustrated by the mailing receipts included in Ex. SR-02, Snake River identified and mailed the application materials and required notice to all uncommitted mineral owners in the proposed unit area and to Payette County, as required by Idaho Code §47-328(3)(b), as well as to all uncommitted mineral owners for property adjacent to the proposed unit area. Applicant's landman Wade Moore confirmed these points in his hearing testimony.[1]

[1] While Ms. Oltman and the City of Fruitland both received notice, Ms. Oltman's counsel appeared to suggest in his questioning of Mr. Moore that notice of some greater set of uncommitted owners was required. This is not supported by a reading of § 47-328(3)(b) as a whole, as it limits the right to file an objection or other reply to uncommitted mineral owners in the proposed unit area.

C. The proposed unit area is appropriate and will prevent the drilling of unnecessary wells, protect correlative rights and prevent waste.

Idaho Code § 47-317(1) provides that on the motion of an interested party, the Department may issue an order establishing spacing units for defined areas in the state "to prevent or assist in the prevention of waste, avoid drilling of unnecessary wells, or protect correlative rights." Idaho Code § 47-317(2) provides that the order shall specify the location, size and shape of the unit that "in the opinion of the department will result in the efficient and economical development of the pool as a whole." Units are to be "geographic" (described by reference to the surface, as opposed to geologic, i.e, described by reference to a subsurface pool or formation), and "described in accordance with the public land survey system." *Id*. The spacing unit is to cover an "area that can be economically and efficiently drained by one (1) well for the orderly development of the pool." *Id.*

Snake River provided a Declaration of David Smith with exhibits illustrating seismic information (*see* Ex. SR-01, pp. 10-18), and extensive hearing testimony from Mr. Smith, a geologist working for Snake River, regarding the information he developed and interpreted. Mr. Smith testified to his conclusion that the proposed unit area is an area, described in accordance with the public land survey system (i.e., the NE ¼ of Section 9 and the NW ¼ of Section 10 in Township 8 North, Range 5 West), best fits Sands A and B where targeted and is an area that can be economically and efficiently drained by one well for the orderly development of the pool. Mr. Smith described in detail his conclusion that the sands are likely prospective for hydrocarbons. He also described in detail the structural (faulting) and stratigraphic (sedimentary pinch-out) trapping mechanisms creating a likely drainage area for the sands as targeted, within the proposed unit area.

The Department's oil and gas program manager, Mr. Thum, testified regarding his support for the application. This should carry substantial weight in the hearing officer's decision, particularly where no evidence to the contrary was presented.

While Ms. Oltman's counsel attempted to suggest otherwise, in part by selectively quoting incomplete portions of Idaho Code § 47-317 and § 47-310(36)(a) (defining "waste") to witnesses without allowing the witnesses to have the relevant statutory sections before them, the testimony of Mr. Smith and Mr. Thum established that the proposed unit area satisfies the requirements of § 47-317(2):

(a) Mr. Smith and Mr. Thum agreed that the proposed unit area would result in the efficient and economical development of the pool as a whole and prevent the drilling of unnecessary wells, and is an area described in accordance with the public land survey system that can be efficiently and economically drained by one well for the orderly development of the pool.

(b) Mr. Thum agreed that if the targeted sands, which straddle quarter sections in two different sections, were developed on default spacing of two separate standard 640-acre sections (per Idaho Code § 47-317(3)(b)), it could result in the drilling of unnecessary wells, as it would require two wells instead of one.

(c) Mr. Thum acknowledged that requiring development in two standard sections could result in waste, because setbacks of 660' from the unit boundary as required by § 47-317(3)(b) could prevent drilling of wells and thereby strand resource in the ground.[2] He acknowledged that Idaho Code § 47-310(36)(b) includes in the definition of "waste" the "production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil and gas that might ultimately be produced."

(d) Mr. Thum agreed that requiring development of Sands A and B, where targeted, in two separate 640 acre units would include a very large amount of nonproductive acreage being included in each unit (in each case, more than three quarters of the unit area), drastically impacting the correlative rights of those owners located in the proposed unit area by diverting most of the revenue from a well to owners of non-productive acreage. *See* Idaho Code § 47-310(8) (defining "correlative rights" as "the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste").

D. No proper objector presented any evidence of prejudice from the proposed unit, and CAIA is not a proper party to the contested case.

Only two persons owning minerals in the area filed objections: The city of Fruitland, which owns mineral rights in the proposed unit area, and Karen Le Oltman, who owns property adjacent to the east boundary of the proposed unit area.[3] Neither filed any exhibits, and neither

[2] The presently planned well location is near the center of the proposed unit, and so would be near the boundary of the two sections from which the quarter sections making up the proposed unit are taken. *See* Ex. SR-01, p. 17 (amplitude map showing planned well location).

[3] Idaho Code § 328(3)(b) does not require service of the application on anyone outside the proposed unit area (consistent with the restriction on who can object to uncommitted owners inside the proposed unit area). Applicant served the application on uncommitted owners of property *adjacent* to the boundary of the proposed unit area in an exercise of caution. Idaho Code § 47-317(5) provides that for applications to *amend* a spacing unit (as opposed to an

presented any evidence at the hearing. Mr. Smith gave unrebutted testimony that Ms. Oltman's minerals are not affected by the unit proposed.

The City's written objection relates to well siting, construction and operation. These issues are not relevant to the subject of spacing. *See* Idaho Code § 47-317(1), (2).

As Applicant set forth in its motion to exclude CAIA as a party, CAIA does not own mineral rights in the proposed unit area and thus is not eligible under Idaho Code §47-328(3)(b) to file an objection or other response to the application. As a result, it is not a proper "protestant" party under IDAPA 04.11.01.155.[4] Consequently, it had no right to examine witnesses or otherwise participate as a party. *See* IDAPA 04.11.01.355, which describes the limited rights of public witnesses. CAIA chose not to offer any testimony as a public witness at the close of the evidentiary hearing. General arguments against the unit made by CAIA should be disregarded as a result.

E. Arguments raised by Ms. Oltman are meritless.

Ms. Oltman's objection is generally that the proposed unit area is both "underinclusive" and "overinclusive." She presented no evidence on either point. Ms. Oltman offered no evidence (and did not even pursue on cross examination) that *her own minerals* are impacted in any way by the proposed unit.[5] Her counsel argued through his examination of witnesses that the unit should describe the subject pools exactly and include no non-prospective acreage. As discussed in Applicant's Prehearing Statement, the Administrator previously rejected this argument. *See Findings of Fact, Conclusions of Law, and Order,* Docket No. CC-2020-OGR-01-002 (September 28, 2020, pp. 16-19). It is not relevant to Ms. Oltman's property in any event, as her property is

application to initially *establish* a spacing unit under § 47-317(1) as is the case here), the uncommitted owners in the proposed unit and "all other parties the operator reasonably believes may be affected" should be served. Ms. Oltman does not qualify as a person who may object or file another response to a spacing application under §47-317(1) and 47-328(3)(b) because her property is outside the proposed unit area, but Snake River did not object to her participation given the possible inconsistency in §47-317 and to give her the opportunity to present any evidence that her mineral rights are affected by the application (i.e., that she should be included in the unit). She presented no such evidence.

[4] At the prehearing conference, the hearing officer offered CAIA the opportunity to present evidence at the hearing to establish its party status. CAIA presented no such evidence regarding itself or any of its members. As it is not a proper party, CAIA would not be an "aggrieved" person permitted to seek judicial review of the Department's decision under Idaho Code § 67-5270. A person "is aggrieved by an order when the order affects his or her present personal, pecuniary, or property interest." *Ashton Urban Renewal Agency v. Ashton Mem'l, Inc.*, 155 Idaho 309, 311, 311 P.3d 730, 732 (2013).

[5] Like CAIA, she has no standing as a litigant to pursue the rights of third parties, such as uncommitted mineral owners in the unit area who failed to object or appear. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125 (2004) (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).

located outside the proposed unit area, and she does not assert that she should be included in the unit (in other words, that the unit as proposed is too small). Her arguments regarding unit configuration should be rejected as a result.

Ms. Oltman's counsel suggested through his cross-examination of Mr. Thum that description of a unit by metes and bounds – even to the point of describing a unit essentially as a circle, would constitute a "geographic" unit description "in accordance with the Public Land Survey System," as required by Idaho Code § 47-317(2). This is wrong.

Metes and bounds description of property – description of a property boundary by a system of distances and directions, tied to landmarks – was imported to the original colonies from England. *See, e.g., Schaer v. Webster County,* 644 N.W.2d 327 (Iowa 2002) (distinguishing the PLLS from "the older metes and bounds system of delineating the boundaries of land based on a designated beginning point" and noting that "the metes and bounds method of description dates back to colonial times"); Metes and Bounds*, BLACK'S LAW DICTIONARY* (11th ed. 2019) ("The territorial limits of real property as measured by distances and angles from designated landmarks and in relation to adjoining properties.").

The enactment of the Land Ordinance of 1785 and the Northwest Ordinance of 1787 created a system of survey and land description by rectangular subdivision -- township, range, section, quarter section, and so on – to facilitate sales of newly acquired western lands in order to pay off Revolutionary War debt. *See, e.g., Journal of Continental Congress*, 28: 375 (May 20, 1785) ("An ordinance for ascertaining the mode of disposing of Lands in the Western Territory"); BLM, "Specifications for Descriptions of Land (2017), p. 7[6]; American Period Maps, "1785 - The Public Land Survey System (PLSS)" (2017), p. 23[7]; C. Albert White, "A History of the Rectangular Survey System" (2nd ed.1991), p. 11[8]; Public Land Survey System, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The system of surveys made using similar principles that the U.S. government - at the direction of first the Confederation Congress and then the U.S. Congress - used to survey and subdivide the continental U.S..... Each [survey] divides a tract into six-mile-by-six-mile squares called townships.... A regular township square is divided into 36 one-mile-by-

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6 Available at https://www.blm.gov/sites/default/files/SpecificationsForDescriptionsOfLand.pdf.

7 Available at https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1022&context=hornbeck_usa_1.

8 Available at https://www.blm.gov/sites/blm.gov/files/histrect.pdf.

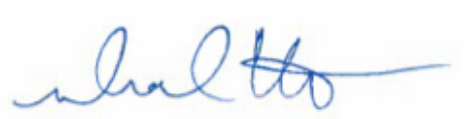
one-mile squares called sections. Each regular section is divided into four quarter sections, and each regular quarter section is divided into four quarter-quarter sections."). The two systems are completely different, and Idaho Code § 47-317(2) clearly prohibits description of a spacing unit by metes and bounds. Mr. Thum also testified that virtually no other producing state draws spacing units in the manner suggested by Ms. Oltman's counsel, because the purpose of describing units by rectangular subdivision is to aid in orderly development.

This contested case is another in a series in which CAIA, often represented jointly with an individual mineral interest owner, seeks to impede spacing unit or integration approval, without any evidence of actual impact to the interests of a properly objecting uncommitted mineral owner. CAIA's clear purpose is not orderly development but stopping development. It has been repeatedly denied party status because of its lack of a concrete interest but continues to appear and impede proper hearing of applications. This causes a significant waste of time and resources by the Applicant and the Department. Applicant respectfully suggests that the same should not be allowed here.

For the foregoing reasons, Applicant respectfully requests that its application be granted.

DATED this 17th day of June, 2024.

HARDEE, PIÑOL & KRACKE, PLLC



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th 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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