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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 NW¼ of Section 10, Township 8 North, Range 5 West, Payette County, Idaho	Agency Case No. CC-2024-OGR-01-001 OAH Case No. 24-320-0G-01 POST-HEARING BRIEF OF OBJECTING MINERAL OWNERS

COME NOW Citizens Allied for Integrity and Accountability (CAIA), and Karen Oltman, by and through counsel and hereby provide their post-hearing brief in opposition to the application for a spacing unit. Via this filing, objectors also seek leave to exceed 5 pages in their post-hearing brief. While objectors are not aware of an actual order limiting briefs, the matter was discussed at the close of the hearing. Objectors have filed a a short, plain statement of their position and the reasons they believe the application should be denied, which has extended to 8 pages. The whole brief should be considered.

The evidence at hearing demonstrates that the applicant has failed to provide the legally required notice of its application. In addition, the Department of Lands has not found, and there is no possible evidentiary basis to find that the application to approve an amended spacing unit of

less than 640 acres would serve any statutory purpose. As such a finding is a legal prerequisite to approving the unit, the application should be denied.

I. There Is No Statutory Basis on Which to Approve the Application

The Idaho Oil and Gas Conservation Act has an easily understandable structure when it comes to the design of spacing units. In order to ensure the express statutory goal of limiting the number of wells that will be drilled, "Every directional well and vertical well drilled for gas **shall be** located in a spacing unit consisting of a six hundred forty (640) acre governmental section or lot or tract, or combination of lots and tracts substantially equivalent thereto." I.C. §47-317(3)(b). This mandatory language is entirely binding upon the parties, the Department and the Hearing Officer.

The statute provides only one method for approving a gas spacing unit of less than 640 acres. To invoke the exception to 640-acre units, the statute requires that first "an operator may request an amendment in the size, shape or location of a spacing unit." I.C. §47-317(4). The process which the Hearing Officer is currently conducting is one of the steps called for when such an application is made. And the statute expressly requires certain findings to be made: "To authorize an amendment [to the 640-acre size, shape or location of a spacing unit], the department shall find that such amendment would assist in preventing the waste of oil and gas, avoid drilling of unnecessary wells, or protect correlative rights." §I.C. §47-317(5). This is also mandatory language, the Department and the Hearing Officer are required to deny an application for a spacing unit of other than 640 acres unless the required findings are actually made.[1]

[1] Objectors can only hope that it is apparent that where factual findings are required, evidence adequate to support those findings must be presented. Otherwise, the hearing process is a mere rubber stamp.

There was no evidence presented either in writing or at the hearing on which to base such findings. James Thum is the Program Manager for the Oil and Gas Program at the Department of Lands. Thum was asked directly and repeatedly whether the approval of the spacing unit of 320 acres instead of 640 acres in this case would result in prevention of waste, and he repeatedly testified any such finding would be mere “speculation.” Mr. Thum was asked directly and repeatedly whether the reduction in the size of the spacing unit would avoid the drilling of unnecessary wells, and he repeatedly testified any such finding would be mere “speculation.” Mr. Thum was asked directly and repeatedly whether the reduction in the size of the spacing unit would protect correlative rights, and he repeatedly testified any such finding would be mere “speculation.” No other witness testified, at all, about whether a 320 acre spacing unit would achieve any of these three goals. There is no basis for such a finding by the Hearing Officer or by the Commission. Without such a finding the application must be denied as a matter of law.

Snake River is likely to assert that the smaller unit will somehow protect correlative rights. What they really mean is that the smaller unit will protect the rights of Snake River’s preferred mineral lessors and will protect Snake River’s own interests. A simple review of Exhibit SR-01 shows that within the 320 acre proposed unit, 235 acres belong to Larry James who has leased all of his holdings to Snake River. In a 320 acre unit, 235/320 shares in the well’s production will go to Larry James. If the spacing unit was properly designed at 640 acres, Larry James’ share of the production would go from 235 out of 320 or 73% of the value of the pool to 235 acres out of 630 or only 37% of the value of the extracted gas.[2]

[2] While Larry James might also hold acreage in the excluded portions, thus increasing his share of a potential 640-acre unit, there was no evidence presented to the hearing officer ont his topic. Thus, Snake River has expressly chosen to leave the impression that they are favoring Larry James over other property holders in the 320 acres that Snake River wants to exclude.

The phrase "correlative rights" is expressly defined 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." I.C. §47-310(8). The evidence in this case reveals that the best available data on the extent of the gas pool that Snake River wants to drill is both larger than the proposed spacing unit (in that it extends south of the proposed unit), and significantly smaller than the proposed unit in that the extent of the pool reveals a surface area far less than 320 acres.[3] There is neither a factual nor a legal argument to be made that being simultaneously underinclusive (excluding that part of the pool which extends south of the proposed unit) and overinclusive (including lands with no known or even suspected gas resources) protects correlative rights. It appears to protect the rights of Larry James, who has leased his rights to Snake River, thus ensuring that the proposal protects the interests of Snake River to a windfall profit, but it will have no effect on the ability of any individual to produce their gas if they so wish. No individual was capable at hearing of explaining how a spacing unit of the size that the Legislature has commanded would harm the right to drill for and extract gas for anyone who owns it. The smaller spacing unit is intended solely to maximize Snake River's profits, at the cost of the owners of the 320 adjacent acres.

As the proposed spacing unit does nothing to satisfy the statutory requirements, the application should be denied in favor of a 640-acre unit.

[3] Snake River and the Department believe that spacing units must be square in order to be "described in accordance with the public land survey system." I.C. 47-317(1). But the statute is quite clear that spacing units may be "not located within the boundaries of a governmental section, quarter section or quarter-quarter section." But the statute expressly provides that when an amendment application such as the one in this case is filed, the Department's and thus the Hearing Officer's job is to determine the "spacing unit's size, **shape** and location." I.C. §47-317(5)(emphasis added). If only squares were allowed, there would be no need to determine the "shape" of the unit.

II. Proper Notice of the Application Was Not Given.

Snake River's failure to justify a deviation from the 640-acre standard would be less insidious if Snake River had not also failed to provide the notice to mineral owners required by the statute. In fact, Snake River has failed to provide notice to the very people who will be harmed by Snake River's application, those members of the statutory 640-acre unit who are being excluded.

Again, the statutory structure is clear on this point. When it comes to an entity such as Snake River requesting a variation in statutory spacing units the statute provides:

> [T]he applicant shall send a copy of the application and supporting documents to all known and located uncommitted mineral interest owners, all working interest owners with the proposed spacing unit, and the respective city or county where the proposed unit is located.

I.C. §47-328(3)(b).

There is an additional notice requirement in that I.C. §47-315(5) adds that "In addition to any other notice required by statute or rule, an operator shall provide proper notice and a copy of the application to all uncommitted owners within the proposed unit and to all other parties an operator reasonably believes may be affected." Thus, a fourth category of "affected parties" must also receive notice.

The statute thus unmistakably requires notice to (1) all uncommitted mineral interest owners, (2) all working interest owners in the proposed spacing unit, (3) the city or county, and (4) "affected" property owners.

The factual record here is just as clear as the statute. Snake River has stated that there are no working interest owners in the proposed spacing unit.[4] Snake River provide notice to all

[4] Witness David Smith testified that he was a working interest owner in this particular unit. The inconsistency in his testimony has not been explaind.

uncommitted mineral interest owners **in the spacing unit.** It provided notice to a handful of property owners that the Department believed were the "affected" owners. And, it provided notice to the city or county. What it did not do is provide notice to "all uncommitted mineral interest owners" as required by the first clause of §47-328(b), it provided such ontice only to those within the proposed unit.

It is, as a matter of well-established law, not adequate to just assume as SROG has apparently done that Section 328(5) only requires notice to"uncommitted mineral interest owners" within the proposed spacing unit, when what the Legislature unequivocally said was that notice must be sent to "**all** known and located uncommitted mineral interest owners." Id., emphasis added. To assume that would be to imbue the statute with words the Legislature chose not to use. In the very next clause, the Legislature demonstrated that it knows how to specify owners "within the proposed spacing unit," when it directed notice to "all working interest owners within the proposed spacing unit." Id. The Legislature knows how to draft, and it singled out working interest owners "within the spacing unit," and also singled out "all uncommitted" mineral interest owners. There is no rule of construction or interpretation that would allow the executive or judicial branches to impart words to Legislation that the Legislature rejected.

While it is true that the Legislature likely did not intend notice be directed to literally every uncommitted mineral interest owner in the world, country or state, it clearly meant something other than uncommitted owners within the spacing unit. Had it meant that, the Legislature would have said that, just as it did for working interest owners.

Nor is it adequate that Snake River directed notice to adjacent land owners. That notice was required by the separate statute §37-317(5). And just as the Hearing Officer is not permitted, as a matter of law, to assume that the Legislature meant things it did not say, the Hearing Officer

is not permitted to assume that the Legislature said the same thing twice, thus rendering one of its statements meaningless and redundant. The Idaho Supreme Court has made clear that it is contrary to the laws of the state to " construe a statute in a way which makes mere surplusage of provisions included therein." *Roesch v. Klemann*, 155 Idaho 175, 177-78, 307 P.3d 192, 194-95 (2013), quoting *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 116, 233 P.3d 38, 47 (2009), quoting *Sweitzer v. Dean*, 118 Idaho 568, 571-72, 798 P.2d 27, 30-31 (1990); *See also Twin Lakes Canal Co. v. Choules*, 151 Idaho 214, 218, 254 P.3d 1210, 1214 (2011) (holding that courts may not interpret a statute in a manner that would "render it a nullity").

The command to provide notice to "all" uncommitted mineral interest owners must mean something other than all such owners "in the proposed spacing unit" or all "affected" owners, since either of those constructions would render another statutory section redundant, irrelevant and a nullity. Since neither Snake River nor the Department have made so much as an argument about proper notice, the Hearing Officer will have to construe the statute. While "all uncommitted mineral interest owners" is excessively broad, to read that as meaning "all uncommitted owners within the proposed spacing unit" would render parts of the statute a nullity, and to read it as merely "all affected owners" would render a different section of the statute a nullity, some other intent must have animated the Legislature in choosing the formulation it did.

Since statutes must be read in *pari materia,* there is one other interpretation that might be reasonable. The statute assumes a 640-acre spacing unit consisting of a single section. Since the applicant in this case wants to take 160 acres from one section (that is called a "quarter-section" in the statute) and 160 acres from another section, it is "borrowing" space from two adjacent sections. Those sections are each presumptively correct spacing units per statute. Thus "all

uncommitted mineral interest owners" can and should be read to require that notice be given to all such owners in the presumptive spacing units who would instead be either lumped into or excluded from an amended spacing unit that could, potentially, drain their lands. But that is merely one suggestible outcome. What is clear as a matter of law is that notice must go to all owners in the spacing unit, and "all uncommitted owners" whether in the spacing unit or not pursuant to §318(5). It is also clear that Snake River did not send notice to anybody other than those within the spacing unit, and those which the Department determined were "affected" within the meaning of §317(5). This is inadequate as a matter of law.

The application should be denied because (1) there is no evidence to support the necessary findings of fact required by statute to justify an amendment from the normal 640-acre spacing unit; and (2) Snake River has not provided the notice to uncommitted mineral interest owners required by statute.

Dated this 17th day of June, 2024.

PIOTROWSKI DURAND, PLLC

/s/ James M. Piotrowski
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Attorneys for CAIA and Karen Oltman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be served on the parties indicated below, via electronic mail, this 17th day of June, 2024.

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