From:	Molly Garner
To:	Mick Thomas; Kourtney Romine; James Thum
Cc:	James Piotrowski
Subject:	Letter re Application for Well Permit, Barlow #2-14
Date:	Wednesday, August 05, 2020 12:18:24 PM
Attachments:	Itr JP~IOGCC re Application for Well Permit Barlow 2-14 08-05-20.pdf

Attached, please find the letter filed on behalf of Citizens Allied for Integrity and Accountability, et al., by their attorney in regards to Application Well Permit, Barlow #2-14.

Thank you,

-Molly Garner
Office Manager
Piotrowski Durand, PLLC

August 5, 2020

Idaho Oil and Gas Conservation Commission
Mick Thomas, Administrator Oil and Gas Division
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83702

Re: Application for Well Permit, Barlow #2-14

Dear Commission,

These comments are offered on behalf of Citizens Allied for Integrity and Accountability ("CAIA") and its members including Brad and Angela Barlow, Sue Bixby, Cookie Atkins, Janie Rodriguez, Melvin and Terri Person, Jan and James Mitchell, Bruce Burrup, Dale Verhaeghe, Linda Dernoncourt, William Tolbert, Julie Fugate, and Joey and Brenda Ishida. CAIA is a not-for-profit, membership-based organization committed to the responsible development of natural resources in the State of Idaho. The individual members of CAIA participating herein are mineral rights owners either within the spacing unit encompassing the well site subject to this application, or living near enough to that well site to have an interest in protecting their property. In the case of Brad and Angela Barlow, they own the site on which Snake River Oil and Gas wishes to drill a new well. All of these parties ask that the IDL and the IOGCC deny the requested permit pursuant to IDAPA 20.07.02.200.

Permits to drill wells should not be automatically granted. The IDL and IOGCC have a critical role to play in the legal process. That role is to ensure that the purposes and goals of Idaho law are met in each case. The law provides for no presumptions that a permit application should be granted, merely that the same should be processed in a "timely fashion." Idaho Code 47-316(1)(d). For the reasons set forth herein, the permit application should be denied.

I. Legal Standard

Idaho statute provides the IOGCC the authority to review and either grant or deny oil and gas well permit applications. I.C. 47-316. Such permits must be granted or denied on the basis of "such rules and regulations" as the Commission adopts. Id. The Commission has adopted relevant rules, including one expressly stating when a permit should be denied:

> **05. Permit Denial.** Applications may be denied for the following reasons: Effective date (3-29-12)
> **a.** Application fee was not submitted.
> **b.** Application is incomplete.
> **c.** Failure to post required bonds.
> **d.** Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies.

IDAPA 20.07.02.200. The permit applied for by SROG would, if approved, result in a waste of oil or gas, the violation of correlative rights, and the pollution of fresh water supplies.

II. The Proposed Well Will Result in Waste by Violating the Spirit and Purpose of the Idaho Oil & Gas Conservation Act.

"Waste" is both a defined term, and its avoidance the overall purpose of the Idaho Oil and Gas Conservation Act ("IOGCA" or "Act.") "Waste" is expressly defined to encompass the act of discharging gas or oil inefficiently, and is also functionally defined by the IOGCA to include acts such as the placement of wells in ways that would reduce efficiency in the extraction of oil or gas. I.C. 47-310, -318(3). While it may presently be unknown whether a Barlow 2-14 well will result in "waste" in the sense of inefficient discharge, there is no doubt that it will result in waste within the functional meaning of the IOGCA.

The Legislature requires that the Act as a whole be administered to achieve efficiency in developing oil and gas resources, and not merely to achieve the greatest amount of development. I.C. 47-311. In particular, the Act incorporates a presumptive standard that each spacing unit shall contain only one well, in order to avoid the drilling of multiple wells whenever possible. "An order establishing spacing units shall direct that no more than one (1) well shall be drilled to and produced from the common source of supply on any unit, and shall specify the location for the drilling of a well thereon." I.C. 47-318(4). The Commission and its Administrator did just that when it established a spacing unit that included precisely the same lands under which SROG now applies for a permit to drill. Case No. 2016-OGR-01-001. That spacing unit resulted in the drilling of a well which the operators have chosen to shut-in rather than produce. Per the Oil and Gas Conservation Act, the Commission is statutorily required to "direct that no more than one (1) well shall be drilled" in any spacing unit. Granting the present application would result in approving a second well within the same spacing unit, despite the fact that the existing well already reaches the exact same geologic structure which SROG wishes to reach with its proposed, new well.[1]

Granting the permit to drill would thus result in waste by allowing two wells in a spacing unit. In addition, it would create an express violation of the statute which the Commission and the Department are legally obligated to enforce.

III. The Permit Should Be Denied as Violative of Correlative Rights Unless and Until SROG Can Demonstrate it Holds Valid and Current Lease Rights to the Drilling Site.

The history of lease rights ownership over the mineral leases in this particular area is too complex to summarize. That complexity leaves lessors uncertain who holds the right to develop

[1] In prior applications, the IOGCC has been willing to approve multiple spacing units which contained the same mineral rights, treating separate reservoirs at different depths as creating different spacing units. That practice carries its own risks for state regulators, and objectors here do not endorse it as a solution to the inconsistencies of the IOGCA. However, in those cases where an existing spacing unit somehow does not apply to a proposed new well, the law expressly prohibits the drilling of wells within 990' of any existing well. I.C. 47-317(3)(b)(i) & (ii).

minerals they own. Unless and until SROG can clarify and demonstrate it actually holds an appropriate interest in the well site, the permit should be denied.

SROG claims to hold a lease it purchased from A.M. Idaho, LLP ("AMI") covering the well site. Mineral owners Brad and Angela Barlow executed a lease to AMI in 2014 covering the site of the Barlow 1-14 well, and other lessors executed similar leases to AMI.

AMI filed a petition for bankruptcy on January 24, 2020 in the United States Bankruptcy Court for the Southern District of Texas, Case No. 20-30608. On that same date, AMI submitted schedules to the bankruptcy court which expressly listed a lease with "Brad and Angela Barlow" covering property in Payette, Idaho within "Section 14, Township 8N, Range SW." Id., Dkt. 1. This is the same property on which SROG seeks a permit to drill. In January, the lease was still held by AMI.

In an order dated June 2, 2020, Judge Marvin Isgur, Bankruptcy Judge for the Southern District of Texas approved the sale of AMI's Idaho oil and gas leases to a combination of oil and gas development companies but did not identify Snake River Oil and Gas as a buyer. Case No. 20-30606, Bankruptcy Court for the Southern District of Texas. At that point, just two months ago, SROG neither held the lease on the Barlows' property, nor did it purchase the lease that day, according to the Order entered by the Federal Bankruptcy Court. Id., Dkt. 220.

Among the entities purchasing the leases was Atlanta Guardian Company, LLC. Dkt. 220. On or about June 26, 2020, Atlanta Guardian sent a payment to the Barlows, purporting to be a shut-in payment. This payment was inadequate to extend the lease (see the following paragraphs), but it came from an entity that is listed as a buyer in the June 1, 2020, court-approved contract of sale. The existence of the letter and payment is evidence (though inconclusive evidence) that the lease is now held by Atlanta Guardian. While multiple companies are identified in the court-approved contract for sale of the leases, Snake River Oil and Gas is never identified as a buyer. There is no evidence that any of the lessors were notified of any further sales of their mineral rights leases. There is no evidence presented in the application to support the claim that SROG holds any lease rights to minerals in the pool they seek to drill to, or has permission to drill on the Barlows' property. While SROG may have or be in the process of obtaining such rights, in the absence of such evidence, and faced with recent and convoluted ownership history, the permit should be denied. Allowing an unauthorized third party to drill for gas would violate the mineral rights and correlative rights of the Barlows and every other mineral rights holder with claim to the pool.

Even if SROG claims to exercise rights to the lease held by the buyers identified in the Bankruptcy Court's order, that lease appears to have expired after AMI shut in the Barlow 1-14 and failed to produce from the well. The lease provided for shut-in payments of $1.00 per acre each year. By its own terms, the lease expired on the fourth anniversary after its execution, unless drilling, production, or other work was ongoing. The lease was executed July 24, 2014, meaning its original term expired on July 24, 2018. The only well drilled pursuant to that lease was the Barlow 1-14 which was completed in February, 2018. Since February, 2018, the Barlow 1-14 has not produced any gas or oil, has not been reworked, and has remained in a shut-in

condition. See monthly reports maintained at IOGCC website at https://ogcc.idaho.gov/monthly-and-annual-reports/, last checked on August 4, 2020.

Pursuant to the terms of the Barlow lease, after 120 days of inactivity, or in June, 2018, the lease would have expired for lack of activity unless AM Idaho (lessee at the time) made a shut-in payment to the Barlows not later than July 24, 2018. The Barlows recall receiving such a payment in June 2018. A second shut-in payment would have been due to the Barlows not later than July 24, 2019, which the Barlows have neither recollection nor record of receiving. It appears the shut-in payment was made in 2018, but it was missed in 2019, resulting in lease expiration on July 24, 2019.

The United States District Court for the Western District of Texas explained that the termination provisions of oil and gas leases should be and are applied strictly against lessees who attempt to rely on the shut-in payment provisions of those leases:

> "Because payment of a shut-in royalty is a substitute for production that keeps the lease in effect, failure to make a timely shut-in payment is the equivalent of cessation of production, and the lease automatically terminates." *Amber Oil & Gas Co. v. Bratton,* 711 S.W.2d 741, 743 (Tex. App. 1986) (citing *freeman v. Magnolia Petroleum Co.,* 141 Tex. 274, 278, 171 S.W.2d 339 (1943)). "The rule is generally applied rigidly against the lessee because time is of the essence in an oil and gas lease." *Amber Oil,* 711 S.W.2d at 743; see also *Fain Family First Ltd. P'ship. V. EOG Res., Inc.,* No. 02-112-00081-CV, 2013 Tex. App. LEXIS 4888, 2013 WL 1668281, at *3 (noting that "[c]ourts construe shut-in royalty clauses strictly "). Thus, while "courts may generally be opposed to the construction which causes automatic termination, . . . the policy behind that rule does not apply to leases for oil and gas," the main purpose of which is "to obtain production." *Riley v. Meriwether,* 780 S.W.2d 919, 923 (Tex. App. 1989) (citing Williams & Meyers, 3 Oil and Gas Law § 604 (1989)); see also *Woodson Oil Co. v. Pruett,* 281 S.W.2d 159, 164 (Tex. Civ. App. 1955) ("There is no principle of forfeiture involved when a lease is terminated by its own provisions for cessation of production.").

EnerQuest Oil & Gas, LLC v. Plains Exploration and Production Co., 981 F.Supp.2d 575, 586 (W.Dist.Texas 2013). Since SROG has not demonstrated that it has a legal right to drill a well on the Barlows' property, the permit should be denied. Granting a permit without relative certainty, and without requiring any showing of proof whatsoever, would violate the property and correlative rights of the Barlows and others, justifying permit denial.

IV. The Proposed Well Would Add to the Risk of Polluting Fresh Water.

Fresh water is a critical and valuable natural resource in Idaho. The City of Fruitland draws its water supply from the Payette River. Numerous homeowners, farmers, ranchers and businesses in the area rely on fresh groundwater for municipal, residential, commercial and industrial use. The Barlow 2-14 well presents an unacceptable risk of fresh water pollution given that it is an exploratory or "wildcat" well, and further given that the Barlow 1-14 well, sited some twenty feet from the proposed location of Barlow 2-14 has not produced any sales, nor delivered any

hyrdocarbons to market, nor resulted in the payment of any royalties to the mineral rights owners.

According to SROG's own application, the well site lies only 465 feet from the Payette River. At least two registered water wells are considerably closer to SROG's drill site than that, and a third lies at a similar distance from the proposed well location. There is considerable evidence from around the country that natural gas exploration frequently results in migration of either gas and related products, or products used in well treatment into fresh water sources. The proposed plan of drilling makes no effort to reduce risks of pollution of those nearby water sources during the drilling process or after completion. The risk of groundwater pollution, no matter how slight, outweighs the commercial value of a well which is likely to never produce in marketable quantities, as demonstrated by the shut-in well sited twenty feet away.

Furthermore, given the importance of fresh water to all commercially conceivable uses of the surface estate (including farming, ranching, and residential uses), a bond adequate to cover most or all of the value of the property on which the well is to be drilled, and each adjacent property, should be required.

V. The Permit Should Be Denied Until the Commission and Department Have Settled Idaho's Law on Spacing Units.

The Commission and the Industry have not been consistent in how they define and utilize spacing units and integration orders. In some cases a spacing unit is deemed to encompass only a single pool or reservoir of oil or gas. This has resulted in some property owners being subjected to multiple spacing units on the same property. In issuing integration orders, the Commission and the Department have not specified that the compelled leases applied only to the pool for which spacing and integration was directed. In short, there has been an inconsistency, with spacing orders issued on a pool by pool basis, and integration orders being overly broad. This violates the correlative rights of mineral owners.

The problem is seen in this very case. The Commission previously issued a spacing and integration order based solely on the alleged existence of a pool of hydrocarbons which AMI originally identified in "Sand 'D'" at approximately 4200'. That well was drilled, and according to the completion reports the bore goes directly through "Sand 'B'" at approximately 3900'. SROG now seeks to rely on the leases which the State of Idaho compelled mineral owners to enter into to justify taking hydrocarbons in Sand 'B.' In other words, AMI received an integration order for Sand D, which SROG now relies on to claim it has 100% leasing for Sand B.

There simply is no Idaho law which would justify the Commission in integrating one pool of hydrocarbons, then allowing an alleged lessor to use that integration to justify drilling to an entirely separate pool of hydrocarbons. If such law is to be "made" by the Commission, it should be done in a contested case procedure, not as a side-effect of a drilling permit application. The application should be denied until these issues are resolved as a matter of law.

Based on all and each of the foregoing reasons, the application to drill the Barlow 2-14 well should be denied as its approval would violate correlative rights, violate Idaho statute, and result in pollution of fresh water.

Sincerely,

James M. Piotrowski