

Audio Transcription

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application)
of Snake River Oil and Gas, LLC,) Docket No.
to Integrate the Spacing Unit) CC-2021-OGR-01-001
Consisting of the SE 1/4 of)
Section 10, the SW 1/4 of)
Section 11, NW 1/4 of Section 14,) and the NE 1/4 of Section 15,)
Township 8 North, Range 5 West,)
Boise Meridian, Payette County,)
Idaho.)
Snake River Oil and Gas, LLC,)
Applicant.)

HEARING TO DETERMINE "JUST AND REASONABLE" FACTORS

DATE/TIME: MAY 20, 2021, at 1:00 p.m.

LOCATION: Fruitland City Hall, 200 S. Whitney Dr.,
Fruitland, ID.

TRANSCRIBED BY:

EMILY L. NORD, CSR No. 695, RPR

Notary Public

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A P P E A R A N C E S:

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6 Chris Gozzo
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24 (Appearances continued . . .)
25

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A P P E A R A N C E S (Cont.):

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19 Also present: RICHARD BROWN
20 BOB HATFIELD
21
22
23
24
25

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P R O C E E D I N G S

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3 MR. GOZZO: The recording has been started.
4 HEARING OFFICER THOMAS: Thank you.
5 Folks, thanks for coming. I've got a script.
6 I want to make sure I check all the boxes and try to
7 eliminate the ums and uhs as much as possible; although,
8 if you've been in hearings with me before, they're going
9 to happen. So just hang in there with me.
10 We're now on the record for Docket No.
11 2021-OGR-01-001. It's now 1:03 p.m., Thursday, May
12 20th, 2021. We're at the Fruitland City Hall in
13 Fruitland, Idaho.
14 This is the time set to determine the factors
15 I will consider when determining whether the terms and
16 conditions of an integration order are "just and
17 reasonable," as provided in Idaho Code 47-320(1), for
18 the spacing unit consisting of the SE 1/4 of Section 10,
19 the SW 1/4 of Section 11, the NW 1/4 of Section 14, and
20 the NE 1/4 of Section 15, Township 8 North, Range 5
21 West, Boise Meridian, Payette County, Idaho.
22 My name is Mick Thomas. I'm the oil and gas
23 and minerals and nav waters Division Administrator,
24 presiding over and conducting the hearing today,
25 pursuant to Idaho Code 47-328.

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1 I want to let everyone know that, depending on
2 how long this goes, we may have some spontaneous
3 recesses that I'll call for five or ten minutes to let
4 everybody do what they need to do. Hopefully we can get
5 this knocked out. We have the room booked until 5:00,
6 but if it goes over, we'll make additional arrangements.
7 Before I continue, I want to let everyone know
8 that I have reviewed all of the briefs and comments. I
9 give equal weight to written and oral comment and
10 arguments.
11 As many of you know, the COVID-19 response has
12 changed some of the typical aspects of a hearing of this
13 type. The hearing is in person, with a virtual Zoom
14 component. This hearing is being recorded in Zoom, as
15 required by IDAPA 04.11.01.651. We also have a backup
16 recording device recording the hearing.
17 For those on Zoom, please mute your
18 microphones until you are called on. Please speak
19 loudly and clearly when it's your turn. If there is a
20 disturbance, you will be reminded to mute your
21 microphone. If the disturbance continues, you may be
22 muted and/or disconnected.
23 For those of you watching this remotely, the
24 material is broadcast via Facebook Live. Please visit
25 our website at OGCC.Idaho.gov site, and click on the

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1 "watch hearing" on Facebook Live link.
 2 The documents in this record, Docket No.
 3 CC-2021-OGR-01-001 are on the OGCC website at
 4 OGCC.Idaho.gov/administrative hearings.
 5 As my April 6th, 2021, notice indicates, this
 6 hearing is addressing scope of factors used to determine
 7 "just and reasonable." I am not addressing today what
 8 terms are in fact "just and reasonable." That is a
 9 question for a future evidentiary hearing held at a
 10 later date.
 11 I have allowed briefing and submittal of
 12 affidavits on the issue of the scope of factors used to
 13 determine "just and reasonable," and I plan to take
 14 argument at that -- pardon me -- take only argument at
 15 this hearing.
 16 Before I go any further, I want to address a
 17 request I received from the Dorsings to be admitted as a
 18 party. My understanding, based on the application and
 19 their request, is that the Dorsings are uncommitted
 20 mineral interest owners in the spacing unit in this
 21 matter. Given that, and that they have responded, they
 22 are already a part of the proceeding, to this
 23 proceeding. You may participate in this hearing. Just
 24 keep in mind the focus is to determine the scope of
 25 factors I'll use to determine whether terms are "just

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1 and reasonable," not whether a certain term or certain
 2 terms proposed are in fact "just and reasonable."
 3 Also, I want to again clarify that the
 4 deadline for uncommitted owners to respond to this
 5 application has not passed, and they can still
 6 participate in future evidentiary hearings on the
 7 integration application. Witnesses and evidence may be
 8 submitted at that evidentiary hearing.
 9 We'll proceed with this hearing as follows: I
 10 will first hear arguments from the applicant Snake
 11 River. This will be followed by argument from
 12 uncommitted owners within the proposed unit. Afterward,
 13 I will accept argument from the Idaho Department of
 14 Lands. Then Snake River will have an opportunity for
 15 rebuttal.
 16 After argument is complete, I will accept
 17 public comments. I will limit these comments to five
 18 minutes. I'll first take up the comments from those
 19 appearing in person. I will then take comments from
 20 those appearing on Zoom.
 21 I would like for everyone who speaks to state
 22 your name for the record. If you are here as a
 23 representative, please indicate your own name as well as
 24 who you're representing. I may ask clarifying questions
 25 while you speak.

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1 That said, will Snake River's representative
 2 please identify themselves for the record.
 3 Mr. Christian, since you're the first one
 4 here, I want to make sure that everything is operating.
 5 So, Chris, we're getting a little feedback
 6 now.
 7 MR. GOZZO: Yeah, I can -- I can hear that.
 8 (Audio interference.)
 9 MR. GOZZO: If somebody else is joined to the
 10 conference in the room, yeah, we might need to mute.
 11 HEARING OFFICER THOMAS: I think we've got it
 12 resolved.
 13 MR. GOZZO: Okay. Excellent.
 14 HEARING OFFICER THOMAS: Mr. Christian, say
 15 "testing" or something like that.
 16 MR. CHRISTIAN: Testing.
 17 MR. GOZZO: Sounds good on this end.
 18 HEARING OFFICER THOMAS: Thank you. Please go
 19 ahead.
 20 MR. CHRISTIAN: Thank you, Mister
 21 Administrator.
 22 I'm Michael Christian. I'm the attorney for
 23 Snake River Oil and Gas, LLC, the Applicants.
 24 Just as a preliminary comment, I'm going to
 25 spend some time on some things that you probably --

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1 you've already seen in briefing. I want to try to focus
 2 or bring some focus to the discussion. Then I'm going
 3 to spend some time responding to some of the arguments
 4 that have been made by the opposing mineral owners or
 5 the Department.
 6 And if I'm redundant, I apologize. If you
 7 think you've heard enough on the subject and you want me
 8 to move on, please tell me, because I don't want to take
 9 up any more of your time than is necessary.
 10 As I think we're all aware, we're here to
 11 discuss what factors should be considered in determining
 12 what are "just and reasonable" terms of integration
 13 under the Idaho Oil and Conservation Act. This is
 14 because of the decision in the CAIA vs. Schultz case.
 15 The directive of the federal court in that
 16 case, in its memorandum decision it ordered in August of
 17 2018, was to, quote, "hold a new hearing that complies
 18 with due process by explaining the factors that will be
 19 considered when determining whether the terms and
 20 conditions of an integration order are 'just and
 21 reasonable,'" unquote.
 22 In other words, this process, and the rounds
 23 of briefing that were made directly to the Commission
 24 some time ago, is perhaps [unintelligible] but I don't
 25 believe at least explicitly required by Judge Winmill's

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1 order in CAIA versus Schultz. In fact, he stated, in
 2 his Memorandum Decision, that "holding a new hearing
 3 will impose relatively few financial or administrative
 4 costs on the Defendants. The hearing will involve the
 5 same issues, parties, and facts that the previous one
 6 did. The only change required will be the specification
 7 of the basis on which Defendants determine factors to be
 8 relevant or irrelevant to the determination of "just and
 9 reasonable" terms.

10 Before this, in his Memorandum Decision, he
 11 had described the case as a close one. In other words,
 12 that the amount of additional process that was due
 13 should not be extensive. And he had said that "the
 14 Commission has a significant amount of discretion to
 15 decide what 'just and reasonable' means."

16 He stated that his order did "not affect the
 17 hearing officers' ability to exclude irrelevant or
 18 unnecessary testimony or evidence, or the Commission's
 19 discretion to determine what facts should be considered
 20 when determining whether terms and conditions of an
 21 integration order are 'just and reasonable.'"

22 In other words, what he appears to have
 23 intended was simply that an integration hearing would be
 24 re-held, but that prior to it, the Commission or the
 25 Department would describe factors that would be

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1 considered in determining "just and reasonable" terms of
 2 integration as an exercise of its discretion.

3 So far, I think that is not what has happened.
 4 After multiple rounds of briefing and argument to the
 5 Commission on the subject of what factors should be
 6 used, we've now engaged in more rounds of briefing
 7 specific to this application -- and I think there was a
 8 previous application that was eventually abandoned where
 9 the same thing happened -- and Snake River has filed
 10 another integration application beyond this one. And at
 11 this time at least another [unintelligible] with more
 12 rounds of briefing.

13 This is not a process that is undertaken in
 14 any other producing state. I am not aware of any other
 15 producing state that has a pooling or integration
 16 process that goes beyond essential economic lease and
 17 joint-operating-agreement terms; royalty, bonus, term,
 18 risk penalty, participation options, and the like. It
 19 would be a relatively simple task to describe a set of
 20 factors bearing on those issues.

21 Now, as Judge Winmill said, "the Commission
 22 has a significant amount of discretion," and it has
 23 exercised it by choosing this procedure. I recite all
 24 of this to emphasize a couple of things.

25 First, that what I think is an extraordinary

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1 amount of process has already been extended to the
 2 participants in getting to this point.

3 Second, that in deciding where and how far to
 4 go after this, I again respectfully suggest that the
 5 Administrator and the Department must keep in mind the
 6 stated purpose of the Oil and Gas Conservation Act and
 7 the scope of their and the Commission's authority.

8 The Commission is not an all-encompassing
 9 regulator of all subjects. It does not police their
 10 party contracts. It does not make economic decisions
 11 for operators. Its primary purpose is to encourage
 12 production while ensuring different interest holders are
 13 able to receive their equitable share of production
 14 while preventing waste.

15 While it does have a role to play in ensuring
 16 safe drilling and production operations and protection
 17 of surface elements, that role is largely accomplished
 18 through existing requirements in the Act of the
 19 Commission's rules.

20 This will not be the first time that you've
 21 heard me repeat this, but the Act states that it is a
 22 public policy of the State "to foster, encourage, and
 23 promote the development, production and utilization of
 24 the natural resources of oil and gas in the State of
 25 Idaho in such a manner as will prevent waste, to provide

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1 for uniformity and consistency in the regulation of the
 2 production of oil and gas throughout the State of Idaho,
 3 to authorize and to provide for the operations and
 4 development of oil and gas properties in such a manner
 5 that greater ultimate recovery of oil and gas may be
 6 obtained and that the correlative rights of all owners
 7 be fully protected."

8 All of this is to the end "that the greatest
 9 possible economic recovery of oil and gas may be
 10 obtained within the state to the end that the
 11 landowners, the royalty owners, the producers, and the
 12 general public may realize and enjoy the greatest
 13 possible good from these vital natural resources."

14 As I've described in briefing, "correlative
 15 rights" is defined in the Act to mean "the opportunity
 16 of each owner in a pool to produce his just and
 17 equitable share of oil and gas in a pool without waste."

18 I've also described in the briefing that
 19 "waste" is defined in the Act as being concerned with
 20 maximizing the ultimate production of oil and gas from a
 21 pool.

22 Because the Commission was created by statute,
 23 our Supreme Court has held, in more than one case, that
 24 it has no jurisdiction other than that which the
 25 legislature has specifically granted to it. I think

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1 I've cited the Idaho Power vs. IPUC case in briefing.
 2 And the Department, of course, is the administrative arm
 3 of the Commission.
 4 The Commission, as you know, is given
 5 jurisdiction and authority over all persons and
 6 property, public and private, necessary to enforce the
 7 provisions of the Act, and it has power and authority to
 8 make and enforce rules, regulations and orders, and do
 9 whatever may be reasonably necessary to carry out the
 10 provisions of the Act.
 11 Similarly, the Act provides that the
 12 Commission is authorized, and it is its duty, to
 13 regulate the exploration for and production of oil and
 14 gas, prevent waste of oil and gas, and to protect
 15 correlative rights and otherwise administer and enforce
 16 the Act.
 17 The Act directs that in the event of conflict,
 18 prevention of waste is paramount.
 19 All of this is -- most of it's in 47-314 and
 20 315. Although a thorough reading of Section 315 of the
 21 Act makes it clear that the focus -- makes clear the
 22 focus of the Commission's [unintelligible], to encourage
 23 production, protect correlative rights, and prevent
 24 waste.
 25 There is reference to surface owners in 315,

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1 sub 2, but it's only as a modifier to protecting
 2 correlative rights by administering the provisions of
 3 the chapter, and it goes on.
 4 So how does the Commission do this? How does
 5 this happen?
 6 First, the Act covers several subjects. Well
 7 spacing and drilling location requirements were set out
 8 in Sections 317 and 318 of the Act. Requirements for
 9 setbacks are laid out in Section 319. Royalty payment
 10 and recording requirements are provided in Sections 331
 11 and 332. Surface owner protections are provided in
 12 Section 334.
 13 And, Second, the Commission's [inaudible]
 14 promulgated rules covering drilling, well construction,
 15 well treatments, production, reclamation, and other
 16 operational requirements in IDAPA 20.07.02.
 17 It is useful, I think, in reaching "just and
 18 reasonable" terms, to evaluate whether a proposed term
 19 or condition exceeds these requirements. In other
 20 words, if an operator proposes terms that are otherwise
 21 economically reasonable in comparison to those
 22 involuntary leases in the area, where joint operating
 23 agreements in use, or in other mature producing states,
 24 or as between the operator and its working interest
 25 partners, and the operator is subject to the operational

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1 requirements of the Act and the rules as I've
 2 summarized, is it just and reasonable to require the
 3 operator's other requirements with respect to
 4 uncommitted mineral owners, which go much further.
 5 The opposing mineral owners, in their
 6 briefing, suggested the term "just and reasonable" must
 7 apply to every other element of Section 320 of the Act
 8 relating to integration, apparently so as to prevent
 9 anyone opposing integration to engage in an
 10 investigation and challenge of every other element --
 11 i.e., location, drilling, equipping and operation of the
 12 well -- as part of the integration process. The
 13 statute, Section 320, of course does not say this, nor
 14 is it necessarily implied.
 15 As previous orders have done, and virtually
 16 every integration and pooling order in every other
 17 producing state does, as near as I can tell, the order
 18 may simply, as the statute says, authorize the drilling
 19 and operation of the well and designate the operator.
 20 The details of drilling and operations are dealt within
 21 the permit to drill, issued pursuant to Section 316 of
 22 the Act, and under the drilling and casing, testing,
 23 treating, completion, metering, reporting, plugging, and
 24 other rules set forth in IDAPA 20.07.02.
 25 To impose requirements differing from those

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1 rules would render them effectively [unintelligible];
 2 and to impose different conditions in different units,
 3 far from bringing uniformity of regulation as the Act
 4 calls for, would cause us to end up with the exact
 5 opposite, a hodgepodge of requirements varying by unit.
 6 This is obviously not what the Act contemplates or
 7 intends.
 8 Moreover, these are specific outcomes. They
 9 are not factors to be considered. And as such, I think
 10 they're beyond the scope of the hearing.
 11 In any case, there is already, in multiple
 12 ways, ways mineral owners can participate more deeply in
 13 operations. First, as provided in the Act, under an
 14 integration order they can elect to participate in a
 15 well, sign the joint operating agreement, in which case
 16 they can be on equal footing with other working interest
 17 partners who invest in and take on the risk of the well.
 18 This is a difference between a participating interest
 19 and a royalty interest.
 20 Second, they also have existing avenues for
 21 relief if they think an operator is violating the Act
 22 and the rules. They can file a complaint with the
 23 Commission, for example, under Section 328.
 24 One indication of what the integration statute
 25 is intended to address is the limitation of persons who

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1 may participate in the integration process, uncommitted
 2 mineral interest owners, per Section 328(3)(b), which
 3 led to my objection and briefing to CAIA's
 4 participation, because it's not an uncommitted mineral
 5 interest owner.

6 That means, contrary to the opposing mineral
 7 interest owner's suggestion, that those who do not own
 8 an uncommitted mineral interest in the unit are not
 9 subject to participation as parties; not mobile home
 10 park residents in the unit, not other people who do not
 11 own mineral rights in the unit.

12 The suggestion, near the end of the opposing
 13 mineral owners' opening brief, that "just and
 14 reasonable" terms should be based on the input of all
 15 property owners, not just mineral owners -- and I think
 16 that's a quote -- with notice and expansion of the
 17 proceedings, is contrary to Section 328(3)(b). And
 18 again, this is a specific outcome, not a factor. I
 19 don't think this is even the venue to argue about
 20 whether the factual assertions that the opposing mineral
 21 owners make in support of that position are true. Those
 22 are issues, I think, for the legislature, if anyone.

23 The procedural due process arguments the
 24 opposing mineral owners make, essentially that the
 25 entire process should be made even longer, should

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1 involve subpoena power to the mineral owners, and should
 2 involve the Department engaging experts to investigate
 3 market conditions, quote, "viability of collection,
 4 processing and transmission facilities," are, again,
 5 directly contrary to the Act and, again, are specific
 6 outcomes, not factors.

7 But they also completely ignore Judge
 8 Winmill's decision in CAIA vs. Schultz, wherein he said,
 9 again, it was a close case and that the only change
 10 necessary to meet due process requirements was to tell
 11 uncommitted mineral interest owners ahead of time what
 12 factors would be considered. This is an exercise of
 13 discretion by the Commission and the Department, and the
 14 opposing mineral owners would take virtually all of that
 15 discretion away.

16 As an aside, the characterization of the
 17 opposing mineral owners at the beginning of their reply
 18 brief, that Snake River is offering "awful, miserly, or
 19 merely irrelevant compensation terms and trying to avoid
 20 all accountability for harm," are beyond not being
 21 factually supported at all, just wrong, and I don't
 22 think helpful to this discussion.

23 Most of what they leave out of their argument
 24 completely is the interest of the other 90 percent of
 25 the mineral interest takers of the unit that have

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1 expressed, through leasing, their desire to develop
 2 their minerals and receive the benefit of it. The
 3 integration statute exists also to protect the interest
 4 of the majority from the tyranny of the minority. And I
 5 don't think you can lose sight of that.

6 In their reply brief, the opposing mineral
 7 owners cite a rate case from the Supreme Court, the
 8 Federal Power Commission vs. Natural Gas Pipeline. It's
 9 a decision from the U.S. Supreme Court, and they cited
 10 the proposition that forced integration statutes could
 11 survive -- could only survive [unintelligible] --
 12 constitutional review, excuse me, in addition to
 13 addressing mineral recovery and correlative rights.
 14 They also include a requirement that the terms of forced
 15 integration be just and reasonable.

16 The decision they cite to involves rates
 17 chargeable by a regulated utility interstate commerce,
 18 not integration or pooling of mineral interests. The
 19 issue in the case was whether the rate allowed by the
 20 Federal Power Commission was so low as to be
 21 [unintelligible] and violated the charging utilities'
 22 constitutional rights.

23 Essentially the Court found that no property
 24 interest was taken by the rate granted by the
 25 Commission, and no consideration of due process as a

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1 condition to a taking was [unintelligible] reached. It
 2 has nothing to do with the issues here and does not
 3 stand for the proposition that the opposing mineral
 4 owners have cited it for.

5 Likewise, the citations to rate-setting cases
 6 in the opposing mineral owners' outgoing brief are not
 7 relevant here. The Act has specific provisions, and
 8 Judge Winmill's decision was quite limited in its scope.

9 I'm not going to repeat for you the factors
 10 that we propose on behalf of Snake River, other than to
 11 comment that we submit that the factors can be fitted
 12 within the scope and purpose of the Act; and, second,
 13 that they are still, I think, well beyond what is
 14 implied in other producing states with similar statutory
 15 schemes.

16 In my reply briefing I think I directed you to
 17 a couple of examples of pooling [unintelligible] from
 18 Arkansas and Wyoming. Both have pooling or integration
 19 statutes which are or if not identical, pretty analogous
 20 to Idaho's. In neither case does the order go anywhere
 21 near as far as the opposing mineral owners or the
 22 Department would have you go.

23 In fact, I went and looked earlier today on
 24 Wyoming's Oil and Gas Commission's website, and that
 25 form of order is a template. In every statutory pooling

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1 proceeding, that form of order is used. I printed it
 2 off. I think I have a copy of it. But -- and with
 3 blanks for the numbers, basically, for what the royalty
 4 should be, what the risk penalty should be, what the
 5 bonus should be. But effectively, that's the form
 6 that's used. And it's consistent with the form of order
 7 for Arkansas as well.

8 I think everything else that I have to say is
 9 set forth well enough in our briefing. I don't want to
 10 take up any more time. And I'll take any questions you
 11 may have.

12 HEARING OFFICER THOMAS: Thank you, Mr.
 13 Christian. Hold on just a moment. I want to shut this
 14 door because I'm hearing some rattling back here.

15 (Brief pause in proceedings.)

16 HEARING OFFICER THOMAS: I've got just a few
 17 more general questions for the audience that I was going
 18 to address before I invited you up.

19 Are the Dorsings in attendance today? Are
 20 they here via Zoom? I just want to make sure.

21 (Pause given for response.)

22 (No response.)

23 HEARING OFFICER THOMAS: Well, whether they
 24 speak up now or not, I just want to make sure they knew
 25 they were invited.

Page 23

1 Thank you, Mr. Christian. I have a few
 2 questions. You answered the first one, I believe,
 3 pretty well in the opening brief, but I'm going to put
 4 it to you because I wanted to ask the other parties the
 5 same question as well.

6 Thank you for the information you provide in
 7 your brief regarding industry standards when regarding
 8 "just and reasonable" factors. Could you share, for the
 9 audience and for those on virtually, what some of the
 10 industry standards are when setting "just and
 11 reasonable" terms?

12 MR. CHRISTIAN: That's a broad question,
 13 but -- well, there are a couple of things. For example,
 14 if you look at the forms of order that I gave you from
 15 Wyoming and Arkansas, there are forms of lease and forms
 16 of joint operating agreement that have been in use in
 17 those areas for some time and are accepted. That's one
 18 thing.

19 So by analogy here, you know, we have forms of
 20 lease that have been used in the -- we'll call it the
 21 valley generally, across -- call it a thousand leases or
 22 so, over the last ten to twelve years. And we can draw
 23 information from those about what is just and reasonable
 24 in terms of what the market has been over a broad area.

25 So, for example, I would say ninety-nine point

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1 something of the leases are at a hundred-dollars-or-less
 2 bonus, and an eighth royalty. There may be leases that
 3 have a slightly higher royalty, and they -- I'm sure all
 4 of them are in an instance where someone owned a large
 5 acreage area where they basically had buying power,
 6 where it was advantageous to the operator to tie up a
 7 larger -- a much larger piece of acreage.

8 But, by and large, a hundred dollars and an
 9 eighth is the norm.

10 Likewise, the form of joint operating
 11 agreement that has been used between I think each of the
 12 prior operators -- I'm not sure about Bridge, but I know
 13 Alta Mesa and Snake River have used effectively the same
 14 form of joint operating agreement between themselves and
 15 their working interest partners across all of the
 16 operations in this area.

17 And it's derived from AAPL, American
 18 Association of Professional Landmen form, a standard
 19 form, which is used across the country. So the form
 20 that Snake River has proposed in this application, for
 21 example, is effectively the same form that they've used
 22 with their own working interest partners.

23 So that's -- those are two elements where I
 24 think you can derive information, either from what's
 25 broadly in use in the industry locally or nationally,

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1 and what's the norm as between the operator and its
 2 royalty interest owners/lessors.

3 HEARING OFFICER THOMAS: Thank you. A few
 4 more questions. Should the factors used to determine
 5 "just and reasonable" terms consider the use of
 6 uncommitted owners' lands, including whether a wellbore
 7 or pipeline may physically cross the land of an
 8 uncommitted mineral interest owner? How -- if not, why
 9 not.

10 MR. CHRISTIAN: It could. But I think it
 11 depends on proof of the impact to the owner.

12 For example, it would be reasonable to ask
 13 whether it's, you know, just and reasonable to allow a,
 14 you know, 12-inch pipeline to go across an uncommitted
 15 mineral interest owner's front yard, on the surface.
 16 Because that's an example of an obvious physical
 17 intrusion impact.

18 I think it's less so if you're talking about a
 19 wellbore that's directionally drilled and is crossing
 20 under the property three thousand feet down. Because
 21 there's no -- there's no actual impact to their use of
 22 the surface. And there's no reasonable likelihood that
 23 that uncommitted mineral interest owner owns, you know,
 24 a quarter-acre [unintelligible] lot, for example, is
 25 ever going to do anything three thousand feet under the

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1 surface. So it is somewhat fact-dependent.
 2 HEARING OFFICER THOMAS: Thank you. Your
 3 brief says that the IDL proposes terms that go beyond
 4 the Act's purpose and would impose terms and conditions
 5 regarding subjects over which the OGCC lacks authority.
 6 If that is the case, would the scope of "just and
 7 reasonable" terms, and ultimately an integration order,
 8 be limited to economic terms and therefore not address
 9 unrelated proposed terms?
 10 MR. CHRISTIAN: I think the vast majority of
 11 the consideration is economic terms, and that's what's
 12 reflected in integration or statutory pooling orders
 13 from other states. They are concerned with, again,
 14 correlative rights and prevention of waste, which is to
 15 say, making sure that those uncommitted mineral interest
 16 owners get their fair share, that they have their
 17 opportunity to receive their equitable share of
 18 production.
 19 I think, you know, following up on the last
 20 question you just asked, there are some operational
 21 considerations you could take into account, a 12-inch
 22 line across somebody's front yard on the surface. Well,
 23 I mean, to the extent it's not already answered by
 24 either the statute -- the Act or the rules, my argument
 25 and comment to you earlier was, the vast majority of

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1 that subject matter is already covered by the Act and
 2 the rules. The operator has to follow the Act and the
 3 rules in how it conducts itself.
 4 And there are -- and I think I set it out in
 5 some more detail in my briefing -- there are notice and
 6 opportunity for hearing requirements and opportunities
 7 for surface owners or uncommitted mineral interest
 8 owners to participate over a number of different
 9 subjects.
 10 For example, I've got -- you know, if an
 11 operator wants to engage in well treatment, they have to
 12 give notice to, you know, a certain surrounding area.
 13 And those people have an opportunity, if they want to
 14 have a hearing, to talk about it, or at least comment on
 15 it. When well permit applications are filed, they're
 16 posted on the Department's website, and those folks have
 17 an opportunity to comment on them. And then the
 18 Department can take that into consideration.
 19 So I think that there's a -- that the sphere
 20 of consideration into operational issues in an
 21 integration order is pretty limited. I don't think it's
 22 zero, but I think it's pretty limited because of statute
 23 rules.
 24 HEARING OFFICER THOMAS: Okay, thank you. One
 25 follow-up question: If there are noneconomic lease

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1 terms proposed, how should I reconcile that request with
 2 the argument you just made, that scope of factors should
 3 be limited to economic terms, at least predominantly
 4 economic terms?
 5 MR. CHRISTIAN: I think you have to -- you
 6 would compare what's proposed with -- mostly, with
 7 what's already out there in the market. What have a
 8 thousand voluntary lessors agreed to? And what have the
 9 -- you know, what's in place in the -- I don't know how
 10 many producing units we have right now. Maybe six. But
 11 there have been more -- you know, what's in place in
 12 those areas that were successfully produced or continue
 13 to be successfully produced? Those would be two obvious
 14 places to look.
 15 So I guess what I'm saying is, it's -- you
 16 know, I guess the question is, what's the noneconomic
 17 term? There are -- you know, basically how long the
 18 lease is going to be for. Is there an option, and how
 19 long should it be?
 20 That could also be dependent upon whether --
 21 either whether there's a well already in the unit or
 22 whether there's already a drilling permit proposed, for
 23 example. It would be reasonable for you to ask, I
 24 think, well, if there's a well in the unit, you know,
 25 what should the primary term be?

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1 Because, you know, assuming that the order
 2 gets entered and there's some provision for extension --
 3 for example, if it gets appealed or it's litigated or
 4 whatever. You know, once it gets to the point where it
 5 is a final order, it's not unreasonable to say you, the
 6 operator, should turn the well on soon. But, you know,
 7 those are factors you could take into consideration.
 8 But mostly I think it is a comparison to
 9 what's in the market.
 10 HEARING OFFICER THOMAS: Thank you, Mr.
 11 Christian. Those are all the questions I have for you
 12 right now.
 13 MR. CHRISTIAN: Thank you.
 14 HEARING OFFICER THOMAS: Next I'm going to
 15 call on Mr. Piotrowski. Let's make sure he's -- Mr.
 16 Piotrowski, can you speak and make sure we all hear you
 17 and everything?
 18 MR. PIOTROWSKI: I -- I certainly can speak.
 19 HEARING OFFICER THOMAS: Okay. We're hearing
 20 you. Very good. Before you begin, I have a question.
 21 Could you please state who you represent and,
 22 specifically, parties within its unit?
 23 MR. PIOTROWSKI: Yes, I certainly can. I'm
 24 James Piotrowski. I'm here on behalf of Kevin and
 25 Margery Plevenger, Kristina & Lynn Larsen, as well as

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1 Citizens Alliance for Integrity and Accountability in
 2 its representational role, representing its members in
 3 the unit, which includes the Plevengers and the Larsens.
 4 Mr. Thomas, you have a difficult job here.
 5 HEARING OFFICER THOMAS: Stand by. I
 6 apologize for that. I want to make sure that people in
 7 the audience can hear. I just had someone jump up. So
 8 hold your momentum. We'll get you right back.
 9 MR. PIOTROWSKI: Will do.
 10 (Brief pause in proceedings.)
 11 HEARING OFFICER THOMAS: Now, that's about as
 12 loud as he's going to go. If you'd like to walk up and
 13 hear better, you can.
 14 Okay, Mr. Piotrowski, go ahead.
 15 MR. CHRISTIAN: Thank you.
 16 Mr. Thomas, you have been given a rather
 17 difficult job, and through no fault of your own;
 18 although, through some fault of the oil and gas
 19 industry, frankly. You are asked to address, in this
 20 particular step of the proceeding, the factors that will
 21 be considered in determining "just and reasonable." You
 22 are doing so against a background that gives you very
 23 little information.
 24 And that is not your fault. That is the fault
 25 of the fact that the American justice system has finally

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1 come to realize the enormous challenges posed to
 2 existing property law and constitutional law by the oil
 3 and gas industry, which -- and is doing so -- in the
 4 case of you and I, Mr. Thomas, doing so in a location
 5 where we are not well-versed in these things.
 6 Mr. Christian has given some effort to
 7 presenting, to you, integration orders and integration
 8 proceedings from other locations. Normally that would
 9 be useful and helpful to you. However, again, we're
 10 doing so in an environment where you face the unique
 11 challenge that, for whatever reason, over the last
 12 hundred-plus years, very few property owners have chosen
 13 -- almost no property owners or mineral rights owners
 14 have chosen to ask the question, can you -- and you, the
 15 State -- take our property and force us to sell it to
 16 somebody else.
 17 And so you're stuck with the situation in
 18 which the only guidance you have, in addressing some of
 19 this, is the very clear guidance from the United States
 20 Supreme Court that says that, in circumstances like
 21 this, whether it is rate setting or integration, the
 22 constitutional requirement is the same as the statutory
 23 requirement. That is to say, that the terms you set
 24 must be just and reasonable.
 25 And frankly, for reasons that escape me,

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1 despite a strong interest in constitutional history,
 2 nobody has, over the last now 80 years, gone back to the
 3 courts to say, well, what does "just and reasonable"
 4 mean in this particular context. A different kind of
 5 question. And it's a question we raise, and it's a
 6 question we will continue to raise; "we" meaning my
 7 clients, the minerals owner in this case; my clients,
 8 the mineral owners in the other cases currently pending;
 9 and, in general, the people of Idaho.
 10 So you have to reach this decision,
 11 Mr. Thomas, and you have very little to guide you.
 12 Now, I will do my best to provide you what I
 13 think is reasonable guidance and have done so. The
 14 process we're using to do this is also somewhat a
 15 challenge. Snake River's lawyer is unhappy at the
 16 process that was chosen, but that process has been
 17 chosen by the Oil and Gas Conservation Commission. It
 18 was their decision to use the case-by-case approach.
 19 That was not the approach that they were forced into.
 20 It was not -- it was an approach that was certainly
 21 considered by multiple parties. But it is the choice
 22 made by the Commission.
 23 We are here today on this particular
 24 integration application, not through any fault of
 25 [unintelligible], not through any fault of the

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1 landowners; but by the fact that Snake River Oil and Gas
 2 chose to file this application at the time it chose.
 3 And so if there has been delay, if there have been
 4 difficulties, they are not the result of anybody else's
 5 conduct. They are the result of the conduct of Alta
 6 Mesa Idaho, now bankrupt, and Snake River Oil and Gas,
 7 the current holder of the operational rights.
 8 So we're here, and the process of getting here
 9 was not the process chosen by any of the parties before
 10 you except for Snake River Oil and Gas. So you're stuck
 11 with trying to figure out what factors should be
 12 included. And we think that, and we have presented our
 13 briefs, our belief that that comes down to what we call
 14 implied statutory factors, although some of them are
 15 expressed statutory factors; the constitutional factors,
 16 which includes both procedural and substantive due
 17 process factors; and what I think we can go ahead and
 18 agree to call a separate category of procedural factors.
 19 I don't necessarily view them that way, but
 20 Mr. Christian, in his response brief, did view them that
 21 way so we're happy to address them on those terms.
 22 And so I want to talk briefly about each of
 23 those categories, because I think each of them is
 24 important, and I think each of them is going to be
 25 important to the future courts who finally get to do the

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1 job of deciding what does "just and reasonable" mean in
 2 the constitutional setting as applied to this process.
 3 So let's start with a short discussion of the
 4 statutory purpose. Now, there is an express stated
 5 legislative purpose. That is the statement that
 6 Mr. Christian and Snake River Oil and Gas routinely
 7 bring out; although they, for fairly obvious reasons,
 8 focus on only the first statement of purpose, that
 9 statement being the one that it is the public policy of
 10 the State to encourage production. But, in fact, the
 11 statutory purposes go far beyond that and are express.
 12 The first purposes are relatively obvious.
 13 Clearly, if the legislature had anything in mind about
 14 what constitutes just and reasonable, it would be the
 15 things they actually wrote about in their own
 16 legislation. So that's relatively clear.
 17 But there are also unstated but reasonably
 18 assumed -- I'm not even talking about implied, but just
 19 reasonable assumed statutory factors. The discretion of
 20 determining what these factors would be was left not
 21 expressly but by implication, as recognized by the
 22 Federal District Court, to the Commission and the
 23 Administrator.
 24 And a clearly required statutory purpose was
 25 the assumption that you and the Commission would

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1 exercise that discretion in compliance with the law.
 2 The assumption was certainly not that you would step out
 3 and try to violate the law. And had that been the
 4 assumption, I doubt you would have taken the job. The
 5 assumption is, you will do your best to perform your
 6 task while complying with all existing law, and that's
 7 hard where the law is poorly developed in this
 8 particular [unintelligible].
 9 The factors for "just and reasonable" are
 10 still undefined. You have to figure out what they are.
 11 And you have to do so, unfortunately, in this context of
 12 insufficient prior determinations by courts as to what
 13 those factors would be.
 14 So there's the statutory purpose and the
 15 clearly unstated but nonetheless necessary statutory
 16 purpose of complying with the law.
 17 There are also implied statutory factors. And
 18 the implied statutory factors are fundamentally
 19 everything that relates to the relationship between a
 20 middle rights lessor and lessee, other than the royalty
 21 rate and the bonus payment. The royalty rate is set by
 22 statute for uncommitted owners, shall receive a 1/8
 23 royalty. The bonus payment is set by statute at the
 24 maximum level paid to a voluntary lessor. So you have
 25 no discretion to address those, which means that

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1 literally every other factor that might go into these
 2 terms is something that should be evaluated to determine
 3 its effect on whether the overall proposal is just and
 4 reasonable.
 5 Now, the legislature was not and cannot be
 6 assumed to have been expert in what are the terms that
 7 make up an oil and gas lease. And so that's why these
 8 factors are implied. They left that to you. And those
 9 are the factors, both the statutory purpose factors and
 10 the implied statutory factors, that are set out in our
 11 brief, and I don't wish to repeat them here.
 12 There are also the -- what I'm going to call
 13 the constitutional factors. Now, it's important, in
 14 addressing these, to understand a couple of points that
 15 are not [unintelligible]. First of all, the uncommitted
 16 owners are not asking you, Mr. Thomas, to decide that
 17 any part of the statute is unconstitutional. That is
 18 beyond your authority, in all likelihood there's
 19 certainly an administrative law argument to that point
 20 to be made, and we are not asking you to make that
 21 determination.
 22 In fact, we are making exactly the opposite
 23 argument, which is to say that the statute is
 24 constitutional as long as the terms set in the
 25 integration order are just and reasonable. And it is

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1 not constitutional if those terms are not just and
 2 reasonable.
 3 So we are not asking you to find that the
 4 statute is invalid in any way. And so any search into
 5 that effect is just simply incorrect. In fact, we're
 6 asking you to make sure that the statute is valid.
 7 Second, the decision of the court in CAIA vs.
 8 Schultz decided a relatively narrow issue, and did so,
 9 and then fundamentally stopped. And that is the way
 10 courts in the Anglo-American tradition have always
 11 proceeded. It's a doctrine called "constitutional
 12 avoidance." You decide a case -- judges in America are
 13 taught to decide a case on the narrowest grounds you
 14 can, and then if that does resolve the case, don't go
 15 any further.
 16 And that's what Judge Winmill did in this
 17 case. He concluded that the failure to define the
 18 phrase "just and reasonable" was a due process violation
 19 adequate to invalidate the prior proceeding that was
 20 addressed in that case. And to fix that problem, he
 21 provided a particular remedy. And the court did not go
 22 on to address the many other due process arguments that
 23 the plaintiffs in that case had raised because it wasn't
 24 necessary to do so. And this is how American courts
 25 work.

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1 So satisfying the explicit requirement of the
 2 judgment in CAIA vs. Schultz; that is to say, and as
 3 Mr. Christian did say, simply telling us what the
 4 factors are. While that is adequate to satisfy the
 5 requirement in CAIA vs. Schultz, it would be extremely
 6 shortsighted to assume that that also means everything
 7 else under the broad rubric of due process of law is
 8 also satisfied.

9 This is further demonstrated by the fact that
 10 despite Mr. Christian pointing out the nature of
 11 integration orders from several other states, he is
 12 unable to cite a single case from a federal court,
 13 sitting as a constitutional reviewer, that has said, oh,
 14 yeah, these factors are acceptable and are adequate to
 15 satisfy due process. That's not his fault. He can't do
 16 that because, as far as I can tell, such a case does not
 17 exist. The question has not been answered.

18 So, Mr. Thomas, again, coming back to where I
 19 started, you have the task of deciding, in the first
 20 instance, what does the constitution require to make
 21 something just and reasonable so that the statute is
 22 valid. This isn't addressed in prior integration orders
 23 for Idaho. It isn't addressed in integration orders
 24 from other states. It isn't addressed in prior
 25 constitutional challenges to integration orders, either

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1 from Idaho or elsewhere, because they simply don't
 2 exist.

3 Now, that may seem odd in an industry as big
 4 as oil and gas, in a nation as large as the United
 5 States, but I can assure you it's not odd. There are
 6 many issues that have simply never been decided, and yet
 7 we have to deal with them.

8 So what do -- you know, your job, in assuring
 9 that the statute is valid and is validly applied in this
 10 and other cases, is to look at what are the issues that
 11 are going to be necessary to satisfy the law.

12 We think you can break those down into wee,
 13 broad categories. One is the substantive due process
 14 categories, and those are expressed and have been
 15 developed to a very limited extent in what are called
 16 the rate-setting cases.

17 I think you have to address the understanding
 18 of correlative rights, not only as the right to produce
 19 and sell one's gas and oil, but also as the right to
 20 decline to produce and sell one's gas and oil.

21 And then, finally, you have to ensure that
 22 there's a procedure that will be adequate, because,
 23 ultimately, there is and will always be a deprivation of
 24 property rights going on in this process. You will, if
 25 you enter the integration order at all, which you are

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1 obligated to do at some point, you will be telling
 2 somebody we are selling -- we, the State of Idaho, are
 3 selling your property to somebody else. That's the
 4 nature of integration.

5 So those are the three things I think to
 6 address. I'm not necessarily going to take those in
 7 order.

8 In determining, first, the issue of
 9 correlative rights. Mr. Thomas, not surprisingly -- as
 10 a representative of the oil and gas industry that
 11 doesn't own, doesn't have any holding of any of these
 12 mineral rights -- necessarily, folks, is on the rights
 13 of individuals that produce their gas. But the
 14 ownership of the thing includes both the right to sell
 15 it and the right to keep it.

16 And so a proper analysis of correlative rights
 17 is going to include balancing of the rights of those who
 18 want to produce against those who think it's not the
 19 right time, those who think it's not a very good deal,
 20 those who think it harms their property more than it
 21 helps it.

22 And so natural recognition of a right not to
 23 sell is an important first step in understanding, what
 24 are you going to order be done when that right is denied
 25 [unintelligible].

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1 [Unintelligible] we should talk about the
 2 procedural methods here. The oil and gas companies want
 3 a fast, inexpensive, stripped-down procedure that makes
 4 it harder for mineral rights owners to make a case for
 5 what are "just and reasonable" terms. But these
 6 procedural steps that we've requested are critical.

7 I can give you a great example that we're
 8 facing already. While it is true that the vast majority
 9 of mineral and gas -- oil and gas leases in Idaho have
 10 been at a 1/8 royalty and a \$100 bonus payment, we know,
 11 because Mr. Christian has told us, that in some cases a
 12 greater bonus payment was made. And I certainly, for
 13 one, appreciate his integrity in disclosing that.

14 I have serious questions, however, about the
 15 integrity of the oil and gas industry. It's America, in
 16 2021. Everyone has questions about the integrity of the
 17 oil and gas industry. And if we don't have the ability
 18 to subpoena records, we have no way of proving whether
 19 or not a different bonus payment was made.

20 We have no way of knowing whether or not Snake
 21 River Oil and Gas is trying to impose terms on mineral
 22 owners that it would never even accept for its own
 23 mineral rights. We have no way of knowing whether in
 24 fact Snake River Oil and Gas has the leaseholds that
 25 they claim to have if we can't test the truth of their

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1 statements.

2 And that's what this procedure that we're

3 proposing is about, and, yes, it looks an awful lot like

4 a court proceeding. But that's the tool that American

5 jurisprudence has chosen, to test the truth of facts.

6 So things like giving us adequate time to

7 prepare, providing us subpoena power, providing us the

8 ability to actively and, when necessary, aggressively

9 cross-examine those who are making statements under oath

10 to you, are all tools for finding the truth.

11 And that is also very closely related to the

12 final category, which is to recognize the substantive

13 rights of mineral holders. In addition to their right

14 to decline, if they are forced to sell despite their

15 right to decline, then the rate-setting cases -- which

16 is very much what you're doing here, Mr. Thomas. You're

17 setting a rate. It's just not -- it's not the royalty

18 rate or the bonus rate, but it's everything else that

19 goes into what are the terms of sale.

20 The law in this teaches us that there are a

21 lot of factors involved, that a lot of those factors are

22 really economic. It is hard to imagine a better example

23 where the economic and the noneconomic are actually

24 identical. If you're going to force somebody to sell

25 what is under their property, then the harm you do to

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1 the surface estate is an economic harm.

2 If, in the course of forcing someone to sell

3 their subsurface estate, or a portion of their

4 subsurface estate, you destroy the value of their

5 surface estate, that's an economic harm.

6 If you force somebody to sell their mineral

7 rights at a below-market rate, then you are not only

8 violating due process, you are doing economic harm.

9 The fact that something is economic does not

10 mean it is unimportant. It does not mean it doesn't

11 have constitutional significance. In fact, it means

12 quite the opposite. Where economic harm is done, the

13 law of due process is always held. It is much easier to

14 prove that there is a deprivation of an interest that

15 requires due process of law. So the argument that this

16 is purely economic and therefore somehow excluded from

17 constitutional consideration wouldn't be more wrong.

18 The combination of the correlative rights of

19 nonconsenting owners, the procedural tools that are used

20 to find the truth and to protect the interests of

21 everybody involved in a transaction, and the substantive

22 due process rights related to ensuring that the overall

23 terms of sale are fair and reasonable, are all related.

24 And so you can't have one without the other.

25 To that end, our position is a fairly simple

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1 one, if not -- if not an easy one, which is to say, we

2 are about to engage in the process of telling people

3 that we are going to take something they paid for,

4 against their will, on terms they don't approve of, and

5 we're going to sell it to someone else. This is an

6 exercise of State power over people's homes. Let's not

7 pretend otherwise. And that implicates fundamental

8 rights at an incredible level.

9 So to that end, the factors we have

10 identified, and the factors that the Department of Lands

11 has identified, are both highly relevant to determine

12 what is just and reasonable.

13 And, finally, if you find yourself uncertain

14 of which way to go, sir, which I wouldn't blame you for,

15 we can go back to -- I mean, literally and directly, to

16 the statute itself. What is just. What is reasonable.

17 It is not just to come to somebody and say, I

18 want to sell my gas, so I'm going to make you pay a

19 price for that, even though you don't want to buy my

20 gas.

21 It is not just for a corporate oil and gas

22 operator to come and say, we're going to shift the costs

23 of our operation on to people who didn't want anything

24 to do with it in the first place.

25 It is not just to come to people and to say,

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1 we're going to let these people -- we're going to let

2 these outsiders, these people who you don't owe anything

3 to, come to your land, drill under your property, and if

4 they happen to poison your groundwater, well, we're not

5 going to do anything about that.

6 "Just and reasonable" implies fairness. It

7 implies a good deal. It implies that nobody is shifting

8 their costs on to anybody else. And it implies that

9 everybody who didn't want to participate in this deal

10 that's being forced on them, be able to walk away in no

11 worse position than they are right now. When this is

12 all said and done, everybody should be in a better

13 position than they were before it started.

14 And right now, with the terms proposed by

15 Snake River Oil and Gas, we don't think that's the case

16 and that's what we think the upcoming hearing should

17 address, how to make sure that that happens.

18 As Mr. Christian admitted whether or not, for

19 instance, surface use of the subject estates is

20 appropriate and within "just and reasonable" is highly

21 contextual. It will depend on the facts on the ground.

22 And so that is why you face this task of

23 trying to decide, in each case, one at a time, what is

24 just and reasonable.

25 Here, where the spacing unit includes both

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1 industrial and agriculture and residential, and I don't
 2 honestly remember whether this particular spacing unit
 3 includes municipal property, but where all of those
 4 things are in existence, then the factors to be
 5 considered should reflect all of those things.
 6 If this were purely a spacing unit that
 7 consisted of nothing but 640 acres of rangeland, it
 8 would be a different case. That is not the case we
 9 have. And the factors you choose should reflect the
 10 interests of everybody who will be affected, including
 11 the homeowners that are my clients here.
 12 I would be happy to answer any questions.
 13 HEARING OFFICER THOMAS: Thank you, Mr.
 14 Piotrowski. I've just got a few questions for you, and
 15 then I am going to have a courtesy 15-minute break for
 16 people in the room and whatnot, and then we'll come
 17 back. But let's address -- let's go to a couple of
 18 questions first.
 19 First, with the people you represent, are they
 20 members of CAIA?
 21 MR. PIOTROWSKI: Yes, they are.
 22 HEARING OFFICER THOMAS: Thank you.
 23 And I'll pose this question to you; it's the
 24 single question I'm going to pose to everyone: Could
 25 you share what industry standards are regarding factors

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1 used in setting "just and reasonable" terms.
 2 MR. PIOTROWSKI: The industry standards, to my
 3 research, vary from place to place and are developing
 4 over time. The form contract that Mr. Christian
 5 continually points to, and that is included as part of
 6 their application and is apparently the basis of the
 7 voluntary leases they've entered into, is very broadly
 8 written and is written in such a way that it can address
 9 many different types of operations.
 10 And so, for instance, the industry standards
 11 in North Dakota will be different from industry
 12 standards in western Pennsylvania, and those will be
 13 different from industry standards in west Texas. And
 14 those standards are highly contextual.
 15 Here in Idaho, those alleged thousands of
 16 leases that Mr. Christian speaks of, the vast majority
 17 of those were entered into by one company, Alta Mesa and
 18 its affiliates. And so it doesn't tell us much about
 19 industry standards here in southwest Idaho.
 20 Those standards have yet to be developed here
 21 in southwest Idaho. We have a handful of wells. Almost
 22 none of them are in production. Those that have been in
 23 production have resulted in litigation, or at least one
 24 of them has.
 25 We don't have industry standards established

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1 in Idaho at this point. We have a company that came in
 2 and has tried to establish industry standards that are
 3 suitable to it and its profit margin. That does not
 4 make them actual industry standards. We won't have
 5 industry standards in Idaho until we have a lot more
 6 experience with what it's like to drill and produce here
 7 in Idaho.
 8 And so while generalized industry standards
 9 are helpful, they provide some level of guidance. But,
 10 one, I don't know how you'll find those standards, to be
 11 honest, you know, because they are difficult to suss
 12 out. And, two, they may still not be appropriate for
 13 our setting.
 14 HEARING OFFICER THOMAS: Mr. Christian, thank
 15 you for that.
 16 And with that, it's 2:05 Mountain Time.
 17 Chris, I'm going to ask you to pause the recording for
 18 about 15 minutes so everyone can get some air and maybe
 19 a drink, and we'll resume at 2:20 Mountain Time. All
 20 right?
 21 (Recess held.)
 22 MR. GOZZO: The recording has been started.
 23 HEARING OFFICER THOMAS: Thank you very much.
 24 Folks, we had a nice little recess, and as you
 25 saw, I tried to improve the speakers for some of those

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1 in attendance. It didn't work. So we're just going to
 2 -- I think everyone can hear, and if not, you can fill
 3 these near -- these front chairs.
 4 We've heard from Mr. Christian and
 5 Mr. Piotrowski. Right now I would like to call on the
 6 Idaho Department of Lands' counsel.
 7 For the record, please state your name and who
 8 you represent.
 9 MS. VEGA: Thank you, Mr. Thomas. My name is
 10 Joy Vega. I'm a deputy attorney general with the Idaho
 11 Office of the Attorney General, appearing today on
 12 behalf of the Department of Lands' Oil and Gas Division.
 13 The Idaho Department of Lands did file an
 14 opening brief in this matter. The stated intent of
 15 IDL's brief is to provide easy reference points to
 16 applicable Idaho Code sections, administrative rules,
 17 and other contract-based considerations that may be
 18 necessary or relevant in establishing what "just and
 19 reasonable" factors -- excuse me, what "just and
 20 reasonable" factors and related evidence may be
 21 considered at the upcoming evidentiary hearing. That
 22 evidentiary hearing will be on the merits of the
 23 integration application before you.
 24 At that evidentiary hearing, the applicants
 25 will presumably offer proof of its compliance with the

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1 statutory requirements that enable the integration of
 2 the uncommitted mineral interest owners, pursuant to
 3 Idaho Code Section 47-320 and IDAPA 20.07.02.
 4 Additionally through this process, evidence
 5 may be accepted as to what "just and reasonable" factors
 6 have been established as a result of this hearing.
 7 IDL's input on the identification of the
 8 applicable statutory and regulatory provisions matters,
 9 because the Oil and Gas Conservation Commission has
 10 delegated most of its powers and duties, vested by law,
 11 to the Department. IDL has authority and obligation to
 12 administer or enforce most of the provisions of the Oil
 13 and Gas Conservation Act, whether by expressed
 14 declaration of the legislature, or a delegation by the
 15 Commission.
 16 The statutes, rules, and contract-based
 17 considerations identified in IDL's opening brief are
 18 each factors that it has identified as being necessary
 19 or relevant in the event a final order is issued
 20 integrating the uncommitted mineral interest owners in
 21 the spacing unit that was established, I believe in
 22 2020, in Docket OGR 01-002.
 23 Section A of the Idaho Department of Lands'
 24 opening brief addresses just a couple surface-use
 25 factors that may integrate -- or, excuse me, that may

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1 impact integrated parcels. If a surface use of an
 2 integrated parcel is addressed in the integration order,
 3 the terms of the order may substitute or supersede the
 4 surface-use provisions in the standard lease form that
 5 has been submitted by Snake River Oil and Gas at
 6 Exhibit D to the application.
 7 As an example, the application cover letter
 8 indicates that no drilling activities will occur on
 9 parcels to be integrated in the spacing unit. If that
 10 statement is presented with evidentiary support in the
 11 integration hearing, the Department recommends that such
 12 a limitation be included and made part of the actual
 13 integration order.
 14 Another example would be whether the applicant
 15 intends for other surface uses, so other than the
 16 drilling location, on any of the integrated parcels. If
 17 the evidence presented at the integration hearing is
 18 that no surface uses are expected on any of those
 19 integrated parcels, then that limitation should be made
 20 part of the order, which, in turn, would supersede
 21 certain surface-use terms in the applicant's standard
 22 lease, including the Exhibit B to that lease form.
 23 Section B of the Department's opening brief
 24 identifies four sections of Title 47, chapter 3, that
 25 pertain to royalties. These are relevant factors to an

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1 integration proceeding because Idaho Code 47-320
 2 provides that the Department, "May prescribe the terms
 3 and conditions upon which the royalty interests in the
 4 unit, or units, shall, in the absence of voluntary
 5 agreements, be deemed to be integrated without the
 6 necessity of a subsequent separate order integrating the
 7 royalty interests."
 8 Since a function of the integration order can
 9 be to set the terms and conditions upon which royalty
 10 interests in the unit will be integrated, utilizing the
 11 minimum requirements of the Oil and Gas Conservation Act
 12 is an appropriate baseline for ensuring that an
 13 integration order includes terms and conditions that are
 14 just and reasonable.
 15 Of the four statutes listed, the Oil and Gas
 16 Conservation Acts' definition of market value was
 17 included, because Idaho Code 47-332, subsection 4, which
 18 addresses reports to royalty owners, including deemed
 19 leased owners, requires that the gross production,
 20 disposition, and market value be stated on each oil and
 21 gas royalty check stub.
 22 Also, Snake River Oil and Gas, as the lessee,
 23 would have to maintain all reports and records that any
 24 integrated owner, as the lessor, may require in order to
 25 verify gross production, disposition, and market value

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1 of oil and gas sold from the unit.
 2 The first sentence of Idaho Code 47-310,
 3 subsection 11, defines market value as it applies to
 4 47-332, subsection 4, which I just discussed.
 5 In addition, the second sentence of the
 6 definition of market value is also applicable to the
 7 royalty check stubs, because 47-332(1)(i) requires that
 8 the royalty owners' share of severance taxes be stated
 9 on the check stub. In the definition of market value,
 10 the legislature has limited what, if any, deductions can
 11 minimize that severance tax.
 12 So the "just and reasonable" terms of
 13 integration should include, at a minimum, applicable
 14 statutory requirements. So each statute that relates to
 15 the royalty interests of a deemed leased owner is
 16 relevant to the integration order and the contract's
 17 terms that would be imposed upon those owners.
 18 Finally, Section C of IDL's brief identifies
 19 some contract-based considerations that you may want to
 20 identify as "just and reasonable" factors for further
 21 discussion and presentation at the evidentiary hearing.
 22 The process of integration under the Oil and
 23 Gas Conservation Act imposes binding contracts on deemed
 24 leased owners. It is therefore incumbent upon the
 25 applicants, and this tribunal, to ensure that those

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1 contract terms at least comply with the statutory
 2 minimum requirements.
 3 In turn, it is incumbent upon the applicants,
 4 and this tribunal, to ensure that the imposed leased
 5 terms do not give the operator more than the right to
 6 develop, produce, and sell the oil and gas from the
 7 unit.
 8 If the standard lease form, submitted as
 9 Exhibit D, does not comply with Idaho law, the
 10 integration order is the tool for altering those form
 11 contract's terms.
 12 Therefore the considerations listed in Section
 13 C could be useful in enabling this tribunal to ensure
 14 that a final order granting the integration application
 15 imposed contract's terms on the deemed leased owners
 16 only to the extent permitted under Idaho law.
 17 If you have any questions, I would be happy to
 18 address those for you.
 19 HEARING OFFICER THOMAS: Thank you, Ms. Vega.
 20 One question that I pose: Would you share industry
 21 standards regarding factors used in setting "just and
 22 reasonable" terms? Again, Idaho, as everyone has said
 23 so far, is a new state to this. So a broader, I think,
 24 body of industry could help.
 25 MS. VEGA: And I agree, Mr. Thomas, that Idaho

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1 is a generally new state to oil and gas development. It
 2 has existed for, I think, over a hundred years; however,
 3 not to any great economic value. However, that could
 4 certainly change.
 5 The focus of the Department's review or
 6 consideration of industry standards is really focused on
 7 ensuring that those standards conform to Idaho law.
 8 Although I was not personally involved with the drafting
 9 of the Oil and Gas Conservation Act, my understanding,
 10 from those who were, is that other nearby western
 11 developing states were looked to and their laws were
 12 looked to and their processes were looked to as to what
 13 works in our region.
 14 So if this tribunal needs to go outside of the
 15 Idaho Oil and Gas Conservation Act and the applicable
 16 regulatory rules and administrative rules, you could
 17 look at what other states in our region are doing, based
 18 on what those states' laws are and whether or not
 19 they're very similar or very different from Idaho's.
 20 You could also perhaps look at what the Bureau
 21 of Land Management does in standard lease. I believe
 22 it's standard across the country. However, there may be
 23 differences in regional lease forms.
 24 But those are things, so kind of the standard
 25 statutes that are used across most states; standard

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1 lease forms are terms that are used by the federal
 2 government, or other state governments; are terms that
 3 are common in the industry, generally accepted in this
 4 industry; and the application across state governments
 5 and the federal government is a normal, understood thing
 6 in the industry which also probably benefits our courts
 7 and other sister jurisdictions.
 8 HEARING OFFICER THOMAS: Thank you, Ms. Vega.
 9 That's all I have.
 10 MS. VEGA: Thank you.
 11 HEARING OFFICER THOMAS: Folks, thanks a lot.
 12 I was going to ask again, are the Dorsings in attendance
 13 either virtually or in person?
 14 (Pause given for response.)
 15 (No response.)
 16 HEARING OFFICER THOMAS: On my Zoom portal, I
 17 don't see any unknown numbers. So I wanted to give them
 18 another opportunity.
 19 I'd like now to ask, are there any other
 20 uncommitted mineral interest owners in the proposed unit
 21 that plan to participate today? In person, first, is
 22 anybody in the room?
 23 (Pause given for response.)
 24 (No response.)
 25 HEARING OFFICER THOMAS: Okay. In Zoom

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1 universe, is there anyone out there?
 2 (Pause given for response.)
 3 HEARING OFFICER THOMAS: I'm going to give you
 4 about 20 seconds to find the mute button. Ah.
 5 MR. GOZZO: Mick, this is Chris. One thing
 6 I'd like to mention is that with the webinar format of
 7 Zoom, we've got three attendees joined, and by default,
 8 they are muted.
 9 HEARING OFFICER THOMAS: I'll go ahead and
 10 we'll start in the upper left. I just want to make sure
 11 everyone has the opportunity to at least say "I don't
 12 want to say anything," or talk.
 13 So I have Nancy Bankhead. Chris, if you could
 14 un-mute her and see if she would like to make comment.
 15 And, Nancy, you don't have to say anything. If you're
 16 quiet, we'll just move on.
 17 MR. GOZZO: Okay. I will ask Nancy to
 18 un-mute.
 19 MR. LEADER-PICONE: This is Malcolm
 20 Leader-Picone. I'm attorney for Nancy Bankhead and
 21 Fallon Enterprises, Inc., the owner of the real property
 22 on which the Fallon 10 and Fallon 11 wells are located.
 23 And we're not going to be making a presentation or a
 24 statement today. We're just observing. If you have any
 25 questions of us, we're happy to answer questions.

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1 HEARING OFFICER THOMAS: Thank you Mr.
 2 Leader-Picone. I do have one question. There's another
 3 one, Helen Yost. Are you representing her as well?
 4 MR. LEADER-PICONE: No. Just Nancy Bankhead
 5 and Fallon Enterprises.
 6 HEARING OFFICER THOMAS: Thank you.
 7 Chris, let's go ahead to Helen and un-mute her
 8 and see if she would like to offer any comment.
 9 MR. GOZZO: Okay. I've asked her to un-mute.
 10 HEARING OFFICER THOMAS: Good afternoon,
 11 Helen.
 12 (Pause given for response.)
 13 (No response.)
 14 HEARING OFFICER THOMAS: Well, that's fine.
 15 She doesn't have to say anything. I just wanted to make
 16 sure everybody had the opportunity to speak who was on
 17 our conference.
 18 All right, folks. I think that covers the
 19 parties who have signed up to speak today. At this time
 20 if you are, first, in person, and you would like to
 21 provide public comment, feel free to stand up, come to
 22 the podium. Again, I'm going to limit you to five
 23 minutes.
 24 (Pause given for response.)
 25 HEARING OFFICER THOMAS: No one is standing up

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1 in the room.
 2 MR. BROWN: I'll say something.
 3 HEARING OFFICER THOMAS: Okay. We do have one
 4 person.
 5 (Unintelligible.)
 6 HEARING OFFICER THOMAS: Just call me hearing
 7 officer --
 8 MR. BROWN: Hearing Officer? Richard Brown
 9 with Snake River. And I understand we're here to talk
 10 about "just and reasonable," and what would be discussed
 11 at -- so we're having a hearing to talk about "just and
 12 reasonable" to have another hearing. And I'm going to
 13 say that we, as the operator, are spending way too much
 14 money on hearings. Right now we're spending ten times
 15 more money on legal fees than we're spending on buying
 16 oil and gas leases and drilling oil and gas wells and
 17 producing oil and gas.
 18 So I would say that hopefully, at this next
 19 hearing, that we have now defined what "just and
 20 reasonable" is, that we can move forward and have less
 21 hearings, maybe condense the hearings going forward.
 22 Mr. Piotrowski keeps referring to that IDL is
 23 forcing these unwilling participants, and I understand
 24 that CAIA represents two parties in this hearing,
 25 representing one point four acres and one acre.

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1 And I understand "just and reasonable" to me,
 2 as a nonlawyer, means fair, or what would be inferred to
 3 what's fair. And I would question whether two acres in
 4 six forty, causing us to spend twelve months going
 5 through hearings on this, if that would be considered --
 6 although that's not involved in this integration, but if
 7 that's just and reasonable, and -- but this "just and
 8 reasonable" term comes about, and it's used in regard to
 9 integrations, and it's going to be -- we're going to
 10 talking about what's just and reasonable to have
 11 integration on this Fallon one eleven.
 12 So this term "integration," and integration
 13 exists in almost all of oil and gas producing states in
 14 the United States. And the purposes of integration --
 15 two of the most important parts of integration are to --
 16 it has a feature that it gets parties together; in other
 17 words, a pending integration gets parties to the table
 18 to work out terms at an arm's-length transaction.
 19 In the absence of that, we go -- operators go
 20 to integration. And we have in this case.
 21 But another very important part of integration
 22 is it prohibits minorities from prohibiting majority
 23 from exercising their rights, from enjoying their
 24 mineral rights.
 25 In this case, I think Malcolm -- Mr. -- Ms.

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1 Bankhead's attorney was just on the phone. They are the
 2 largest owner in the unit, followed by Ms. Donohoe
 3 [phonetic] -- excuse me, Ms. Lockner.
 4 Next down to -- so we've got almost 90 percent
 5 of the unit that want us to drill a well, and we're
 6 prevented from doing so because we don't have an
 7 integration.
 8 So the other thing is, you-all just had
 9 testimony, you-all are going to lean on other states and
 10 what they do, and why don't we lean on other states in
 11 this regard as well. So integration in other states
 12 occurs in some window of a 90- to 120-day period. In
 13 this case we've been at this -- we're going to be
 14 pushing up to over 12 months when this is done.
 15 And there are not -- there's not multiple
 16 hearings in other states. There's typically -- so we've
 17 had spacing. We've got spacing. Now we're having a
 18 "just and reasonable" hearing. And then there's going
 19 to be an integration hearing. In other states, there's
 20 typically one hearing.
 21 So if we're going to lean on other states,
 22 let's do it the way they do it.
 23 And, anyway, that's all I have to say. Thank
 24 you.
 25 HEARING OFFICER THOMAS: Thank you, Mr. Brown.

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1 And I need to make sure that we all -- go ahead. I'm
 2 not going to ask you a question. That's fine.
 3 I wanted to say that I procedurally kind of
 4 broke my own rules here. I would have liked for Snake
 5 River to offer rebuttal before the comments began.
 6 I haven't forgotten about you-all, all right?
 7 We'll get to it.
 8 So let's go ahead and flow through the public
 9 comments and I'll say to Snake River, for your rebuttal,
 10 please don't consider any comments in your rebuttal.
 11 MR. CHRISTIAN: Sure. I understand.
 12 HEARING OFFICER THOMAS: Thank you.
 13 Thank you, Mr. Brown.
 14 Do we have any other commenters? I don't see
 15 anyone who hasn't been given the opportunity to speak
 16 yet. Anybody else in the room? Go ahead. State your
 17 name.
 18 MR. HATFIELD: My name is Bob Hatfield.
 19 HEARING OFFICER THOMAS: Mr. Hatfield? Go
 20 ahead. I'll give you five minutes.
 21 MR. HATFIELD: Okay. Thank you, Mr. Thomas.
 22 I just wanted to say that, you know, we have a
 23 small business here that we started here, and I've been
 24 affiliated with the oil and gas thing here since 2010.
 25 And we've been on again, off again, on again,

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1 off again. And we get on the bandwagon. We drill some
 2 wells, and produce some wells, and complete stuff, and
 3 do workovers. And we get things all [unintelligible] up
 4 and we start rolling ahead, and everybody's doing well,
 5 and then all of a sudden something comes up and
 6 everything shuts down. And then we're shut down for --
 7 and now we've been shut down -- we haven't really done a
 8 whole lot since they finished the Barlow at Fallon
 9 wells.
 10 And so now we've been all these years without
 11 anything going on. We need to get an industry standard.
 12 We have to keep going and get some kind of momentum
 13 built so that we have enough wells that we can say this
 14 is an industry standard. Because this is not Wyoming.
 15 It's not California, North Dakota.
 16 But, you know, we just -- we're really hanging
 17 on, trying to stay in business so that we can keep
 18 moving forward, you know.
 19 And that's all I really want to say. My
 20 people would really like to come back home and work.
 21 Because we're not providing, you know, low-income jobs.
 22 We're providing jobs that are paying people three
 23 hundred, four hundred, five hundred dollars a day. You
 24 know, when things are going on here, we can do that.
 25 But we can't do that unless this deal's up and running.

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1 So we have to go other places to do it.
 2 I have people working in Nevada, that are
 3 working in Washington; they're working in North Dakota.
 4 They live here. They're all people that live in this
 5 community, and they want to come home.
 6 So that's why we put all this together years
 7 ago, and then we get it up and then it all shuts down.
 8 So that's pretty much all I have to say.
 9 HEARING OFFICER THOMAS: Thank you, Mr.
 10 Hatfield.
 11 MR. HATFIELD: Thank you, Mr. Thomas.
 12 HEARING OFFICER THOMAS: I will say, before
 13 Snake River comes up with their rebuttal, if you want to
 14 make -- if you want to provide comments, I'm willing to
 15 accept comments up to probably, let's say, 5 o'clock
 16 Mountain Time tomorrow, if you want to e-mail comments
 17 directly in to me. I just really want to give the
 18 opportunity for everyone to speak.
 19 I would say, I think, on our OGCC site
 20 definitely -- if there is, contact us. Just go to the
 21 OGCC.Idaho.gov, click on "contact," and we'll make sure
 22 your comments are recorded, again, up until 5 p.m.
 23 tomorrow, Mountain Time.
 24 And with that, Snake River counsel, thank you
 25 for your patience. I invite you to come up and offer

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1 any rebuttal.
 2 MR. CHRISTIAN: Thank you, Mister
 3 Administrator. I'll try to be brief.
 4 Mr. Piotrowski, in his comments, referred
 5 repeatedly to, or described the process repeatedly, as a
 6 taking of uncommitted mineral owners' interests and a
 7 forced sale of those interests to others. And as a
 8 legal matter, I think that's incorrect. There's a
 9 number of courts, over a long period of time, who have
 10 said that the integration is not a taking. In fact,
 11 Mr. Piotrowski's clients in the CAIA vs. Schultz case
 12 initially asserted a taking claim and then ultimately
 13 dropped it in the case, I think because it recognized
 14 that it wasn't an appropriate claim. It is not a
 15 compensable taking.
 16 The courts have recognized that the
 17 integration or pooling process is a regulation of that
 18 interest in a valid exercise of the State's police
 19 power, which is the whole balancing act. So it's sort
 20 of maybe a small issue but I think it's important to
 21 keep in mind that what is being -- what is happening is
 22 the regulation of their interests.
 23 Mr. Piotrowski continued his discussion, which
 24 carried over into his briefing, or from his briefing,
 25 about implied elements of the statute, what should be

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1 implied from the statute. And of course he implied a
 2 broad range of things, up to and including an entirely
 3 separate procedure and notice and subpoena power and
 4 every other -- other things that don't exist in the
 5 statute.
 6 And my response is really just, to the extent
 7 that there are things that are directly contrary to what
 8 is set forth in the statute, by definition it can't be
 9 necessarily implied from the statute.
 10 If 47-328 says, here is the procedure upon
 11 which we will process applications for integration, and
 12 the timeframes under which it will occur, and who may
 13 participate, and whether there may be discovery, and all
 14 of those things; those are set in statute. That's the
 15 procedure. And you cannot imply, from the statute, some
 16 other procedure which is well in excess and contrary to
 17 that.
 18 And he stated in his comments about whether,
 19 you know, everything else [unintelligible] is on the
 20 table, the entire universe is on the table. Again,
 21 you've got to keep in mind, and I think we all have to
 22 keep in mind, what did Judge Winmill say; what was his
 23 directive, what was the requirement of the federal court
 24 to do to comport with due process; that is, what factors
 25 are you going to consider.

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1 He recognized that the meaning of that term --
 2 because it's not -- there's no definition of it in the
 3 statute -- is an item of discretion for the agency; in
 4 this case for you, or if it's appealed, to the
 5 Commission. And there is abundant case law in our own
 6 state courts about what constitutes an appropriate
 7 exercise of discretion. I'm getting old, and I may
 8 forget [unintelligible] but for a court to exercise its
 9 discretion, for example, they've got to recognize that
 10 it is an element of discretion; they have to engage in
 11 something that's not completely arbitrary in the manner
 12 in which they exercise it, and follow through those
 13 steps, and you have properly exercised your discretion.
 14 It is no different here, which, I think, is
 15 why Judge Winmill did not go off into any sort of
 16 investigation or finding or order regarding what "just
 17 and reasonable" means, because he recognized that's not
 18 for me to say. That's an element of -- an item of
 19 discretion for you, the Administrator, or the Commission
 20 ultimately.
 21 And so as long as you follow the rules on the
 22 exercise of discretion, and you do this extra piece that
 23 the federal court imposed in order to comport with due
 24 process, you've done your job.
 25 So, again, I'm repeating myself, but we need

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1 to keep in mind, what is it exactly that Judge Winmill
 2 said, and what does the statute say about what the
 3 Commission does and what its ultimate goal is, what its
 4 ultimate purpose is.
 5 Mr. Piotrowski engaged in a discussion of
 6 correlative rights which he said included, you know --
 7 he thinks it includes, or suggested it includes, the
 8 right not to sell, and some other things. And again,
 9 the statute defines what correlative rights means.
 10 In making your decision, and the Commission
 11 doing its job, it has to operate under the statutory
 12 definition that has been provided to it by the
 13 legislature. Because again, the Commission is a
 14 preacher of statute and it has the power that the
 15 legislature gave it and no more.
 16 And so it must use that definition. And so if
 17 its job is to protect correlative rights, that means
 18 engage in processes and do those things that it can do,
 19 within the statutory framework, to ensure that all
 20 interest holders have the opportunity to receive their
 21 equitable share of production. Because that's the
 22 definition of correlative rights. And don't commit
 23 waste. And that also is defined in the statute.
 24 I think that's all I have to say about the
 25 opposing mineral owners' comments.

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1 With respect to Ms. Vega's comments on behalf
 2 of the Department, I am not sure but I think we are
 3 actually now on the same page about the scope of
 4 application of that definition of market value in
 5 Section 310, sub 11. I think what she said -- and
 6 she'll correct me if I'm wrong -- was that it applies to
 7 that definition, or to those reporting obligations in
 8 332.
 9 And so to the extent there are reporting
 10 obligations to royalty interest holders, which the
 11 integrated mineral owners will be, how that reporting
 12 occurs is impacted by the definition of market value. I
 13 don't think I disagree with that.
 14 I started with the assumption that the
 15 Department was urging that market value meant something
 16 in all -- in all settings, and that, for example, which
 17 results in the particular lease term. And I think she
 18 maybe corrected my misapprehension.
 19 The only other comment I would have about the
 20 Department's suggestions are, yes, it is reasonable to
 21 say that we should ensure that the operator complies
 22 with the law. The question is whether -- whether an
 23 integration order has to proactively include terms which
 24 seek to enforce portions of the law which are already
 25 there and that the operator is already subject to. The

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1 operator already has to do things. It has to submit an
2 application for a permit to drill, for example, or if it
3 wants to plug a well, it has to follow certain standards
4 that are set forth in the statute.

5 If it wants to -- you know, its casing has to
6 meet certain standards, and cementing, and it has to
7 report in certain ways.

8 It isn't necessary to recite all of those
9 things in the integration order. It's appropriate to
10 say, you know, do I, as the Administrator, when I look
11 at the application, do I see anything that is possibly
12 contrary to what their obligation is under the law.

13 I think it's a -- it's a very large and
14 unwieldy and maybe impossible job for an operator to
15 say, in the universe of laws that could apply to my
16 application and I'm going to show you how this
17 application applies to every single one of them. That
18 could go on for weeks, I think, in a research project.

19 So I think it's -- I think that approach isn't
20 necessary. But certainly if either the Department, in
21 evaluating the application, or an opposing mineral owner
22 has some suggestion that something that's included in an
23 application is out of [unintelligible] of the statute or
24 the rules, then certainly the operator ought to be
25 prepared to respond to that.

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1 But the intention of any operator, I think,
2 that's supplying an application for integration is what
3 we've described, which is, what are the economic terms
4 upon which we're going to deal with uncommitted mineral
5 interests, with the knowledge that everything else we do
6 in our operation we're subject to the law and have to
7 comply with it, otherwise we're subject to penalties and
8 enforcement from the Department and the Commission.

9 I think those are all the comments I have.

10 HEARING OFFICER THOMAS: Thank you, Mr.
11 Christian. And again -- well, to everyone, virtually
12 and in the room, thank you for participating. I will
13 take this matter under advisement and issue a written
14 description -- decision within 30 calendar days of this
15 hearing.

16 That adjourns our hearing. Thank you very
17 much.

18 Chris, you can stop recording.
19 (End of audio recording.)

20
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25

REPORTER'S CERTIFICATE

1
2
3 I, EMILY L. NORD, CSR NO. 695, Certified
4 Shorthand Reporter, Certify:

5 That the audio recording of the proceedings were
6 transcribed by me or under my direction;

7 That the foregoing is a true and correct
8 transcription of the audio recording, to the best of my
9 ability;

10 I further certify that I am not a relative or
11 employee of any attorney or party, nor am I financially
12 interested in the action.

13 IN WITNESS WHEREOF, I set my hand and seal this
14 2nd day of June, 2021.



15
16
17
18
19 EMILY L. NORD, CSR, RPR

20 Notary Public

21 P.O. Box 2636

22 Boise, Idaho 83701-2636

23 My Commission Expires November 5, 2023

24
25

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