From: Don Haagensen
To: Comments
Subject: Comments Related to Idaho Code title 47 chapter 3 Changes
Date: Monday, February 21, 2022 04:57:31 PM

My name is Don Haagensen. I reside in Payette County, and my wife and I have an Oil and Gas Lease for our property which Snake River Gas and Oil, LLC assumed. I am interested in oil and gas activities in Idaho and any potential changes to the law. I have the following comments on the Third Draft Text of Idaho Code title 47, chapter 3–Proposed Statutory Changes.

1.a. Requested Revision. Draft Idaho Code (IC) 47-310 (38) defines "Arms-Length" in the first sentence which should be sufficient for a statutory definition if it is revised to be all inclusive. The remaining two sentences and subparts (a), (b) and (c) should be deleted. Draft IC 47-310 (38) should then read in its entirety: "'Arms-Length' means a contract, agreement or other transaction between independent, nonaffiliated and unrelated persons with the value of the contract, agreement or other transaction based solely on each person's self interest."

b. Discussion. The draft first sentence should add "or other transactions" to the definition because there are certain other actions that could occur such as, for example, an exchange. Also, the draft first sentence by using the phrase "that has been arrived at in the marketplace" places an unnecessary qualifier on the contracts, agreements and other transactions covered by the definition. The phrase "that has been arrived at in the marketplace" should be deleted. Finally, the phrase "with opposing economic interests regarding that contract" unnecessarily limits the persons governed by the definition with the value of the contract, agreement or other transaction and how it was arrived at being the critical factor. The phrase "with opposing economic interests regarding that contract"should be deleted.

The second and third sentences of the draft definition and subparts (a), (b) and (c) should be deleted because they focus only on situations that may or may not be arms-length and could be interpreted to constrain the Commission's authority by their specific inclusion. Subpart (c) inappropriately limits the Commission's authority by including a presumption that the Commission "may rebut" if it "demonstrates" the presence of control in a certain situation. Finally, one sentence in subpart (c) ["The Commission may require the lessee to certify the percentage of ownership or control of the entity."] is not a definition but confirms a specific Commission power and should be included in Draft IC 47-314 if its mention is important.

2.a.Requested Revision. Draft IC 47-314 (1)(b) in the second sentence should be revised so that the three Commission members established by that sentence reflect a more diverse, yet still informed, view for matters to be covered by the Commission. The most straightforward approach would be to delete the requirement for "a college degree in geosciences or engineering" and change "experience in the oil and gas industry" to "experience concerning the oil and gas industry." If the Commission chooses not to delete the college degree requirement, the requirement for a college degree should be revised to read: "a college degree in geosciences, engineering, environmental sciences or the law."

b. Discussion. The requirements in the draft second sentence provide an inappropriately narrow set of requirements for participation on an Idaho state commission or board. In

contrast, see, for example, the broad requirements for the seven members of: (1) the Fish and Wildlife Commission (IC 36-102 (b))[well informed and interested in wildlife conservation and restoration]; (2) the Environmental Quality Board (IC 39-107 (1)(a))[two with knowledge of and interest in solid waste; two with knowledge of and interest in air quality; two with knowledge of and interest in water quality; one with knowledge of and interest in air, water and solid waste]; and (3) the Transportation Board (IC 40-302) [six well informed and interested in the construction and maintenance of public highways and highway systems; one with special training, experience or expertise in aeronautical transportation].

Without intending anything negative toward the current Oil and Gas Commission members, the requirements in the second sentence should be broadened so there are not three members of the Commission who spent their careers working for companies in the oil and gas industry. Obviously, three Commission members who work in the oil and gas industry coupled with having a degree in geosciences or engineering will provide very similar perspectives on the appropriate approach to regulation of the Idaho oil and gas industry. If the college degree requirement is removed or broadened and the required experience is "concerning" the oil and gas industry, additional potential Commission members would have a different, but important, perspective on the appropriate approach to regulation of the oil and gas industry. Such a diversity of perspective should be critical to the goals for the Commission.

As a footnote, I served for seventeen years on the five-member Governing Board of the Oregon Department that regulates oil and gas with, at the time, an active gas-producing field. I did not have a college degree in geosciences or engineering and did not have five years of experience "in" the oil and gas industry. At the time, I had an undergraduate degree in zoology, a graduate degree in marine biology and a law degree coupled with considerable experience "concerning" the oil and gas industry and as an attorney specializing in natural resource and environmental matters.

3.a. Requested Revision. Draft IC 47-320 (1) should be revised by deleting the terms "set forth herein" after "terms and conditions."

b. Discussion. Restricting all terms and conditions only to those specifically established in the Idaho Code will tie the Commission's as well as mineral interests owners' hands solely to the present conditions. Determining the terms that are just and reasonable should not be frozen in time.

Value to a resource developer and to a mineral interest holder can change over time. For example, Snake River Oil and Gas, LLC (Snake River) presently takes the position that Idaho is a "wildcat area" and monetary terms for mineral interest owners must reflect the considerable risk faced by Snake River in locating and developing gas and oil production areas. However, over time, many oil and gas fields evolve from wildcat areas to established fields with reduced risk for the resource company. That reduced risk then becomes reflected in increased financial value, not only for the oil and gas company, but also for mineral interest owners.

Although Snake River publicly takes the position that its operations are in a wildcat area, at a hearing before the Payette County Planning and Zoning Commission on March 11, 2021, Richard Brown a principal for Snake River testified in response to a Commission question that Snake River had developed only 5% of the potential for the field. At the time, Snake River had two shut in wells capable of producing gas which means Richard Brown is expecting the field

to support in the neighborhood of forty producing wells.

As an additional example why "just and reasonable" terms cannot be frozen in time, the history and character of the resource developer over time also matter. The prior oil and gas company operating here—AM Idaho, LLC/Alta Mesa Services, LP—began its initial offer of oil and gas leases to mineral interest owners not in good faith but as "take it or be integrated" offers. That company then over time violated Idaho law with its operations and also flirted with bankruptcy until it finally succumbed. These types of factors, if they occur, must be considered in establishing just and reasonable terms for integration.

Deleting the terms "set forth herein" will allow just and reasonable terms to be established in an integration proceeding based on the applicable terms of the Idaho code, rules implementing the code, and the specific facts applicable to integration at the time of the integration proceeding.

4.a. Requested Revision. Draft IC 47-320 (3)(c)(3) should be revised to state: "The operator of an integrated spacing unit shall pay an owner integrated under this subsection the average payment per acre of the bonus payments paid to all owners in the spacing unit prior to the filing of the integration application."

Note—In order to implement the above revision, IC 47-320 (4)(i) would need to be revised to read: "An affidavit listing the bonus paid and acreage for each leased owner in the spacing unit being integrated prior to filing the integration application;"

b. Discussion. Currently, Snake River pays mineral interest owners $100 per acre as a bonus for signing an oil and gas lease. Apparently only once has Snake River paid more, paying $250 for one acre based on what Snake River characterized in an integration proceeding as an "'erroneous departure.'" Findings of Fact, Conclusions of Law, and Order, Docket No. CC-2021-OGR-01-001, Sept. 13, 2021, p. 10 (Hereinafter, Findings of Fact). Based on IC 47-320 (3)(c),(d), Snake River was ordered to pay all deemed lease owners $250 per acre as a bonus payment with a $100 minimum payment for tracts less than one acre. Findings of Fact, p. 20-21.

Because of its past practices as well as the recent order requiring Snake River to pay $250, Snake River will very likely continue paying a bonus of $100 per acre no matter how proven and profitable its gas production operations in Payette County are or become. Revising Draft IC 47-320 (3)(c)(3) so that the bonus paid under the Base Entitlement in an integration proceeding is the average bonus per acre Snake River pays to all leased mineral owners would potentially allow the bonus paid to leased mineral interest owners to increase through negotiation for an area no longer considered a wildcat area and, in turn, to increase the base entitlement in an integration proceeding. This revision could potentially support a sharing by Snake River of any increased profitability that occurs if and when it further develops its gas field in Idaho.

The second and third paragraphs in the discussion in section 3.b. above also apply here.

5.a.Requested Revision. Draft IC 47-320 (3)(c)(1) should be revised to state: "An owner integrated under this subsection shall receive a royalty of any gas, oil, or natural gas liquids produced, proportionate to the owner's interest in the integrated unit with the amount of the royalty equal to the average royalty per acre paid to all other owners in the spacing unit prior

to the filing of the integration application."

Note—In order to implement this revision, the following provision would have to be added to IC 47-320 (4): "(k) An affidavit listing the agreed royalty and acreage for each leased owner in the spacing unit being integrated prior to filing the integration application." In addition, IC 47-320 (4)(j) would need to end with ";and" instead of a period.

b. Discussion. The discussion about bonus payments in section 4.b. above applies here for why this revision to draft IC 47-320 (3)(c)(1) should be made regarding royalty payments.

6.a. Requested Revision. Draft IC 47-320 (3)(c)(4) should be revised to delete the second sentence and revise the first sentence to read: "The operator shall avoid any use of surface or subsurface lands belonging to an owner integrated under this subsection."

b. Discussion. Proposing for the first time to allow an oil and gas operator through an integration proceeding to use the surface lands of an unleased mineral interest owner is a tremendously significant step. Also significant is fact that there is no mention of non use of the subsurface of an unleased mineral interest owner in draft IC 47-320 (3)(c)(4) which means that there would be NO restrictions on subsurface use as a result of the integration.

In contrast, in the most recent integration proceeding, the integration order determined that it was "'just and reasonable' to include a condition in the integration order that no drilling activities or physical occupation will occur on the surface or subsurface of any deemed leased owners." Findings of Fact, p. 30. In that proceeding, Snake River had leased over 90% of the mineral acres in the spacing unit. Id. p. 8. The 13 parcels of unleased acreage were owned primarily by individuals and ranged from 1.4 acres to 13.4 acres. Id.

Ignoring this very recent integration order that protected deemed mineral rights owners from illegal use of their property, draft IC 47-320 (3)(c)(4) references IC 47-334 to provide for the use of these unleased mineral owner's lands with some form of compensation. However, IC 48-334 does not authorize the forced use of surface land envisioned in draft IC 47-320 (3)(c)(4), but if it did, on its face it would be an unconstitutional taking of property without due process of law and payment of just compensation.

Finally, forcing unleased owners with small parcels of land and who rarely follow changes in the law, let alone appear in an integration proceeding, to allow such a use of their land is inherently unfair. It might cost an oil and gas developer a little more to avoid or to work around these unleased parcels, but incurring that cost would be much less than the significant disruption that this draft provision would be imposing on unsuspecting unleased mineral interest owners.

7.a. Requested Revision. Draft IC 47-320 (3)(6) should be revised to read: "Nothing in an integration order shall be deemed to prevent the operator and owners from voluntarily agreeing to different lease terms before or after entry of an integration order." The phrase "An integration order including the terms specified in this subsection fulfills the Department's obligation to integrate mineral interests upon just and reasonable terms, provided, that" should be deleted.

b. Discussion. The discussion in 3.b. above also applies here.

Thank you for considering these comments,

Don Haagensen

Sent from my iPhone