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Subject: Docket No. CC-2021-OGR-01-002: IDL's Opening Brief
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Attachments: [IDL Opening Brief.pdf](#)

Greetings:

Attached is IDL's Opening Brief in the above-referenced matter.

Regards,
Joy

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BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF:

The Application of Snake River Oil and Gas, LLC to Integrate the Spacing Unit Consisting of the E ½ of the SE ¼ of Section 9, the SW ¼ of Section 10, the N ½ of the N ½ of the NW ¼ of Section 15, and the N ½ of the NE ¼ of the NE ¼ of of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.

Snake River Oil and Gas, LLC, Applicant.

Docket No. CC-2021-OGR-01-002

**IDAHO DEPARTMENT OF LANDS’
OPENING BRIEF**

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, and pursuant to the ORDER VACATING HEARING, ORDER SETTING HEARING TO DETERMINE “JUST AND REASONABLE” FACTORS, AND NOTICE OF HEARING AND SETTING FILING DEADLINES, issued May 5, 2021, files this Opening Brief for review and utilization by the Oil and Gas Division

Administrator of the Idaho Department of Lands (“Administrator”), as he deems useful or necessary, in determining whether the terms and conditions of the integration order sought by Snake River Oil and Gas, LLC (“SROG”), in Docket No. CC-2021-OGR-01-002 are “just and reasonable” as required by Idaho Code § 47-320(1).

The Administrator’s determination of what the “just and reasonable” terms for the integration order will be, must be consistent with the Oil and Gas Conservation Act. The Idaho Legislature has enacted statutory regulation of the development of oil and gas resources within the State of Idaho, which includes the integration of mineral interest owners to participate in the risks and rewards of such development. Idaho Code §§ 47-309 *et seq.* “‘Forced integration’ ... is the remedy that permits development of the drilling unit in the event that the mineral-interest owners cannot agree to pool voluntarily.” *Gawenis v. Arkansas Oil & Gas Commission*, 464 S.W.3d 453, (Ark. 2015) (citation omitted). The state’s integration procedures “constitute a proper exercise of its police power” ... to protect “property rights by requiring a just, orderly, and efficient process for neighbors to extract common resources.” *Kerns v. Chesapeake Exploration, L.L.C.*, 762 Fed. Appx. 289, 297 (6th Cir. 2019) (citations omitted). “Each landowner’s property interest in the minerals remains intact; it is simply regulated.” *Id.* (citation omitted).

The Idaho Oil and Gas Conservation Commission (“OGCC”) and IDL have the authority and obligation to protect correlative rights while preventing waste of hydrocarbon resources. Idaho Code §§ 47-311 through 47-315. The OGCC and IDL must enable the development of hydrocarbon resources, protecting and enforcing the property rights of owners *and* producers; and, in doing so, prevent the waste of hydrocarbon resources. Idaho Code §§ 47-311, 47-312. Part of the Legislature’s instructions to IDL regarding its authority to regulate all integrated owners and producers includes the following directive:

In the absence of voluntary integration, the department, upon the application of any owner in the proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom. The department, as part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.

Idaho Code 47-320(1) (emphasis added). The inclusion of “just and reasonable” is significant because it provides the Administrator with discretion to enter an order based on the facts and circumstances of each individual case. In an integration proceeding “it would be impracticable for statutes to cover every possible situation that an agency may encounter when carrying out its statutory duties.” *Hurd v. Arkansas Oil & Gas Comm’n*, 601 S.W.3d 100, 105 (Ark. 2020) (upholding the agency’s reduction of royalty percentages after scrutiny of private leases at issue during integration proceeding). Consequently, the authority granted by Idaho law authorizes the Administrator to ensure that all integrations orders are upon terms that are “just and reasonable”. The requirement that an integration order “be ‘issued upon terms and conditions that are just and reasonable’ refers to [the agency’s] responsibility to prevent waste and ensure ratable production of shared geologic resources.” *Id.* at 109 (Hart, J., dissenting) (criticizing the agency’s and majority’s, effective, alteration of private business negotiations).

IDL recommends that the Administrator consider the following factors in determining what terms and conditions of the integration order are “just and reasonable”.

A. Whether use of integrated parcels will include both drainage of subsurface hydrocarbons and some type of surface occupation. If any surface occupation on integrated parcels is contemplated, then the integration order should address the following:

1) While the Fallon 1-10 well is already drilled, the application cover letter states that the “proposed form of lease provides that no drilling activities will occur on the surface of the integrated acres under five (5) acres in size.” (Application p. 7.) If applicable, damages for surface occupation must be paid by the operator consistent with Idaho Code § 47-334.

2) If additional surface use is contemplated, but there are no surface use agreements (as defined in Idaho Code § 47-334(e)), the integration order should provide for the surface reclamation described in IDAPA 20.07.02.510, and require the posting of a bond that ensures performance of reclamation of surface disturbances as provide in IDAPA 20.07.02.220.01 and Idaho Code § 47-334(8).

3) Whether the operator has entered into any surface use agreements as allowed by IDAPA 20.07.02.510.08 – Reclamation Under a Surface Use Agreement.

B. Whether the compensation terms proposed by the operator are consistent with and will comply with the following minimum statutory requirements:

1) Idaho Code § 47-332 – Reports to Royalty Owners.

2) Idaho Code § 47-333 – Action for Accounting for Royalty; that the operator shall provide written accounting upon demand from any owner.

3) Idaho Code § 47-331 – Obligation to Pay Royalties as Essence of Contract – Interest; including the statutory requirement that: “Royalty shall be due on all production sold from the leased premises except on that consumed for the direct operation of the producing wells and that lost through no fault of the lessee.” Idaho Code § 47-331(1)(b).

4) Idaho Code § 47-310(11), that royalties paid are transparent and based on "market value" as defined by the Legislature to mean “the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil and gas should bring in a competitive and open

market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the severance tax directly or indirectly.”

C. Whether SROG has informed the Administrator regarding whether the proposed lease form, operating agreement, and other integration provisions proposed by SROG have been:

1) Analyzed by SROG, to ensure compliance with Idaho Code, IDAPA, and any applicable local ordinance;

2) Analyzed to ensure that no liability or duty arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance is removed from the operator and placed on, assumed by, or assigned to an integrated owner;

3) Analyzed to ensure that no water right owned by an integrated owner is incorrectly used by the operator as a result of any change to the purpose of use of the water right, the place of use, or the point of diversion without prior approval by the Idaho Department of Water Resources;

4) Analyzed to ensure that no estate in real property held by an integrated owner can be assumed, subrogated, or redeemed by the operator, as lessee, without the integrated owner having an opportunity to recover such estate from the operator;

5) Analyzed to ensure that the venue for any claims against or involving an integrated owner is in either the Idaho district court for the county where the integration order applies, or the United States Court for the District of Idaho;

6) Standardized and broadly accepted in the oil and gas industry;

7) Accepted and agreed to by SROG, when it is an interest holder and not an operator; and

8) Approved, with or without modification, by other governing bodies or by courts, given any unique circumstances in that spacing unit; or

9) Rejected, in whole or in part, or found inapplicable by other governing bodies or courts, given any unique circumstances in that spacing unit.

DATED this 28th day of May, 2021.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ Joy M. Vega
JOY M. VEGA
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May, 2021, I caused to be served a true and correct copy of the foregoing by the following method to:

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