

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil)
and Gas, LLC for Spacing Order Consisting of the)
E ½ of the SE ¼ of Section 9, SW ¼ of Section 10,)
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 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

**ORDER DENYING MOTION
TO STRIKE**

On April 26, 2021, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the above captioned spacing unit. The Minerals, Public Trust, and Oil & Gas Division Administrator (“Administrator”) of the Idaho Department of Lands (“Department”) subsequently noticed a June 21, 2021 hearing to determine “just and reasonable factors” and established briefing deadlines for that hearing.

On May 28, 2021, the Administrator received opening briefs, including briefs from Snake River, the Department, and Citizens Allied for Integrity and Accountability (“CAIA”) and nonconsenting landowners Dale Verhaeghe, Linda Dernoncourt, Sharon Simmons, Alan and Glenda Grace, Edward and Cheryl Adair, William and Roxie Tolbert, Wendell and Norma Nierman, Cheryl and Richard Addison, Jimmie and Judy Hicks, Antonio and Danielle Anchustegui, Philip and Kathleen Hendrickson, Dawna and George Jackson, Karen Oltman, Bonnie McGehee, Lorinda Shuman, Samuel Butorovich, and Tim and Kate Kilbourne (collectively “Nonconsenting Owners”). On June 11, 2021, the Administrator received response briefs from Snake River and the Nonconsenting Owners. On June 16, 2021, the Administrator received a reply brief from Snake River.

The Administrator held the hearing on the factors used to determine “just and reasonable” terms on June 21, 2021. Both Snake River and Nonconsenting Owners presented argument at that hearing. On the same day, after the hearing, the Administrator received a Motion to Strike from the Nonconsenting Owners. The Nonconsenting Owners requested that the Administrator strike portions of Snake River’s opening, response, and reply briefs with Snake River’s argument directed at CAIA’s participation in the proceeding and whether the hearing should be vacated. They argued that Snake River did not properly make a motion to raise these issues, and therefore that briefing should be struck. The Nonconsenting Owners requested oral argument. Snake River responded on June 23, 2021, arguing it appropriately raised those issues in its briefing.

ANALYSIS

The Nonconsenting Owners argue portions of Snake River’s briefing should be struck from the record because they were not raised properly by motion. Motions are “pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings.” IDAPA 04.11.260.02. Motions should fully state the facts upon they are based; refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and state the relief sought. IDAPA 04.11.260.

Essentially, Nonconsenting Owners are asking the Administrator to strike portions of the record only because Snake River included that argument using an incorrect procedure. No additional reasons were provided to strike this briefing, including no analysis to why the briefing is prejudicial. Further, a week and a half before filing the motion to strike, Nonconsenting Owners had already filed a response to Snake River’s brief. That response directly addressed one of the issues they now request to strike from Snake River’s briefing. Additionally,

Nonconsenting Owners filed their Motion to Strike hours *after* the Administrator held the hearing that they participated in. Use of an incorrect procedure is not by itself a sufficient reason to strike argument from the record. See IDAPA 04.11.01.052 (“The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. . . Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency.”)

Nonconsenting Owners have provided no reasons as to why the briefing remaining in the record is prejudicial. As the Nonconsenting Owners note, no motion to prohibit or restrict CAIA’s participation in this proceeding has been presented to the Administrator, and without a motion the Administrator cannot consider whether such a prohibition or restriction is appropriate. Thus, the briefing, while extraneous, does not prejudice the Nonconsenting Owners. The Nonconsenting Owners’ request for oral argument and motion to strike is denied.

The parties are reminded that if they would like to request that the Administrator take a specific action in this contested case,¹ those should be made by motion and “fully state the facts upon they are based; refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and state the relief sought.” IDAPA 04.11.260. That makes it clear to the Administrator what action is requested and enables each party a clear opportunity to fully respond within certain deadlines. See IDAPA 04.11.01.565 (“party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder.”).

ORDER

¹ This includes any issues already included in briefs.

The Nonconsenting Owner's request for oral argument and motion to strike is DENIED. This order was intended to be issued on July 20, 2021, but the Administrator neglected to issue and serve it on that day. Thus, the Administrator orders that this order is effective on July 20, 2021.

Dated this 22 day of July 2021.

A handwritten signature in cursive script that reads "Mick Thomas". The signature is written in black ink and is positioned above a horizontal line.

Richard "Mick" Thomas

Division Administrator
Minerals, Public Trust, Oil & Gas
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of July 2021. I caused to be served a true and correct copy of the foregoing by regular mail unless indicated otherwise addressed to the following and emailed courtesy copies as shown:

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