

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,)
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 DETERMINING CAIA
IS NOT A PARTY AND
DENYING PETITION TO
INTERVENE**

PROCEDURAL BACKGROUND

On April 26, 2021, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the spacing unit 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. Pursuant to the *August 3, 2021 Amended Notice of Evidentiary Hearing and Notice of Prehearing Conference*, the Minerals, Public Trust, and Oil & Gas Division Administrator (“Administrator”) of the Idaho Department of Lands noticed a September 16, 2021 evidentiary hearing with a deadline for prehearing motions of September 2, 2021.

On September 2, 2021, Snake River Oil and Gas, LLC (“Snake River”) filed a *Motion for Order Determining Citizens Allied for Integrity and Accountability (“CAIA”) is not a party*. In that motion, Snake River references its reliance on two documents from Docket No. CC-2021-OGR-01-001: (1) the Administrator’s August 12, 2021 *Order Determining CAIA is not a Party and Denying Petition to Intervene* and (2) Snake River’s July 29, 2021 prehearing motion addressing that issue.

CAIA filed a response on September 14, 2021, and argued that the motion should be denied as moot because the remedy it requests is entirely without meaning. CAIA additionally petitioned to intervene as a party and requested that the Administrator grant its untimely motion because excluding CAIA would cause substantial prejudice on CAIA, its members, and the public interest. Further, CAIA contends that it has a direct interest in the proceeding given (1) its role as a public interest organization with concern for Idaho's natural resources and the well-being of its property owners; (2) its members include mineral rights owners in this proceeding; and (3) it has been granted intervention in prior proceedings.

ANALYSIS

CAIA first argues that the motion should be denied as moot because barring CAIA as a party is a request entirely without meaning. CAIA does not explain how to reconcile its assertions that (a) determining it is not a party is without meaning and (b) it and its members would be substantially prejudiced by not participating. If CAIA participated in the proceeding as a party, it would be able to fully participate in the hearing, including examining witnesses.¹ Because the hearing has not been held and the Administrator does not know whether CAIA would seek to offer additional evidence or cross examination beyond that offered by its individual members who are owners within the spacing unit, the question is not moot.

CAIA responded to Snake River's request to determine it is not a party with a petition to intervene. The Idaho Rules of Administrative Procedure state that parties to a contested case are called "applicants or claimants or appellants, petitioners, complainants, respondents, protestants,

¹ While CIA may participate in this proceeding as a public witness whether or not a party, CAIA's participation as a public witness would not include full participation. See IDAPA 04.11.01.355 ("Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties.").

or interveners.” IDAPA 04.11.01.150. An intervenor is a person “who [is] permitted to participate as parties pursuant to Rules 350 through 354.” IDAPA 04.11.01.156. Intervenors must “claim a direct and substantial interest in the proceeding” and petition for an order granting intervention. IDAPA 04.11.01.350.² Petitions that show “direct and substantial interest in any part of the subject matter of a proceeding and do not unduly broaden the issues” will be granted. IDAPA 04.11.01.353. While CAIA does not appear to meet the definitions of the other types of parties to a contested case and is not currently an intervenor, it has petitioned to intervene. Thus, the Administrator will address that petition.

The broad rules for intervention detailed in the Idaho Rules of Administrative Procedure of a direct and substantial interest in the proceeding do not apply in this case because Idaho Code § 47-328(3)(b) is a specific statute addressing participation in an integration proceeding that has its own specific requirements. Idaho Code § 47-328(3)(b) addresses “applications involving an order regarding unit operations or integration of a drilling unit.” It provides: “*Only* an uncommitted owner in the affected unit may file an objection or other response to [an integration] application.” Idaho Code § 47-328(3)(b) (emphasis added). In using the limiting word “only,” the statute precludes any other persons from filing an objection or response. Thus, Idaho Code § 47-328(3)(b) does not allow persons who are not uncommitted owners to intervene and participate as parties.³

An “owner” is “the person who has the right to drill into and produce from a pool and to appropriate the oil and gas that he produces therefrom, either for himself or for himself and others.”

² Untimely motions to intervene must “state a substantial reason for delay” and may be denied for “failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.”

³ While CAIA notes that it was permitted to intervene in 2015, that was prior to the passage of Senate Bill 1339, which included the language now codified at Idaho Code § 47-328(3)(b).

Idaho Code § 47-310(23). An “uncommitted owner” is “one who is not leased or otherwise contractually obligated to the operator.” Idaho Code § 47-310(31). While CAIA has members that are uncommitted owners, CAIA itself does not allege that it owns the right to drill into and produce from a pool in the affected unit. Therefore, it is not an owner or an uncommitted owner and cannot be permitted to intervene and participate as a party.

The Legislature’s intent that parties to an integration proceeding be limited to uncommitted owners is further demonstrated within other subsections of Idaho Code § 47-328. Idaho Code § 47-328(4) provides that the Administrator’s decision “may be appealed to the commission by the applicant *or any owner* who filed an objection or other response to the application within the time required.” Since only uncommitted owners can file an objection or other response to an integration application, uncommitted owners are the only owners who are permitted to file an appeal in these proceedings. Also, Idaho Code § 47-328(3)(c) provides that for applications that are not integration or unit operations, “the department and any uncommitted owner within the area defined in the application may file objections or other responses to the application.” Idaho Code § 47-328(3)(c) does not use a limiting word like “only” to preclude any other persons from filing an objection or response and thus participating as a party. Thus, the Oil and Gas Act does not impose Idaho Code § 47-328(3)(b)’s uncommitted owner limit on certain other types of proceedings, including spacing applications.

In sum, Idaho Code § 47-328(3)(b) statutorily limits those who can participate in an evidentiary hearing for an integration application to “uncommitted owners.” CAIA does not claim to be an uncommitted owner. No evidence has been submitted that shows there are uncommitted mineral interest owners in the proposed unit that are not already participating in the matter that are represented by CAIA. The individual CAIA members that are uncommitted mineral interest

owners in the affected unit are already represented in this proceeding and participating in the proceeding as individual parties. Thus, their interests are already represented in the matter as they have the rights of parties. CAIA is still able to participate in the proceeding as a public witness, with the rights articulated in IDAPA 04.11.01.355.

ORDER

Snake River's motion to determine CAIA is not a party is GRANTED and CAIA's Petition to Intervene is DENIED.

Dated this 15 day of September 2021.



Richard "Mick" Thomas

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

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2021. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Snake River Oil & Gas LLC
c/o Michael Christian
Smith + Malek
101 S. Capitol Blvd, Suite 930
Boise ID 83702

Email: mike@smithmalek.com
morgan.burr@smithmalek.com

Kristina Fugate
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

Email: kristina.fugate@ag.idaho.gov

Joy Vega
Deputy Attorney General
PO Box 83720
Boise ID 83720-0010

Email: joy.vega@ag.idaho.gov

Mick Thomas
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

Email: mthomas@idl.idaho.gov

James Thum
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

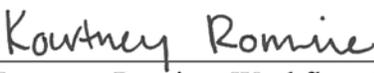
Email: jthum@idl.idaho.gov

James Piotrowski
Piotrowski Durand, Pllc
1020 W. Main St., Suite 440
P.O. Box 2864
Boise, ID 83701

Email: james@idunionlaw.com
Molly@idunionlaw.com

Stephanie J. Bonney
MSBT Law, Chtd
7699 W Riverside Dr.
Boise, ID 83714

Email: sjb@msbtlaw.com



Kourtney Romine, Workflow Coordinator