

**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 1/2 of the SE 1/4 of Section 9, )  
the SW 1/4 of Section 10, N 1/2 of the N 1/2 of the )  
NW 1/4 of Section 15, and the N 1/2 of the NE 1/4 )  
of the NE 1/4 of Section 16, Township 8 North, )  
Range 5 West, Boise Meridian, Payette County, )  
Idaho. )  
Snake River Oil and Gas, LLC, Applicant. )

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

**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 1/2 of the SE 1/4 of Section 9, the SW 1/4 of Section 10, N 1/2 of the N 1/2 of the NW 1/4 of Section 15, and the N 1/2 of the NE 1/4 of the NE 1/4 of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The Minerals, Public Trust, and Oil & Gas Division Administrator (“Administrator”) of the Idaho Department of Lands (“Department”) subsequently issued a May 5, 2021 *Order Vacating Hearing, Order Setting Hearing to Determine “Just and Reasonable” Factors, and Notice of Hearing and Setting Filing Deadlines* that set and noticed a June 21, 2021 hearing to determine “just and reasonable factors” and established briefing deadlines for that hearing.<sup>1</sup>

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<sup>1</sup> The June 21, 2021 hearing to determine “just and reasonable factors” was set to comply with the United States District Court for the District of Idaho’s order to “hold a new hearing that complies with due process by explaining the factors that will be considered when determining whether the terms and conditions of an integration order are “just and reasonable” under Idaho Code § 47-320(1).” *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F.Supp.3d

Briefs were received from Snake River, the Department, Dale Verhaeghe, Linda Dernoncourt, Sharon Simmons, Alan and Glenda Grace, Edward and Cheryl Adair, William and Roxie Tolbert, Wendell and Normal 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, Tim Kilbourne, Kate Kilbourne (collectively “Nonconsenting Owners”)<sup>2</sup>, and Citizens Allied for Integrity and Accountability (“CAIA”). Additional written comments were received from Tyler Hartung, Jeremy Davis, and Irene Shaver. On June 21, 2021, the Administrator held a hearing in Fruitland, Idaho on the factors used to determine “just and reasonable.” The following persons argued at the June 21, 2021 hearing: Michael Christian, attorney for Snake River, Deputy Attorney General Joy Vega, attorney for the Department; and James Piotrowski, attorney for CAIA and Nonconsenting Owners. Stephanie Bonnie, attorney for the City of Fruitland, attended the hearing but did not argue.

The Administrator issued an *Order Determining “Just and Reasonable” Factors* on July 20, 2021. He determined first that the broad requirement for an integration order to be on “just and reasonable” terms does not include authority to award additional compensation beyond statutory requirements and integration will not be denied when uncommitted owners’ economic risks exceed

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1216 (D. Idaho 2018). The Oil and Gas Conservation Commission decided at its April 23, 2019 meeting that prior to holding an evidentiary hearing on the merits of an integration application pursuant to Idaho Code § 47-328(3)(d), the Administrator would hold a hearing and issue a ruling identifying the factors to be considered.

<sup>2</sup> Karen Oltman is listed as a nonconsenting owner in Nonconsenting Owners’ brief but is not included as an uncommitted owner in the resume of efforts. No evidence establishes that she is an uncommitted owner in the spacing unit, including that no address, tract number, or evidence about her ownership was provided in briefing or at hearing. Nor did Karen Oltman make any request for intervention. As a result, the Administrator determines that she is not an uncommitted owner included as a “Nonconsenting Owner.”

benefits. This was because the Legislature made integration mandatory upon meeting certain statutory requirements. Further, an integration order's terms and conditions must be within the Commission's statutory authority and be consistent with the Oil and Gas Conservation Act's purposes. The Administrator then determined that he would consider the following factors:

1. Are the proposed terms addressed in another source of law?
2. Are the proposed terms and conditions (a) consistent with industry standards; (b) consistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies; and (c) applicable to the unit and its operations?
3. Are the proposed terms and conditions similar to other agreements within and nearby the unit? If a proposed term is not similar, is there a reason why a different term or condition is appropriate?
4. Are any proposed terms, including those addressed at drilling, equipping, and operating the well, consistent with the Oil and Gas Act and necessary given site-specific conditions?
5. Will the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation?
6. If the proposed operation includes use of uncommitted owners' surface estate, is the operator's compliance with Idaho Code § 47-334 adequate to protect the surface owner?
7. Do the unit's circumstances and operations require additional bonding with the Department?
8. Does the integration order ensure that integrated owners that do not choose to participate as an owner retain the private right of action against the operator for any future harms?

On July 20, 2021, the Administrator issued a *Notice of Evidentiary Hearing and Notice of Prehearing Conference*, which was mailed to all uncommitted owners. On August 3, 2021, the Administrator issued an *Amended Notice of Evidentiary Hearing and Notice of Prehearing Conference*. Both documents noticed a September 16, 2021 evidentiary hearing, a September 2, 2021 deadline for uncommitted owners to file objections or other responses, and a September 2, 2021 deadline for prehearing motions. Aside from the briefs, comments, and motions filed by

Nonconsenting Owners and CAIA prior to the June 20, 2021 *Hearing to Determine “Just and Reasonable” Factors*, no additional objections or other responses were filed by uncommitted mineral interest owners. On September 2, 2021, Snake River Oil and Gas, LLC (“Snake River”) filed a *Motion for Order Determining CAIA is Not a Party*.

On September 8, 2021, a telephonic prehearing conference was held. Attendance at the prehearing conference was mandatory for those who intended to participate in the evidentiary hearing. The following persons participated in the Prehearing Conference: Michael Christian, attorney for Snake River; James Piotrowski, attorney for CAIA and Nonconsenting Owners; Joy Vega, Deputy Attorney General for the Department; James Thum, Oil and Gas Program Specialist for the Department, and Stephanie Bonnie, attorney for the City of Fruitland.

Prior to the evidentiary hearing, the Administrator granted Snake River’s *Motion for Order Determining CAIA is Not a Party*. CAIA had responded to Snake River’s motion and also petitioned to intervene as a party. The Administrator determined that Idaho Code § 47-328(3)(b) did not allow those who were not uncommitted owners to participate as a party, but CAIA could participate as a public witness. Therefore, he denied CAIA’s petition to intervene.

On September 16, 2021, the Administrator held the evidentiary hearing on Snake River’s integration application at 9:00am in Fruitland, Idaho with Zoom videoconference appearances available. Michael Christian represented Snake River and appeared in person. Richard Brown, partner in Weiser-Brown Oil Company,<sup>3</sup> testified in person. Wade Moore III, Snake River’s landman, testified in person. David Smith, Snake River’s geologist, testified via videoconference. James Piotrowski represented the Nonconsenting Owners<sup>4</sup> appeared via videoconference. Julie

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<sup>3</sup> Weiser-Brown Oil Company is the sole member of Snake River Oil and Gas.

<sup>4</sup> Sharon Simmons, one of the Nonconsenting Owners, also provided a comment in person at the conclusion of the hearing.

Fugate, Fruitland landowner and CAIA member, testified via videoconference. Chereese McClain, attorney for City of Fruitland, appeared via videoconference. Deputy Attorney General Joy Vega represented the Department and appeared via videoconference.

All participating parties were provided with an opportunity to present testimony and evidence. They were also provided the opportunity to present opening and closing statements, and cross examine witnesses. The Administrator also asked questions of the witnesses. The following exhibits were admitted: Exhibits SR-1, Snake River's integration application; SR-2, Excel spreadsheet of Snake River's resume of efforts; SR-3, May 10, 2021 letter from Michael Christian to James Thum; SR-4, a plat of the spacing unit showing the Fallon #1-10 well; SR-5, a corrected plat showing the spacing unit boundary; SR-6, a corrected form of lease; and IDL-1, a demonstrative map of the field.

The Administrator held a separate session for public witness comments at 6:00pm the same day as the evidentiary hearing. That session was held in Fruitland with a Zoom videoconference option. Sharon Simmons, uncommitted mineral interest owner, participated in person. Shelly Brock, President of CAIA, participated via video conference. Julie Fugate, CAIA member and Fruitland landowner outside of the spacing unit, participated via videoconference. Wild Idaho Rising Tide participated via videoconference. Wild Idaho Rising Tide commented that they were unable to review the record before the public witness session and therefore could not provide written comment at this time. The Administrator stated that he would allow written public comments to be submitted by 5:00pm on Friday, September 17, 2021. No written public comments were received by that deadline.

The Administrator considered the testimony presented and the exhibits received into evidence and hereby makes the following findings of fact, conclusions of law, and order in this matter:

### **FINDINGS OF FACT**

1. On April 26, 2021, Snake River filed an application to integrate all uncommitted mineral interest owners in the spacing unit consisting of the E 1/2 of the SE 1/4 of Section 9, the SW 1/4 of Section 10, N 1/2 of the N 1/2 of the NW 1/4 of Section 15, and the N 1/2 of the NE 1/4 of the NE 1/4 of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The proposed unit is approximately 300 acres.
2. Snake River is the applicant and proposed operator of the unit. SR-1 p. 1.
3. Snake River certified that it mailed its application, supporting documents, and notice of the hearing date to all uncommitted owners within the spacing unit on April 30, 2021. *5/5/21 Proof of Mailing.*
4. The Department requested additional information from Snake River regarding the application on May 3, 2021.
5. Snake River responded with a letter to the Department containing the requested information on May 10, 2021. Several documents were attached to the letter: (1) a plat map showing uncommitted tracts that were keyed to numbers in the resume of efforts; (2) maps from the Fallon #1-10 well permit application; and (3) an amended form of lease correcting certain errors.
6. Nonconsenting Owners are uncommitted owners in the unit who filed an objection or other response to Snake River's application. They filed a May 28, 2021 statement of position regarding the appropriate factors to be addressed or considered in establishing "just and

reasonable” lease terms for mineral rights owners.<sup>5</sup> They did not submit any additional objection or response after the *Order Determining “Just and Reasonable” Factors* was issued. They participated in the evidentiary hearing through their attorney.<sup>6</sup>

7. Snake River’s application included a cover letter and six exhibits (Exhibits A-F.)

The cover letter contains sections addressing (1) Snake River’s name and address; (2) a description of the spacing unit; (3) geological statement concerning the likely presence of hydrocarbons; (4) statement that the proposed drill site is leased; (5) statement of proposed operations for the spacing unit and the proposed operator’s name and address; (6) a proposed joint operating agreement (“JOA”) and lease form; (7) a list of the names and addresses of all uncommitted owners in the unit; (8) information related to Idaho Code § 47-320(6)’s conditions for granting an integration order when the proposed operator has leased greater than 55% of mineral interest acres in the unit but less than 67% of mineral interest acres in the unit; (9) a declaration stating the highest bonus paid to a leased owner in the unit prior to filing the application; (10) a resume of efforts; and (11) Snake River’s proposed terms of integration. SR-1 pp. 1-8 and pp. 113. Snake River’s proposed terms of integration included a request for:

- a 300% risk penalty for nonconsenting owners;
- a 1/8 royalty for those leased and deemed leased;
- a \$100 bonus payment per net mineral acre;

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<sup>5</sup> Non-consenting Owner Linda Dernoncourt also submitted her own comments in advance of the June 21, 2021 Hearing on Determining “Just and Reasonable” Factors.

<sup>6</sup> Sharon Simmons is one of the Non-Consenting Owners, and she also participated in the evidentiary hearing by commenting after evidence was presented. She also participated in the evening public witness session.

- a five-year primary term with a three-year renewal option to extend the primary term;
- 15 days for uncommitted owners to make the election; and
- the integration order applies to any unknown spouse, devisee, personal representative, successor or assign of all parties subject to this order.

Exhibit A is a plat map of the unit with uncommitted owners' tracts identified with shading and a number that corresponds with their name and address on the resume of efforts. SR-1 p. 9.<sup>7</sup> Exhibit B is a declaration from Wade Moore III, Landman for Snake River. SR-1 pp. 10-13.<sup>8</sup> Exhibit C is the proposed JOA. Exhibit D is the proposed lease form. SR-1 pp. 14-68; 69-72. Exhibit E is the Resume of Efforts. SR-1 pp. 73-112. Exhibit F is a sample form letter that is similar to letters Snake River sent to uncommitted mineral interest owners as part of its offer to lease. SR-1 p. 113.

8. Snake River's application contained a geologic statement paragraph that referred to the November 5, 2020 *Findings of Fact, Conclusions of Law, and Order* ("Spacing Order") in Docket No. CC-2020-OGR-01-001. The geologic statement also referred to the existing Fallon 1-10 well. That well completion report was filed with the Department on June 25, 2018, and the production test showed 41 bbls of condensate and 3,330 MCF of gas per day.

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<sup>7</sup> At hearing, Snake River testified that it's application and response letter to James Thum each included plat maps with acreage that was not actually included in the spacing unit. Hr'g Tr. p. 10. Snake River submitted a corrected plat map for the hearing as Exhibit SR-5, which shows that several of the uncommitted tracts listed in the Application's plat fall outside of the established spacing unit. Hr'g Tr. p. 11.

<sup>8</sup>Wade Moore's declaration stated this was a proposed well. At hearing, Snake River testified that it is a "drilled well" Hr'g Tr. p. 41

9. The area is not a “resource play” involving the development of a shale resource of consistent depth and thickness over a large area, making targeting more technically complex and higher risk. SR-1, p. 6.
10. A conventional sand known as Sand B was encountered by the Fallon 1-10 from 3772’-3880’MD (3453’-3545’ TVD) with approximately 92’ of gross gas pay and 70’ of net pay.
11. The *Spacing Order* determined that there was sufficient evidence to determine that Sand B could be efficiently and economically drained by one well.
12. The order also determines that “Sand B is the common source of supply for this proposed spacing unit and that only one (1) well may be drilled to and produced from Sand B.” *Spacing Order* p. 28. Thus, the Administrator concluded that the spacing unit in Docket No. CC-2020-OGR-01-001 was established for only one source of supply: Sand B.
13. The application describes the proposed operations as producing the existing Fallon #1-10 well. It states that the well was tested in March 2018 and has been shut in since that time due to the lack of a pipeline. A gathering line has been constructed in the vicinity that connects to processing facilities for production. SR-1 pp. 2-3. The application states that operations may be similar to existing wells in the Little Willow area, and that all operations will comply with IDAPA 20.07.02. *Id.*
14. Exhibit E is Snake River’s resume of efforts. It identifies uncommitted mineral interest owners in the unit with their corresponding parcel numbers and acreages. Uncommitted owners listed in Exhibit E are: Anadarko Land Corp. (1.03, 3.17, 1.66 acres); Leslie & Margaret Gardner Trust, two parcels (7.43, 8.88 acres); Sharon M Simmons (7.80 acres); Susan R Coffman (1.05 acres); Jimmie L & Norma J Greene (1.00 acres); Lisa Herres (1.14 acres); The Jimmie R and Judy A Hicks Family Trust, Jimmie R Hicks and Judy A Hicks,

Trustees (4.50 acres); Alan R & Glenda D Grace (1.58 acres); City of Fruitland (14.10, 5.89, 23.15 and 1.12 acres); Shady River, LLC (3.06, 0.55 acres); Kenneth E Alan (1.02 acres); River Ridge Estates, LLC (8.22 acres); Robert J Boula (0.24 acres); Roland & Amelia Zobel (0.28 acres); Clair & Betty Havens Trust (0.28 acres); Michael W Crowther (0.28 acres); Michael & Tanya Folgeman (0.29 acres); Northview Ranch HOA (0.42, 1.44, 0.14 acres); Tiffany Smith & Scott Horrace (0.31 acres); Todd Baker (0.30 acres); Casey & Brandi Mordhorst (0.34 acres); Michael J & Rashelle L. Boyer (0.26 acres); Cecilia Marie Gladson & Dennis John Harmon (0.36 acres); Richard & Janel Wood (.023 acres); Mary E. Smith (0.23 acres); Hugh A & Barbara A Bullock (0.38 acres); Robert L & Bonnie McGehee (0.38 acres); Robert V Maxwell (0.22 acres); John & Janell Rochester (0.22 acres); Bob J & Patricia C Snyder (0.22 acres); The Carol S Wininger Family Trust (0.24 acres); The George and Dawna Jackson Living Trust, dated August 18, 1992 (0.24 acres); Shaun Ryan & Briar Rose Fogleman (0.24 acres); Charles E & Karen A McBee (0.24 acres); Alex Chadwell (0.24 acres); Kelly Glenn & Thaddeus Singer (0.23 acres); Chance & Miriam Poe (0.34 acres); Charles B & Keila D Mass (0.28 acres); Shane J & Meridith M Hickman (0.25 acres); James M & Cheryl A Flannery, Jr (0.21 acres); Zelda S. & Charles E. Jr. Helfrich (0.21 acres); Pelican Development LLC (0.21, 0.14 acres); Robert Mallonee & Gaylia Johannes (0.21 acres); Phillip L & Maureen E Praeger (0.24 acres); Derrick Leon Mahan & Tisha Presher (0.24 acres); Eric & Julie Rysenga (0.35 acres); Sara Ann & Marcus L Mahler (0.27 acres); Nathan D & Christine A Main (0.44 acres); Kial K & Stacy M Brotherson (0.41 acres); Alejandro & Llesenia Range (0.37 acres); Edward A. & Cheryl B. Adair (0.22 acres); Gustavo Mata Gonzalez (0.28 acres); Wendell P & Norma K Nierman (0.64 acres); Stephen P. & Laura A. Lambert (0.28 acres); Jason G. & Lori A. Hysell (0.27 acres); Larry A &

Debbie A. Butler (0.29 acres); Dale K Verhaeghe & Linda S Dernoncourt (0.29 acres); Lorinda Shuman & Samuel Burtorovich (0.29 acres); Paola Poveda Aleman & Sebastien Jean Delage (0.29 acres); Donald B & Phyllis P Gruell (0.29 acres); Gale & Beverly Gehret (0.28 acres); Jonathan & Sarah Dunbar (0.27 acres); Joseph Marasa (0.27 acres); Ambrea & Joseph Martarano (0.26 acres); Lydia & Miguel Machuca (0.32 acres); Philip Lee & Kathleen Marie Hendrickson (0.25 acres); William G & Roxie Tolbert (0.27 acres); Joshua C & Kaela M Cook (0.25 acres); Antonio G & Danielle D Anchustegui (0.25 acres); Richard & Mary Heller (0.25 acres); Mike R & Hilary Heller (0.25 acres); Lance Robert & Lauren Michelle Silva (0.25 acres); Richard L & Cheryl Lynn Addison (0.25 acres); Timothy & Katherine Kilbourne (0.25 acres); Stevan & Debra Iler (0.25 acres); and Robert & Merri Haskins (0.29 acres). SR1 pp. 74-112. Snake River's application asserted that no mineral owners were unknown or could not be located. SR-1 p. 11.

15. There were no leases signed after the application was filed. Hr'g. Tr. p. 76, ll. 7.
16. Snake River leased approximately 62% of the mineral acres in the spacing unit. SR-1, pp. 7, Hr'g Tr. p. 65, ll. 15. Snake River made at least two contacts with each of the uncommitted mineral interest owners in the two months before the application was filed. SR-1 pp. 74-112. These efforts started around December 2020 and carried over about four months through April, including contacts in February. *Id.* At least one contact attempt was made by certified mail in December 2020. SR-1, pp. 74-112. Some owners did not respond to attempted contacts by mail and phone. Hr'g Tr. p. 67, ll. 1.
17. Snake River's declaration from Wade Moore attested that Snake River "made diligent good faith efforts to lease the mineral interests in the subject spacing unit for more than 120 days prior to the filing of its integration application." SR-1, p. 11. During that time, Snake River

“leased two owners, holding a total of approximately 1.2 acres.” *Id.* at 4. Of the remaining uncommitted owners, 82 failed to respond to every attempt at contact, and four instructed Snake River’s representatives not to contact them further. *Id.*.

18. Snake River’s form offer letter to mineral interest owners (Exhibit F) stated that it “desires to reach an agreement with you pertaining to mineral rights owned by you with the intention to develop them within a gas or oil unit.” SR-1 p. 113. The offer provided a five year primary term, a \$100 per net mineral acre one-time signing bonus payment, a 1/8 royalty on marketable gas and oil for the life of the well, and an option to extend the primary term for three years at \$100 per net mineral acre. *Id.* The offer letter was included in a mailing from Snake River to uncommitted owners. Hr’g Tr. p. 66, ll. 9.
19. The well pad location for the existing Fallon #1-10 well has been leased. The location was originally leased from Fallon Enterprises. Hr’g Tr. p. 28. The parcel has recently changed owners, but the parcel is still subject to a surface use agreement for the Fallon #1-10’s surface location. *Id.* Hr’g Tr. p. 47, ll. 21.
20. All current surface use in this unit is on leased properties. Hr’g. Tr. pp. 28 ll. 9. Gathering lines for the well will be placed on leased ground. Hr’g Tr. p. 56, ll. 1.
21. The Fallon #1-10 well is directionally drilled to the south. Hr’g Tr. p. 48, ll. 15.
22. The path of the wellbore crosses land that is currently leased and land that is unleased. Hr’g Tr. p. 85, ll. 24. The wellbore transects tracts at the following True Vertical Depth (TVD).SR-4; IDL-1

(1) The wellbore begins on the leased Fallon property and continues within that tract to approximately 1214’ TVD

- (2) From approximately 1214' TVD to approximately 2198' TVD it crosses under the Payette River, which is state owned land.
  - (3) From approximately 2198' TVD to approximately 3609' TVD it crosses unleased tracts 12 and 11 owned by the City of Fruitland.
  - (4) From approximately 3609' TVD to approximately 4003' TVD it crosses the unleased tract 10 owned by Anadarko Land Corp.
  - (5) From approximately 4003' TVD to approximately 5000' TVD it crosses the unleased tract eight owned by the Hicks Family Trust.
  - (6) The wellbore terminates at approximately 5000' TVD. Pp. 7, 05/10/2021 SR Response to Info Request pp. 5-7.
23. The wellbore encountered Sand B from 3453' TVD (3772' MD) to 3545' TVD (3937' MD), SR Witness Exhibit Disclosure p. 118, IDL-1, p. 7.
  24. The Fallon #1-10 well was drilled by the previous operator while an integration order was in effect for the area. Hr'g Tr. pp. 28-29. It has never been produced, but it was tested for less than 24 hours as part of completing the well. *Id.*
  25. The highest royalty paid in the spacing unit was 1/8, and no voluntarily leased owner in the spacing unit was paid a royalty other than 1/8. Hr'g Tr. p. 22, ll. 14.
  26. Snake River's application requested a \$100 bonus be paid to leased and deemed leased owners. SR-1 pp. 3, 5. Mr. Moore's declaration stated that Snake River paid \$100 per net mineral acre for all tracts larger than one acre and a flat bonus of \$100 for lots smaller than one acre. SR-1 p. 11.
  27. Richard Brown is a partner in Weiser Brown Oil Company, the company who is the sole member of Snake River Oil and Gas. Hr'g Tr. p. 12. Richard Brown is a landman who had

been practicing for at least 40 years. *Id.* His experience includes negotiating leases and surface use agreements in seven or eight different states, including Idaho. *Id.* He is responsible for managing the day-to-day operations of Snake River, including its leasing and permitting efforts. *Id.*

28. Snake River's proposed JOA uses the 1989 version of Form 610 American Association of Professional Landmen ("AAPL") standard form. Hr'g Tr. pp. 18 ll. 7.
29. The AAPL Form 610, 1989 version has been used by many participants in the oil and gas industry in many states, including by Weiser-Brown Oil Company. Hr'g Tr. p. 18.
30. Richard Brown testified that the Form 610 has been in use his entire 40-year career. Hr'g Tr. p. 18, ll. 15.
31. Richard Brown testified that Snake River's JOA with its working interest owner operating partners provides a 500% risk penalty for nonconsenting working interest owners. Hr'g Tr. p. 20, ll. 17-21. Snake River's application states that a 300% risk penalty for nonconsenting working interest status is consistent with Snake River's JOA with its operating partners. SR-1 p. 5. Snake River's proposed JOA in its application requested a 300% risk penalty. *Id.*
32. The proposed JOA is a similar form to the JOA used in prior integrations in this area by the previous operator. Hr'g Tr. p.19. Richard Brown also testified that it also similar to the JOA formed used with over 1,000 wells for Weiser-Brown's working interest partners. *Id.* It is also a similar form to what Snake River uses with its working interest partners. *Id.* at 20.
33. Richard Brown testified that there was nothing about this unit that led him to conclude that using the proposed JOA would not be appropriate. Hr'g Tr. p. 20, ll. 6.
34. Snake River's proposed lease form (Exhibit D, SR-1 pp. 69-72) is similar to other leases that are used in the area and this unit. Hr'g Tr. p. 21, ll. 1-5; p. 21, ll. 13-15. Similar versions of

this proposed form of lease are also used in operations Richard Brown has been involved with in other states. Hr'g Tr. p. 26, ll. 21.

35. Snake River's proposed lease has special terms and conditions attached. SR-1 p. 72. One condition is that Snake River "shall not engage in drilling operations on the surface" of tracts five acres or smaller in size. SR-1, p. 72; Hr'g Tr. p. 44, ll. 25. Other operations on tracts less than five acres would be unlikely, but not impossible. Hr'g Tr. p. 44, ll. 11-15.
36. In Snake River's response to IDL's information request, Snake River included a revised lease with two changes made to the lease submitted with its application.
  - (1) On SR-1, p. 69 paragraph 1, the number ninety is written out, but the number 120 appears in parenthesis after it. Snake River clarified that the word ninety should be deleted and replaced with the word one-hundred-twenty.
  - (2) On SR-1, p. 69, the term "200 feet" should be changed to "300 feet" in reference to the setback requirements. SR Witness Exhibit Disclosure. p 109.
37. Snake River's application states that the well in the unit is a "wildcat" well in an area with limited knowledge of and experience with the geology, entailing a higher degree of risk to Applicant than a well drilled in a fully developed area. SR-1 p. 6.
38. Richard Brown testified that the risk on the well is based on its reserves. Hr'g Tr. p. 41, ll. 4.
39. When the well was drilled Richard Brown stated that his company and his partners were approximately 1/4 owner in the well. Hr'g Tr. p 34, ll. 8.
40. Snake River has not recovered any of its initial investment in the Fallon 1-10. Hr'g Tr. p 30, ll. 21-23.
41. The prior operator and majority owner, Alta Mesa, held about 65% ownership at the time the Fallon 1-10 was drilled. Hr'g Tr. p 34, ll. 15-16.

42. Snake River bought about 35% of the interest in December, 2019, prior to the bankruptcy. Hr’g Tr. p 34 ll. 21-24, p 55, ll. 21-25.
43. Snake River bought approximately 30% more in the bankruptcy. Hr’g Tr. p 34, ll. 25.
44. The cost born by Snake River at the time the well was drilled was approximately 25%. Hr’g Tr. p 35, ll. 23-25; p 36, ll. 1-2.
45. The assets of the Fallon 1-10 unit, including the Fallon 1-10 well, were purchased at a discount compared to the amount spent by Alta Mesa to develop it. Hr’g Tr. p 36, ll. 23-25; p 37, ll. 1-3.
46. In other states where Weiser-Brown operates there have been horizontal or directional wells drilled in units that were pooled or integrated. In those cases, there were wells drilled under tracts that were pooled or integrated. Hr’g Tr. p 30 ll. 4-15.
47. Richard Brown is unaware of any special compensation or consideration given to the owners of an integrated tract under which a well passes. Hr’g Tr. p 30 ll. 16-20.
48. Richard Brown testified that additional wells may need to be drilled in the Fallon 1-10 unit if the current well became uneconomic. Hr’g Tr. p. 44 ll. 16-25, p. 45 ll. 1-20.
49. David Smith testified that the reservoir is not a candidate for hydraulic fracturing. None of the 11 wells drilled in this area have been fractured. Hr’g Tr. p 95 ll. 4-20.
50. Richard Brown shared that he would agree to no hydraulic fracturing on this well. Hr’g Tr. p. 51 ll. 6-10.
51. Nonconsenting Owners requested that the Administrator ensure payment amounts, bonding, and well operation matters are just and reasonable to all uncommitted owners. Nonconsenting mineral owners requested terms that well treatments and fracking are prohibited, that surface and subsurface use of deemed leased properties be prohibited, and that bonding “should thus

be set at the very least at the current assessed values of the properties in the unit.” Hr’g Tr. p. 117 ll. 24, p. 118 ll. 1-4.

52. Nonconsenting mineral owners state that there is no evidence in the public record or elsewhere in the record of this case to indicate that the properties along what is known as Tamarack Court have leased, nor any evidence that any of them received notice of this proceeding from Snake River, from the Department or from any other party. Hr’g Tr. p 10 ll. 10-16.
53. Julie Fugate did a property search on the Payette County website and found no record of mineral leases for the homes on Tamarack Court. Julie Fugate searched the current and prior owners on the Payette County website. Hr’g Tr. p 100 ll. 11-25.
54. Julie Fugate testified that she had direct communication with some of the owners on Tamarack Court, and that those owners would neither acknowledge or deny an oil and gas lease. Hr’g Tr. p. 105 ll. 1-16.
55. Julie Fugate confirmed her research appears to show that Leroy Atwood and/or Pelican Development subdivided the property and then sold lots to builders, who then sold to the ultimate 24 homeowners. Hr’g Tr. p. 107 ll. 21-25.
56. Wade Moore testified that he was involved in preparing SR-5, the plat map that showed which tracts were leased and which were unleased. Hr’g Tr. p. 72. He and his team used the prior operator’s lease record and the Payette County document search engine. Wade Moore testified that he has personally seen the lease for the ground where Tamarack Court is, the lease predates these lots, and that he was confident that the ground was leased prior to these homes being there. Hr’g Tr. p. 72 ll. 15-25.

57. Wade Moore stated that it is possible that a lease may not show up unless someone runs a chain of title because a general search would not discover a lease granted over a larger property. Hr’g Tr. p. 77 ll. 1-23.
58. Snake River stated that there were no unknown or unlocatable mineral owners. SR-1, p. 11.
59. Four public witnesses testified at the September 16, 2021 evening hearing session. No additional public comments were submitted by the Administrator’s extended deadline of September 17, 2021.
60. This Findings of Fact, Conclusions of Law, and Order incorporates by reference the entire record in this matter and accompanying exhibits, comments from mineral owners and public witnesses, correspondence with IDL personnel, notices, pleadings, responses, and the hearing recordings.

## **CONCLUSIONS OF LAW**

### **A. The Administrator has jurisdiction over this matter**

1. The Administrator is authorized to conduct this hearing pursuant to Idaho Code §§ 47-320 and 47-328. This proceeding is governed by the Idaho Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code); Idaho Administrative Procedure Act (Chapter 52, title 67, Idaho Code); Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02).
2. The Idaho Oil and Gas Conservation Act (“Oil and Gas Act”) applies to all matters affecting oil and gas development on all lands located in the state of Idaho. Idaho Code § 47-313.

3. The Idaho Oil and Gas Conservation Commission (“Commission”) is “authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.” Idaho Code § 47-315(8). IDL is the administrative instrumentality of the Commission, and the Administrator has authority over these proceedings pursuant to Idaho Code §§ 47-314(7), 47-320, and 47-328(3).
4. Idaho Code § 47-328(3)(b) requires that for integration applications the applicant “shall send a copy of the application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located.” Snake River mailed its application and supporting documents to all uncommitted owners within the spacing unit on May 5, 2021. While Snake River has working interest owner partners, it does not have working interest mineral interest owners within the unit. The Administrator takes official notice pursuant to IDAPA 04.11.01.602 that the applicant sent a copy of the application to the respective city or county where the proposed unit is located as required by Idaho Code § 47-314(10)(a). Thus, Idaho Code § 47-328(3)(b) is met.

#### **B. Snake River bears the burden of proof**

1. The Applicant Snake River generally bears the burden of proof in this matter. “The customary common law rule that the moving party has the burden of proof – including not only the burden of going forward but also the burden of persuasion – is generally observed in administrative hearings.” *Intermountain Health Care, Inc. v. Bd. of County Comm’rs of Blaine County*, 107 Idaho 248, 251, 688 P.2d 260, 263 (Ct. App. 1984), *rev’d on other grounds* 109 Idaho 299, 707 P.2d 410 (1985).

2. Under Idaho law, “preponderance of the evidence” is generally the applicable standard for administrative proceedings, unless the Idaho Supreme Court or legislature has said otherwise. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 439, 926 P.2d 213, 215 (Ct. App. 1996). “A preponderance of the evidence means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not.” *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).
3. A court shall affirm an agency’s action unless the decision is “not supported by substantial evidence on the record as a whole; or [the decision] is arbitrary, capricious, or an abuse of discretion. Idaho Code § 67-5279(3)(d)-(e).

### **C. Notice to Uncommitted Owners**

1. Idaho Code § 47-328(3)(b) requires that for integration applications the applicant “shall send a copy of the application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located.”
2. Snake River attested that it mailed its application and supporting documents to all uncommitted owners within the spacing unit.
3. While Snake River has working interest owner partners, it does not have working interest mineral interest owners within the unit. While there is no evidence in the record of Snake River mailing the application to the respective city or county where the unit is located, the Administrator takes official notice pursuant to IDAPA 04.11.01.602 that IDL sent a copy of the application to the respective city or county where the proposed unit is located as required by Idaho Code § 47-314(10)(a). Thus, these requirements of Idaho Code § 47-328(3)(b) are met.
4. In addition to notice of the application, the applicant must document its attempts to contact uncommitted owners in a resume of efforts consistent with Idaho Code § 47-320(4)(j). That

includes documenting the applicant's "good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit." Idaho Code § 47-320 does not require that all leases be included in the application for integration.

5. Nonconsenting owners allege that certain homes along Tamarack Court did not receive notice of the application or hearing and that there is nothing in the record indicating that the owners along Tamarack Court have been leased or noticed. They support this allegation with testimony from Julie Fugate.
6. Julie Fugate is a board member of CAIA and has a master's degree in speech pathology. She testified that she did a property search on the Payette County website and found no indication that the current owners have been leased. Julie Fugate testified that she had visited the residences in question along Tamarack Court and could not verify after discussions with the residents that the property was leased or unleased for oil and gas development.
7. Snake River's landman, Wade Moore, also testified at the hearing. Wade Moore has been a Landman for eight or nine years with most of that time spent in Idaho. Tr. p. 63. He was responsible for leasing efforts in the spacing unit in this proceeding. He had three contracted employees that worked on leasing efforts. Tr. p. 64. He testified that he had personally seen the lease for this land, and that the property was leased before these homes were built. Wade Moore further testified that a chain of title is the best way to verify the status of a property because it would reveal a lease granted over a larger property. Wade Moore stated that not doing a chain of title search could possibly miss the lease status of some properties. Snake River's application stated that there were no unknown or unlocatable mineral owners.

8. Based on the recorded testimony provided by Julie Fugate and Wade Moore, the Administrator determines that there is sufficient evidence that uncommitted mineral interest owners were provided notice for the unit and contacted for the resume of efforts. Wade Moore is an experienced landman that directed efforts in the unit and prepared a map based on records that he had reviewed, which included the lease in question. He testified that these properties were leased prior to homes being built. While Julie Fugate searched some of the Payette County records, she admitted that she did not run a chain of title and she does not have training or experience in establishing a chain of title. Further, when Julie Fugate spoke to the residents along Tamarack Court, she was unable to confirm or deny the existence of a lease. None of those owners have appeared or petitioned to intervene to allege or provide evidence that they are uncommitted owners entitled to notice, despite being notified by Julie Fugate. Given Wade Moore's training and experience, his review of the lease over the property in question, which he used to base his decision not to include Tamarack Court as an unleased owner, The Administrator finds that there is sufficient evidence that Idaho Code § 47-328(3)(b)'s requirement for the applicant to "send a copy of the application and supporting documents to all known and located uncommitted owners" is met.

**D. Idaho Code § 47-320(4)(a) – (j) and Idaho Code § 47-320(6)'s requirements.**

1. Idaho Code § 47-320(4) requires that an integration application substantially contain: (a) applicant's name and address; (b) a description of the spacing unit to be integrated; (c) a geologic statement concerning the likely presence of hydrocarbons; (d) a statement that the proposed drill site is leased; (e) a statement of the proposed operations for the spacing unit, including the name and address of the proposed operator; (f) a proposed JOA and a

proposed lease form; and (g) a list of all uncommitted owners in the spacing unit to be integrated, including names and addresses.

2. Snake River's application contains Snake River's name and address, described the spacing unit; included a geologic statement; stated the drill site was leased by Fallon Enterprises; included proposed operations; included a JOA and lease form; and contained a list of uncommitted owners. Therefore, the application substantially contains the information required by Idaho Code § 47-320(4)(a)-(g).
3. Idaho Code § 47-320(4)(i) requires an affidavit stating the highest bonus payment to a leased owner in the spacing unit prior to filing the integration application. The application includes a declaration from Wade Moore III stating that the highest bonus payment in the unit was \$100 per net mineral acre for tracts over one acre. It stated that for tracts smaller than one acre a flat bonus of \$100 per acre was paid. Hence, the application meets this requirement.
4. Idaho Code § 47-320(4)(j) requires that the resume of efforts document "the applicant's good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit." At least one (1) contact must be by certified U.S. mail sent to an owner's last known address. Idaho Code § 47-320(4)(j). If any owner requests no further contact from the applicant, the applicant is "relieved of further obligation to attempt contact to reach agreement with that owner." *Id.*
5. Snake River made at least two contacts with each of the uncommitted mineral interest owners in the months before the application was filed. At least one contact attempt was made by certified mail in December 2020. SR-1, pp.74-112. Some of these efforts began as early as

2016 and continued until April 2020. SR-1, pp. 74-112. Thus, the resume of efforts meets Idaho Code § 47-320(4)(j)'s requirements.

6. Idaho Code § 47-320(4)(h) requires “An affidavit indicating that at least sixty-seven percent (67%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner.”
7. However, pursuant to Idaho Code § 47-320(6), an operator who does not meet the 67% in section (4)(h) “may nevertheless apply for an integration order” if all of the following conditions are met:
  - (a) The operator has obtained consent from at least fifty-five percent (55%) of mineral interest acres;
  - (b) The operator has negotiated diligently and in good faith for a period of at least one hundred twenty (120) days prior to his application for an integration order; and
  - (c) The uncommitted owners in the affected unit shall receive from the operator mineral lease terms and conditions that are no less favorable to the lessee than those set forth in section 47-331(2), Idaho Code.
8. Wade Moore's declaration indicated nearly 62% of the acreage was leased, which is above the minimum 55% required in Idaho Code § 47-320(6)(a). Based on the record, including Snake River's many attempt contacts included in the resume of efforts from December 2020 through April 2021 and testimony from Wade Moore, Snake River has negotiated diligently and in good faith for a period of at least 120 days prior to the application for an integration order. Thus, Idaho Code § 47-320(4)(h) is met. Snake River has stated that the uncommitted owners

in the affected unit shall receive mineral lease terms and conditions that are no less favorable to the lessee than those set forth in section 47-331(2).

**E. Integration is granted upon “terms and conditions that are just and reasonable” as required by Idaho Code § 47-320.**

1. Idaho Code § 47-320(1) provides that upon the application of any owner in a proposed spacing unit, the Administrator:

shall order integration of all tracts of interests in the spacing unit for drilling of a well or wells, development, and operation thereof and for the sharing of production therefrom.

It further provides that an integration order “shall be upon terms and conditions that are just and reasonable.” Idaho Code § 47-320(1).

2. The operations of a well upon any portion of a spacing unit under an integration order “shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof.” Idaho Code § 47-320(2). The “portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon.” *Id.*
3. The Administrator issued an *Order Determining “Just and Reasonable” Factors* on July 20, 2021. He determined first that the broad requirement for an integration order to be on “just and reasonable” terms does not include authority to award additional compensation beyond statutory requirements and integration will not be denied when uncommitted owners’ economic risks exceed benefits because the Legislature has made integration mandatory upon meeting certain statutory requirements. Further, an integration order’s terms and conditions must be within the Commission’s statutory authority and be consistent with the purposes of

the Oil and Gas Conservation Act. The Administer then determined that he would consider the following factors:

1. Are the proposed terms addressed in another source of law?
  2. Are the proposed terms and conditions (a) consistent with industry standards; (b) consistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies; and (c) applicable to the unit and its operations?
  3. Are the proposed terms and conditions similar to other agreements within and nearby the unit? If a proposed term is not similar, is there a reason why a different term or condition is appropriate?
  4. Are any proposed terms, including those addressed at drilling, equipping, and operating the well, consistent with the Oil and Gas Act and necessary given site-specific conditions?
  5. Will the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation?
  6. If the proposed operation includes use of uncommitted owners' surface estate, is the operator's compliance with Idaho Code § 47-334 adequate to protect the surface owner?
  7. Do the unit's circumstances and operations require additional bonding with the Department?
  8. Does the integration order ensure that integrated owners that do not choose to participate as an owner retain the private right of action against the operator for any future harms?
4. An integration order “shall authorize the drilling, equipping and operation, or operation, of a well on the spacing unit; shall designate an operator for the integrated unit; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest.” Idaho Code § 47-320(3).

5. Each integration order shall provide for four participation options: (1) working interest owner; (2) nonconsenting working interest owner; (3) leased; (4) deemed leased. Idaho Code § 47-320(3) articulates those options as follows:

**(a) Working interest owner.** An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into a joint operating agreement approved by the department in the integration order.

**(b) Nonconsenting working interest owner.** An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner, is a nonconsenting working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved by the department in the integration order.

**(c) Leased.** An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive no less than one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.

**(d) Deemed leased.** If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.

#### **F. Idaho Code § 47-320(3)'s terms of integration**

The Administrator is required by Idaho Code § 47-320 to establish certain economic terms.

As to the JOA, the term is the risk penalty that applies to the nonconsenting working interest

owners. Idaho Code § 47-320(3)(b). As to those leased or deemed leased, the terms are the bonus payment and royalty amount. Idaho Code § 47-320 (3)(c), (d). The risk penalty, bonus payment, and royalty payment terms are discussed below.

1. Risk penalty for non-consenting working interest owners: An operator “shall be entitled to recover a risk penalty of *up to* three hundred percent (300%)” of a nonconsenting working interest owner’s share of the cost of drilling and operating the well under the integration order’s terms. Idaho Code § 47-320(3)(b) (emphasis added). Snake River’s application proposes a 300% risk penalty for nonconsenting working interest owners. SR-1 pp. 4-6.

Nonconsenting owners argue that because the current working ownership in the well includes owners who purchased the previous operator’s interest at a discount in bankruptcy, then any award on the original costs would allow the working interests to receive more than they have the right to acquire. Hr’g Tr. p. 33-39. They also argue the risk penalty should be lower because the well is already drilled and capable of producing. *Id.* at 40-41.

Weiser Brown bore approximately 25% of the actual costs of drilling the well. The remaining costs were bore by other partners, who have since been bought out in purchases shortly before and then after the majority owner filed bankruptcy in early 2020. The true costs of development for the Fallon 1-10 that was bore by Weiser Brown is unknown, however this amount is less than the actual costs bore by the combined ownership group at the time of well completion.

The Administrator determines that a 300% risk penalty should be based on a combination of the 25% of actual costs spent by Weiser Brown when the well was completed, and the amount spent by this group to acquire the remaining ownership of the well and whatever amount is paid going forward for their share of operation expenses. The record indicates that Weiser Brown acquired the remaining ownership of the well for an amount less than what was paid for

completion. This amount, plus the 25% noted above, combined with the amount paid since acquisition for operating expenses should be used to determine the cost of the well and therefore the amount the 300% risk penalty applies to.

In other words, the working interest owners who bought an interest from a prior operator for the already-drilled well should be entitled to a risk penalty only on the amount they actually spent. Those who already had the 25% working interest in the well when it was drilled are entitled to the risk penalty on the amount they spent.

A 300% risk penalty is appropriate for several reasons. The 300% risk penalty requested is lower than the 500% risk penalty provided in the JOA for Snake River's current working interest owners. This means that a 300% risk penalty gives nonconsenting owners more favorable terms than those who are currently working interest owners. Richard Brown testified that the well is located in an area where there is limited knowledge and experience with the production potential. Additionally, Richard Brown testified that the risk of the well is based on its reserves. Hr'g Tr. p. 41, ll. 4. These points add a higher degree of risk for Snake River. While Richard Brown noted that risk penalty on an already drilled well varies, he has seen 300% risk penalties where a well had been drilled. *Id.* at 41-42. Also, there are additional mobilization and operating expenses because well service contractors are largely unavailable locally and drilling rigs are sourced from outside the area. For these reasons, the Administrator determines that the 300% risk penalty is appropriate and "just and reasonable."

2. Bonus payment for leased and deemed leased: Leased and deemed leased owners shall receive the "highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application." Idaho Code § 47-320 (3)(c), (d). This is supported by the application requirement of an "affidavit stating the highest bonus payment

paid to a leased owner in the spacing unit . . . prior to filing the integration application.” Idaho Code § 47-320(4)(i). Snake River’s application requests a \$100 bonus payment per acre for leased and deemed leased owners. SR-1 pp. 3, 5. It was accompanied by a declaration from Wade Moore stating that Snake River paid \$100 per net mineral acre for all tracts larger than one acre and \$100 flat bonus payment for lots smaller than one acre. Thus, it is determined that the bonus payment for those leased and deemed leased shall be \$100 per net mineral acre for all tracts larger than one acre and \$100 flat bonus payment for tracts less than one acre.

3. Royalty Payments for Leased owners: Idaho Code § 47-320(3)(c) provides uncommitted owners with the option to enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The statute dictates that royalty paid to a leased owner shall be “no less than one-eighth (1/8) royalty.” Idaho Code § 47-320(3)(c). This allows the Administrator to set a royalty higher than 1/8 for uncommitted owners who elect to sign the lease, but he cannot set a royalty lower than 1/8. Those deemed leased are always paid a 1/8 royalty. Idaho Code § 47-320(3)(d).

Based on the evidence in the record regarding royalties paid to others leased in the same unit and the royalty paid to those in nearby units, the Administrator determines that those selecting the “leased” option shall be paid a 1/8 royalty. A royalty of 1/8 was paid to all other leased mineral interest owners in the unit. Further, mineral interest owners in surrounding areas also have leased their oil and gas rights for a 1/8 royalty. Nonconsenting owners did not request a different royalty rate or present any evidence of differing royalty rates nearby or unique circumstances in this unit that would indicate that the royalty rate should be adjusted. Therefore, the Administrator finds that a 1/8 royalty is appropriate and a “just and reasonable” term to include for leased owners.

## **Factors Used to Determine “Just and Reasonable”**

All factors used to determine “just and reasonable” terms are listed below and used to evaluate the proposed JOA and proposed lease in general along with several specific terms in the proposed lease.

### **Factor 1: Are the proposed terms addressed in another source of law?**

The Administrator will consider whether a proposed term is already addressed by another entity and whether a proposed term is already addressed by a Department permit. No evidence was presented about whether a term proposed was already addressed by another entity, including any local ordinances to protect public health, safety, and order. As to Department permits, the Fallon 1-10 well has already been permitted, completed, tested, and has a well number USWN 11-075-20032. SR-1, p 2. The Fallon 1-10 application included the location of the nearest water supply; the type of tools and logging program; the proposed target depth and target formations; details on casing and cement; the drilling plan; erosion and sediment control; and reclamation plan. *See* IDAPA 20.07.02.200.04.b-j. The Department evaluated the operator’s specific plan as to how the well would be equipped, drilled, and operated; the potential impacts of that plan; and the specific location of the well. After that evaluation, the Department included conditions directed at ensuring 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. IDL Opening Brief, p 6.

Nonconsenting owners ask that the Administrator impose a condition that prohibits well treatments and hydraulic fracturing. A well treatment is defined as “actions performed on a well to acidize, fracture, or stimulate the target reservoir.” IDAPA 20.07.02.010.60. IDAPA 20.07.02.010.26 defines hydraulic fracturing as “a method of stimulating or increasing the

recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir.” Thus, hydraulic fracturing is always a well treatment, but well treatments are not always hydraulic fracturing. Snake River testified hydraulic fracturing had never been used in Idaho, and Richard Brown testified that he would agree to a term that on hydraulic fracturing could occur on this well. Hr’g Tr. p. 51. Given that agreement, the Administrator imposes a term that no hydraulic fracturing can be used on this well.

However, this does not prohibit well treatments that are not hydraulic fracturing. Well treatments are authorized under the Idaho Oil and Gas Conservation Act, but they must follow the requirements set forth in statute and rule. Other than stating general concerns about directional drilling and a belief there could be an impact on home values, nonconsenting owners did not provide any evidence of specific threats of harm from a well treatment on this well. In a conventional well such as the Fallon 1-10, well treatments designed to remove scale and maintain flow of the perforations can be useful in order to extend the life of the well, thereby improving the production potential and reducing the need to drill additional wells. Because well treatments are authorized in existing law, this factor weighs towards finding allowance of well treatments as a just and reasonable term.

**Factor 2: Are the proposed terms and conditions (a) consistent with industry standards; (b) consistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies; and (c) applicable to the unit and its operations?**

The Administrator will consider industry standards terms and conditions, the consistency of those standards, and how those standards apply to this particular unit.

*Proposed JOA*

Snake River's proposed JOA is the AAPL Form 610, the 1989 version, which has been used in the oil and gas industry in many states. This JOA has been used in other states by Weiser-Brown.

The proposed JOA is a similar form to the JOA used in prior integrations in this area by the previous operator. Snake River was a working interest owner with the prior operator, which also indicates that Snake River itself found these terms to be reasonable. Richard Brown testified that there was nothing about this unit that led him to conclude that using the proposed JOA would not be appropriate. Those who choose this option would be able to participate on the same basis as the existing working interests, except with a more favorable risk penalty of 300% versus the 500% risk penalty used with Snake River's partners.

Aside from what was discussed in the risk penalty section earlier, nonconsenting owners did not propose alternate terms to the JOA or present any evidence that the JOA differed from industry standards. They did not present any evidence that the JOA was inconsistent with terms previously accepted or rejected by courts or other oil and gas administrative agencies. They also did not claim the JOA was not applicable to the unit or its operations or present any related evidence.

Thus, applying this factor to the evidence presented weighs towards to the conclusion that Snake River's proposed JOA is "just and reasonable" because the proposed JOA is (a) consistent with industry standards, both in Idaho and other states; (b) employs similar terms as those the operator had agreed to when it was a working interest owner; and (c) has terms applicable to the unit and its operations.

*Proposed Lease*

Snake River's proposed lease is similar to other voluntary leases that Snake River has taken in the area and unit. Similar versions of this proposed lease are also used in operations Richard Brown has been involved with in other states. This indicates that these lease terms are industry standards. All evidence in the record establishes that these terms are commonly used in the industry, which weighs towards finding that these terms are "just and reasonable." The applicability of certain lease terms to the unit and its operations as discussed further in Factor 4, below.

**Factor 3: Are the proposed terms and conditions similar to other agreements within and nearby the unit? If a proposed term is not similar, is there a reason why a different term or condition is appropriate?**

*Proposed JOA*

Richard Brown testified that the proposed JOA was similar to the JOA used with Weiser Brown's working interest partners except for the proposed JOA had a lower risk penalty of 300%. This lower risk penalty is appropriate for the reasons discussed above. Thus, this factor also weighs towards determining the JOA is "just and reasonable."

*Proposed Lease*

Snake River's witnesses also testified that the proposed lease was similar to other voluntary leases signed in the unit and surrounding area. Nonconsenting owners proposed alternate terms about increased bonding, as well as prohibiting hydraulic fracturing, well treatments, surface occupation, and subsurface occupation, but did not present any evidence that those terms were similar to any voluntary leases signed in the unit and surrounding area. Thus, the evidence in the record indicates that the terms in these leases were similar to other voluntary leases in the unit, as well as leases in the surrounding area. Because the JOA and lease contain terms that are similar to many other voluntary agreements in the unit and surrounding area, that aspect of this factor weighs

towards finding the proposed terms “just and reasonable.” Whether there are reasons a different term might be appropriate are discussed in Factor 1, 4, and 5, below.

**Factor 4: Are any proposed terms, including those addressed at drilling, equipping, and operating the well, consistent with the Oil and Gas Act and necessary given site-specific conditions?**

Nonconsenting owners argued in their “just and reasonable” factors brief that Idaho Code § 47-320 required the Administrator to articulate “whether a well is authorized to be drilled, and which precise well is authorized; how the well will be drilled, by what methods; how the well will be equipped once drilled; and how the well will be operated.” *NC Owners Br.* p. 3. Nonconsenting owners proposed alternate terms about increased bonding, as well as prohibiting hydraulic fracturing, well treatments, surface occupation, and subsurface occupation.

*Authorizing Additional Wells*

Snake River did not argue that the integration order should provide for multiple wells to be drilled beyond the one well currently proposed. However, they did discuss that possibility that future wells might be drilled in the unit. Indeed, Idaho Code § 47-320(1) leaves open the possibility an integration order may be for more than one well when it provides that integration can be ordered “for drilling or a well or wells, development and operation thereof and for the sharing of production therefrom.” However, the spacing order for this unit does not authorize multiple wells. *November 5, 2020 Spacing Order*. That order determined that that “Sand B is the common source of supply for this proposed spacing unit and that only one (1) well may be drilled to and produced for Sand B.” *Spacing Order* p. 28. Thus, the Administrator established the spacing unit in Docket No. CC-2020-OGR-01-001 for only one source of supply: Sand B. *See Spacing Order* p. 28.

While additional sources of supply may be discovered later, Snake River will have to establish spacing units for those sources of supply. This is because the spacing unit is not a state-wide spacing unit composed of a pre-established single governmental section. *See Idaho Code §*

47-317. Instead, this unit is made up of parts of four quarter sections from different statewide units, which necessitated a spacing order unique to this unit and a certain common source of supply. Further, if Snake River decided it needed to drill another well to the same source of supply in this same unit, then it would need to make a request through the appropriate administrative process to do so and obtain authorization. Either way, neither is proposed or authorized at this time: this spacing unit only relates to one well drilled to Sand B. Thus, the integration order is limited to one (1) well in the spacing unit and the Administrator determines it would not be a “just and reasonable” term to authorize any additional wells in the integration order at this time.

*How the well will be Drilled, Equipped; and Operated*

Snake River’s application notes that all operations will be conducted in compliance with IDAPA 20.07.02. The lease also provides that “all operations conducted under this Lease, including permitting, drilling, production, pooling, and unitization, plugging and abandonment of wells, and surface reclamation, shall be done pursuant to and in accordance with applicable federal, state, and local rules and regulations.” SR-1 p. 72. Thus, both the lease and Snake River’s application acknowledge the necessity of compliance with the Oil and Gas Act and rules, which establishes some basic requirements of operations.

In addition, a JOA dictates how the working interest owners for a well interact, including how the well is operated. For example, the JOA includes provisions that outline notice and reporting for drilling and testing operations, the priority of operations, and how expenses and revenues from the well are shared. A JOA governs those who choose to be a working interest owner or a nonconsenting working interest owner. Thus, those that choose to participate by agreeing to the JOA can be involved in operational decisions pursuant to the JOA.

The lease and JOA address subsequent operations that comply with Idaho law. For this unit, the additional operation terms proposed by nonconsenting owners were prohibiting well treatments and hydraulic fracturing. As discussed in Factor 1, the Administrator imposes a term that no hydraulic fracturing will occur. However, given that well treatments are authorized by law and can be needed in this reservoir for the treatment of scale or to maintain the flow through perforations, it is not appropriate to prohibit well treatments that are not hydraulic fracturing. Thus, this factor weighs towards finding the terms regarding operations, drilling, and equipping the well to be “just and reasonable.”

*Three-year primary term with a three-year renewal option.*

Snake River’s proposed lease includes a three-year primary term with a three-year renewal option to extend the primary term. Richard Brown testified that some leases in the area have a longer term of five years for the primary term with a three-year extension. Hr’g Tr. p. 22, ll. 1-4. Because other leases in the unit and area have a similar primary term, as well as the fact that this is an exploratory field that may take additional time and resources to initiate development, the Administrator determines that three years for a primary term is a “just and reasonable” term.

However, the three-year renewal term is not a “just and reasonable” term given the particular circumstances of this unit. The renewal term Snake River requests provides that it can extend the primary term to six years with a payment of \$100 per mineral acre. If Snake River chooses to exercise this option “it shall be considered for all purposes as though this Lease originally provided for a Primary Term of Six (6) years.” SR-1 p. 72. Snake River requests the option for this longer term despite the fact that this well is already drilled and has been shown to be viable. Hr’g Tr. p. 40, ll. 19-24. Indeed, Richard Brown testified that the well could be connected to an already in place rise and ready to sell within 10 to 15 days. Hr’g Tr. p. 56. If

production begins within the next three years, there does not need to be a need for a renewal option that would extend the primary term to six years. Further, a renewal option also makes it more difficult to discern whether the primary term has expired because the renewal is at Snake River's discretion and payment. Additionally, certainty of when a primary term expires is important for the Department as well as those uncommitted owners. Thus, the Administrator determines that a renewal term to extend the primary term is not "just and reasonable."<sup>9</sup>

#### *Shut-in Royalty Clause*

Snake River's proposed lease includes a shut-in royalty clause in paragraph 4. SR-1 p. 69.

That paragraph provides:

Where Gas from a well capable of producing Gas, or from a well in which dewatering operations have commenced, is not sold or used after the expiration of the primary term, Lessee shall pay or tender as royalty to Lessor at the address set forth above One Dollar (\$1.00) per year per net mineral acre, such payment or tender to be made on or before the anniversary date of this Lease next ensuing after the expiration of ninety (90) days from the date such well is shut in or dewatering operations are commenced and thereafter on or before the anniversary date of this Lease during the period such well is shut in or dewatering operations are being conducted. If such payment or tender is made, it will be considered that Gas is being produced within the meaning of this lease. Failure to properly or timely pay or tender such shut in royalty shall render Lessee liable for the amount due but shall not operate to terminate this lease.

This provision essentially allows the lease to be held in perpetuity after the primary term for \$1.00 a year per net mineral acre without any production. In addition, the operator's failure to timely pay does not operate to terminate the lease.

In the Administrator's experience, operators can use a term like this to hold a lease during times of economic uncertainty when market prices decline, and production is not economic. Other leases in the unit and area have a similar term. Additionally, this is an exploratory field that may

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<sup>9</sup> This determination does not alter the operator's ability under the lease to hold the unit by production.

require additional time and resources to best produce the well and do so efficiently. For these reasons, the Administrator determines that having a shut-in royalty is a “just and reasonable” term. However, to foster, encourage, and promote the development, production, and utilization of oil and gas consistent with Idaho Code § 47-311, to ensure production is resumed in a reasonable time, and to ensure certainty in the term of the order for both the Department and mineral interest owners, the Administrator determines it is “just and reasonable” in this unit to limit the term of the shut-in royalty to one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit. After either of the above time periods is reached the integration order will be terminated.

**Factor 5: Will the proposed operations, including the drill site, physically occupy the property of uncommitted owners, and are any additional terms necessary to address physical occupation?**

*Surface*

Snake River’s application provides that no drilling activities will occur on the surface of the integrated acres under five acres in size. SR-1 p. 7. However, the proposed lease does not broadly address all integrated acres, but instead limits drilling operations on only integrated acres of a certain size. The lease provides that “if Leased parcels are 5.0 acres or smaller in size, Lessee shall not engage in drilling operations on the surface of the leased premises.” SR-1, p. 72.<sup>10</sup> Otherwise, the proposed lease provides that Snake River “shall have the right to use only so much of the Leased Premises as is reasonably necessary for the full exercise of the purpose of this Lease.”

Despite Snake River’s proposed lease allowing surface use for parcels greater than five acres owned by uncommitted owners, Snake River testified at hearing that its planned surface uses would be covered under existing surface use agreements and not need to physically occupy or use

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<sup>10</sup> Several integrated parcels are greater than five acres in size.

the surface of unleased parcels. Instead, those activities would take place on parcels that are already leased. Given Idaho Code § 47-420(4)(d)'s requirement to have the "drill site" leased and that Snake River does not identify a need to physically occupy the surface of uncommitted owners, the Administrator determines that it would be "just and reasonable" to include a condition in the integration order that no drilling activities or physical occupation will occur on the surface of any deemed leased owners.

### *Subsurface*

Nonconsenting owners propose a term prohibiting subsurface occupation of deemed leased tracts. The Fallon #1-10 wellbore crosses the subsurface property of certain uncommitted owners at approximately 2198' Total Vertical Depth (TVD) and continues below uncommitted owners estates until reaching bottom hole at approximately 5000' TVD.

Idaho Code § 47-320's statutory language requires that after integration, all tracts are treated as a common interest for drilling, development, operation, and sharing of production. Idaho Code § 47-320(1) provides that upon meeting certain requirements, the Commission "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*." Idaho Code § 47-320(1) (emphasis added). Idaho Code § 47-320(2) explains the implications of forced pooling further, stating "all operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, *shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof*." In other words, operations on one tract in the unit are the same as operations on another tract in the unit owned by a different owner. Functionally, the statute "deems" every tract in the unit as having a common interest in drilling and operating the

well. Idaho Code § 47-320(2) goes on to explain how that applies to production of oil and gas from the unit. It provides that “[t]hat portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes to have been actually produced from such tract by a well drilled thereon.” These statutory requirements indicate that after the unit has been pooled as a common interest, the Legislature has allowed for the operation of a subsurface wellbore within all tracts, including those tracts of uncommitted owners.

Further, the Oil and Gas Conservation Act’s statutory framework creating a common interest in the unit is consistent with holdings of courts in other states analyzing similar circumstances. *See Cont’l Res., Inc. v. Farrar Oil Co.*, 559 N.W.2d 841, 846 (N.D. 1997) (holding drilling horizontal well through pooled owner’s subsurface was not a trespass when a pooling state provided the that oil and gas operations on forced pooled units are “deemed, for all purposes” to be the proper “conduct of such operations upon each separately owned tract” in the unit “by the several owners thereof.”; *Nunez v. Wainoco Oil & Gas Co.*, 488 So.2d 955, 961, 963 (La, 1986) (forced pooling “convert[s] separate interests within the drilling unit into a common interest with regard to the development of the unit and the drilling of the well” and “protect[s] private property interests, or ‘correlative rights’ of nondrilling landowners”).

This statutory approach to establish a common interest in all tracts for the development of oil and gas in a unit ensures the fulfillment of the correlative rights of each owner within the unit through the compensation terms and conditions in the order. Indeed, the Commission’s duty is to “prevent waste of oil and gas and to protect correlative rights.” Idaho Code § 47-315(1). Correlative rights are “the opportunity of each owner in a pool to produce his just and equitable share of oil and gas without waste.” Idaho Code § 47-310(4). In this case Snake River established that it was necessary for the wellbore to operate across uncommitted tracts to protect the correlative

rights of all owners within the unit. Snake River established that the wellbore's current placement was necessary to access the reserves of Sand B and give owners the opportunity to economically and efficiently produce the well. If a no subsurface occupation condition were placed on deemed leased tracts, then one owner could prohibit all other owners from having the opportunity to produce their just and equitable share of oil and gas in the unit. Thus, the Administrator determines that a condition prohibiting subsurface occupation would not be a just and reasonable term and condition for the unit.

**Factor 6: If the proposed operation includes use of uncommitted owners' surface estate, is the operator's compliance with Idaho Code § 47-334 adequate to protect the surface owner?**

As explained above, the Administrator has determined that a "just and reasonable" term would be one that prohibits drilling activities and physical occupation on the surface of any deemed leased owners. Thus, this factor does not apply.<sup>11</sup>

**Factor 7: Do the unit's circumstances and operations require additional bonding with the Department?**

Nonconsenting owners argued that the unit's circumstances and operations required additional bonding because the current bonding was inadequate. Tr. p. 117. Nonconsenting owners argued that "The bonding should thus be set at the very least at the current assessed values of the properties in the unit." Idaho Code § 47-315(5)(e) calls for:

"The furnishing of a reasonable performance bond with good and sufficient surety, conditioned upon the performance of the duty to comply with the requirements of this law and the regulations of the commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil and gas;"

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<sup>11</sup> Idaho Code § 47-334(2)'s grant of permission to enter and use surface land does "not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations." Idaho Code § 47-334(5).

The Commission's rules also allow the Department to impose additional bonding in certain circumstances. See IDAPA 20.07.02.220.04. Examples of those circumstances include non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. While the Department can assess this additional bonding independently of an integration order, the rule does not preclude the Administrator making that decision in an integration order.

Idaho Code § 47-315(5)(e)'s reference to "the drilling, maintaining, operating, and plugging of each well drilled for oil and gas;" means bonding is in place to address the ultimate plugging and abandonment of the well and reclamation of the wellsite in the event the state is left with the responsibility for drilling, maintaining, and operating the well. There is no indication that the legislature intended additional commercial, agricultural, or residential bonding to be needed beyond such funds as directly related to the well site. Additionally, at the evidentiary hearing no party presented any evidence of unusual conditions outlined in rule above. While the well is directional and well treatments are authorized, no evidence was presented that established that this well has potential excessive risk or liability. For those reasons, no bonding is required in this order.

**Factor 8: Does the integration order ensure that integrated owners that do not choose to participate as an owner retain the private right of action against the operator for any future harms?**

Richard Brown testified at hearing that he believed that Snake River's proposed lease did not affect the private right of action against the operator for owners who choose not to participate in the well. Hr'g Tr. p. 27, ll. 8-12. Several terms in the proposed lease address terms associated with liability, including Exhibit B, paragraph 3: Liability Insurance, Exhibit B, paragraph 7: Indemnification Clause, and Exhibit B, paragraph 9: Hold Harmless Clause. Richard Brown testified that he did not believe the lease had conditions that would limit the operator's liability. Hr'g Tr. p. 26 ll. 6-13. Regardless, Richard Brown's opinion on whether Snake River would or

would not accept liability is not relevant here as the operative question is whether an owner would retain any private right of action they have against the operator, not whether the operator would be successful in defending any litigation. However, to ensure that is clear, the Administrator determines it is “just and reasonable” to include a term that a deemed leased owners retain any private right of action they have in law against the operator for any future harms.<sup>12</sup>

### **Summary of Terms and Conditions Established in this Order**

Based on the “just and reasonable” factors analysis articulated above, the Administrator establishes the following additional terms and conditions:

- The proposed JOA proposed in the integration order is approved as “just and reasonable” with a 300% risk penalty of a nonconsenting working interest owner’s share of the cost of drilling and operating the well under the integration order’s terms. See risk penalty section above.
- The proposed lease is adopted as “just and reasonable” as modified by the following conditions:
  - 1/8 royalty for those leased and deemed leased.
  - \$100 bonus per mineral acre for those leased and deemed leased, with a \$100 minimum payment.
- The following terms are adopted as “just and reasonable” for those deemed leased:
  - No surface physical occupation by the operator is permitted on the lands of deemed leased owners.

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<sup>12</sup> The Administrator does not determine whether such a private right of action exists in law for certain situations with certain facts. Instead, the intent is to limit any liability limits imposed in the proposed lease.

- A three-year primary term is approved, but no renewal term to extend the primary term is permitted.
- The order will be terminated one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit. After either of the above time periods is reached the integration order will be terminated.
- No hydraulic fracturing as defined in IDAPA 20.07.02.010.26 can occur on this well.
- The operator must comply with Idaho Code §§ 47-331 (Obligation to pay royalties as essence of contract); 47-332 (Reports to Royalty Owners); and 47-333 (Action for Accounting for Royalty).
- Deemed leased owners retain any private right of action they have in law against the operator for any future harms.
- Only one (1) well is authorized consistent with the spacing order in Docket No. CC-2020-OGR-01-001. If Snake River decides to drill additional wells in spacing unit, it must use the appropriate administrative process to make that request.
- Nothing in this integration order alters any duty of care owed to uncommitted mineral interest owners and their property, and nothing in this order shall be interpreted to relieve the operator of any such duty or to shift to uncommitted mineral interest owners any risk of injury arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance by the operator.

- This order is applicable to successors or assignees of all parties, except that this order is only applicable to successor / assignee of operator when the current operator files notice with the Administrator and with Administrator approval.

## **ORDER**

Based on the reasons stated above and based on the evidence in the record, pursuant to Idaho Code §§ 47-320 and 47-328, the Administrator hereby APPROVES the integration application in Docket No. CC-2021-OGR-01-002 according to the terms and conditions requested by the Applicant Snake River as modified by the terms and conditions contained herein. To the extent that any terms and conditions in this order conflict with the terms and conditions in the proposed lease, the order's terms and conditions control.

### A. Integration.

All separate tracts within the 300-acre spacing unit in the E 1/2 of the SE 1/4 of Section 9, the SW 1/4 of Section 10, N 1/2 of the N 1/2 of the NW 1/4 of Section 15, and the N 1/2 of the NE 1/4 of the NE 1/4 of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho, are HEREBY INTEGRATED for the purposes of operating one (1) well in the spacing unit, and for the sharing of production therefrom, in accordance with the terms and conditions of this order.

### B. Designated Operator.

Snake River Oil and Gas, LLC, is the designated operator of the well to be operated within this spacing unit and has the exclusive right to drill, equip, and operate the well.

### C. Operations.

All operations, including but not limited to, the commencement, drilling, or operation on any portion of the spacing unit will be deemed for all purposes the conduct of operations each separately owned tract in the spacing unit.

D. Production Allocation.

Production allocated or applicable to a separately owned tract included in the spacing unit shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on that tract. From and after this date all production from this spacing unit is integrated and allocated among the interest owners therein according to the proportion that each mineral interest owners' net mineral acreage bears.

E. Participatory Options.

Consistent with Idaho Code § 47-320(3), the available participatory options for this spacing unit are:

- (1) Working Interest Owner. An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner' interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into the joint operating agreement approved in this order.
- (2) Nonconsenting Working Interest Owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of 300% of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective share of the production of the well and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting owners shall enter into a joint operating agreement approved in this order.
- (3) Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive a 1/8 royalty and \$100 bonus per net mineral acre with a \$100 minimum payment.

- (4) Deemed Leased. If an owner fails to make an election within the 30 days set forth in this order, such owner's interest will be deemed leased under the terms and conditions in this order. The owner shall receive 1/8 royalty and a \$100 bonus per net mineral acre with a \$100 minimum payment.

F. Election Procedure.

All uncommitted owners in the spacing unit are hereby notified that they have 30 days from and after the date of the issuance of this order to make known to the operator, Snake River Oil and Gas, LLC, which of the options above they select to participate in the integrated spacing unit. This selection shall be made in writing, and mailed to the following address:

Snake River Oil & Gas, LLC  
P.O. Box 500  
Magnolia, AR 71754-0500

A failure to notify Snake River Oil & Gas, LLC, within 30 days of this order shall result in that owner's interest being deemed leased.

G. Idaho Code § 47-331

As provided in Idaho Code § 47-331:

- The operator shall make payments in legal tender unless written instructions for payment in kind have been provided.
- Royalty shall be due on all production sold from the leased premise except on that consumed for the direction operation of the producing wells and that lost through no fault of the operator.
- If an operator fails to pay oil and gas royalties to the royalty owner or the owner's assignee within 120 days after the first production of oil and gas under the lease is marketed, or within 60 days for all oil and 90 days for all gas produced and marketed thereafter, the unpaid royalties shall bear interest at the maximum rate of interest authorized under Idaho Code § 28-22-104(1) from the date due until paid. Provided, however, that whenever the

aggregate amount of royalties due to a royalty owner for a 12-month period is less than \$100, the operator may remit the royalties on an annual basis without any interest due.

H. Idaho Code § 47-332

Each royalty payment shall be accompanied by an oil and gas royalty check stub that includes the following information, as provided in Idaho Code § 47-332: (a) Lease or well identification; (b) Month and year of sales included in the payment; (c) Total volumes of oil, condensate, natural gas liquids or other liquids sold in barrels or gallons, and gas in MCF; (d) Price per barrel, gallon, or MCF, including British thermal unit adjustment of gas sold; (e) Severance taxes attributable to said interest; (f) Net value of total sales attributed to such payment after deduction of severance taxes; (g) Owner's interest in the well, expressed as a decimal to eight places; (h) Royalty owner's share of the total value of sales attributed to the payment before any deductions; (i) Royalty owner's share of the sales value attributed to the payment, less the owner's share of the severance taxes; (j) An itemized list of any other deductions; and (k) An address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered. If information is requested by certified mail, an answer must be mailed by certified mail within 30 days of receipt of the request. All revenue decimals shall be calculated to at least eight decimal places and all oil and gas volumes shall be measured by certified and proved meters.

Additionally, the operator must maintain, for a period of five years, and make available to the integrated owners upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks,

or pools and gas lines or gas storage, and any other reports or records that the integrated owners may require to verify the gross production, disposition and market value.

I. Idaho Code § 47-333

As provided in Idaho Code § 47-332, whenever an owner of a royalty interest makes a written demand for an accounting of the oil and gas produced, but no more frequently than once every 24 months, and makes written demand for delivery or payment of his royalty as may then be due upon the person or persons obligated for the delivery or payment of the royalty, and the obligated persons then fail to make the accounting demanded and the payment or delivery of the royalty due within a period of 90 days following the date upon which the demand is made, then the royalty owner may file an action in the district court of the county wherein the lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated. In such an action, the prevailing party or parties shall be entitled to reasonable attorney's fees to be allowed by the court, together with the costs allowed to a prevailing party, pursuant to Idaho Code § 12-120.

J. Additional Terms for those Deemed Leased

- a. No surface physical occupation by the operator is permitted on the lands of those deemed leased.
- b. A three-year primary term is approved, but no renewal term to extend the primary term is permitted.
- c. Deemed leased owners retain any private right of action they have in law against the operator for any future harms.

K. No Hydraulic Fracturing Permitted

No hydraulic fracturing as defined in IDAPA 20.07.02. 010.26 can occur on this well.

L. Duty of Care

Nothing in this integration order alters any duty of care owed to uncommitted mineral interest owners and their property, and nothing in this order shall be interpreted to relieve the operator of any such duty or to shift to uncommitted mineral interest owners any risk of injury arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance by the operator.

M. Applicability.

This order is applicable to any successor or assign of all parties subject to the order, except that this order is only applicable to any successor or assign of operator when the current operator files a notice with the Administrator and obtains Administrator approval for the transfer.

N. Termination

This order will automatically terminate one year following cessation of drilling operations if no production is established or two years from the cessation of production from the unit.

**PROCEDURES AND REVIEW**

Pursuant to Idaho Code § 47-328(3)(e), the above-captioned order shall not be subject to any motion to reconsider or further review, except for appeal to the Idaho Oil and Gas Conservation Commission. Pursuant to Idaho Code § 47-328(4), this order 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. An appeal must be filed with the Administrator within fourteen (14) calendar days of the date of issuance of the Administrator's written decision. The date of issuance for those who receive a copy of the decision by mail shall be October 22, 2021 which is three (3) calendar days after the Administrator deposits the decision in the U.S. mail. The date of issuance for those who receive a copy of the decision by e-mail shall be the date that the

Administrator remits the decision electronically, which is October 18, 2021. Such appeal shall include the reasons and authority for the appeal and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings below, by certified mail, or by personal service. Any person who participated in the proceeding below may file a response to the appeal within five (5) business days of service of a copy of the appeal materials. The appellant shall provide the Administrator with proof of service of the appeal materials on other persons.

If no appeal is filed within the required time, this decision shall become a final order. Idaho Code § 47-328(6).

Dated this 18 day of October 2021.

A handwritten signature in black ink, appearing to read "Mick Thomas", written over a horizontal line.

Richard "Mick" Thomas

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of October 2021. I caused to be served a true and correct copy of the foregoing by email only addressed to the following:

Michael Christian <i>Smith + Malek</i> <i>Attorney for Snake River Oil &amp; Gas LLC</i>	<a href="mailto:mike@smithmalek.com">mike@smithmalek.com</a> <a href="mailto:morgan.burr@smithmalek.com">morgan.burr@smithmalek.com</a>
Kristina Fugate <i>Office of the Attorney General</i> <i>Deputy Attorney General</i>	<a href="mailto:kristina.fugate@ag.idaho.gov">kristina.fugate@ag.idaho.gov</a>
Joy Vega <i>Office of the Attorney General</i> <i>Deputy Attorney General</i>	<a href="mailto:joy.vega@ag.idaho.gov">joy.vega@ag.idaho.gov</a>
Mick Thomas <i>Idaho Department of Lands</i> <i>Division Administrator</i>	<a href="mailto:mthomas@idl.idaho.gov">mthomas@idl.idaho.gov</a>
James Thum <i>Idaho Department of Lands</i> <i>Program Manager</i>	<a href="mailto:jthum@idl.idaho.gov">jthum@idl.idaho.gov</a>
James Piotrowski <i>Piotrowski Durand, PLLC</i> <i>Attorney for Sharon Simmons, Alan and Glenda Grace, Edward and Cheryl Adair, William and Roxie Tolbert, Wendell and Normal 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, Tim Kilbourne, Kate Kilbourne (collectively "Nonconsenting Owners" and Citizens Allied for Integrity and Accountability ("CAIA"))</i>	<a href="mailto:james@idunionlaw.com">james@idunionlaw.com</a> <a href="mailto:Molly@idunionlaw.com">Molly@idunionlaw.com</a>
Stephanie J. Bonney <i>MSBT Law, Chtd</i> <i>Attorney for City of Fruitland</i>	<a href="mailto:sjb@msbtlaw.com">sjb@msbtlaw.com</a>
Dale K. Verhaeghe & Linda S. Dernoncourt	<a href="mailto:dernoncourt@cableone.net">dernoncourt@cableone.net</a>

Tyler Hartung

[hartungtj@gmail.com](mailto:hartungtj@gmail.com)

Jeremy Davis

[jeremy.davis12@hotmail.com](mailto:jeremy.davis12@hotmail.com)

Irene Shaver

[bushmurphy@hotmail.com](mailto:bushmurphy@hotmail.com)

Kourtney Romine  
Kourtney Romine  
Workflow Coordinator