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Admitted in Idaho

September 25, 2020

Via Email: mthomas@idl.idaho.gov

Mick Thomas, Division Administrator  
Minerals, Public Trust, Oil and Gas  
Idaho Department of Lands  
P.O. Box 83720  
Boise, ID 83720-0200

Re: Application for Permit to Drill, Barlow #2-14

Dear Administrator Thomas:

This law firm represents Snake River Oil and Gas, LLC, the applicant (“Applicant”) on an Application for Permit to Drill for the proposed Barlow #2-14 well (“Application”). On behalf of the Applicant, pursuant to Idaho Code § 47-316(1)(e) we submit this letter as an appeal of your September 11, 2020 letter decision denying the application (“Denial”).

Idaho Code § 47-316(1) provides that application for an APD shall be made “under such rules and regulations as may be reasonably prescribed by the commission[.]” IDAPA 20.07.02.200.04 sets forth the required contents of an application for a permit to drill. It does not require identification of a well with a spacing unit (although it is obvious, in this case, that a well to be drilled in Section 14, which is integrated to all depths, would be within that spacing unit).<sup>1</sup>

The Denial concludes, based on limited materials submitted by a previous operator in support of a spacing unit application that was never heard and was ultimately withdrawn, that there is “evidence” that “the drainage area of the proposed Barlow #2-14 target interval extends beyond the unit boundaries of section 14.” As a result, the Denial further concludes that “the Application does not meet the requirements of Idaho Code §47-318 and IDAPA

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<sup>1</sup> The OGCC APD form, IDLOGD001.01, is vague. It offers under “Type of Test/Unit” the option of checking “Gas/640 Acre Unit” – which is accurate for the Section 14 unit. It also offers the option of checking “Other/Docket No. \_\_\_\_\_”, but contains no instructions regarding this option. It is true that the existing Section 14 unit is a 640 acre gas unit.

September 25, 2020

Mick Thomas

2 of 7

20.07.02.220.05.d

IDAPA 20.7.02.200.05.d provides that an application may be denied if the proposed well “will result in a waste of oil or gas, a violation of correlative rights, or the pollution of freshwater supplies.” Note that the rule is not phrased in terms of potential. The Denial does not explain which factor in Rule 220.05.d it relies upon – waste, violation of correlative rights, or pollution of freshwater supplies.

“Waste” is defined in Idaho’s Oil and Gas Conservation Act similarly but not identically with respect to gas and oil,<sup>2</sup> but both definitions concern unreasonable impacts to the ultimate recovery of gas or oil from a pool or reservoir. Idaho Code 47-310(32) defines waste relating to gas as follows:

"Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil and gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

Meanwhile, Idaho Code § 47-310(33) defines waste relating to oil as follows:

"Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer’s above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause,

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<sup>2</sup> While Application was for a gas well, wells in the region have often produced a combination of gas and condensate. Condensate is included in the statute’s definition of oil. See Idaho Code § 47-310(17)(oil includes “other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas.”).

September 25, 2020

Mick Thomas

3 of 7

reduction of the quantity of oil and gas ultimately recoverable from a pool under prudent and proper operations.

There is no evidence contained in the Application materials, and no evidence discussed in the Denial, supporting the conclusion that the well drilled in the requested location would result in any of the conditions constituting waste, i.e., any unreasonable reduction in ultimate recovery, as to either gas or oil. To the extent the denial is based on the conclusion that the requested well “*will* result in a waste of oil or gas,” it is unsupported by fact and arbitrary.

The only fact asserted in the Denial, ultimately, is that the “drainage area of the proposed Barlow #2-14 target interval extends beyond the unit boundaries of section 14.” This assertion is itself based on the assertion that the “geologic limits of the Sand B target . . . appear[] to extend beyond section 14,” which is in turn based on a seismic amplitude map submitted by the previous operator in support of the unprocessed, withdrawn spacing unit application. In other words, the Denial’s conclusion that the “drainage area of the . . . target interval” extends beyond Section 14 is based entirely on a seismic amplitude map suggesting the “geologic limits” of the targeted sand extend beyond Section 14. The conclusion regarding drainage area is not factually supported, as geologic extent based on an amplitude map<sup>3</sup> does not establish drainage area. In any case, nothing about these assertions suggests that the proposed well would result in a diminished ultimate recovery from Sand B.

“Correlative rights” are defined in the Act as “the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste.” Idaho Code § 47-310(4). Assuming the denial is based on the same conclusion that the geologic limit of Sand B extends beyond Section 14, this fact by itself does not establish that owners outside Section 14 lack the opportunity to produce from Sand B.

The second fundamental assertion in the Denial is that state-wide spacing pursuant to the Act does not apply, as a “spacing order” exists. The Denial states: “Docket No. 2016-OGR-01-001 contains the current spacing order in place for Section 14. The statewide drilling units found in Idaho Code § 47-317(3)(b) apply only in “the absence of an order . . . establishing drilling or spacing units.” The order in Docket No. 2016-OGR-01-001 (“Order”) does not authorize an additional well to be drilled within Section 14.”

In fact, the Order expressly adopts the “state-wide spacing” scheme. It state in pertinent part:

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<sup>3</sup> Again, a map submitted by a previous operator, not the Applicant, with no evidence in the record suggesting that the Applicant agrees with the previous operator’s approach or submittal.

September 25, 2020

Mick Thomas

4 of 7

IDAPA 20.07.02.120.02 mandates that a standard state-wide spacing unit area be initially employed for wells drilled in the absence of a Commission Order setting spacing units for the pool. This rule provides in pertinent part that: [e]very well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributable to, any other well completed in or drilling to the same pool.

Orders for Integration, Conclusion of Law (“COL”) 2, p. 8. And:

Based on the current evidence available and provided in these Applications,<sup>4</sup> establishing the state-wide spacing units for gas wells consisting of approximately 640 acres in Section 14 . . . [is], by operation of law, deemed to result in the most efficient and economic drainage of a common pool or source of supply.

*Id.*, COL 3, p. 8. And:

Establishing and accepting this initial spacing of 640 acres best protects the correlative rights of mineral owners in the spacing unit, absent further information gained from drilling these exploratory wells.

*Id.*, COL 4, p. 9. And:

Thus, the Department accepts and recognizes the initial state-wide spacing of 640 acres for gas wells under IDAPA 20.07.02.120.02 as applicable to the Applications under consideration.

*Id.*, COL 5, p. 9.

The “Orders for Integration” portion of the Order, following the Findings of Fact and Conclusions of Law, addresses only the integration of the spacing unit. The Order pointedly does *not* establish a spacing unit departing from the default state-wide spacing scheme set forth in IDAPA 20.07.02.120.02 (now ensconced in Idaho Code § 47-317(3)(b)). The statement in the Denial that “statewide drilling units found in Idaho Code §47-317(3)(b) apply only in “the absence of an order . . . establishing drilling or spacing units” is in error because, as set forth in

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<sup>4</sup> The application related to Section 14 was processed and heard concurrently with an application relating to Section 19, Township 8 North, Range 4 West (Docket No. Docket No. 2016-OGR-01-002).

September 25, 2020

Mick Thomas

5 of 7

the Conclusions of Law, the Director expressly accepted the statutory spacing scheme as applicable.

At that time, IDAPA 20.07.02.120.02 provided with respect to gas wells:

Unit and Well Location. Every well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. A gas well must have a minimum setback of three hundred thirty (330) feet from the governmental section line.

This provision was eventually replaced by what is now Idaho Code § 47-317(3)(b), which provides with respect to gas wells:

Vertical gas wells. Every vertical well drilled for gas shall be located in a drilling unit consisting of either a one hundred sixty (160) acre governmental quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, or a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto. A vertical gas well located on a one hundred sixty (160) acre drilling unit shall have a minimum setback of three hundred thirty (330) feet to the exterior boundaries of the quarter section. A vertical gas well located on a six hundred forty (640) acre drilling unit shall have a minimum setback of six hundred sixty (660) feet to the

September 25, 2020

Mick Thomas

6 of 7

exterior boundaries of the governmental section.

(i) No gas well shall be drilled less than nine hundred ninety (990) feet from any other well drilling to and capable of producing gas from the same pool; and

(ii) No gas well shall be completed in a known pool unless it is located more than nine hundred ninety (990) feet from any other well completed in and capable of producing gas from the same pool.

Thus, under current law, in an area subject to state-wide spacing a gas well is allowed if it is: (a) at least 660' from the section line, and (b) more than 990' from any other well completed in and capable of producing gas from the same pool. The proposed Barlow #2-14 well complies with these restrictions. As set forth in the Application, the proposed target is 803' from the west section line and 670' from the south section line. There is no other well completed in or drilling to Sand B within 990' of the proposed target.<sup>5</sup>

Therefore, the statement in the Denial that the "order in Docket No. 2016-OGR-01-001 does not authorize an additional well to be drilled in Section 14" is incorrect and in error.

This area remains an exploratory basin. The Department appears to be requiring the operator to plan in advance for the most advanced development of a sand at the beginning, rather than allowing what the statutory spacing scheme contemplates – drilling of exploratory wells to test sands, followed by more refined spacing and the drilling of additional wells as warranted.

The Denial violates the correlative rights of the Applicant and its lessors, by denying the Applicant the ability to drill a well in what is a legal location within an established unit, and instead requiring the operator to submit a different spacing application without considering any of the land, geographic or geologic limitations that may impact its ability to do so. The state-wide spacing provisions – including the setbacks from sections lines and distances from other wells producing from a common source of supply – exist for a reason: to allow an operator to know the standards under which it may apply for and drill new wells in an area not otherwise spaced according to different terms. As a result of the Denial: (a) the provisions of Idaho Code § 47-317(3)(b) are improperly rendered a nullity, and operators are left without clear guidance in

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<sup>5</sup> There reference in the Application to the "nearest producing well" being "20 feet" from the proposed well is an erroneous reference to the *surface* location of the wellbore, to be on the same pad as the existing Barlow #1-14 well. The well will be directionally drilled, and the target location is approximately 1900' to the southwest of the surface location, as illustrated on the plat attached to the Application. The existing Barlow #1-14 well is completed in "Sand D," a separate source of supply.

September 25, 2020

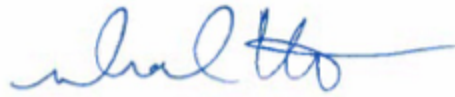
Mick Thomas

7 of 7

the law about how to proceed; and (b) mineral owners within the unit are *actually* denied their opportunity to produce their just and equitable share of oil and gas in the pool, in the apparent effort to protect against the hypothetical possibility that other owners *may* be denied an opportunity, without substantial factual basis.

On behalf of the Applicant we respectfully request that the Denial be reversed and the Application granted.

Very truly yours,  
SMITH+MALEK

A handwritten signature in blue ink, appearing to read "Michael R. Christian", with a long horizontal flourish extending to the right.

MICHAEL R. CHRISTIAN