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Subject: Response to Appeal - Barlow #2-14
Date: Monday, October 12, 2020 02:29:22 PM
Attachments: [Response to Appeal 10-12-20.pdf](#)

Attached, please find the Response to Appeal re the Matter of Snake River Oil and Gas, LLC's Application for Permit to Drill, Barlow #2-14, filed on behalf of Citizens Allied for Integrity and Accountability (CAIA) and its members.

Thank you,

-Molly Garner
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BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

In the Matter of Snake River Oil and Gas, LLC's)
Application for Permit to Drill, Barlow #2-14.) RESPONSE TO APPEAL
_____)

COME NOW Citizens Allied for Integrity and Accountability (“CAIA”) and its members including Brad and Angela Barlow, Sue Bixby, Cookie Atkins, Janie Rodriguez, Melvin and Terri Person, Jan and James Mitchell, Bruce Burrup, Dale Verhaeghe, Linda Dernoncourt, William Tolbert, Julie Fugate, and Joey and Brenda Ishida, and hereby provide their response to the appeal by Snake River Oil and Gas of the denial of a permit to drill a well known as Barlow #2-14. The appeal should be denied, and the Administrator’s denial of the well permit affirmed.

CAIA is a not-for-profit, membership-based organization committed to the responsible development of natural resources in the State of Idaho. The individual members of CAIA participating herein are mineral rights owners either within the spacing unit encompassing the well site subject to this application or living near enough to that well site to have an interest in protecting their property. In the case of Brad and Angela Barlow, they own the site on which Snake River Oil and Gas wishes to drill a new well. All of these parties requested that the IDL and the IOGCC deny the requested permit pursuant to IDAPA 20.07.02.200.

As grounds for denial, CAIA and its members assert the grounds it raised below, as well as the fact that Snake River Oil and Gas failed to properly file and serve its appeal.

I. Snake River Oil and Gas Failed to Perfect its Appeal

The Commission and the IDL utilize a simplified administrative procedure established directly the Idaho Legislature. The process is set out in clear terms, by statute, and is easy to follow. Nonetheless, Snake River Oil and Gas (hereafter “SROG”) was unable to perfect its appeal. As a result it should be denied.

Idaho Code 47-328(4) sets out the process for appeal of a decision the IDL

Administrator:

An appeal must be filed with the oil and gas administrator within fourteen (14) calendar days of the date of issuance of the oil and gas administrator's written decision. The date of issuance shall be three (3) calendar days after the oil and gas administrator deposits the decision in the U.S. mail, or the date on which he remits a decision electronically. 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, by certified mail, or by personal service. Any person who participated in the proceeding 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 oil and gas administrator with proof of service of the appeal materials on other persons as required in this section.

The requirements for a valid appeal are thus set out by the Legislature and include: a statement of the “reasons and authority for the appeal,” an identification of “any facts in the record supporting the appeal;” service of a “copy of the appeal materials” on all other participants; and “proof of service of the appeal materials.” This is neither difficult nor unusual. In all other cases involving civil and administrative law, service on opposing parties is routinely required. See, e.g., Idaho Rules of Civil Procedure, Rule 5; Idaho Appellate Rule 17(1)(5).¹

In the present case, SROG failed to serve its Notice of Appeal on other parties, and failed to include any proof of service with its Notice of Appeal. In Idaho, the failure to meet a

¹ It is worth noting that throughout their own appeal, attorneys for SROG repeatedly insist that the use of the words “will” and “shall” indicate mandatory requirements when applied to a decision to deny a permit. The same rule should apply to SROG’s appeal.

procedural requirement of the Rules of Procedure is not automatically grounds to strike or deny the non-complying pleading. Only “substantial compliance” is required in order for a pleading to be effective. The Idaho Supreme Court has explained:

Generally, substantial compliance does not require absolute conformity with the form prescribed in the statute, but does require a good faith attempt to comply, and that the general purpose detailed in the statute is accomplished." *In re Doe*, 155 Idaho 896, 901, 318 P.3d 886, 891 (2014) (citation omitted). In this case, we conclude the Notice of Appeal substantially complies with Idaho Appellate Rule 17 because it identifies the parties and the attorney involved, and the issue raised. The Notice of Appeal clearly states one issue is raised: "Was the award of attorney fees and costs, as entered by the court, supported in fact, and law under the Statutes and Rules of Procedure in Idaho." Contrary to the dissent's position, the Notice of Appeal is sufficient because it represents a good faith attempt to comply with Idaho Appellate Rule 17 and, therefore, accomplishes the purposes of the rule—putting TVSC on notice of the issues raised on appeal. *Smith v. Treasure Valley Seed co.*, 161 Idaho 107, 110 (2016).

In this case there is no evidence of any attempt, much less a “good faith attempt,” to serve the Notice of Appeal. It is undisputed that the Notice of Appeal contained no proof of service. Thus, SROG failed to serve their appeal as required, and failed to include proof of service in their Notice of Appeal. SROG made no attempt to comply with the statutory requirements for appealing a decision of the Administrator. In the absence of substantial compliance, the appeal should be struck or denied for failure to comply.

II. The Administrator Properly Denied the Permit

CAIA and its members would incorporate herein, as if fully set forth, their Objection to the permit application. The Administrator correctly denied the permit in this case because granting the permit would result in waste, violation of correlative rights, and pollution.

The Administrator’s decision in this case also reflects the proper judgment that the well permit provisions should be read within the larger context of Idaho’s law on oil and gas

exploration including the requirement for spacing units, integration orders, and holding proper leases and other legal authority before allowing oil and gas wells to be begun.

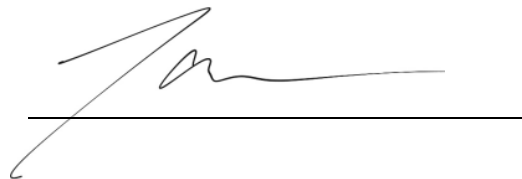
The Appeal claims that SROG's application complied with Idaho Code 47-317(3)(B) as grounds for claiming that it simply does not need a spacing order to proceed in this case. That reliance is entirely misplaced, since that statutory provision applies only to "vertical gas wells," and both the Application in this case and the Notice of Appeal clearly indicate that SROG was applying for a permit to and wishes to drill a directional well, not a vertical one.

III. Conclusion

For the reasons stated in the Objection filed by CAIA and its membership, for the reasons stated in Administrator Thomas's denial, and for the reasons stated herein, the Appeal should be struck as inadequate and non-compliant, or denied on its merits and the action of the Administrator affirmed.

DATED this 12th day of October, 2020.

PIOTROWSKI DURAND, PLLC

A handwritten signature in black ink, appearing to read 'JP', is written over a solid horizontal line.

James M. Piotrowski
Attorneys for Objectors

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of October, 2020, I caused to be served a true and correct copy of the preceding motion by the method indicated below and addressed to the following:

Idaho Department of Lands Attn: Mick Thomas kromine@idl.idaho.gov	U.S. Mail Certified Mail E-Mail	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
Snake River Oil & Gas, LLC c/o Michael Christian Smith & Malek, PLLC mike@smithmalek.com lauren@smithmalek.com	U.S. Mail Certified Mail E-Mail	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
Chris Weiser Snake River Oil & Gas, LLC chrisw@weiser-brown.com	U.S. Mail Certified Mail E-Mail	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
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_____/s/ James M. Piotrowski
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