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**BEFORE THE IDAHO DEPARTMENT OF LANDS**

IN THE MATTER OF:

Application of AM Idaho, LLC for Spacing  
Order and to Integrate Unleased Mineral  
Interest Owners in the Drilling Unit Consisting  
of the SW ¼ of Section 10, Township 8 North,  
Range 5 West, Boise Meridian, Payette  
County, Idaho.

AM Idaho, LLC Applicant.

Docket No. CC-2019-OGR-01-002

IDAHO DEPARTMENT OF LANDS'  
OPENING BRIEF

The Idaho Department of Lands (“IDL”), by and through the Office of the Attorney General, its counsel of record, and pursuant to the ORDER VACATING HEARING, ORDER SETTING HEARING TO DETERMINE “JUST AND REASONABLE” FACTORS, AND NOTICE OF HEARING AND SETTING FILING DEADLINES, issued July 10, 2019, files this Opening Brief for review and utilization by the Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator”), as he deems useful or necessary, in determining whether the terms and conditions of the integration

order sought by AM Idaho, LLC, in IOGCC Docket No. CC-2019-OGR-01-002 are “just and reasonable” as required by Idaho Code § 47-320(1).

The Administrator’s determination of what the “just and reasonable” terms for the integration order will be, must be consistent with the Oil and Gas Conservation Act. The Idaho Legislature has enacted statutory regulation of the development of oil and gas resources within the State of Idaho, which includes the integration of mineral interest owners to participate in the risks and rewards of such development. Idaho Code §§ 47-309 *et seq.* “‘Forced integration’ ... is the remedy that permits development of the drilling unit in the event that the mineral-interest owners cannot agree to pool voluntarily.” *Gawenis v. Arkansas Oil & Gas Commission*, 464 S.W.3d 453, (Ark. 2015) (citation omitted).

The Idaho Oil and Gas Conservation Commission (“OGCC”) and IDL are charged with the authority and obligation to protect correlative rights while preventing waste of hydrocarbon resources. Idaho Code §§ 47-311 – 47-315. The OGCC and IDL must enable the development of hydrocarbon resources, protecting and enforcing the property rights of owners and producers; and, in doing so, prevent the waste of hydrocarbon resources. Idaho Code §§ 47-311, 47-312. Part of the Legislature’s instructions to IDL regarding its authority to regulate all integrated owners and producers includes the following directive:

In the absence of voluntary integration, the department, upon the application of any owner in the proposed spacing unit, **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. The department, as part of the order establishing a spacing unit or units, **may** prescribe the terms and conditions upon which the royalty interests in the unit or units **shall**, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.

Idaho Code 47-320(1) (emphasis added). The inclusion of “just and reasonable” is significant because it provides the Administrator with discretion to enter an order based on the facts and circumstances of each individual case.

IDL recommends that the Administrator consider the following factors in determining what terms and conditions of the integration order are “just and reasonable”.

A. Whether use of integrated parcels is limited to drainage of subsurface hydrocarbons, expressly leased for a drill site, or some other type of surface occupation is contemplated. If any surface occupation is contemplated, then the integration order should address the following:

1) Whether the operator has entered into any surface use agreements as allowed by IDAPA 20.07.02.510.08 – Reclamation Under a Surface Use Agreement.

2) If there are no surface use agreements, the integration order must provide for the surface reclamation described in IDAPA 20.07.02.510, and must require the posting of a bond that ensures performance of reclamation of surface disturbances as provide in IDAPA 20.07.02.220.01 and Idaho Code § 47-334(8).

3) Additionally, the Administrator must identify the nature of surface occupation to determine whether additional compensation for such occupation is just, reasonable, and required by 5th and 14th Amendments of U.S. Constitution and Article 1, § 14 of Idaho Constitution.

4) Damages for surface occupation must be paid by the operator consistent with Idaho Code § 47-334.

B. Whether the compensation terms proposed by the operator are consistent with and will comply with the following statutory requirements:

1) Idaho Code § 47-332 – Reports to Royalty Owners.

2) Idaho Code § 47-333 – Action for Accounting for Royalty; that the operator shall provide written accounting upon demand from any owner.

3) Idaho Code § 47-331 – Obligation to Pay Royalties as Essence of Contract – Interest; including the statutory requirement that: “Royalty shall be due on all production sold from the leased premises except on that consumed for the direct operation of the producing wells and that lost through no fault of the lessee”. Idaho Code § 47-331(1)(b)

4) Idaho Code § 47-310(11), that royalties paid are transparent and based on "market value" as defined by the Legislature to mean “the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil and gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the severance tax directly or indirectly.”

C. Whether the previously drilled well, Fallon #1-10, is in compliance with statutes and regulations addressing potential environmental impacts of the well or hydrocarbon extraction, including the following authorities:

1) Idaho Code § 47-316 – Permit to Drill or Treat a Well; including IDL’s receipt of a notification from the director of the Idaho Department of Water Resources to “recommend conditions he believes necessary to protect freshwater supplies.” Idaho Code § 47-316(1)(b).

2) Idaho Code § 47-319 – Setbacks; including compliance with distances of oil and gas wells, tank batteries and gas processing facilities.

3) Any applicable zoning ordinances adopted by a city or county pursuant to Idaho Code § 47-314.

4) IDAPA 20.07.02.220 – Bonding.

5) IDAPA 20.07.02.230 – Pit Requirements.

6) IDAPA 20.07.02.301 – Well Site Operations.

7) IDAPA 20.07.02.310 – General Drilling [and Casing] Rules.

8) IDAPA 20.07.02.420 – Tank Batteries.

9) IDAPA 20.07.02.510 – Surface Reclamation.

10) IDAPA 20.07.02.502 – Well Plugging.

11) IDAPA 20.07.02.210 – Well Treatments; including having an approved fresh water protection plan that has been submitted by the operator with sufficient time before conducting any well treatment, for IDL to review the plan in consultation with the Idaho Department of Environmental Quality. IDAPA 20.07.02.210.k.

11) Any other Idaho Code or IDAPA provision necessary to protect interests of integrated owners and potential environmental impacts of hydrocarbon development.

D. Whether the proposed lease, operating agreement, and other integration terms proposed by AM Idaho, LLC have been:

1) Analyzed by AM Idaho, LLC to ensure compliance with Idaho Code, IDAPA, and any applicable local ordinance;

2) Analyzed to ensure that no liability or duty arising from or related to any violation of law, environmental damage, injury to real property, personal injury, negligence, or nuisance is removed from the operator and placed on, assumed by, or assigned to an integrated owner;

3) Analyzed to ensure that no water right owned by an integrated owner is incorrectly or illegally 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;

4) Analyzed to ensure that no estate in real property held by an integrated owner can be assumed, subrogated, or redeemed by the operator, as lessee, without the integrated owner having an opportunity to recover such estate from the operator;

5) Analyzed to ensure that the venue for any claims against or involving an integrated owner is in either the Idaho district court for the county where the integration order applies, or the United States Court for the District of Idaho;

6) Standardized and broadly accepted in the oil and gas industry;

7) Accepted and agreed to by AM Idaho, LLC when it is an interest holder and not an operator; and

8) Approved, with or without modification, by other governing bodies or by courts, given any unique circumstances in that spacing unit; or

9) Rejected, in whole or in part, or found inapplicable by other governing bodies or courts, given any unique circumstances in that spacing unit.

Dated this 31<sup>st</sup> day of July, 2019.

  
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JOY M. VEGA  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of July 2019, I caused to be served a true and correct copy of the foregoing by the following method to:

Mr. Mick Thomas, Administrator  
Idaho Department of Lands  
PO Box 83720  
Boise ID 83720-0050

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JOY M. VEGA  
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