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BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of AM	)	Docket No. CC-2019-OGR-01-002
Idaho, LLC for Spacing Order and to	)	
Integrate Unleased Mineral Interest	)	RESPONSE OF NON-CONSENTING
Owners in the Drilling Unit Consisting of	)	OWNERS AND CAIA RE: FACTORS
the SW 1.4 of Section 10, Township 8	)	FOR ESTABLISHING JUST AND
North, Range 5 West, Boise, Meridian,	)	REASONABLE TERMS
Payette County, Idaho.	)	
	)	
	)	
	)	
	)	

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COME NOW Judith and Jimmie Hicks, Karen Oltman, Alan and Glenda Grace, Shady River, LLC, and Citizens Allied for Integrity and Accountability, by and through counsel of record and hereby submit their responsive brief regarding the appropriate factors to be addressed or considered in establishing just and reasonable lease terms for mineral rights owners who shall be compelled either to enter into lease agreements or to be deemed leased if they fail to enter such agreements.

Submissions on this matter were provided by AM Idaho and counsel for the Idaho Department of Lands. Those submissions fail to address the fundamental legal issue that was supposed to be addressed by determining what factors would play into the just and reasonable analysis.

The United States District Court for the District of Idaho explained in some detail that while basic compliance with the statutes governing forced integration was necessary, compliance was not alone sufficient to satisfy due process:

The Director's Order failed to meet these minimum due process requirements. It stated that the terms of the integration order were just and reasonable because the terms of the proposed lease and JOA were "reasonable and standard in the industry throughout the greater geographic region." Director's Order at 21-22, Dkt. 24-5. In part, this statement shows circular reasoning by suggesting that the terms are "just and reasonable" because they are reasonable.

*CAIA et al v. Schultz, et al.*, Case No. 1:17-cv-264BLW, USDC Idaho, Dkt. No. 36, Memorandum Decision and Order, August 13, 2018, p. 17-18.

Counsel for the IDOL suggests in its submission merely that the Commission should comply with existing statutes. While that goes without saying, it is not adequate when the very problem is that the statutes are insufficiently definite as to what actually constitutes "just and reasonable."<sup>1</sup> If the Commission decides only that just and reasonable terms are ensured by compliance with the same statutory scheme that the District Court found inadequate in the first place.

AMI takes a slightly different approach, urging the Commission to simply comply with "industry standard" by approving use of a model agreement written by an association of gas and oil producers, for the benefit of gas and oil producers. While AMI does not expressly suggest that landowner input should be ignored, it makes no concessions in regard to actually soliciting or listening to it.

AMI's position is also inconsistent with positions it has taken in the past. In April, 2019, when AMI was concerned that the Commission would engage in rulemaking regarding "just and reasonable" it suggested a laundry list of factors that ought to be considered. Apparently, having

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<sup>1</sup> This was precisely the reason that CAIA and others recommended rulemaking to put flesh on the bare, statutory bones.

dodged the risk of new legal authority which might constrain its operations, AMI has reverted to insisting that whatever it proposes must be approved in order to ensure that statutory purposes are met.

While statutory compliance is appropriate and necessary, and industry standards are a relevant consideration, the non-consenting owners' proposals for substantive factors should be adopted as appropriate, Constitution-based measures to ensure lease terms are "just and reasonable" as required by both state and federal law.

Dated this 14<sup>th</sup> day of August, 2019

PIOTROWSKI DURAND, PLLC

                /s/                James M. Piotrowski                  
James M. Piotrowski  
Attorneys for CAIA and Certain Non-  
Consenting Owners

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>TH</sup> day of August, 2019, I caused to be served a true and correct copy of the following item in Docket No: CC-2019-OGR-01-002: *RESPONSE OF NON-CONSENTING OWNERS AND CAIA RE: FACTORS FOR ESTABLISHING JUST AND REASONABLE TERMS* by the method indicated below and addressed to the following:

Idaho Department of Lands	U.S. Mail	<input type="checkbox"/>
Attn: Mick Thomas	Hand Delivery	<input type="checkbox"/>
300 N. 6 <sup>th</sup> Street, Suite 103	Certified Mail	<input type="checkbox"/>
PO Box 83720	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83720		
<a href="mailto:kromine@idl.idaho.gov">kromine@idl.idaho.gov</a>		

AM Idaho, LLC	U.S. Mail	<input type="checkbox"/>
c/o Michael Christian	Hand Delivery	<input type="checkbox"/>
Smith & Malek, PLLC	Certified Mail	<input type="checkbox"/>
101 S. Capitol Blvd, Suite 930	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83702		
<a href="mailto:mike@smithmalek.com">mike@smithmalek.com</a>		

Kristina Fugate	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
<a href="mailto:kristina.fugate@ag.idaho.gov">kristina.fugate@ag.idaho.gov</a>		

Joy Vega	U.S. Mail	<input type="checkbox"/>
Deputy Attorney General	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0010	E-Mail	<input checked="" type="checkbox"/>
<a href="mailto:joy.vega@ag.idaho.gov">joy.vega@ag.idaho.gov</a>		

James Thum	U.S. Mail	<input checked="" type="checkbox"/>
Idaho Department of Lands	Hand Delivery	<input type="checkbox"/>
PO Box 83720	Certified Mail	<input type="checkbox"/>
Boise ID 83720-0050	E-Mail	<input type="checkbox"/>

City of Fruitland	U.S. Mail	<input checked="" type="checkbox"/>
Attn: Rick Watkins-City Clerk	Hand Delivery	<input type="checkbox"/>
PO Box 324	Certified Mail	<input type="checkbox"/>
Fruitland, ID 83619	E-Mail	<input type="checkbox"/>

Anadarko Land Corp.	U.S. Mail	<input checked="" type="checkbox"/>
Attn: Dale Tingen	Hand Delivery	<input type="checkbox"/>
1201 Lake Robbins Dr	Certified Mail	<input type="checkbox"/>
The Woodlands TX 77380	E-Mail	<input type="checkbox"/>

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James M. Piotrowski