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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)	MOTION TO STRIKE OBJECTION
Owners in the Drilling Unit Consisting of)	AND/OR FOR EXTENSION OF
the SW 1.4 of Section 10, Township 8)	DEADLINE TO RESPOND TO
North, Range 5 West, Boise, Meridian,)	OBJECTION TO INTERVENTION
Payette County, Idaho.)	
)	
)	
)	
)	

COME NOW Carrie Grant, Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap (the effected but excluded mineral rights owners), by and through counsel of record and hereby move the Commission and Idaho Department of Lands to strike entirely the Objection to Motion to Intervene that was submitted to the Commission on or about October 15, 2019 by attorneys for AM Idaho, LLC. The objection should be struck because (1) it was never served on the effected but excluded mineral rights owners who are seeking to intervene; (2) it was served on other parties in a manner that directly violated the Idaho Rules of Professional Conduct for attorneys; (3) it was not served on counsel for many of the parties to this proceeding; and (4) it was submitted in an improper format that violates IDAPA. As an alternative remedy to striking

the objection, the effected but excluded mineral rights owners would ask for an extension of time submit a response brief in opposition to what should have been AM Idaho's Motion in Opposition to Intervention. Such extension should be at least 14 days from the Commission's ruling on this motion to strike or extend, and should be extended to all parties to this proceeding.

The intervenors have inquired of opposing counsel and been informed that AM Idaho opposes this motion.

I. Facts and Background

On October 7, 2019 this group of effected but excluded mineral rights owners moved to intervene in the current application by filing such request with the Commission. On October 9, 2019, the Hearing Officer directed any parties who opposed intervention to file a motion to that effect no later than seven days from their receipt of the motion to intervene. On October 15, 2019, Michael Christian filed his "objection" to intervention on behalf of his client AM Idaho. The Objection was not served on the effected but excluded mineral rights holders, the very people who had filed the motion to intervene. Even worse, counsel for AM Idaho failed to even serve counsel for many of the existing parties (instead serving them directly in contravention of Idaho law), and entirely failed to serve (either directly or by counsel) at least one of the parties.

The certificate of service for AM Idaho's objection to the motion to intervene demonstrates that Mr. Christian's office served a copy of the objection on the Department of Lands, its Director and its Deputy Attorneys General. He also served his objection on the City of Fruitland, Payette County and the Anadarko Land Co. Service on these parties was appropriate, or at least not inappropriate as far as Intervenors can determine. However, Mr. Christian never served his objection on the proposed Intervenors in any way whatsoever. Thus, he failed to

provide notice to the party that actually submitted the request for intervention that there was an objection.

But that was not the end of the failure to properly serve the objection. In the underlying case certain mineral rights owners, including Judith and Jimmie Hicks, Karen Oltman, Alan and Glenda Grace, and Shady River, LLC, have participated in this proceeding through counsel. Those mineral rights holders, however, were served directly by Mr. Christian, rather than by serving the objection on their lawyer. This communication directly with represented parties likely violated the Idaho State Bar's Idaho Rules of Professional Responsibility. Rule 4.2 prohibits communications by lawyers with other parties that are represented by counsel:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Of greater concern than the possible ethical violation, this improper service effectively prevented lawyers for parties to this application from timely learning of AM Idaho's objection.

That was still not the end of Mr. Christian's failure to properly serve his objection. Although he served his objection directly on some represented parties, illegally bypassing their counsel, and he failed to serve the parties who petitioned to intervene, he also did not serve Citizens Allied for Integrity and Accountability at all. He neither served their counsel, nor the organization directly. This party to the proceeding thus was entirely excluded from receiving AM Idaho's Objection.

II. AM Idaho's Failure to Serve its "Objection" Violated the Rules Governing this Proceeding.

IDAPA rules specifically address intervention and opposition to intervention in proceedings such as the current one. IDAPA 04.11.01.350 through 354 provide rules of

procedure governing intervention, at least in cases where an agency of the state has not adopted its own rules of procedure. Rule 350 provides that intervention should be granted if a proposed intervenor claims a “direct and substantial interest” in the matter under consideration. If other parties oppose intervention, they are required to submit their opposition in writing, as a motion, and must “serve the motion upon all parties of record and upon the person petitioning to intervene.” IDAPA 04.11.01.354. This was the rule that was quoted by the Hearing Officer in his October 9 Order establishing how the petition for intervention would be addressed, wherein the Hearing Officer specifically ordered that service be made “upon all parties of record and upon their persons petitioning to intervene.” Oder of October 9, 2019.

The undersigned counsel for the proposed intervenors, who is also counsel for a group of uncommitted owners should have been among the first to receive the Objection to the Motion to Intervene. Instead, the undersigned learned of the Objection only today, 16 days after it was filed, when one of his improperly served clients forwarded the communication from Mr. Christian inquiring why counsel was not on the service list, and whether counsel had received the objection. The undersigned had not received the objection prior to October 31, 2019.

Because AM Idaho’s objection to the petition to intervene was not properly served, and because such failure to serve was in direct violation of the IDAPA rules governing the procedure for intervention, as well as in violation of the Hearing Officer’s Order, it should be struck in its entirety pursuant to IDAPA 04.11.01.304 which expressly permits rejection of insufficient pleadings.

III. If the Objection is Not Struck, Intervenor’s Should be Granted Leave and Time to Oppose AM Idaho’s Motion.

IDAPA 04.11.01.354 provides a clear procedure for objecting to a motion to intervene in an administrative proceeding. Rule 354 requires that: “Any party opposing a petition to

intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene.” AM Idaho’s “Objection to Intervention” thus should either be struck as it is not a motion. But, if the Commission chooses to treat it as a motion, opposing parties must be provided an opportunity to respond to that motion. The Rules provide 14 days for any party to respond to a motion. IDAPA 04.11.01.565.

In the interests of justice, if AM Idaho’s “objection” is not a “motion” it should be struck as the only available method for contesting a claimed right to intervene is by motion. If it is treated as a “motion” all parties should be given 14 days after service in which to file a response to that motion. Specifically, the proposed intervenors request a time of 14 days after the Commission’s or the Hearing Officer’s ruling on this Motion to Strike or Extend in which to submit their response to AM Idaho’s “objection.”

Dated this 31st day of October, 2019

PIOTROWSKI DURAND, PLLC

 /s/ James M. Piotrowski
James M. Piotrowski
Attorneys for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this 31ST day of October, 2019, I caused to be served a true and correct copy of the preceding motion in Docket No: CC-2019-OGR-01-002 by the method indicated below and addressed to the following:

Idaho Department of Lands Attn: Mick Thomas 300 N. 6 th Street, Suite 103 PO Box 83720 Boise, ID 83720 kromine@idl.idaho.gov	U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
AM Idaho, LLC c/o Michael Christian Smith & Malek, PLLC 101 S. Capitol Blvd, Suite 930 Boise, ID 83702 mike@smithmalek.com	U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Kristina Fugate Deputy Attorney General PO Box 83720 Boise ID 83720-0010 kristina.fugate@ag.idaho.gov	U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Joy Vega Deputy Attorney General PO Box 83720 Boise ID 83720-0010 joy.vega@ag.idaho.gov	U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
James Thum Idaho Department of Lands PO Box 83720 Boise ID 83720-0050 jthum@idl.idaho.gov	U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
City of Fruitland Attn: Rick Watkins-City Clerk PO Box 324 Fruitland, ID 83619	U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input type="checkbox"/>
Anadarko Land Corp. Attn: Dale Tingen 1201 Lake Robbins Dr The Woodlands TX 77380	U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> E-Mail <input type="checkbox"/>

_____/s/ James M. Piotrowski
James M. Piotrowski