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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)	AMENDED MOTION TO STRIKE
Owners in the Drilling Unit Consisting of)	OBJECTION AND/OR FOR EXTENSION
the SW 1.4 of Section 10, Township 8)	OF DEADLINE TO RESPOND TO
North, Range 5 West, Boise, Meridian,)	OBJECTION TO INTERVENTION
Payette County, Idaho.)	
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Peittioners in Intervention are hereby submitting this Amended Motion to Strike and would ask that the Commission allow it to withdraw the pleading filed earlier on this same date, substituting this Motion for it entirely. The grounds for requesting Amendment is that the prior motion contained material and arguments that are not necessary to the resolution of this motion, which need not be any part of the record in this matter, and which will not assist the Commission or the Department in reaching a resolution of the issue presented. Those matters and argument, relating to the Idaho Rules of Professional Conduct, are entirely removed from this Motion.

For the Amended Motion to Strike, 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, request that the Commission, through its Hearing Officer 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 not served on counsel for many of the parties to this proceeding; and (3) it was submitted as an objection rather than as a motion as required by IDAPA 04.11.01.354. 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 who are seeking to intervene. Even worse, counsel for AM Idaho failed to even serve counsel for many of the existing parties (instead serving them directly but not serving their lawyer), and entirely failed to serve (either directly or via 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 moved 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.

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 the persons petitioning to intervene.” Hearing Officers’ Order 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 clients forwarded the pleading. 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, Intervenors 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 Octobe, 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	U.S. Mail	<input type="checkbox"/>
Attn: Mick Thomas	Hand Delivery	<input type="checkbox"/>
300 N. 6 th Street, Suite 103	Certified Mail	<input type="checkbox"/>
PO Box 83720	E-Mail	<input checked="" type="checkbox"/>
Boise, ID 83720		
kromine@idl.idaho.gov		

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		
mike@smithmalek.com		

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"/>
kristina.fugate@ag.idaho.gov		

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"/>
joy.vega@ag.idaho.gov		

I further certify that I will cause a true and correct copy of the foregoing to be served on the following individuals by U.S. Mail, postage prepaid on November 1, 2019

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"/>

/s/ James M. Piotrowski
James M. Piotrowski

From: [James Piotrowski](#)
To: [Kourtney Romine](#)
Cc: mike@smithmalek.com; [Fugate, Kristina](#); [External - Joy M. Vega](#)
Subject: . Amended Submission re Dkt # CC-2019-OGR-01-002 - Amended Motion to Strike Objection &/or for Extension of Deadline to Respond
Date: Thursday, October 31, 2019 09:52:57 PM
Attachments: [Amended Mot to Strike.pdf](#)

Ms. Romine,

Please find an Amended Motion to Strike for filing in this matter. This is an amended version of the motion that was filed earlier today. I wish to have this motion substituted entirely for the document that was submitted earlier if that is possible. If that is not possible, please let me know and I will issue a notice withdrawing the prior motion, and then will submit an entirely new motion.

Thank you for your attention to this matter.

James Piotrowski

From: Molly Garner <Molly@idunionlaw.com>
Sent: Thursday, October 31, 2019 1:09 PM
To: Kelly Robinson <me@kellylynae.com>
Cc: mike@smithmalek.com; [Fugate, Kristina](#) <kristina.fugate@ag.idaho.gov>; joy.vega@ag.idaho.gov; [James Piotrowski](mailto:James.Piotrowski@idunionlaw.com) <james@idunionlaw.com>
Subject: Submission re Dkt # CC-2019-OGR-01-002 Motion to Strike Objection &/or for Extension of Deadline to Respond

Please find the attached MOTION TO STRIKE OBJECTION AND/OR FOR EXTENSION OF DEADLINE TO RESPOND TO OBJECTION TO INTERVENTION filed on behalf of Carrie Grant, Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap by their attorney James Piotrowski in the following:

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

Before the Idaho Dept. of Lands

In the Matter of the Application of AM Idaho, LLC for Spacing Order and to Integrate Unleased Mineral Interest Owners in the Drilling Unit Consisting of the SW 1.4 of Section 10, Township 8 North, Range 5 West, Boise, Meridian, Payette County, Idaho.

Thank you,

-Molly Garner
Office Manager
Piotrowski Durand, PLLC