

**BEFORE THE IDAHO DEPARTMENT 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 ¼ of Section 10, Township )  
8 North, Range 5 West, Boise Meridian, Payette )  
County, Idaho. )  
AM Idaho, LLC, Applicant. )  
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Docket No. CC-2019-OGR-01-002

**ORDER DENYING AMENDED  
MOTION TO STRIKE AND  
GRANTING AMENDED MOTION  
FOR EXTENSION OF TIME**

On October 7, 2019, a *Motion to Intervene on Behalf of Effected but Excluded Mineral Rights Owners and Motion to Reopen Hearing (“Petition to Intervene”)* was filed by James Piotrowski 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 (collectively “petitioners to intervene.”) The Oil and Gas Division Administrator (“Administrator”) issued a *Continuance and Scheduling Order* on October 9, 2019. In that order, the Administrator continued the issuance of his order to determine just and reasonable factors and set deadlines for parties opposing the *Petition to Intervene*. AM Idaho, LLC (“AMI”) filed an *Objection to Motion to Intervene on Behalf of Applicant AM Idaho, LLC (“Objection”)* on October 14, 2019.

On October 31, 2019, a *Motion to Strike Objection and/or for Extension of Deadline to Respond to Objection to Intervention (“Motion to Strike and for Extension”)* was filed on behalf of petitioners to intervene. After petitioners to intervene filed the *Motion to Strike and for Extension*, AMI filed an October 31, 2019 *Amended Objection to Motion to Intervene on Behalf of Applicant AM Idaho, LLC (“Amended Objection”)*. The *Amended Objection* noted that it was

“only to correct the certificate of service.”<sup>1</sup> On November 1, 2019, the Administrator received an *Amended Motion to Strike Objection and/or for Extension of Deadline to Respond to Objection to Intervention* (“*Amended Motion*”) filed on behalf of petitioners to intervene.

The *Amended Motion* requests that the Administrator allow petitioners to intervene to withdraw their October 31, 2019 *Motion to Strike and for Extension*. The *Amended Motion* argues that AMI’s *Objection*<sup>2</sup> should be struck because it was never served on petitioners to intervene, it was not served on their counsel or counsel for many of the parties, and it was submitted as an objection rather than as a motion. Counsel for petitioners to intervene stated that he did not receive AMI’s *Objection* until October 31, 2019. In alternative to striking AMI’s *Objection*, the motion requests a fourteen (14) day extension of time to submit a response to AMI’s *Objection*.

**1. The Administrator will consider the *Amended Motion* and leave the October 31, 2019 *Motion to Strike and for Extension* in the record.**

The *Amended Motion* asks the Administrator to treat it as a substitute for the October 31, 2019 *Motion to Strike and for Extension* because the original motion contained material not necessary to the decision. It also asks to withdraw the October 31, 2019 *Motion to Strike and for Extension* from the record as the material does not need to be part of the record in this matter.

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<sup>1</sup> The *Amended Objection* certified that the following additional persons were served:

- James Piotrowski was served as attorney for CAIA, Certain Non-Consenting Owners (Jimmie and Judith Hicks, Karen Oltman, Alan and Glenda Grace, and Shady River, LLC); and
- James Piotrowski was served as attorney for Petitioners to Intervene (Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap).

<sup>2</sup> The *Amended Motion* does not discuss AMI’s *Amended Objection* and the additional service provided in that *Amended Objection*. Because petitioners to intervene re-state the same issues in the *Amended Motion*, the Administrator infers that petitioners to intervene do not believe the *Amended Objection* resolves the service issues they raised.

IDAPA 04.11.01.305 addresses withdrawal of pleadings. It provides that “[a] party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy.” IDAPA 04.11.01.305. Unless the Administrator orders otherwise, “the notice is effective fourteen (14) days after filing.” *Id.*

While the November 1, 2019 *Amended Motion* is not titled as a “Notice of Withdrawal of Motion,” it essentially operates as a notice because it requests the Administrator allow withdrawal of the October 31, 2019 *Motion to Strike and for Extension*. The *Amended Motion* also indicates that it was served on all parties. The Administrator will therefore allow withdrawal of that motion and treat the *Amended Motion* as the document the Administrator will consider in issuing this Order.

However, the Administrator will keep the original October 31, 2019 motion in the administrative record as it was a motion filed with the Administrator and is required to be included in the record by statute. Indeed, Idaho Code § 67-5249(2)(a) provides that “[t]he record shall include: all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings.” Previous pleadings withdrawn in prior proceedings before the Commission and Administrator likewise have remained in the record even after withdrawal. Thus, the October 31, 2019 *Motion to Strike and for Extension* will remain in the administrative record.

**2. The Amended Motion to Strike AMI’s *Objection* is denied because petitioners to intervene have now been served.**

Petitioners to intervene first argue that the Administrator should strike AMI’s *Objection* because it was never served on them or counsel for many of the parties. Petitioners to intervene are correct that AMI did not serve its *Objection* on them or their counsel, Mr. Piotrowski.

Petitioners to intervene are also correct that AMI served its *Objection* on certain parties to the proceeding directly instead of serving their counsel, Mr. Piotrowski. However, AMI’s *Amended*

*Objection* certified that additional persons were served. The *Amended Objection* certifies service on Mr. Piotrowski as attorney for CAIA, Jimmie and Judith Hicks, Karen Oltman, Alan and Glenda Grace, and Shady River, LLC. Further, it certifies service on Mr. Piotrowski as attorney for petitioners to intervene. AMI did not properly serve Mr. Piotrowski with AMI's *Objection*. However, proper service did recently occur in AMI's October 31, 2019 *Amended Objection*. Thus, the service required has now been completed.

Petitioners to intervene next argue that AMI's *Objection* should be dismissed because IDAPA 04.11.01.354 requires that any opposition be submitted as a motion. IDAPA 04.11.01.260 defines a motion as a pleading "requesting the agency [] take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings." AMI's *Objection* does not appear to ask the Administrator to take any specific action beyond denying the motion to intervene; in other words it appears to be a pleading specifically answering another pleading.

Regardless, how the Administrator construes AMI's *Objection* is immaterial to whether the Administrator can consider it. Rule 354 provides "[a]ny 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." IDAPA 04.11.01.354. Rule 354 gives the option to oppose a petition to intervene by motion and includes detailed instructions on service for that type of motion. But its plain language does not require or limit opposition to only motions by stating that opposition "must" come by motion or listing the ways to oppose a motion to intervene.<sup>3</sup> Because IDAPA

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<sup>3</sup> Even if opposition to a petition to intervene does not come by motion, IDAPA 04.11.01.354's service requirement applies here. IDAPA 04.11.01.302 allows the Administrator to require that documents be served on interested or affected persons who are not parties. The *Continuance and*

04.11.01.354 does not preclude AMI from filing its *Objection* or *Amended Objection*, the *Amended Motion to Strike* must be denied.

**3. The Amended Motion for Extension is granted.**

Petitioners to intervene request that all parties should be given fourteen (14) days to file a response to AMI's *Objection* and *Amended Objection*. Petitioners to intervene argue this is required because IDAPA 04.11.01.565 allows fourteen (14) days for any party to respond to a motion. Whether or not AMI's *Objection* and *Amended Objection* are in fact motions, the petitioners to intervene did not receive AMI's *Objection* until October 31, 2019, seventeen (17) days after AMI filed the document. In the interest of fairness and ensuring all parties have the opportunity to fully consider and respond to these documents, the Administrator will grant all parties fourteen (14) days from the issuance of this order to respond to the *Objection* and *Amended Objection*.

**ORDER**

The Administrator hereby ORDERS:

1. The Amended Motion to Strike AMI's *Objection* is DENIED.
2. The Amended Motion for Extension of Time is GRANTED and petitioners to intervene and all parties have fourteen (14) days from the issuance of this order to file any responses.

DATED this 4 day of November, 2019.



MICK THOMAS  
Administrator, Idaho Department of Lands Oil and Gas Division

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*Scheduling Order* stated that a party opposing must “serve the opposition upon all parties of record and upon the persons petitioning to intervene.” The requirement for service upon petitioners to intervene and was clear.

## CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of November 2019, I caused to be served a true and correct copy of the following item in Docket No: CC-2019-OGR-01-002: *Order Denying Amended Motion to Strike and Granting Amended Motion for Extension of Time* by the method indicated below and addressed to the following:

AM Idaho, LLC  
c/o Michael Christian  
Smith + Malek  
101 S. Capitol Blvd, Suite 930  
Boise ID 83702

- U.S. Mail, postage prepaid
- Hand Delivery
- Certified mail, return receipt requested
- Email: [mike@smithmalek.com](mailto:mike@smithmalek.com)  
[lauren@smithmalek.com](mailto:lauren@smithmalek.com)

Kristina Fugate  
Deputy Attorney General  
PO Box 83720  
Boise ID 83720-0010

- U.S. Mail, postage prepaid
- State House Mail
- Certified mail, return receipt requested
- Email: [kristina.fugate@ag.idaho.gov](mailto:kristina.fugate@ag.idaho.gov)

Joy Vega  
Deputy Attorney General  
PO Box 83720  
Boise ID 83720-0010

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- State House Mail
- Certified mail, return receipt requested
- Email: [joy.vega@ag.idaho.gov](mailto:joy.vega@ag.idaho.gov)

Mick Thomas  
Idaho Department of Lands  
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James Thum  
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James Piotrowski  
Attorney for CAIA and  
Certain Non-Consenting Owners (Judith and Jimmie  
Hicks, Karen Oltman, Alan and Glenda Grace, Shady  
River, LLC)  
1020 W. Main St, Suite 400  
PO Box 2864  
Boise, ID 83702

- U.S. Mail, postage prepaid
- Hand Delivery
- Certified mail, return receipt requested
- Email: [james@idunionlaw.com](mailto:james@idunionlaw.com)

James Piotrowski  
Attorney for Petitioners to Intervene (Carrie Grant,  
Shannon Benedict, Donald and Phyllis Gruell, Sharon  
Simmons, Lowell and Geraldine Davis, James and  
Beverly Smith, Dana Harris, and Sandra Dunlap)  
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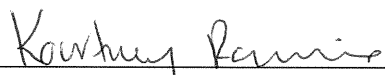
*\*same address/email as above*

City of Fruitland  
Attn: Rick Watkins-City Clerk  
PO Box 324  
Fruitland ID 83619

- U.S. Mail, postage prepaid
- Hand Delivery
- Certified mail, return receipt requested

Anadarko Land Corp.  
Attn: Dale Tingen  
1201 Lake Robbins Dr  
The Woodlands TX 77380

- U.S. Mail, postage prepaid
- Hand Delivery
- Certified mail, return receipt requested

  
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Kourtney Romine  
Administrative Assistant