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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)	PROPOSED INTERVENORS' RESPONSE
Owners in the Drilling Unit Consisting of)	TO AM IDAHO'S OPPOSITION TO
the SW 1.4 of Section 10, Township 8)	PETITION TO INTERVENE
North, Range 5 West, Boise, Meridian,)	
Payette County, Idaho.)	
)	
)	
)	
)	

COME NOW proposed Intervenor 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 offer their response in opposition to AM Idaho, LLC's motion to oppose intervention.

Because the Idaho Oil and Gas Conservation Commission has not adopted its own rules of procedure governing contested cases or applications for spacing and integration, this proceeding is governed by rules of procedure for contested cases established by the Idaho Attorney General. IDAPA 04.11.001.01.1. Pursuant to those rules, the Department must permit intervention wherever a party seeking to intervene "shows direct and substantial interest" in the

matter under consideration. IDAPA 04.11.01.353. As set out in their petition to intervene, the proposed intervenors hold mineral interests in the same alleged pool of hydrocarbons which AM Idaho, LLC seeks to extract. Although AM Idaho claims that they will extract only the hydrocarbons lying under a more limited set of surface estates, a set which excludes the intervenors, this claim simply defies logic, geology and, ultimately, the laws of physics.

AM Idaho LLC is pursuing hydrocarbons existing primarily in liquid state in an identified pool lying under a part of Fruitland, Idaho. In 2016, AM Idaho identified the pool as lying under the surface estates of owners of four contiguous quarter-sections of land. AM Idaho now claims that it will somehow extract only the liquid (and possibly gaseous) hydrocarbons underlying only one of those quarter-sections of land. What AM Idaho proposes is literally impossible. The identified pool of hydrocarbons is liquid and gaseous and will necessarily migrate as portions are extracted. Indeed, the migratory nature of oil and gas are the sole reason that the Oil and Gas Conservation Act even exists. If AM Idaho were capable of removing only those hydrocarbons lying under an identified surface estate the integration of mineral interests would be entirely unnecessary and would violate property interests. The correlative rights which animate the Oil and Gas Conservation Act exist solely because of that migratory nature.

Since the pool identified by AM Idaho extends under the surface estates held by intervenors, they have a substantial interest in the subject matter of this proceeding. The proceeding under the integration application will establish which mineral rights holders are entitled to share in royalties and bonus payments, and should address a variety of other matters that will ultimately affect the intervenors property including their mineral rights. Intervenors have shown a direct and substantial interest in the subject matter.

AM Idaho's complaint that the intervenors are not owners "in the affected unit" as required by statute indicates there may be a conflict between the Oil and Gas Conservation Act, I.C. §47-328(3)(b), and the rules of procedure. The statute governs applications for integration and does, in section 328(3)(b) seem to limit the filing of objections to owners "in the affected unit." Section 328(3)(c) reinforces this conclusion, providing that "the department and any uncommitted owner within the area defined in the application may file objections or other responses to the application." I.C. §47-328(3)(c). Counsel for intervenors is, candidly, at a loss. There is no possible way for AM Idaho, LLC to extract hydrocarbons from the proposed integration unit without also causing the migration of hydrocarbons from outside the unit, into the geologic spaces which will be drained by AM Idaho's operations. Thus, AM Idaho can only extract minerals by trespassing on the mineral rights held by owners outside the integration unit. Those owners, at least per the statute, have no opportunity to participate in the proceeding. And that state of affairs results in mineral rights being lost without the participation of the individuals or entities who will suffer that loss.

In short, intervention is authorized and even required by the relevant regulations, appears to be barred by relevant statute, but is required to satisfy constitutional requirements of due process. The Oil and Gas Conservation Commission and the Department of Lands are left with either an untenable choice or the need to craft a creative solution.¹ Petitioners here seek intervention as full parties. They wish to receive all notices; participate as full parties at any hearings in this matter; call, examine and cross-examine witnesses; present documentary evidence; provide argument and legal authority; and, otherwise enjoy the rights of parties to the

¹ One possible solution would be for this matter to be stayed while the Department of Lands seeks a judicial ruling, such as in an action for declaratory judgment, about how they should proceed. This may be necessary since administrative agencies are, as a general matter, prohibited from resolving such potential constitutional violations.

proceedings, rather than merely be treated as members of the public who are limited, generally, to status no greater than that of “interested persons” under IDAPA 04.11.01.158. The intervenors are more than “interested persons,” they are persons whose mineral rights will be directly and negatively affected by operations of the Fallon 1-10 well. A well that exists only because of a prior, procedurally deficient spacing and integration order.

Petitioners seek to intervene as full parties, and pursuant to IDAPA rules governing contested cases, their petition should be granted.

Dated this 14th day of November, 2019

PIOTROWSKI DURAND, PLLC

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

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2019, I caused to be served a true and correct copy of the preceding response 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		
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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		

James Thum	U.S. Mail	<input 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 checked="" type="checkbox"/>
jthum@idl.idaho.gov		

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