

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.)
_____)

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

**ORDER GRANTING PETITION
TO INTERVENE, BIFURCATING
HEARING, AND REQUIRING
ADDITIONAL NOTICE**

AM Idaho, LLC (“AMI”) filed an application on June 24, 2019, for a spacing order and to integrate all uncommitted owners in the proposed unit consisting of the SW ¼ of Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The Oil and Gas Division Administrator (“Administrator”) of the Idaho Department of Lands subsequently issued a July 10, 2019 *Order Vacating Hearing, Order Setting Hearing to Determine “Just and Reasonable” Factors, and Notice of Hearing and Setting Filing Deadlines* that set and noticed a September 9, 2019 hearing to determine “just and reasonable factors” and established briefing deadlines for that hearing.¹ After receiving written briefs, the Administrator held the hearing on the factors used to determine “just and reasonable” terms on September 9, 2019 at 9:00 am at the Payette County Courthouse, 1130 3rd Ave N, Ste. 104, Payette, Idaho.

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 on behalf of

¹ The Administrator set the hearing to determine “just and reasonable factors” in order to comply with the United States District Court for the District of Idaho’s order to “hold a new hearing that complies with due process by explaining the factors that will be considered when determining whether the terms and conditions of an integration order are ‘just and reasonable’” under Idaho Code § 47-320(1). *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216 (D. Idaho 2018).

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”). The *Petition to Intervene* stated that each of the petitioners are (1) mineral rights owners in Fruitland, Idaho; (2) hold mineral rights included in a portion of AMI’s identified hydrocarbon pool; and (3) did not receive notice of this proceeding. It asked the Administrator to allow them to intervene as parties, to reopen the record on factors used to determine just and reasonable terms, and to require notice to other mineral rights owners.

The Administrator issued a *Continuance and Scheduling Order* on October 9, 2019. That order continued the issuance of the just and reasonable factors order and set deadlines for parties opposing the *Petition to Intervene*. Additionally, the Administrator ordered the petitioners to submit their addresses as required in IDAPA 04.11.01.351.

Petitioners submitted their addresses in a *Notice of Errata to Motion to Intervene*. AMI later filed an *Objection to Motion to Intervene on Behalf of Applicant AM Idaho, LLC* (“*Objection*”) on October 14, 2019. AMI’s *Objection* argued that Idaho Code § 47-328 precluded the petitioners from filing the *Petition to Intervene* and that the *Petition to Intervene* failed to identify authority for participation.

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. The same day, AMI filed an *Amended Objection to Motion to Intervene on Behalf of Applicant AM Idaho, LLC* (“*Amended Objection*”), which noted that it was “only to correct the certificate of service.”² On November 1, 2019, the Administrator received an *Amended Motion*

² The *Amended Objection* certified that James Piotrowski was served as attorney for (1) CAIA (“Citizens Allied for Integrity and Accountability”) and Certain Non-Consenting Owners (Judith and Jimmie Hicks, Karen Oltman, Alan and Glenda Grace, and Shady River, LLC); and (2)

to Strike Objection and/or for Extension of Deadline to Respond to Objection to Intervention (“*Amended Motion*”) filed on behalf of petitioners.

The *Amended Motion* argued that AMI’s *Objection*³ should be struck because it was never served on petitioners, 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 stated that he did not receive AMI’s *Objection* until October 31, 2019. In the alternative, the motion requested a fourteen (14) day extension of time to submit a response. The Administrator denied the *Amended Motion*’s motion to strike because petitioners were ultimately served, but granted the motion for extension to allow all parties fourteen (14) additional days to respond to the *Objection* and *Amended Objection*.

Petitioners filed a *Response to AM Idaho’s Opposition to Petition to Intervene* (“*Response*”) on November 14, 2019. Petitioners reiterate the *Petition to Intervene*’s argument that they have a substantial interest in the proceeding because they hold mineral interests in the hydrocarbon pool AMI seeks to extract. They ask the Administrator to allow them to participate as full parties, including that they receive notice and be permitted to call, examine, and cross-examine witnesses; present documentary evidence; and provide argument and legal authority.

ANALYSIS

Petitioners request the Administrator allow them to intervene as parties and reopen the record to allow them to submit additional evidence and argument as to what factors the Administrator should consider to determine just and reasonable terms. They also ask the

Petitioners to Intervene (Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap). The *Objection* did not serve petitioners or CAIA and served the Certain Non-Consenting Owners directly.

³ The *Amended Motion* did not discuss AMI’s *Amended Objection* and its additional service.

Administrator to direct AMI to issue notice to all mineral rights owners within the 625 acre spacing unit AMI proposed in 2016 in contested case Docket No. CC-2016-OGR-01-004.⁴

1. The size, shape, and location of the spacing unit is determined by the Administrator based on the facts and circumstances.

AMI argues Idaho Code § 47-328 precludes the petitioners' ability to intervene because that statute only allows uncommitted owners⁵ within the proposed application area to intervene.

Idaho Code § 47-328(3)(b) provides:

For applications involving an order regarding unit operations or integration of a drilling unit, the applicant shall send a copy of the application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located. . . .

Only an uncommitted owner in the affected unit may file an objection or other response to the application, and the uncommitted owner shall file at least fourteen (14) calendar days before the hearing date provided in the notice.

AMI's assertion overlooks the first sentence in Idaho Code § 47-328(3)(b), which clarifies that the subsection addresses "applications involving an order regarding unit operations or integration of a drilling unit." The remainder of the paragraph, providing that "[o]nly an uncommitted owner in the affected unit may file an objection or other response to [an integration] application," must be read in conjunction with the first sentence, which presumes the existence of a spacing unit.

Idaho Code § 47-328(3)(b).

If the drilling or spacing unit identified in the application has not been previously authorized by order of the Commission, then the issue of whether the petitioners are within the

⁴ Petitioners repeatedly refer to the proceedings in Docket No. CC-2016-OGR-01-004, but have not submitted any documents from that prior proceeding into the record in this proceeding. For that reason, the Administrator hereby takes official notice of all documents filed in Docket No. CC-2016-OGR-01-004. *See* IDAPA 04.11.01.602.

⁵ "Uncommitted owner" means one who is not leased or otherwise contractually obligated to the operator. Idaho Code § 47-310(31).

“spacing unit” or “affected unit” is determined by the Administrator and depends on the circumstances and the facts presented. Indeed, a spacing order “shall specify the size, shape and location of the [spacing] units, which shall be such as will, *in the opinion of the department*, result in the efficient and economical development of the pool as a whole.” Idaho Code § 47-318(2) (emphasis added). The “affected unit” is not necessarily confined to the proposed application area. If that were always the case, then any applicant could simply designate the spacing unit without meeting the standards established in Idaho Code, title 47, chapter 3. Instead, the Administrator ultimately determines the spacing unit by applying the law to the facts and circumstances of a particular case.

AMI’s *Objection* acknowledges that the size, shape, and location of the spacing unit is to be determined by the Administrator. The *Objection* cites David Smith’s Declaration as evidence that the proposed spacing unit is not smaller than the maximum area that could be effectively and economically drained by a well as required by Idaho Code § 47-318. By citing *evidence* submitted and the standards in Idaho Code § 47-318, AMI has implicitly admitted that the spacing unit’s size, shape, and location is something to be proven; it is not a given. Because the unit is something to be proven, it cannot be presumed that only owners within the proposed spacing unit will be affected by the Administrator’s decision. Thus, Idaho Code § 47-328 does not preclude the petitioners from intervening because the Administrator has the ability to determine the spacing unit, which will determine which mineral interest owners are uncommitted owners within the “affected unit.”

Additionally, the statutory requirements for spacing applications do not preclude additional persons from intervening to prove they should be included in a spacing unit. Idaho Code § 47-328(3)(c) provides that for spacing applications “the department and any

uncommitted owner within the area defined in the application may file objections or other responses to the application.” However, Idaho Code § 47-328(3)(c) does not use a limiting word like “only” to preclude any other persons from filing an objection or response. It also does not preclude other persons from presenting evidence at the hearing. While Idaho Code § 47-317(3)(d) requires mandatory notice and opportunity for hearing to “all uncommitted owners” before producing a well in a drilling unit, that statute also does not bar participation of other owners that may argue they should be included in the unit. Thus, there is no statutory bar to these petitioners participating in a spacing evidentiary hearing to assert and put forth evidence that they should be included in the spacing unit.

2. The petitioners are permitted to intervene because they show a direct and substantial interest in the size, shape, and location of the spacing unit.

The Idaho Rules of Administrative Procedure of the Attorney General address petitions to intervene. IDAPA 04.11.01.350-354. Rule 350 states that a petition to intervene to become a party may be filed by “[p]ersons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding.” IDAPA 04.11.01.350. Further, Rule 353 provides that petitions to intervene will be granted upon showing “direct and substantial interest in any part of the subject matter of a proceeding” and that they do not unduly broaden the issues. IDAPA 04.11.01.353. Intervention can be granted “subject to reasonable conditions.” *Id.*

Here, the petitioners show a direct and substantial interest in the proceeding because they claim that they hold mineral rights in AMI’s identified hydrocarbon pool. They base this claim in part on AMI’s 2016 spacing application that included their mineral interests in the then-proposed spacing unit. The petitioners state that AMI’s currently proposed spacing unit would exclude their right to receive royalties and bonus payments due to them. For these reasons, they

essentially claim that their mineral rights would be affected by the spacing order and should be included in the spacing unit. The assertion by the petitioners that the spacing unit should include their mineral rights qualifies as a direct and substantial interest in the proceeding.

Allowing intervention and the opportunity to advance these claims would not unduly broaden the issues because, as explained above, the size, shape, and location of the spacing unit is already at issue in this proceeding. No party has yet proven the extent of the hydrocarbon pool and what the “affected unit” is in this case. Indeed, the size, shape, and location of the spacing unit is within the Administrator’s discretion and will be based upon evidence presented by the parties. *See* Idaho Code §§ 47-317, 47-318. For those reasons, the Administrator allows the petitioners to intervene and participate as parties in the evidentiary hearing to determine the spacing unit.

3. The Administrator will bifurcate the proceeding and hold a separate evidentiary hearing on the spacing application to determine the size, shape, and location of the spacing unit.

The Administrator must hear evidence before he can issue an order determining the size, shape, and location of the spacing unit. *See* Idaho Code §§ 47-317, 47-318. Without establishing and authorizing the boundaries of the spacing unit, the Administrator cannot know the uncommitted owners who would share production and be included in any subsequent integration order. *See* Idaho Code § 47-328(3)(b) (“Only an uncommitted owner in the affected unit may file an objection or other response to [an integration] application.”). To ensure the spacing unit is determined and appropriate notice is given for integration, the Administrator will bifurcate the proceeding. He will make a decision on the spacing application before issuing any order on the factors used to determine “just and reasonable terms,” and before holding an evidentiary hearing on the integration application.

If, after the spacing evidentiary hearing, the Administrator determines that the spacing unit includes some or all of these petitioners' mineral rights, then those who are uncommitted owners within the "affected unit" would be entitled to notice of an integration application under Idaho Code § 47-328(3)(b). After the Applicant submits an application with the requirements in Idaho Code § 47-320, including obtaining the support required and making the good faith efforts required, along with proper notice, the Administrator would then notice and hold a new hearing and allow the then-determined uncommitted owners within the affected unit to propose factors used to determine whether the terms of an integration order are "just and reasonable" as required by Idaho Code § 47-320. After that "just and reasonable factors" order, the Administrator would hold and notice an evidentiary hearing to allow the parties to present evidence related to the merits of the integration application itself and what proposed terms and conditions are "just and reasonable."

4. AMI is ordered to give notice to all uncommitted mineral interest owners within the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.

Petitioners request that the Administrator require AMI to provide additional notice "to all of [the] mineral rights owners with an interest in the larger pool of hydrocarbons which will necessarily be depleted" by the Fallon #1-10 well. *Petition to Intervene*, p. 4. They argue this is necessary because the current application does not indicate that the pool of natural gas has changed from AMI's 2016 application for a 625 acre unit in Docket No. CC-2019-OGR-01-002. *Id.* at 2. They assert that AMI has drawn an arbitrary line and excluding these owners would violate the owners' rights to due process.

The Fourteenth Amendment of the United States Constitution requires procedural due process. The minimal requirements of procedural due process relate to notice and an opportunity for hearing if the deprivation of a significant life, liberty, or property interest may occur.

Bradbury v. Idaho Judicial Council, 136 Idaho 63, 72, 28 P.3d 1006, 1015 (2001). If an uncommitted mineral interest owner may have their mineral interest included in a spacing unit, that mineral interest owner may have a property right affected by a spacing order.

AMI's application claims that the spacing unit is limited to the 160 acre unit in the SW ¼ of Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. It appears that AMI has decided to not to give additional notice to those outside of their 160 acre proposed unit.⁶ As already explained, the Administrator has not yet determined the size, shape, and location of the spacing unit. Other than the application materials, the record in this proceeding does not yet include detailed geologic data about the size and extent of the pool. But petitioners are correct that in Docket No. CC-2016-OGR-01-004 AMI previously applied for a 625 acre spacing unit that included several adjacent quarter sections.

Given that the prior request for a larger spacing unit includes mineral interest owners that may be potentially affected, and the fact that due process requires that those with property interests affected by an order are to be given notice and opportunity for hearing, notice of the hearing will be given to all other uncommitted owners within the 625 acre spacing unit. This ensures these potentially affected and interested uncommitted owners receive due process.

⁶ This lack of additional notice risks that the Administrator may determine the spacing unit should be a different area than proposed. A oil and gas treatise addresses some other potential consequences of operator decisions about notice:

Prudence may counsel giving notice to adjacent owners even if it is not proposed that they share. Otherwise, the agency determination will not be binding upon them, and they will be free to litigate the findings of the agency. If they are given notice and fail to take part in the agency proceeding, they will not be able to litigate the agency determination because they will be collaterally attacking an order of the agency or will have failed to exhaust an administrative remedy available to them.

Therefore, the Administrator will allow any other uncommitted mineral interest owners in the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho, to participate as parties in the spacing evidentiary hearing on AMI's spacing application if they also believe their mineral interests may be affected by the spacing order.

Proper notice to those potentially affected mineral interest owners ensures procedural due process and ensures the agency order will not be collaterally attacked by owners who did not receive notice. Further, IDAPA 04.11.01.203 and .302 allow the Administrator to order parties to serve documents upon parties and non-parties. Thus, AMI is hereby required to give notice to all uncommitted owners within the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.

AMI must serve the notice of hearing, and this order, on all uncommitted owners within the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.

Further, AMI must serve the portions of their application that relate to its request for a spacing unit on all uncommitted owners within the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. The pages of AMI's application that appear to relate to spacing are as follows: Cover letter pages 1-2; Exhibit A (Plat Map); Exhibit B (Declaration of Dave Smith); Exhibit 1 (Original Directional Well Plan); Exhibit 2A ("As Drilled" Directional Plan); Exhibit 2B ("As Drilled" Directional Plan View); Exhibit 3 (Quad Combo Log); and Exhibit 4A and 4B (Net Pay Isopach Map and Interpreted Seismic Cross Sections). If AMI believes that additional pages of the application also support its spacing application and it believes it will rely on those in the

spacing evidentiary hearing, it should serve those pages as well. AMI does not need to serve pages of its application that only relate to its request for integration.

As to the method of service, Idaho Code title 47, chapter 3, does not specify the method an operator must use to serve notice in a spacing proceeding. *See* Idaho Code § 47-328(3)(c). Regardless, the notice should be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). If AMI has updated and current ownership and address information for all mineral interests within the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho, AMI should send notice by regular U.S. mail to that contact information.

Additionally, for addresses where AMI does not have updated ownership contact information, AMI is required to send the application and notice of hearing by regular mail to “Current Mineral Owner” at the addresses it has for mineral interests within that area. AMI is required to do this so that a reasonable attempt is made to give notice even if ownership has changed. Because in prior applications AMI has previously identified uncommitted mineral interest owners in that area and therefore has likely ascertained many of the uncommitted owners within that area, the Administrator will give AMI fourteen (14) days from this order to serve notice and the documents required. If notice is not accomplished by the end of fourteen (14) days and no extension is requested, then the Administrator will dismiss AMI’s application.⁷ AMI must file proof of service with the Administrator. IDAPA 04.11.01.303.

⁷ Any extensions requested or other communication to the Administrator related to notice must be submitted to the Administrator in writing and served on all persons on the attached certificate of service.

Moreover, in order to provide notice to any unknown owners or those that are not reasonably ascertainable without an extensive title search, the Administrator will publish notice of hearing for two consecutive weeks in a newspaper of general circulation in Payette County, Idaho, the county where the proposed spacing unit and affected property is located.

5. The Administrator will further continue the issuance of an order on the factors used to determine “just and reasonable terms” until after an order is issued on AMI’s spacing application.

Because the Administrator has not determined whether petitioners are within the affected spacing unit, at this time he cannot act on the request to reopen the record to allow additional submission of evidence and argument as to what factors the Administrator will consider to determine just and reasonable terms. The Administrator will further continue his order on the factors used to determine just and reasonable terms pending the outcome of the spacing application hearing.

ORDER

The Administrator hereby ORDERS:

1. The evidentiary hearing on AMI’s application for a spacing order in Docket No. CC-2019-OGR-01-002 is BIFURCATED from all hearings on AMI’s application to integrate all uncommitted owners in the proposed unit consisting of the SW ¼ of Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.

The Administrator will hold an evidentiary hearing on AMI’s application for spacing and make a decision on the spacing application prior to (a) issuing an order on the factors used to determine just and reasonable terms and (b) holding an evidentiary hearing on AMI’s integration application.

2. Carrie Grant, Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap’s *Petition to Intervene* is GRANTED for the purpose of participating as parties in the evidentiary hearing to determine the spacing unit.

Further, the Administrator will allow any other uncommitted mineral interest owners in the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho, to

participate as parties in the evidentiary hearing on AMI's spacing application if they also believe their mineral interests may be affected by the spacing order.

3. Carrie Grant, Shannon Benedict, Donald and Phyllis Gruell, Sharon Simmons, Lowell and Geraldine Davis, James and Beverly Smith, Dana Harris, and Sandra Dunlap's request to issue an order directing notice is GRANTED to require notice as detailed above to petitioners and all other uncommitted mineral interest owners in the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho.
4. AMI is required to serve the notice of hearing, this order, and a copy of documents supporting the spacing request in its June 24, 2019 application on all mineral interest owners within of the SE ¼ of Section 9, the NW ¼ of Section 15, and the NE ¼ of Section 16, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. AMI does not need to serve the application on those uncommitted owners located in the SW ¼ of Section 10 because the application has already been served on those persons. If AMI fails to serve notice as directed within fourteen (14) days, then the Administrator will dismiss AMI's application.
5. The issuance of an Administrator order to determine just and reasonable factors is CONTINUED pending a decision on the spacing application.

DATED this 21 day of November, 2019.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 25th 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 Granting Petition to Intervene, Bifurcating Hearing, and Requiring Additional Notice* 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
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
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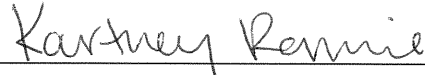
**same address/email as above*

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


Kourtney Romine
Administrative Assistant