

BEFORE THE STATE BOARD OF LAND COMMISSIONERS

In the Matter of the Application )  
of AM Idaho, LLC for Spacing ) DOCKET NO.  
Order and to Integrate Unleased ) CC-2019-OGR-01-002  
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, )  
AM Idaho, LLC, Applicant. )  
\_\_\_\_\_ )

BEFORE

HEARING OFFICER: MICK THOMAS

Date: September 9, 2019 - 9:05 a.m.

Location: Payette County Courthouse  
1130 3rd Avenue North, Suite 104  
Payette, Idaho

REPORTED BY:

COLLEEN P. DOHERTY, CSR 345

Notary Public

APPEARANCES:

For AM Idaho, LLC:

SMITH MALEK  
BY MR. MICHAEL CHRISTIAN  
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For the Unleased Landowners:

HERZFELD & PIOTROWSKI  
BY MR. JAMES M. PIOTROWSKI  
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For the Oil and Gas Division Administrator of the Idaho  
Department of Lands:

OFFICE OF ATTORNEY GENERAL  
Deputy Attorney General  
BY MS. KRISTINA FUGATE  
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Boise, Idaho 83720-0010  
kristina.fugate@ag.idaho.gov -And-

THE HEARING OFFICER: Good morning. It's now 9:05 a.m., Monday, September 9th, 2019. We're at the Payette County Courthouse in Payette, Idaho. This is the scheduled time and place for the IDL Hearing No. CC-2019-OGR-01-002 to determine the factors I will consider when determining whether the terms and conditions of an integration order are just and reasonable as provided in Idaho Code 47-320.

My name is Mick Thomas. I'm the division administrator with the Idaho Department of Lands, and I am presiding over, and conducting the hearing today pursuant to Idaho Code 47-328. For background, on October 23rd, 2019 (sic), the Oil and Gas Conservation Commission decided that after integration applications are filed, the administrator will hold a hearing, and issue a ruling identifying the factors the administrator will consider.

The OGCC directed this be done prior to holding an evidentiary hearing on the merits of an integration application pursuant to Idaho Code 47-328. A decision is required to comply with U.S. District Court 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 condition of an integration order are just and

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reasonable.

On June 24th, 2019, AM Idaho, LLC initiated this matter when it filed the application for a spacing order, and to integrate all uncommitted owners in the proposed unit consisting of Southwest 1/4 of Section 10, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. On July 10th, 2019, I issued an order that vacated the August hearing, set the September 9th, 2019 hearing to determine just and reasonable factors, set a briefing deadline for the September 9th, 2019 hearing, and noticed the September 9th, 2019 hearing. As that notice indicates, the scope of these factors is a question of law, and I am limiting parties to the presentation of legal arguments. This is not an evidentiary hearing.

My responsibility is to consider the arguments provided, along with the applicable statute, rules, and case law, and determine the factors used to determine whether the terms of an integration order are just and reasonable. After I hear the arguments today, I will ultimately issue a written order within 30 days of the hearing of this issue.

This hearing is being recorded by a court reporter. So I ask that everyone here be sure to speak clearly, please limit side conversations. I look

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1 forward to a civil hearing; however, if these  
2 proceedings are interrupted, or parties are not treated  
3 with respect, I may take action to regain order. This  
4 may include asking those who are disruptive to leave  
5 this courtroom. I don't anticipate that today, but I  
6 want to share it. Shuffle papers carefully, and if you  
7 haven't done so already, please silence your cell  
8 phones.  
9 My decision will be based on the information  
10 provided in the record. The record will include  
11 arguments provided today, as well as the agency record.  
12 The agency record thus far consists of the following.  
13 On June 24th, 2019 the application for spacing and  
14 integration. July 3rd, 2019, Idaho Department of Lands  
15 reply to the application. July 10th, 2019, the order  
16 vacating the hearing, over setting the hearing date to  
17 determine just and reasonable factors, and notice of  
18 hearing, and setting filing deadlines. July 16th, the  
19 applicant, AM Idaho, LLC notice of service. July 31st,  
20 2019, the AM Idaho, LLC opening brief. July 31st, Idaho  
21 Department of Lands opening brief. July 31st, the  
22 submission of nonconsenting owners, and CAIA regarding  
23 factors for establishing just and reasonable terms.  
24 August 14th, response of nonconsenting owners and CAIA  
25 regarding factors for establishing just and reasonable

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1 terms. Again, on August 14th, the applicant, AM Idaho,  
2 LLC response to the brief. And on August 21st, the  
3 applicant, AM Idaho, LLC replied to the brief. All of  
4 these documents are on the OGCC web page.  
5 We'll proceed with the hearing as follows. I  
6 will first hear arguments from the applicant, AM Idaho,  
7 LLC. This will be followed by arguments from the  
8 uncommitted owners within the proposed units, or the  
9 their representation. Afterward, I will accept  
10 arguments from the Idaho Department of Lands. Again, I  
11 may ask clarifying questions of each party. Finally, I  
12 will accept testimony from members of the public.  
13 For those people who would like to provide  
14 comment today, who are not uncommitted property owners,  
15 I'm going to limit your comments to five minutes. If  
16 you are a member of the public, or really for anybody  
17 who comes up and speaks, please write your name on the  
18 attendance sheet. And when you come up, I'll ask you  
19 and remind you to state your name and spell it. If you  
20 are here as a representative, please indicate your own  
21 name, as well as who you are representing. I may ask  
22 clarifying questions again when you speak.  
23 So before we begin, are there any procedural  
24 questions before we begin?  
25 Okay. Hearing none. Let's lead with

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1 testimony. State and spell your name.  
2 MR. CHRISTIAN: Mr. Hearing Officer, my name  
3 is Michael Christian, the last name is  
4 C-h-r-i-s-t-i-a-n. I'm the attorney for the applicant,  
5 Am Idaho, LLC. I'm happy to be here. I'll try to be  
6 brief. I don't think most of what I say, will be a  
7 surprise to you. I'm happy to answer any questions you  
8 have.  
9 As you know we're here, because the U.S.  
10 District Court concluded that as to the prior  
11 application objecting mineral interest owners were not  
12 afforded sufficient due process prior to the issuance of  
13 that last integration order relating to what is now the  
14 Fallon 1-10 well and the area surrounding it. It's  
15 important, I think to keep in mind, that the federal  
16 court did not find or require that the mineral interest  
17 owners were entitled to any particular result. In other  
18 words, any particular set of terms and conditions. He  
19 held only that more process was required to afford them  
20 a reasonable opportunity to be heard, and for the  
21 commission's discretion to be appropriately exercised.  
22 The result remains one of discretion for you and for the  
23 Commission.  
24 As I expect you to glean from the briefing we  
25 had filed, AMI's position is that the focus should be on

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1 the purposes of Idaho's Oil and Gas Act, and admission  
2 of the Oil and Gas Conservation Commission as defined  
3 within the act, which is primarily to encourage  
4 development, prevent waste, and protect correlative  
5 rights.  
6 Economic terms of integration are largely  
7 defined in the statute, as you know. The bonuses to be  
8 the highest paid in the unit at the time of application.  
9 The royalty is defined as no less than one-eighth.  
10 Presumably there will be evidence developed at the main  
11 hearing to determine whether or not to deviate from an  
12 eighth. There is also some flexibility regarding the  
13 risk penalty for a nonconsenting working interest owner.  
14 And presumably evidence will be developed at the main  
15 hearing to determine whether the request and percentage  
16 is reasonable.  
17 The form of lease and joint operating  
18 agreement will presumably be evaluated. AMI has noted  
19 in its briefing that the AAPL Model Form 610 JOA has  
20 been widely adopted. And we noted that the Utah Supreme  
21 Court recently held that the form was reasonable as  
22 proposed by the operator, in part because it was  
23 materially in the same form as the JOA used by working  
24 interest owners, and the form that the operator had used  
25 for several years.

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1 Noneconomic items are the main subject of the  
2 discussion over just and reasonable terms, including  
3 such subjects as lease terms and surface occupancy.  
4 You'll note from the cases cited in AMI's briefing that  
5 the focus of courts is consistent with the focus of the  
6 act. What is just and reasonable is what affords an  
7 unleased mineral owner to all that he or she is entitled  
8 to because of ownership of minerals. The Commission is  
9 not an all knowing, all powerful body, and its reach  
10 into subject matters outside of the confines and  
11 purposes of the act, for example, third party contract  
12 rights, I would submit is neither consistent with the  
13 act, or necessary to reach what is a just and reasonable  
14 result under the act.  
15 The cases also make clear that the goal is not  
16 to place the operator and the unleased mineral interests  
17 in equal balance. The entire point of the integration  
18 process is to prevent tyranny of the minority by  
19 allowing the minority of the mineral interests in a  
20 spacing unit area to prevent development.  
21 The focus of the act is on providing the  
22 opportunity of each owner in a pool to produce his just  
23 and equitable share of the oil and gas in the pool  
24 without waste. That's from 47-310(4). The act also  
25 says the duty to prevent waste is paramount. That's

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1 47-315(2). Considering the rights of the operator and  
2 voluntarily leased mineral interests behind it, who wish  
3 for their minerals to be developed is also necessary in  
4 determining what terms and conditions are just and  
5 reasonable.  
6 Opposing a set of terms and conditions, which  
7 effectively prevent that development, either by erecting  
8 a practical and absolute barrier, or by rendering  
9 operation of uneconomical is as unjust as would be an  
10 order allowing development without compensating unleased  
11 mineral interests at all. With respect to the point  
12 about potential environmental impacts of hydrocarbon  
13 development raised by the objective mineral interest  
14 owners, 47-315 makes it clear that the Commission has  
15 the authority to regulate operations, but those are  
16 covered in IDAPA 20.07.02, and also covered in the drill  
17 permit process.  
18 Integration orders are focused on prevention  
19 of waste and protection of correlative rights, i.e.,  
20 ensuring each mineral interest owner has the opportunity  
21 to receive their just share of production. Other states  
22 pool and processing orders are consistent with this  
23 conclusion. We attached as a sample to AMI's briefing,  
24 as a sample of, again, when I was briefing, is a sample  
25 of recent pooling from Arkansas as an illustration. AMI

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1 has not found any indication in other states,  
2 commissions, or governing bodies become engaged in third  
3 party contracts, or valuations of non-mineral property  
4 interests. Certainly no other Commission has  
5 effectively given veto power to a non-mineral owner.  
6 Surface protections are already covered in the act  
7 referring to 47-334, and it certainly may be referenced  
8 in an integration order.  
9 I take it that the objecting mineral interest  
10 owners position appears to be without some radical  
11 change integration procedures are inherently  
12 unconstitutional, and would result in an  
13 unconstitutional taking. This is not what the federal  
14 court said. It said, this conclusion does not affect  
15 the hearing officer's ability to exclude irrelevant, or  
16 unnecessary testimony or evidence, or the commission's  
17 discretion to determine what factors should be  
18 considered when determining whether the terms and  
19 conditions of an integration order are just and  
20 reasonable. Rather it simply recognizes the due process  
21 requires a meaningful opportunity to be heard. And in  
22 these circumstances, the plaintiffs and other  
23 nonconsenting non-owners know the standard, which the  
24 hearing officer will apply in considering whether the  
25 integration order is just and reasonable.

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1 In other words, as you've stated here, and in  
2 your order setting this hearing, the hearing officer,  
3 merely needs to announce standards prior to the main  
4 hearing. And it steams to me in your order setting this  
5 hearing, you already did announce at least some  
6 standards.  
7 Lastly, the idea that integration is an  
8 unconstitutional taking, has been roundly rejected by  
9 other courts in other states. In fact, in the prior  
10 lawsuit, CAIA dropped its takings claim. AMI has no  
11 issue with objecting mineral owners presenting evidence  
12 regarding harm specific to them, proposing terms and  
13 conditions narrowly tailored to address those specific  
14 proven impacts, if consistent with the purposes of the  
15 act, and the commissions authority under it. Some  
16 alleged or potential impacts are simply within the  
17 purview of other governmental bodies, with different  
18 missions and authority. And mineral interest owners are  
19 free to turn to them, again consistent with their own  
20 statutory purposes and authority.  
21 The job of the Commission, as stated in the  
22 act, is to encourage development, prevent waste, and  
23 protect correlative rights, and to justly integrate  
24 mineral interests as necessary in pursuit of that  
25 mission. Likewise, a venue exists for those who oppose

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1 development in its entirety to pursue that policy goal,  
2 and there will always be those who oppose development,  
3 just as there are those who favor it. That venue is the  
4 legislature. And AMI remains happy to debate policy  
5 issues there.

6 Lastly, I would note the irony of the  
7 complaint in the mineral interest owners briefing about  
8 the last application being for a smaller unit size,  
9 which was based on test information developed since the  
10 Fallon well was drilled. Given that it complained in  
11 the last hearing that the unit was too large, and not  
12 sufficiently drawn down to best encompass the pool.  
13 Now, that AMI has attempted to do that, the complaint  
14 comes from the other direction. I will leave it to you,  
15 who was the hearing officer in the main hearing, to draw  
16 your conclusions from that.

17 So with that, I'm done with my spoken  
18 comments. And answer any questions you may have.

19 THE HEARING OFFICER: Thank you,  
20 Mr. Christian. I have a few questions I would like to  
21 ask. Some of the material you've already covered, but I  
22 would like to ask it regardless. Just for my  
23 information, you were talking about the standard form of  
24 the joint operation agreement. You said this was an  
25 industry standard. And just so I know, does that JOA

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1 also contain an AFE, which is the authority for  
2 expenditures.

3 MR. CHRISTIAN: It does.

4 THE HEARING OFFICER: Okay. Thank you. A few  
5 more questions. You previously suggested detailed  
6 factors in April in this matter relating to your  
7 previous integration order application in 2016-004. I'm  
8 not sure if you have it in front of you today. What is  
9 your position on the factors that you previously  
10 suggested?

11 MR. CHRISTIAN: I think it's appropriate, and  
12 you can define from my description of those factors,  
13 that the point was to focus the parties on facts  
14 specific to the proposed unit area at hand, and the  
15 proposed operations at hand. And I think there are  
16 appropriate reasons to consider some or all of those  
17 factors within the purview of you and the Commission.

18 Specifically, you must review and approve a  
19 form of lease to be used in the integration order. Some  
20 of those factors may bear on terms to be included or  
21 excluded from the form of lease. For example, we  
22 included language in the proposed form that if a parcel  
23 was below a certain size, there would be no drilling  
24 activity, or no surface operations on track, consistent  
25 with setbacks in the statute. It's just a practical

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1 impossibility to engage in some things on a tract below  
2 a certain size. That's just one example. It's a  
3 long-winded way of saying, that those factors are  
4 appropriate to consider in conjunction with your, and  
5 the Commission's mission and authority under the act.

6 THE HEARING OFFICER: Thank you. The next  
7 question, what types of activities do you think are  
8 included in the protection of correlative rights?

9 MR. CHRISTIAN: Well, the concept of  
10 correlative rights, as I think it's defined in the  
11 statute, has to do with ensuring that a mineral interest  
12 owner has at least the opportunity to receive their just  
13 and fair share of production. So in this case, for  
14 mineral interests owners to be integrated, one of the  
15 most obvious things it would include would be the amount  
16 of the royalty. It could also include the amount of the  
17 risk penalty, because that can impact what they  
18 ultimately receive.

19 For purposes of the operator, or the committed  
20 mineral interest, it's the same subject. It may include  
21 consideration of whether certain terms and conditions  
22 make it too difficult or uneconomic to produce, at least  
23 unfairly so for the operator. In the pursuit of some  
24 goal that is outside the concept of correlative rights,  
25 I'm not saying that very clearly. But correlative

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1 rights go both ways. And if the interests of the  
2 unleased mineral interest owner is not paramount, then  
3 there is that of the operator of the leased mineral.  
4 Your job as the administrator, and the Commission's job  
5 is to balance them to ensure that everybody receives, or  
6 has the opportunity to receive their fair share of  
7 production.

8 THE HEARING OFFICER: Thank you. That leads  
9 into my second question or third question. Is it  
10 possible for the term "just and reasonable," is it  
11 possible for a term to be just and reasonable, if it is  
12 outside the terms described in Idaho Code.

13 MR. CHRISTIAN: My position would be that it's  
14 not. That again, as you've seen in AMI's briefing, this  
15 proceeding is occurring pursuant to the terms of the Oil  
16 and Gas Act. And the Oil and Gas Act has a very strong  
17 statement of public policy at the beginning of it, and  
18 it has terms set throughout it in pursuit of that stated  
19 public policy. So to my mind, a term or condition in an  
20 order that is contrary to that stated public policy,  
21 pursuant to which this proceeding is being held would  
22 not be just and reasonable.

23 THE HEARING OFFICER: Thank you. What if the  
24 circumstance comes up in this unit, that is not  
25 addressed by statute or rule?

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1 MR. CHRISTIAN: It's impossible to address  
2 every circumstance. I mean, you just can't do it. But,  
3 if a circumstance arises, the act, itself, has, for  
4 example, procedures that a member of the public, or a  
5 mineral interest owner can resort to address it. I'm  
6 not going to quote the section to you. But there is the  
7 ability to make a complaint to the Commission about some  
8 circumstance where, for example, a member of the public,  
9 or an uncommitted mineral interest, or integrated  
10 mineral interest owner thinks that the operator is  
11 violating their obligations under the act. And the  
12 Commission can then investigate that complaint, and take  
13 whatever action it needs to enforce the act.  
14 So the short answer to your question is, there  
15 are procedures in the act to address and deal with  
16 unforeseen circumstances.  
17 THE HEARING OFFICER: Thank you,  
18 Mr. Christian. Those are all the questions I have for  
19 you right now.  
20 MR. CHRISTIAN: Okay.  
21 THE HEARING OFFICER: Next I'm going to accept  
22 comment testimony from the uncommitted property owners.  
23 And while Mr. Piotrowski is getting ready, I will also  
24 say that when he is finished, I'm going to have a second  
25 call for any uncommitted property owners in the room if

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1 they are not represented by Mr. Piotrowski.  
2 MR. PIOTROWSKI: Good morning, Mr. Hearing  
3 Officer. I'm James Piotrowski, P-i-o-t-r-o-w-s-k-i,  
4 here representing Judith and Jimmie Hicks, Karen Oltman,  
5 Alan and Glenda Grace, Shady River, LLC, and Citizens  
6 Align for Integrity and Accountability.  
7 We've submitted briefing in this matter. And  
8 I think to start with, I would point out, that if  
9 complying with the statute, and purely complying with  
10 the statute was adequate, we wouldn't be here today.  
11 The District Court had in front of it, the entire  
12 statute. There was no claim in the case that the  
13 statute had been violated. And yet, the court found  
14 there was a due process violation. So clearly beyond  
15 merely complying with the statute is required to satisfy  
16 the constitutional obligations of an arm of state  
17 government. That shouldn't be surprising to anyone.  
18 By deciding that the Commission cannot alter a  
19 bonus payment, cannot reduce a royalty payment below a  
20 certain level, the legislature was making, I think, a  
21 very clear point. And that point was that the Oil and  
22 Gas Commission was required to ensure the terms were  
23 just and reasonable by looking to all of the terms of  
24 the agreements, and all of the potential terms of the  
25 agreements.

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1 The most obvious way to address an inequality  
2 of the law is through the awarding of additional monies.  
3 We often say that in litigation, the only tool a court  
4 has usually to award damages. Damages here are not  
5 available. That is not a tool that the Commission has  
6 to use. It can not decide that a bonus payment of a  
7 thousand dollars would make the lease more just and  
8 reasonable. It cannot decide that a royalty of 98  
9 percent is just and reasonable.  
10 The legislature has imposed limits on the  
11 financial terms that the Commission can address, and  
12 leaves to the Commission all of the other tools  
13 available to ensure that the terms of leases are just  
14 and reasonable. This is important for a very simple  
15 reason. As the Supreme Court has said over, and over,  
16 and over again, when addressing the compelled sell of  
17 minerals, the requirement of just and reasonable terms  
18 is coextensive with the substantive due process  
19 requirement.  
20 In other words, the phrase "just and  
21 reasonable" is not a throwaway. It has meaning. If you  
22 take the phrase "just and reasonable" out of the Oil and  
23 Gas Commission Act, the act becomes unconstitutional.  
24 And so just and reasonable is meant to protect the  
25 constitutional rights, which we would argue are more

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1 important than correlative rights. And so if the  
2 Commission focuses only on correlative rights as AMI  
3 suggests, it would be ignoring the United States  
4 Constitution.  
5 So the direct challenge to the Commission, and  
6 to you, Mr. Hearing Officer, posed by the district court  
7 is to be the first to determine what is required for  
8 terms to be just and reasonable. And then it is not  
9 unusual for courts to allow executive branches to have  
10 that first shot, or legislative branches to have that  
11 first shot in defining the terms.  
12 When faced by the possibility that the  
13 Commission might actually adopt a rule setting out just  
14 and reasonable terms, AMI had a lengthy list of factors.  
15 In fact, it had eight of them to be precise. And those  
16 factors, indeed, were reasonable. We've heard  
17 Mr. Christian now say, that he thinks, indeed, those  
18 factors are appropriate. He says that today, although  
19 no such admission was made in the briefing.  
20 So as a starting point, the factors listed in  
21 the previous briefing to the Commission back in April,  
22 seem to be a point of agreement, at least between my  
23 clients and AMI, that those eight factors are eight that  
24 we should consider.  
25 I think that makes your job fairly easy in

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1 that you've got the agreement of at least many of the  
2 parties, not all of them by any means, but many of the  
3 parties that the factors, you know, one through eight  
4 seen at page 3 of my own submission to the Commission,  
5 but copied from the April briefing by AMI, are a good  
6 starting point.  
7 Importantly, contrary to Mr. Christian saying  
8 this today, included in those factors were  
9 considerations of third-party contract issues. I  
10 believe that was set out in -- yeah, it was his third  
11 factor, where he said whether existing regulatory zoning  
12 or contract property restrictions in the proposed unit  
13 area require the imposition of certain terms and  
14 conditions in order to prevent harm or unreasonable  
15 impact to surface owners.  
16 Now, harm, or unreasonable impact are not  
17 certainly defined. But certainly putting a homeowner in  
18 a position of violating the terms of their mortgage,  
19 violating the terms of their property insurance policy,  
20 or violating other terms of contracts that run with  
21 their property would be harm to them. So we can start  
22 with those eight factors as a beginning point for this  
23 case, and I would imagine for every future case as well.  
24 This case raises some particular concerns that  
25 don't exist in all others, however. First, is the

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1 procedural due process concern that it is almost beyond  
2 question that any person whose property interests are  
3 affected by a decision of an element of state government  
4 are entitled to notice and an opportunity to be heard.  
5 And yet, when you look at the application, itself, it  
6 reveals that AMI wishes to extract hydrocarbons from  
7 property owners, who have not received notice of this  
8 procedure.  
9 In 2016, when the previous application was  
10 before you for a decision, and then before the  
11 Commission, there was an administrative rule in place.  
12 The statute in this case says that integration units,  
13 spacing units rather should be defined in reference to  
14 the land management system.  
15 The Commission had adopted a regulation that  
16 stated that statute would be interpreted as requiring  
17 that a spacing unit should be a section, a 640 acre  
18 section. That was why three years ago, AMI proposed  
19 a -- it was actually four quarter sections because of  
20 where the hydrocarbon pool was located, but suggested a  
21 slightly less than 640 acre unit, slightly less because  
22 a portion of the one of the quarter sections was cut off  
23 by the enumerator.  
24 Today, they've redefined the pool. At the  
25 time, in 2016, the pool was smaller than a full section.

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1 Today, they've redefined the pool based on allegedly new  
2 data. The pool is larger than a quarter section, yet it  
3 is only a quarter section that the company proposes as a  
4 spacing unit.  
5 And that requires that the Commission consider  
6 whether all of the affected households, or whether all  
7 the affected property owners, the mineral rights  
8 property owners have received notice. There is no  
9 reason that a spacing unit now should be based on, or  
10 should encompass only a section, or even a quarter  
11 section. The regulation that required that is no longer  
12 effective. It went away earlier this year. And I  
13 believe it was on the list to not be repropose.  
14 So we have a requirement that the spacing unit  
15 be described with reference to the land property system,  
16 but no requirement that it be a quarter section, or a  
17 section. And certainly no requirement that the spacing  
18 unit be square when the hydrocarbon pool in question is  
19 over. To put it bluntly, Alta Mesa is trying to stick  
20 square blocks in round holes.  
21 This presents a serious due process problem,  
22 because those people whose land overlies the round part  
23 of the unit, but don't overlie the square if I'm Alta  
24 Mesa have not received notice, haven't been given a  
25 meaningful opportunity to participate.

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1 Finally, we would point out, the procedural  
2 due process concerns are not where due process ends, but  
3 rather substantive due process applies here, also. In  
4 evaluating the systems requiring the sale of oil and gas  
5 interests, at prices established, either directly by the  
6 government, or established on the basis of factors set  
7 out in the statute. The Supreme Court has been very  
8 clear, these systems are permissible. These systems are  
9 permissible as long as the terms of sale that are  
10 compelled by the government are based on just and  
11 reasonable terms. And in doing so, the courts have  
12 identified at least five specific factors overlapping  
13 somewhat, that ought to be considered.  
14 The first of those -- and these from set out  
15 on page 6 of our submission. The first of those is the  
16 protection of reasonable market based investment  
17 expectations. Applying that in this case it's quite  
18 simple. When people bought property in the area of the  
19 proposed spacing unit, and in the area of the previously  
20 proposed spacing unit, they were buying primarily for  
21 two purposes. They were buying homes, or they were  
22 buying agricultural land. And ensuring that the market  
23 based expectations of those investments are protected is  
24 a critical part of finding just and reasonable terms.  
25 Other courts have found that it is necessary

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1 to establish terms sufficient to ensure confidence in  
2 the financial integrity of all entities involved. And  
3 that goes precisely to the point Mr. Christian made,  
4 which is that the interest of the operator must be  
5 addressed, the interest of the homeowners, the interest  
6 of the property owners, the industrial land developers,  
7 all of those interests must be addressed. And terms and  
8 conditions that make it impossible to successfully  
9 drill, may not be acceptable. But so are terms and  
10 conditions that would destroy the value of investments  
11 made by homeowners and landowners.  
12 A third requirement was addressing the broad  
13 public interest involved. And the Idaho Legislature has  
14 told us that the protection of correlative rights, and  
15 the reasonable development of hydrocarbons in Idaho are  
16 part of the broad public interests. But broad public  
17 interest go beyond just the act in consideration right  
18 now. Broad public interests in Idaho certainly include  
19 the protection of a reasonable property right  
20 expectations.  
21 Almost nowhere more than in Idaho is a man's  
22 home his castle, or a woman's home, or anyone's home.  
23 We are a state that believes in property rights at a  
24 level that most states don't. The broad public interest  
25 involved here are not merely to increase hydrocarbon

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1 production. Those interests include personal autonomy,  
2 personal sovereignty, the freedom, as so many Idahoans  
3 pursue, the freedom to be left alone. A fourth  
4 consideration that the courts have pointed to in  
5 determining just and reasonable as a due process  
6 element, are avoiding terms that are unjust,  
7 unreasonable, unduly discriminatory, or preferential to  
8 one party over another.  
9 What the industry proposes here are terms that  
10 would be preferential to AMI over the property owners.  
11 The royalty they proposed is as low as it can possibly  
12 go. The bonus payment is quite small as to be  
13 de minimis. The Commission should be evaluating whether  
14 the terms proposed protect the operator over the  
15 landowners.  
16 And a fifth term we've discovered in our  
17 research, is ensuring that the terms fairly compensate  
18 investors for the risks they have assumed. When an  
19 individual goes out to buy farmland, he can evaluate the  
20 condition of the land. He can determine the likely  
21 yield of that land. He can determine whether the land  
22 will grow appropriate graze and forbs for animals, for  
23 livestock.  
24 What he cannot evaluate is the likelihood that  
25 some operator drilling oil 500 yards away might engage

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1 in some kind of conduct that creates pollution, creates  
2 contamination of that land. And so ensuring the terms  
3 that compensate the investors for the risks they have  
4 assumed is a critical part of this. A landowner assumes  
5 certain risks. An operator assumes other risks. And  
6 making sure that the operator remains responsible for  
7 the risks they have assumed, and that landowners remain  
8 responsible only for the risks they have assumed is a  
9 reasonable and just term.  
10 As I started out saying, when the legislature  
11 decided that royalties and bonus payments were largely  
12 going to be set by external factors, they were leaving  
13 the Commission all of the other tools. The Commission  
14 should decide -- and as a result, we have one last set  
15 of factors that the Commission ought to be considering.  
16 The Commission ought to decide whether bonding  
17 requirements are appropriate in this case.  
18 AMI has almost no market value at this point.  
19 This is a company that one good oil spill puts them out  
20 of business, and beyond the reach of creditors. So  
21 bonding to ensure reclamation and protection of nearby  
22 property owners is appropriate. Tracing requirements,  
23 the current proposal is for a square spacing unit over  
24 part of an oval hydrocarbon pool. And so using tracing  
25 methods to see whether, in fact, Alta Mesa ends up

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1 taking hydrocarbons from people outside of the spacing  
2 unit is required to ensure that there is not, in fact, a  
3 taking here that would violate the constitution.  
4 Restrictions on operations such as requiring that  
5 appropriate means of moving any extracted hydrocarbons  
6 are in place before operations begin, before extraction  
7 operations begin. Restrictions on methods, restrictions  
8 on times and means, those are all within the Oil and Gas  
9 Commission's power as terms to be used to ensure just  
10 and reasonable terms in the integration.  
11 Specific reclamation requirements would be  
12 appropriate. This is less of a problem in hydrocarbon  
13 mining, than other types of mining. But America is  
14 covered in thousands, tens of thousands, perhaps  
15 hundreds of thousands abandoned wells that have become  
16 dangerous. And ensuring that doesn't happen here in  
17 Idaho, and that doesn't happen to innocent property  
18 owners, who are forced into this process, is a just and  
19 reasonable term.  
20 And finally, establishing specific disclosure  
21 requirements that would be specific to this proposal  
22 would also be appropriate. AMI is a company that has  
23 routinely and for years now fought every effort  
24 requiring them to disclose their production. If my  
25 clients are forced into, are integrated into an



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1 operation here, they will be entitled to at least a  
2 one-eighth royalty. And yet, AMI can't be trusted to  
3 accurately and fully disclose how much oil and gas  
4 they've produced. They haven't been willing to tell the  
5 Commission. They certainly haven't been willing to tell  
6 us. They treat that as a trade secret. When, in fact,  
7 it is my clients' oil and gas that they are taking. So  
8 disclosure requirements to ensure that there is adequate  
9 protection for lease holders is another factor that  
10 should be addressed.  
11 All of these things taken together should  
12 provide more than adequate basis for the Commission to  
13 establish what factors are appropriate for consideration  
14 in this case to ensure that the compelled leases are  
15 just and reasonable. Thank you.  
16 THE HEARING OFFICER: Thank you. If you don't  
17 mind, I have some questions for you, Mr. Piotrowski?  
18 MR. PIOTROWSKI: Yes, absolutely.  
19 THE HEARING OFFICER: Before I start with some  
20 questions, we will get a little housekeeping. There is  
21 a sign-in sheet floating around the room. Has anyone  
22 not signed it? Hands in the air. If you can please get  
23 it to those people, if you don't mind, just a small  
24 little break. Thank you.  
25 MR. PIOTROWSKI: Okay.

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1 THE HEARING OFFICER: You've elaborated on  
2 some of this, but I want to ask some of these questions  
3 just for clarity. Should the factors to determine just  
4 and reasonable terms be contained within the act stated  
5 purpose in Idaho Code 47-311, which is encourage and  
6 promote development, prevent waste, and protect  
7 correlative rights?  
8 MR. PIOTROWSKI: The Oil and Gas Conservation  
9 Act does not exist alone. There is a notion in American  
10 law, that the law forms a seamless web. I personally  
11 kind of take issue with that, it's not so seamless. But  
12 it expresses an important idea, which is that no piece  
13 of law stands alone. If the act, itself, was adequate,  
14 we wouldn't have a due process issue here at all. We  
15 wouldn't be having this hearing, in fact.  
16 The statute must be construed, understood, and  
17 applied within the broader context of Idaho property  
18 rights, and within the context of the state and federal  
19 constitutional rights of all property owners. So  
20 staying within the four corners of the act is not going  
21 to be adequate.  
22 THE HEARING OFFICER: Thank you. Follow-up,  
23 beyond the Idaho Code 47-320 requirement for an  
24 integration order to be upon just and reasonable terms,  
25 what statutory authority in the Oil and Gas Act supports

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1 the factors that you've identified?  
2 MR. PIOTROWSKI: Well, first of all, the act  
3 does clearly give the Commission the power to establish  
4 just and reasonable terms. And so within a certain  
5 range of reasonableness is a common term used, the  
6 Commission should exercise that authority as broadly as  
7 it feels is necessary. And administrative agencies in  
8 Idaho are given quite broad discretion in how to  
9 exercise their authority.  
10 Again, though, the agency is never permitted,  
11 merely because it has statutory authority, to ignore  
12 constitutional requirements, or other requirements of  
13 law. And so what specific authority does it have within  
14 the four corners of the act is that authority to  
15 establish, and/or acquire the terms of leases to be just  
16 and reasonable. Beyond that, it necessarily has the  
17 obligation. And where it has the obligation, it  
18 necessarily has the authority to comply with  
19 constitutional norms.  
20 THE HEARING OFFICER: Thank you. In your  
21 opening brief, you stated that all affected property  
22 interests need notice, and the opportunity to be heard.  
23 You've touched on this a little bit, but for clarity.  
24 Who do you argue should have notice?  
25 MR. PIOTROWSKI: We believe it should be

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1 everybody who overlies the full extent of the identified  
2 hydrocarbon pool. We have an unusual case here. The  
3 act was written on the basis of similar acts across the  
4 west. Those acts in turn were primarily written in  
5 response to the challenges facing the oil industry, not  
6 just in the West, but also in the East. And they assume  
7 that oil fields will be quite extensive. I mean, west  
8 Texas is kind of the model for this legislation, where  
9 there are productive wells reaching into the same  
10 reservoirs across vast areas.  
11 Here we have the unusual situation in which  
12 AMI has identified what it believes to be a relatively  
13 small pool of hydrocarbons. In this case, there can be  
14 no assumption that if the Commission establishes the  
15 spacing unit requested, that other subsequent spacing  
16 units, you know, will capture those other homeowners.  
17 If I own a home in west Texas, I can assume that one  
18 unit or another is going to include my property. Here  
19 that is not the case. Alta Mesa first determined, to  
20 the best of its ability, and based on the best science  
21 available at the time, it claimed that it had identified  
22 a pool. Today, it identifies a much smaller pool.  
23 Now, really importantly is the fact that it  
24 doesn't say, that it's current description of the pool  
25 is actually the geographic limits of the pool. What it

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1 says is the current pool definition is all the gas that  
2 is easily and economically retrievable. We know, and  
3 the Commission certainly knows, that if you draw the oil  
4 and gas from the middle of a reservoir, the oil and gas  
5 from the edges of the reservoir migrates in. Which  
6 means, we think, and we'll be prepared to show at  
7 hearing, that, in fact, what Alta Mesa is proposing to  
8 do is to extract oil and gas from people, who are not  
9 part of this integration order. That would violate due  
10 process.

11 In only way to correct that is to identify the  
12 pool as broadly as possible, and to include everyone  
13 whose mineral interests that are included in that. That  
14 will exclude some of the people, who were in the  
15 proposed prior 624 acre unit, or whatever the size was.  
16 I forget the number. That will exclude many of them,  
17 but it would include a great deal more mineral owners  
18 that are included in Alta Mesa's current identification.

19 THE HEARING OFFICER: Thank you. A few more  
20 questions. When you say, "property rights," are you  
21 referring to mineral rights, surface rights, or  
22 something different?

23 MR. PIOTROWSKI: All the above. The idea that  
24 mineral rights are not property rights is, excuse my  
25 bluntness, bunkum. The idea that you don't have a

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1 property interest in minerals that are specifically  
2 described as part of your property, is the worst kind of  
3 legal sophistry. And I think that the court ultimately  
4 had a little problem determining that the mineral rights  
5 are part of that bundle of rights that make up property  
6 in America.

7 So the Commission can distinguish between  
8 different types of rights, but it must protect all of  
9 them. And so protections that will ensure the integrity  
10 of surface rights will be different than protections  
11 that secure the integrity of mineral rights. The  
12 legislature of Idaho has determined that a one-eighth  
13 royalty and a bonus payment are adequate to entirely  
14 protect the financial interests in mineral rights. But  
15 that does not address the other interests that fall  
16 along with it. And, indeed, the Oil and Gas Commission  
17 determining what interests, or what terms are just and  
18 reasonable should be considering the entire property  
19 right that's at stake.

20 THE HEARING OFFICER: Well, I'll have to ask.  
21 When you agree that mineral rights, surface rights, and  
22 something else were all property rights, you don't cite  
23 any statute or sort of any legal grounds for that. Can  
24 you provide any?

25 MR. PIOTROWSKI: In Idaho, mineral rights are

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1 taxable. I mean, it can't get much clearer than that.  
2 I don't have the citation handy, but, indeed, mineral  
3 rights are taxable. They are separately devisable.  
4 They have all of the hallmarks of a property interest.  
5 They have a value that can be determined. They could be  
6 identified as a specific portion of the bundle of rights  
7 that constitutes property. They are transferrable,  
8 separate from the surface interests. They are sellable,  
9 buyable, leasable. And as I said, they are taxable.  
10 You can borrow money using mineral rights as collateral.  
11 All of these are hallmarks of property.

12 THE HEARING OFFICER: Thank you. In your  
13 opening brief, you argued that an agency can fix a zone  
14 of reasonableness as long as the terms are not  
15 confiscatory. Now, zone and reasonableness normally  
16 involves pipeline rates. But I'm curious if you can  
17 define for me, what you mean by the term  
18 "confiscatory"?

19 MR. PIOTROWSKI: Confiscatory means that the  
20 transaction the state compels a person to enter into has  
21 zero or negative value to that person.

22 THE HEARING OFFICER: Okay. So you asked for  
23 a factor to ensure that compelled leases will not result  
24 in financial losses to those whose properties rights are  
25 integrated. What would the burden of proof be on the

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1 loss of property values?

2 MR. PIOTROWSKI: We are dealing with a  
3 proceeding that is not as formal as court proceedings.  
4 So we generally haven't engaged in clearly delineating  
5 burdens of proof. In the prior proceedings of the Oil  
6 and Gas Commission, bluntly the burden of proof has been  
7 whatever was necessary to convince the Commission.

8 If there was to be a burden of proof applied,  
9 it probably ought to be a preponderance of the evidence,  
10 and it needs to be applied to all aspects of the  
11 process. There should be no presumption that a  
12 requested spacing unit is appropriate. There should be  
13 no presumption that a requested integration order on  
14 specific terms is just and reasonable.

15 If there is to be a defined burden of proof,  
16 Alta Mesa should be held to prove by a preponderance of  
17 the evidence that indeed it has proposed terms that are  
18 just and reasonable. And if the Commission cannot find,  
19 cannot determine by a preponderance of the evidence that  
20 the terms should be just and reasonable, the application  
21 should be denied.

22 THE HEARING OFFICER: Do you think that  
23 financial loss is always possible with or without an  
24 integration unit?

25 MR. PIOTROWSKI: Well, yes, it's kind of

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1 a -- it's a very broad question. Financial loss is  
2 always possible. I own a home, for instance, and I'm  
3 looking very carefully at what will happen in the next  
4 recession. Will I lose value? So there is a difficulty  
5 in this process in predicting future events. But we  
6 have the tools to do that, and we do that on a regular  
7 basis.

8 In deciding what the value of in situ gas is,  
9 and deciding that it's worth at least a one-eighth  
10 royalty. The legislature has engaged in precisely that  
11 process. We don't know what is going to happen to gas  
12 prices tomorrow. They literally could skyrocket. We  
13 could see doubling, tripling, quadrupling of the value  
14 of natural gas within the next year, and nobody would be  
15 all that shocked, a little bit surprised.

16 We could also see, though, the present value  
17 of those hydrocarbons plummet. I would say each of  
18 those outcomes is about equally likely at the moment.  
19 That's just my off-the-top guess. But that means, we  
20 need to address those outcomes. If a vast increase in  
21 the price of hydrocarbons, for instance, yields a  
22 windfall for the operator, that's not particular just  
23 and reasonable for the people who actually own that gas.  
24 If on the other hand, if all of the market risk is  
25 assessed to one party, or the other, for instance, to

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1 the operator, rather than the landowners. But that  
2 would also not be just and reasonable.

3 So we make our best conclusions based on the  
4 data, knowledge, and information we have available at  
5 the moment. And decide, okay. What's the likely  
6 outcome? What are the most likely outcomes of this  
7 process, and how likely are they? An outcome that is  
8 only ten percent likely to occur, should be valued or  
9 weighted differently than one that is 90 percent likely  
10 to occur. And so that's the process that the  
11 legislature left to the Commission and the Department of  
12 Lands in determining just and reasonable terms.

13 THE HEARING OFFICER: Thank you. Going back  
14 to the property values, how would you determine that an  
15 increase or decrease in property values were related to  
16 the integration?

17 MR. PIOTROWSKI: We have and hope to present  
18 what we think is compelling evidence, that, indeed,  
19 where oil and gas exploration occurs, there will be  
20 effects on property values. And those studies that have  
21 been done take into account other reasons for changes in  
22 property values. The property market is complex, but it  
23 is not so complex that we can't separate out different  
24 effects. That would be like saying that, well, you  
25 bought a house in 2010 at the bottom of the recession.

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1 You added a thousand square feet to it. And now, you  
2 are selling it in 2019 for twice the value. And so all  
3 of that increase in value was because you added a  
4 thousand square feet. That would ignore all of the  
5 other market conditions that led to that increase.

6 We can break that out statistically. There  
7 are tools for determining that. And we believe that  
8 requiring both parties to assess that risk, and provide  
9 the best evidence that they can, so that the Commission  
10 and the Department can make a decision is our job. And  
11 it's the job of all parties.

12 THE HEARING OFFICER: Thank you. So we're  
13 talking about property values right now. But broadly  
14 the factors. If a factor evaluated whether your clients  
15 retain the ability to sue for damages, would that  
16 address some of the factors that you are proposing?

17 MR. PIOTROWSKI: It might address some. What  
18 we're talking about are a variety of possible  
19 occurrences. So, for instance, the risks from a surface  
20 spill of extracting hydrocarbons, those damages are  
21 likely recoverable at great expense to the property  
22 owners if it were to happen. And so the assessment  
23 there would be, is it just and reasonable to require a  
24 property owner to bear that risk, not just the risk of a  
25 spill occurring, but also the risk of having spent

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1 hundreds of thousands of dollars in legal fees to try to  
2 recover. When there are other tools available, bonding,  
3 operations requirements that were voided in the first  
4 instance, a variety of other things.

5 So availability of other remedies might also  
6 be a relevant factor. But in assessing that  
7 availability, the Commission should also address, again,  
8 and the bundle of property rights that comes along with  
9 this. By integrating people, we're requiring them to  
10 assume risks that they don't want to assume.

11 Normally, if I don't wish to smear my brain on  
12 the highway, I wear a helmet when I ride my motorcycle.  
13 That's the risk analysis that I perform. If I don't  
14 want to take motorcycle at all. That's the risk  
15 assessment that I perform. And we are used to making  
16 decisions about what risks are acceptable to us, and  
17 what risks aren't. And every one of us is different in  
18 that regard.

19 What integration does, is it says to a  
20 homeowner, your risk assessment is irrelevant. We're  
21 going to force you to do this, even though you think it  
22 is too risky, and payoff is too small. In doing that,  
23 we need to recognize the various levels of risk aversion  
24 that people have. The people who sign leases with AMI's  
25 land men, they have a much lower risk aversion. And

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1 yet, the process, if it weren't for the requirement of  
2 just and reasonable terms, the process set out by  
3 statute would necessarily allow the least risk averse 55  
4 percent to set terms. And so we should be considering  
5 that in the process as we move forward.  
6 THE HEARING OFFICER: Thank you. You refer to  
7 statutes were insufficient to determine just and  
8 reasonable. In 2017, the legislature enacted  
9 comprehensive legislation with more specific terms and  
10 conditions of how royalties are paid. Would these new  
11 more specific terms provide more specificity to  
12 establish just and reasonable terms?  
13 MR. PIOTROWSKI: I'm sorry. Is the question,  
14 do they provide more specificity?  
15 THE HEARING OFFICER: Yes.  
16 MR. PIOTROWSKI: I don't think they do. The  
17 basic command from the legislature remains that the  
18 Commission, and the Department shall ensure that the  
19 terms of the leases are just and reasonable. An  
20 integration order is entered only on terms that are just  
21 and reasonable.  
22 Had the legislature meant, we want you to  
23 enter into integration orders on terms that comply with  
24 the statute, they certainly could have done so. And  
25 they have done so many times in other settings. Instead

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1 they required that the agency determine that the terms  
2 of the integration order be just and reasonable. That  
3 implies discretion, but it also implies a duty to  
4 actually determine what those terms are. The  
5 legislature didn't make that decision. They left it to  
6 the agencies.  
7 THE HEARING OFFICER: Okay. Last question.  
8 Other than the requirement for an integration order to  
9 be upon terms that are just and reasonable, what legal  
10 authority do you rely on to assert the Commission has  
11 jurisdiction to do the following: address contractual  
12 agreements, including mortgages between private parties;  
13 potentially award damages to private property owners; or  
14 compensate property owners for financial losses in their  
15 home value that is not associated with any physical  
16 occupation. I'm asking you to clarify the authority  
17 that you think the Commission has.  
18 MR. PIOTROWSKI: The primary authority is that  
19 obligation to ensure the terms are just and reasonable.  
20 That's the primary authority. Written into the entire  
21 fabric of Idaho law is the simple notion that all  
22 agencies will comply with existing law. I think it's  
23 important to note that under the Idaho Administrative  
24 Procedure Act, judicial review is extremely limited on  
25 facts, but wide open on the law. What that indicates to

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1 me is that, following the law, and by that I mean, the  
2 law written broadly, is assumed of every agency. The  
3 agency will establish the facts, and they won't be  
4 second guessed, except in very unusual circumstances.  
5 However, the agency can't be second guessed on the law.  
6 And that, in addition, imposes an obligation  
7 on the agencies to do their best to comply with the law,  
8 with all of the law. Not merely the organic statute,  
9 not merely the specific statute applicable in a certain  
10 situation, but rather all of them. No agency means  
11 explicit statutory authority to follow the law. That's  
12 assumed.  
13 Here we have cited to, what we think are  
14 specifically the requirements in the due process clause.  
15 We have tried to develop factors that would reflect both  
16 the requirements of the statute, which does limit the  
17 Commission in its authority to set financial terms of  
18 leases. But it doesn't limit it to set other types of  
19 terms. And I think that the importance of doing that is  
20 apparent in the submission by the applicant here. They  
21 didn't merely take a form agreement, and say, here we  
22 go. This one's been approved by the courts. They took  
23 a form agreement, and they modified it. And they said,  
24 we're going to strike out this, we wouldn't have that,  
25 we'll strike out these other sections. And all of that

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1 certainly implies from AMI that they believe that the  
2 Commission has the authority to modify those terms. And  
3 I think that's on one point that we're in agreement, or  
4 at least as stated so far in this proceeding we're in  
5 agreement between the parties.  
6 THE HEARING OFFICER: Thank you very much.  
7 Folks, I'm going to take a ten-minute recess,  
8 followed by testimony from additional uncommitted  
9 property owners in the unit. And then the Idaho  
10 Department of Lands. And then finally the public  
11 comments. Let's take ten minutes right now.  
12 (Recess.)  
13 THE HEARING OFFICER: Okay. Everyone, it's  
14 been ten minutes, a little over. Thank you,  
15 Mr. Christian. Thank you, Mr. Piotrowski, for your  
16 testimony so far. Do we have any uncommitted property  
17 owners in this proposed unit, who would like to provide  
18 testimony at this time?  
19 Okay. Great. Next will be testimony provided  
20 by the Idaho Department of Lands.  
21 MS. VEGA: Thank you, Mr. Hearing Officer.  
22 Joy Vega, V-e-g-a, Deputy Attorney General appearing on  
23 behalf of the Idaho Department of Lands.  
24 Recently I was thinking about this statutory  
25 phrase "just and reasonable," and what its application

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1 should be in determining the terms of this particular  
2 integration order, under Idaho Code, Section 47-320(1).  
3 And it dawned on me that the starting point for  
4 determining that phrase, must be the same as any other  
5 tribunal starting point, when administering the statute,  
6 which is the plain meaning of the words.  
7 The general rules of statutory construction  
8 are first, that a statute must be construed and the  
9 person submits plain, usual, and ordinary meaning. And  
10 second that the whole provision must be looked at  
11 considering the meaning of each word, so as to not  
12 render any other word superfluous or redundant.  
13 This phrase "just and reasonable" has been,  
14 and during this hearing will continue to be used, and  
15 presented almost like a standalone elevated requirement  
16 of a statute. However, it is just three words out of  
17 167 words that make up section 320, subsection 1. And  
18 subsection one is only the first of seven subsections in  
19 47-320.  
20 So the first big question that perhaps you  
21 will be deciding is, what do those three words mean? So  
22 I looked them up in my Black's Law Dictionary, and this  
23 is what I learned "just" is an adjective. And it means  
24 legal rights, lawful, or equitable. "Reasonable" is  
25 also an adjective. And it means, fair, proper, or

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1 moderate under the circumstances. And while the  
2 definition of "and" seems obvious. When it is used in a  
3 statute it is typically given a conjunctive meaning,  
4 which requires both items, so both "just" and  
5 "reasonable" to exist.  
6 Consequently, in considering each proposed  
7 term and condition discussed today, or that you might be  
8 considering after this hearing, you likely want to start  
9 with whether it is legally right and proper, and whether  
10 the proposed term is truly related to the integration of  
11 all tracks or interests within the proposed spacing  
12 unit.  
13 In its opening brief, the Idaho Department of  
14 Lands primarily focused its argument on the just  
15 component of just and reasonable. And listed a number  
16 of statutes within the Oil and Gas Conservation Act, as  
17 well as a number of rules, within the rules governing  
18 conservation and oil, and natural gas in the state of  
19 Idaho, which is at IDAPA 20.07.02, that would render  
20 just and reasonable terms in this integration order.  
21 That being said, several of the authorities  
22 listed in IDL's opening brief are really applicable to  
23 the second phase of developing an oil and gas operation,  
24 which is the application for a permit to drill a well.  
25 Idaho Code Section, 47-316, 317, and 318 deal

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1 with the drilling application, drilling location, and  
2 well spacing. These statutes and related rules include  
3 additional notice requirements of the applicant, or the  
4 department, and additional opportunities for public  
5 comment, as well as the opportunities for comment of  
6 other state agencies. Which leads us, or, you know, is  
7 a component of what is the Department's jurisdiction in  
8 this case, what are the Department's authorities, what  
9 is the commissions authorities. And the careful dance  
10 between agencies to not overlap, and try to do  
11 responsibilities of other state agencies that are  
12 charged with different protections of human health and  
13 environmental regulation.  
14 It is really within these drilling statutes  
15 and regulations that the environmental and human health  
16 protections provided for by the Idaho Legislature are  
17 found. The first phase of integration, which is what  
18 we're discussing today, and what the next evidentiary  
19 hearing will be about, is focusing on ensuring the  
20 orderly development of a proposed operation, while  
21 compensating every mineral interest owner within that  
22 spacing unit.  
23 The Department is primarily concerned with the  
24 terms of the integration order being lawful, so that the  
25 department is able to carry out it's only statutory

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1 regulatory duties as the operation progresses. Other  
2 than the recommendations presented in the Department's  
3 opening brief, the Department doesn't really have any  
4 additional suggestions for what just and reasonable  
5 terms should be.  
6 And unless you have any questions from me this  
7 morning still, yes, the Department will rest on its  
8 written presentation and the opening brief.  
9 THE HEARING OFFICER: Thank you, Ms. Vega. I  
10 don't have any questions for you right now.  
11 MS. VEGA: May I. I would actually like to  
12 comment, and perhaps correct the record on a couple of  
13 things. Mr. Piotrowski was talking about shoving a  
14 square peg into a round hole. And I just wanted to  
15 bring into the record the fact that Idaho Code  
16 47-317(3), and subsections A and B actually govern the  
17 sizing of units right. So subsection B for gas wells  
18 requires that well be in a unit that is either 160  
19 acres, or 640 acres.  
20 Subsection A is specific to oil wells. And it  
21 limits it to a minimum of a 40 acre tract, or a  
22 combination of tracts. So I thought that clarification  
23 was important, because the evidence that will be  
24 presented at the next hearing by Alta Mesa to what's the  
25 correct spacing unit to be integrated, does actually

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1 have statutory borders and boundaries. And frankly,  
2 they are all squares. So if the pool is round, we're  
3 still looking at a square unit.  
4 That was my last comment. Thank you.  
5 THE HEARING OFFICER: Thank you.  
6 All right. Folks, I think that enables, or it  
7 shows everyone has provided testimony, who is a party,  
8 or is a representative of a party within the integrating  
9 unit. Thank you all the parties for your comments and  
10 your civil actions today. I would invite members at  
11 large of the public who would like to come up and  
12 provide testimony. I have our sign-in sheet that I  
13 pushed on all of you at the beginning.  
14 I'm going to go through here. Some of you  
15 have noted that you would like to provide oral  
16 testimony. I'm going to limit that to five minutes.  
17 And if you are not on here, and you do want to provide  
18 testimony, and I don't call your name, you'll get your  
19 chance at the end. All right. I want everyone to come  
20 up and speak, and be able to have the right. All right?  
21 So we'll start today, as I start at the top.  
22 Ms. Shelley Brock, if you would like to come up, you are  
23 welcome to.  
24 MS. BROCK: My name is Shelley Brock,  
25 S-h-e-l-l-e-y, B-r-o-c-k. And I'm a longtime Eagle

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1 resident, and I'm the president of CAIA. I didn't  
2 realize we were going to have an opportunity to speak,  
3 so I didn't really prepare anything. But I do have just  
4 a few comments I want to make based on what I heard said  
5 earlier by the two attorneys.  
6 I wanted to say that I noticed in  
7 Mr. Christian's brief, he mentioned that there was  
8 no -- basically in so many words, that there was no  
9 guarantee that just and reasonable had to be equally  
10 fair for both the property owner and the operator. And  
11 another point that he made by showing integration  
12 applications from a couple of other states, was that  
13 just because this industry frequently gets away with  
14 operations like this in other states, that he feels they  
15 should be allowed to do that. We feel like, of course,  
16 it's a huge violation of private property rights. And I  
17 think that our attorney very adequately expressed why we  
18 feel that way.  
19 Mr. Christian also mentioned the word  
20 "tyranny," which I thought was interesting. He  
21 mentioned -- I don't have this word for word, but he  
22 said that the point of forced pooling was, I believe, to  
23 prevent tyranny by minority of mineral owners preventing  
24 development of the others. We, of course, see that as  
25 quite the opposite. We believe that it's tyranny for

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1 Idaho property owners to be forced to give up the oil  
2 and gas that they own under their homes for a pittance  
3 against their will, with inadequate payment to  
4 compensate them for the risks that they are being  
5 exposed to. So I just wanted to make that.  
6 Another thing Mr. Christian mentioned, that if  
7 we wanted some of these factors that we submitted in the  
8 form of a letter earlier, a couple months ago, before  
9 the April -- I think it was the April 23rd  
10 meeting -- that we should go in front of the  
11 legislature. But we pushed very hard to get those terms  
12 in the form of rulemaking. I know you had almost 60  
13 letters submitted, I believe. And I think all of those,  
14 if not all of those, were people who had a lot of  
15 requirements that they thought would make it just and  
16 reasonable. And they really wanted as we did, as CAIA  
17 did, to get it in front of the rulemaking panel, which  
18 would put it in front of the legislature. The  
19 Commission rejected that idea, and opted for this  
20 hearing instead. So I just wanted to point that out.  
21 We did attempt to go through the legislature.  
22 Mr. Christian also defined correlative rights  
23 as being that mineral owners should be entitled to  
24 receive a just and fair share of the royalties. But I  
25 think everybody in this room is aware of the class

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1 action suit against Alta Mesa, AMI, and other entities,  
2 related entities going on now here in Payette County.  
3 This is a bunch of mineral owners, who are very upset.  
4 They have fought for years to get accurate and complete  
5 production records, as you know. I know that the  
6 Commission, and you, Mick, have been personally involved  
7 in attempting to hold them accountable for that.  
8 Those people are furious at the lack of  
9 cooperation they've gotten. They feel like they've been  
10 getting ripped off for years. And the legislation that  
11 we helped to promote in 2017 House Bill 301, everyone  
12 thought that was going to ensure that honest and fair  
13 reporting was going to happen. And I watched you guys  
14 chase your tails trying to make them cough up these  
15 production records now for the last couple of years, and  
16 so I feel for you. I see that you are not getting the  
17 cooperation you need. And so why should these people,  
18 who never wanted to sign a lease, now be forced into a  
19 lease. When even those people who voluntarily signed,  
20 and are pro drilling, have not been getting fairly paid.  
21 One last thing. I know that we've talked  
22 about the oil and gas migrating essentially from outside  
23 of this integrated, this new 160 acres. We have  
24 testimony by some people who were approached by Alta  
25 Mesa's land man over the last couple years. "The land

1 man killed them. They better sign a lease, or their oil  
2 and gas was going to be absorbed by the well." So we  
3 have even have their own land man admitting to that.  
4 And so I just wanted to clarify those facts for you.

5 THE HEARING OFFICER: Thank you.

6 MS. BROCK: Okay.

7 THE HEARING OFFICER: Well, on the list  
8 Shelley was the only one who signed up to provide oral  
9 testimony. Is there anyone else here who would like to  
10 provide oral testimony at this time?

11 Thank you. It's now 10:36, 10:37 on Monday,  
12 September 9th. This hearing is concluded.

13 (Hearing concluded at 10:30 a.m.)

14 (Signature waived.)

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1 **REPORTER'S CERTIFICATE**

2 I, COLLEEN P. DOHERTY, CSR No. 345, Certified  
3 Shorthand Reporter, certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place therein set forth, at  
6 which time the witness was put under oath by me;

7 That the testimony and all objections made were  
8 recorded stenographically by me and transcribed by me or  
9 under my direction;

10 That the foregoing is a true and correct record  
11 of all testimony given, to the best of my ability;

12 I further certify that I am not a relative or  
13 employee of any attorney or party, nor am I financially  
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this  
16 18th day of September, 2019.

17  
18  
19  
20



21 COLLEEN P. DOHERTY, CSR 345  
22 Notary Public  
23 P.O. Box 2636  
24 Boise, Idaho 83701-2636  
25 My commission expires September 7, 2023.

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