

**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 VACATING HEARING,  
ORDER SETTING HEARING  
TO DETERMINE “JUST AND  
REASONABLE” FACTORS,  
AND NOTICE OF HEARING  
AND SETTING FILING  
DEADLINES**

The Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator”) hereby: (1) vacates the August 8, 2019 evidentiary hearing; (2) sets a September 9, 2019 hearing to determine “just and reasonable” factors and (3) gives notice of hearing and sets filing deadlines for the September 9, 2019 hearing. The September 9, 2019 hearing will take place at 9:00 a.m. (MST) at the Payette County Courthouse, 1130 3<sup>rd</sup> Ave N Ste. 104, Payette, ID.

**I. Background**

On June 24, 2019, AM Idaho LLC filed an application for a spacing order and to integrate unleased mineral interest owners in the above-captioned spacing unit. AM Idaho, LLC requested that the Administrator grant:

- (1) A spacing order establishing a 160 acre spacing unit consisting of the SW ¼ of Section 10, Township 8 North, Range 5 west, Boise Meridian, Payette County, Idaho, and
- (2) An integration order that integrates all uncommitted owners in that 160 acre proposed spacing unit.

The existing Fallon #1-10 well is located in this proposed spacing unit.

This proceeding is governed by the Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code); the Idaho Administrative Procedure Act (Chapter 52, title 67, Idaho Code); Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), to the extent that the Rules of Administrative Procedure are not superseded by Oil and Gas Conservation Act; and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02). A copy of the Rules of Administrative Procedure is available at the Idaho Department of Lands office located at 300 N. 6th Street, Suite 103, Boise, Idaho, and at the Office of Administrative Rules Coordinator's website, accessible at <http://adminrules.idaho.gov>.

**I. The August 8, 2019 Evidentiary Hearing is Vacated**

AM Idaho LLC's application requests that the Department set this matter for public hearing. The Administrator is authorized and required to conduct hearings on spacing and integration applications. Idaho Code § 47-328(3). That includes the authority to conduct all prehearing procedures and the subsequent evidentiary hearing on spacing and integration applications. Idaho Code § 47-328. The Administrator sets regular hearing dates and applications shall be filed at least forty-five (45) days before these hearing dates. The Administrator may for good cause continue any hearing. The Administrator's next regular hearing date is August 8, 2019, and the forty-five day deadline to submit applications for that hearing date was on June 24, 2019. AM Idaho, LLC's application was filed June 24, 2019.

However, pursuant to Idaho Code § 47-328(3)(d), the Administrator for good cause hereby vacates his August 8, 2019 evidentiary hearing date on AM Idaho, LLC's application because the Administrator must, prior to the evidentiary hearing, make a decision on the factors to be considered in determining whether the terms of an integration order fulfill the "just and reasonable" requirement of Idaho Code § 47-320(1). This decision is required 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.'" *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216 (D. Idaho 2018).

The Oil and Gas Conservation Commission ("Commission") decided at its April 23, 2019 meeting that prior to holding an evidentiary hearing on the merits of the integration application pursuant to Idaho Code § 47-328(3)(d), the Administrator will hold a hearing and issue a ruling identifying the factors the Administrator will consider in determining whether the terms of an integration order fulfill Idaho Code § 47-320(1)'s statutory requirement that "each integration order shall be upon terms and conditions that are just and reasonable." After the Administrator issues a ruling identifying such factors, the Administrator will schedule an evidentiary hearing on the application and give notice of that hearing to all uncommitted owners.

**II. The Administrator sets a hearing to determine the factors he will use to determine whether an integration order's terms are "just and reasonable."**

To ensure the Administrator affords due process consistent with the court's order in *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, the parties should be given the opportunity to present argument as to what factors the Administrator should consider when determining whether the terms and conditions of an integration order are "just and reasonable" as articulated in Idaho Code § 47-320(1). In order for such a hearing to be productively focused on this issue, the Administrator issues this order preliminarily identifying the matters that the parties should address at the hearing.

First, "[t]he interpretation and application of a statute are pure questions of law." *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009). Therefore, determining the *scope* of

factors that can be considered in meeting the “just and reasonable” requirement is a question of law, and, in hearing such question, the Administrator will limit parties to the presentation of legal arguments. Once the scope of factors that fall within the meaning of “just and reasonable” is determined, the Administrator will issue his legal findings, and set the matter for an evidentiary hearing at which he will take evidence relating to such factors.

Additionally, in determining the factors necessary for an order to be just and reasonable, the Administrator intends to apply the following fundamental principles that cabin the Commission’s discretion.

- First, Idaho Code § 67-5279 provides that an administrative order cannot violate constitutional or statutory provisions. Therefore, parties are asked to demonstrate how their proposed “just and reasonable” factors comply with existing statutes.
- Second, Idaho Code § 67-5279 provides that an administrative order cannot be arbitrary or capricious. In order to avoid a finding of arbitrariness, an agency is bound by the rules that it has promulgated. *Vitarelli v. Seatori*, 359 U.S. 535, 540 (1959). Therefore, parties are asked to demonstrate that any proposed “just and reasonable” factors comply with existing Commission rules.
- Third, the terms of an administrative order cannot be “in excess of the statutory authority of the agency.” In other words, if a subject is already addressed by an existing statute, the Commission may be prohibited or restricted in its ability to impose requirements in addition to those imposed by the statute. *See In re Truman*, No. 36082, 2010 WL 9585673, at \*2 (Idaho Ct. App. Jan. 27, 2010) (mandatory language in statute left “little room for an unfettered exercise of discretion”). Nor can

an integration order impose requirements if the Legislature has vested another agency with exclusive jurisdiction over the subject matter. Therefore, parties are asked to demonstrate that any proposed “just and reasonable” factors are within the statutory authority and discretion of the Commission and do not impose burdens, conditions, or restrictions in excess of or inconsistent with existing statutory provisions in the Oil and Gas Conservation Act, title 47, chapter, 3, Idaho Code.

Further, parties are asked to clearly identify the precedent they are relying on for the assertion that a particular factor is necessary to determine whether an integration order is just and reasonable. Greater weight will be given to proposed factors if the proponent demonstrates that the factor is used to determine compliance with the “just and reasonable” requirement in other state integration or forced-pooling proceedings. Simply asserting that a term is just and reasonable without identifying precedent supporting the assertion will be of lesser value to the Administrator in his decision.

### **III. The Administrator gives Notice of a September 9, 2019 Hearing on Determining “Just and Reasonable Factors” and Setting Filing Deadlines**

Based on the foregoing, the Oil and Gas Division Administrator of the Idaho Department of Lands (“Administrator”) gives notice that he will hold a hearing on the specific issue of the factors the Administrator will consider when he determines whether the terms and conditions of an integration order are “just and reasonable.” This hearing will only address the single issue of the factors used to determine just and reasonable and should follow the guidance articulated in Section II of this order. The hearing will take place on September 9, 2019 at 9:00 a.m. at the Payette County Courthouse, 1130 3<sup>rd</sup> Ave N Ste. 104, Payette, ID. The Administrator is authorized to conduct this hearing pursuant to Idaho Code § 47-328.

The Applicant, the Department, and any uncommitted owner in the unit may file briefs on this topic. Idaho Code § 47-328(3). Those briefs must be filed with the Idaho Department of Lands by 5:00 p.m. (MST) on the dates listed below.

July 31, 2019	Deadline to file opening briefs discussing the factors the Administrator should consider to determine whether terms of an integration order are just and reasonable.
August 14, 2019	Deadline to file response briefs
August 21, 2019	Deadline to file reply briefs
September 9, 2019	Hearing on Factors the Administrator will use to Determine Just and Reasonable Terms

Filing a written brief is not required for an uncommitted owner or the Department to appear and testify at the hearing.

Pursuant to Idaho Code § 67-5242(3)(c), the Administrator will also provide an opportunity for public testimony at the September 9, 2019 hearing. Any person planning to testify will be treated as a public witness, with their rights and status in this matter as defined by IDAPA 04.11.01.355. The hearing officer may set time limits for public testimony if necessary. In addition, members of the public may file written comments that must be filed with the Idaho Department of Lands before July 31, 2019 at 5:00 p.m. (MST) Filing written comments is not required for a person to testify at the hearing as a public witness.

Uncommitted owners may also choose to file their initial objections or responses addressing the merits of the application during this time period, but will continue to have the opportunity to file such responses and objections up until fourteen days before the evidentiary

hearing, which has not been scheduled. After the Administrator makes his decision on the factors used to determine just and reasonable, he will issue a notice of the evidentiary hearing that includes the deadline for uncommitted owners to file responses or objections to the application.

All briefs, responses, objections, and comments filed with Idaho Department of Lands should be mailed or e-mailed to:

Mail: Idaho Department of Lands  
Attn: Mick Thomas  
300 N. 6<sup>th</sup> Street, Suite 103  
P.O. Box 83720  
Boise, ID 83720

E-mail: [kromine@idl.idaho.gov](mailto:kromine@idl.idaho.gov).

The hearing location meets the accessibility requirements of the Americans with Disabilities Act (“ADA”), in accordance with IDAPA 04.11.01.551. If a person requires assistance of the kind the agency is required to provide under the ADA in order to participate in or understand the hearing, the agency will supply the assistance upon request. Please submit any requests to IDL by 5:00 p.m. (MST) September 3, 2019. Parties requiring the use of telephonic conference at the hearing shall notify Kourtney Romine ([kromine@idl.idaho.gov](mailto:kromine@idl.idaho.gov)) by 5:00 p.m. (MST) September 3, 2019. Inquiries about scheduling, hearing facilities, etc. should be directed to Kourtney Romine, Administrative Assistant, Idaho Department of Lands, 300 N. 6<sup>th</sup> Street, Suite 103, P.O. Box 83720, Boise, ID 83720; e-mail: [kromine@idl.idaho.gov](mailto:kromine@idl.idaho.gov); phone: (208) 334-0283.

## ORDER

Based on the foregoing, it is HEREBY ORDERED that

- The August 8, 2019 evidentiary hearing is vacated and will be rescheduled in the future.
- The Administrator sets a September 9, 2019 hearing on the specific issue of what factors the Administrator will consider when he determines whether the terms and conditions of an integration order are “just and reasonable.”
- Opening Briefs on this topic must be filed with Idaho Department of Lands by 5:00 p.m.(MST) on July 31, 2019.
- Response briefs must be filed with Idaho Department of Lands by 5:00 p.m.(MST) on August 14, 2019.
- Reply briefs must be filed with Idaho Department of Lands by 5:00 p.m.(MST) on August 21, 2019.
- Written public comments must be filed with Idaho Department of Lands by 5:00 p.m.(MST) on July 31, 2019.

Dated this 10th day of July 2019.



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Richard “Mick” Thomas

Oil and Gas Division Administrator  
Idaho Department of Lands



## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of July 2019, I caused to be served a true and correct copy of the following item in Docket No: CC-2019-OGR-01-002: *Order Vacating Hearing, Order Setting Hearing To Determine 'Just And Reasonable' Factors, And Notice Of Hearing And Setting Filing Deadlines* 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

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

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

- U.S. Mail, postage prepaid
- State House Mail
- Certified mail, return receipt requested

Mick Thomas  
Idaho Department of Lands  
PO Box 83720  
Boise ID 83720-0050

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

James Thum  
Idaho Department of Lands  
PO Box 83720  
Boise ID 83720-0050

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

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

Jimmie & Judy Hicks  
1540 NW 6<sup>th</sup> Ave  
Payette ID 83661

- 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

Shady River, LLC  
3500 E. Coast Hwy. Ste 100  
Corona Del Mar, CA 92625


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

Alan & Glenda Grace  
1755 Killebrew Dr.  
Payette ID 83661

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

Karen Oltman  
8970 Hurd Lane  
Payette ID 83661

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

  
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Kourtney Romine  
Administrative Assistant