

NOV 02 2015

BOISE, IDAHO

BEFORE THE OIL AND GAS CONSERVATION COMMISSION STATE OF IDAHO

**In the Matter of Application of AM Idaho, LLC )  
 and Alta Mesa Services, LP , for Integration of )  
 Unleased Mineral Interest Owners in the ) Docket No. CC-2015-OGR-01-001  
 Proposed Unit Consisting all of Section 14, )  
 Township 8 North, Range 5 West, Boise )  
 Meridian, Payette County, Idaho. )  
 )  
 AM IDAHO, LLC, and )  
 ALTA MESA SERVICES, LP, Applicants. )**

\_\_\_\_\_ ) Docket No. CC-2015-OGR-01-002  
**In the Matter of Application of AM Idaho, LLC, )  
 and Alta Mesa Services, LP, for Integration of )  
 Unleased Mineral Interest Owners in the ) ORDER VACATING HEARING  
 Proposed Unit Consisting all of Section 19, )  
 Township 8 North, Range 4 West, Boise )  
 Meridian, Payette County, Idaho )  
 \_\_\_\_\_ )**

On October 30, 2015, Applicants, AM Idaho, LLC, and Alta Mesa Services, LP., withdrew the applications for Integration which are the subject of the above-captioned contested cases.

Pursuant to IDAPA 04.11.01.305, the notice of withdrawal will be effective as of November 13, 2015, and this matter will terminate without prejudice to Applicants' ability to submit new applications to the Idaho Department of Lands.

In light of such termination, no rulings will be issued on any pending motions. The Pre-hearing Conference scheduled for November 12, 2015 and the Hearing scheduled for November 19, 2015 are both hereby vacated. IS IT SO ORDERED.

DATED this 2nd Day of November, 2015.

By: Tommy H. Butler  
 Tommy H. Butler  
 Hearing Examiner

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF IDAHO

In the Matter of Application of AM Idaho, LLC, )  
and Alta Mesa Services, LP, for Integration of )  
Unleased Mineral Interest Owners in the )  
Proposed Unit Consisting of all of Section 14, )  
Township 8 North, Range 5 West, Boise )  
Meridian, Payette County, Idaho )  
  
AM IDAHO LLC & ALTA MESA SERVICES, )  
LP, Applicants )  
\_\_\_\_\_ )

Docket No. CC-2015-OGR-01-001

In the Matter of Application of AM Idaho, LLC, )  
and Alta Mesa Services, LP, for Integration of )  
Unleased Mineral Interest Owners in the )  
Proposed Unit Consisting of all of Section 19, )  
Township 8 North, Range 4 West, Boise )  
Meridian, Payette County, Idaho )  
  
AM IDAHO LLC & ALTA MESA SERVICES, )  
LP, Applicants )  
\_\_\_\_\_ )

Docket No. CC-2015-OGR-01-002

**FINAL ORDER**

On January 15, 2016, the hearing officer issued the Recommended Order Denying Oral Argument, and Denying Attorney’s Fees in these matters. No parties filed exceptions to the recommended order. On February 18, 2016, the Oil and Gas Conservation Commission (“Commission”) held a meeting to consider the recommended order. At the meeting, the Commission, by unanimous vote, adopted the recommended order as its decision in this matter.

IT IS HEREBY ORDERED that the January 15, 2016 recommended order is adopted in full as the Final Order of the Commission for both matters pursuant to Idaho Code § 67-5246 and

IDAPA 04.11.01.740.<sup>1</sup> The recommended order is attached to this order and incorporated by reference.

### PROCEDURES FOR FINAL ORDERS

This is a final order of the Commission. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Commission will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272 any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) a hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or (4) the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days (1) of the service date of this final order, (2) of an order denying petition for reconsideration, or (3) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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<sup>1</sup> This final order is prepared and filed for both contested cases (Docket Nos. CC-2015-OGR-01-001 and CC-2015-OGR-01-002). The contested cases have not been formally consolidated.

DATED this 13 day of February, 2016.

IDAHO OIL AND GAS CONSERVATION COMMISSION



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CHRIS BECK  
Chairman of the Commission

Countersigned:



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THOMAS M. SCHULTZ, JR.  
Secretary to the Commission and  
Director of the Idaho Department of Lands

BEFORE THE OIL AND GAS CONSERVATION COMMISSION STATE OF IDAHO

In the Matter of Application of AM Idaho, LLC )  
 and Alta Mesa Services, LP, for Integration of )  
 Unleased Mineral Interest Owners in the ) Docket No. CC-2015-OGR-01-001  
 Proposed Unit Consisting all of Section 14, )  
 Township 8 North, Range 5 West, Boise )  
 Meridian, Payette County, Idaho. )  
 )  
 AM IDAHO, LLC, and )  
 ALTA MESA SERVICES, LP, Applicants. )  
 \_\_\_\_\_ )  
 ) Docket No. CC-2015-OGR-01-002  
 In the Matter of Application of AM Idaho, LLC, )  
 and Alta Mesa Services, LP, for Integration of ) RECOMMENDED  
 Unleased Mineral Interest Owners in the ) ORDER DENYING ORAL  
 Proposed Unit Consisting all of Section 19, ) ARGUMENT, AND  
 Township 8 North, Range 4 West, Boise ) DENYING ATTORNEY'S FEES  
 Meridian, Payette County, Idaho )  
 \_\_\_\_\_ )

**INTRODUCTION**

Pursuant to Idaho Code section 67-5243, the following Order is recommended for adoption by the Idaho Oil and Gas Conservation Commission ("Commission") as the Final Order in the above-captioned administrative contested cases.<sup>1</sup>

This is a recommended order of the hearing officer. It will not become final without action of the Commission. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. Idaho Code § 67-5243(3). The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *Id.*

<sup>1</sup> The above-captioned matters have not been formally consolidated, but this Recommended Order is proposed to resolve both administrative contested cases.

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Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Commission's Secretary. Opposing parties shall have twenty-one (21) days to respond. The Commission may schedule oral argument in the matter before issuing a final order. The Commission will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Commission may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

### **FINDINGS OF FACT**

1. On October 30, 2015, AM Idaho, LLC, and Alta Mesa Services, LP ("Applicants"), withdrew the applications for integration which are the subject of the above-captioned contested cases.
2. Pursuant to IDAPA 04.11.01.305, the notice of withdrawal was effective as of November 13, 2015.
3. No rulings had been issued on any pending motions prior to the November 2,

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2015 Order Vacating Hearing.

4. Respondents, Person, Mitchell, Smith, Cotto, Pierce, Ishida, and Stutzman, and Intervenor, Citizens Allied for Integrity and Accountability (hereinafter collectively referred to as "Respondents"), filed a request for costs and attorney fees styled as a Petition for Reconsideration of the November 2, 2015 Order, for the purpose of requesting that the Respondents be awarded costs and/or attorney fees incurred in responding to the applications for integration which had been withdrawn by the Applicants. The Respondents have requested oral argument on their request for costs and fees.

5. On November 16, 2015, Respondents Louis M. and Joann Higby filed a motion for attorney fees and costs in Docket No. CC-2015-OGR-01-001. That same day, Respondents Blaine and Teri May filed a motion for attorney fees in Docket Nos. CC-2015-OGR-01-001 and CC-2015-OGR-01-002.

6. On November 3, 2015, the Applicants filed new applications for integration which would apply to the same Sections of real property described in the above-captioned matters.

7. The Applicants opposed the requested award of attorney fees and costs requested by Respondents.

### **CONCLUSIONS OF LAW**

#### **I. Oral Argument**

The Respondents moved for oral argument on their request for costs and attorney fees. Pursuant to IDAPA 04.11.01.565, the motion for oral argument on the request for costs and attorney fees is hereby DENIED since the parties have adequately briefed the

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legal questions and all parties have had a sufficient opportunity to submit affidavits and arguments in support or opposition to the question of attorney fees. Given that, at this time, oral argument would not provide greater insight into, or facilitate, the resolution of what are primarily legal questions.

**II. No Attorney Fees are awardable under the Idaho Rules of Civil Procedure.**

The Respondents assert that they are entitled to an award of costs and attorney fees since the Applicants filed new applications for integration involving the same real property on November 3, 2015. The legal argument posited by the Respondents is that Idaho Rule of Civil Procedure (I.R.C.P.) 41(d) applies to these procedural circumstances. Rule 41(d) directs that:

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Similarly, the Respondents assert that I.R.C.P. 54(d)(1) applies to direct that costs be awarded to the Respondents here since the applications for integration were withdrawn by the Applicants, and, as a consequence, the Respondents claim that they were the prevailing party. Rule 54(d)(1) directs that:

(A) Parties Entitled to Costs. Except when otherwise limited by these rules, costs shall be allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respec-



tive parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

Likewise, the Respondents cite I.R.C.P. 54(e)(1) as authority for the award of attorney fees to the Respondents:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment.

Because no rulings were made on any outstanding unresolved motions in the above-captioned matters, no party in the above-captioned contested case matters can be considered to be a "prevailing party." The matters are moot. Furthermore, the Respondents have failed to cite any legal authority justifying the direct application of the Idaho Rules of Civil Procedure to a withdrawn administrative contested case, such as the above-captioned matters under consideration. To the contrary, I.R.C.P. 1(a) and IDAPA 04.11.01.52 are dispositive. Rule 1(a) describes the scope of the Idaho Rules of Civil Procedure as follows:

These rules govern the procedure and apply uniformly in the district courts and the magistrate's divisions of the district courts in the state of Idaho in all actions, proceedings and appeals of a civil nature whether cognizable as cases at law or in equity, including probate proceedings and proceedings in which a judge pro tempore is appointed pursuant to Idaho Court Administrative Rule 4; except that certain proceedings in the magistrate's division involving family law and the Domestic Violence Crime Prevention Act are governed by the Idaho Rules of

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Family Law Procedure as set forth in IRFLP 101 and proceedings in the small claims department are governed by these rules only as provided by Rule 81.

(emphasis added).

In turn, IDAPA 04.11.01.052, provides in pertinent part that: “[u]nless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency.” (emphasis added).

Additionally, even if the Idaho Rules of Civil Procedure applied to these procedural circumstances under consideration, it is clear that Idaho follows “the American Rule” which denies attorney fees to a prevailing party unless authorized by statute or contract. See, Hellar v. Cenarrusa, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984).

### **III. No attorney fees are awardable here by contract or Idaho statute**

In Idaho, the power of an administrative agency to award attorney fees cannot be recognized in the absence of clear legislative intent. See, Idaho Power Co. v. IPUC, 102 Idaho 744, 751, 639 P.2d 442, 449 (1981); Accord, Williams v. Idaho St. Bd. of Real Estate Appraisers, 157 Idaho 496, 337 P.3d 665 (2014). IDAPA 04.11.01.741.01 provides procedures for awarding attorney fees in administrative contested case proceedings, but it expressly disavows that this rule provides a substantive source of administrative authority by which an agency may award attorney fees. (“This rule is not a source of authority for awarding costs and/or fees.”).

IDAPA 20.07.01.100 provides that:

The Commission adopts the rules of practices and procedure contained in the

Rules of Civil Procedure of the State of Idaho insofar as the same may be applicable and not inconsistent with the Oil and Gas Conservation Laws of the State of Idaho and the rules promulgated by the Commission under the authority of said laws.

A review of Title 47, Chapter 3 of the Idaho Code reveals that there is no express legislative delegation of authority to the Commission to award attorney fees to any participant in an administrative contested case proceeding. The Commission cannot authorize itself by administrative rule to assume legal powers which were not first expressly delegated to it by the legislature. In re Russet Valley Produce, Inc., 127 Idaho 654, 904 P.2d 566 (1995)

The Respondents contend that other legal authority exists by which attorney fees could be awarded here. They cite Idaho Code sections 12-120, and 12-121. Idaho Code sections 12-120(1) and (3) provide that:

(1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

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(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

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(emphasis added).

Idaho Code section 12-121 provides that:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(emphasis added).

These two code sections also do not provide authority for the grant of attorney fees in this instance for two primary reasons. First, an administrative contested case is not a "civil action." Idaho Code section 12-121 allows for an award of attorney fees in civil actions, but not in administrative cases. Lowery v. Board of County Comm'r, 117 Idaho 1079, 1081-82, 793 P.2d 1251, 1253-54 (1990) (A "civil action" within the meaning of Idaho Code 12-121 is commenced by the filing of a complaint in district court as described by Rule 3(a) of the Idaho Rules of Civil Procedure.); Foster v. City of St. Anthony, 122 Idaho 833, 968 P.2d 1097 (Ct. App. 1992). These administrative proceedings do not constitute a "civil action," because they were not "commenced" by the filing of a complaint under I.R.C.P. 3(a).

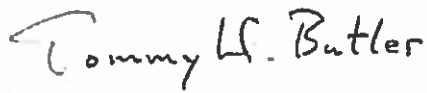
Second, nothing in the context of an administrative contested case hearing to review an application for integration under IDAPA 20.07.02.130 constitutes a "commercial transaction" as described in Idaho Code section 12-120. See, Owner-Operator Independent Driver's Ass'n Inc. v. IPUC, 125 Idaho 401, 408, 871 P.2d 818, 825 (1994) (Agency action is not a "commercial transaction" within the meaning of Idaho Code Section

12-120(3).); See also, Andrea v. City of Coeur D'Alene, 132 Idaho 188, 968 P.2d 1097 (Ct. App. 1998). There is no evidence presented here that the Respondents were enforcing any contractual agreement with the Applicants which had been breached and which predated the application for integration.

### CONCLUSION

Based upon the Findings of Fact and Conclusions of Law set out herein above, it is recommended that the Commission vacate the Hearings for the above-captioned administrative contested case hearings, subject to the procedures afforded by Idaho Code § 67-5243, and deny the award of any costs or attorney fees to the Respondents.

DATED this 14th Day of January, 2016.

By:   
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Tommy H. Butler  
Hearing Examiner