

BEFORE THE IDAHO DEPARTMENT OF LANDS

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) Docket Nos. CC-2016-OGR-01-001 and
Meridian, Payette County, Idaho,) CC-2016-OGR-01-002
))
AM IDAHO, LLC & ALTA MESA SERVICES,) **ORDERS FOR INTEGRATION**
LP, Applicants.)
))
_____)
))
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.)
_____)
))

On June 16, 2016, at 9:00 am (MDT) at the State Capitol Hearing Room EW40, Lower Level, East Wing, 700 W. Jefferson St., Boise, Idaho, and at a continuation hearing occurring on July 19, 2016, at 2:00 pm (MDT) at the Idaho Department of Lands, 300 N. 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho, the Director of the Idaho Department of Lands, Thomas Schultz, Jr., held two consolidated hearings upon the above-referenced integration applications (hereinafter referred to as the "Applications") of AM Idaho, LLC and Alta Mesa Services, LP ("Alta Mesa"). Tommy H. Butler, served as the Hearing Officer conducting the hearings.

JURISDICTION

The Director of the Idaho Department of Lands (“IDL”) held the hearings on these Integration Applications pursuant to Idaho Code § 47-324 (2016), and applied the substantive and procedural law found in the Oil and Gas Conservation Act (Chapter 3, title 47, Idaho Code), the Idaho Administrative Procedure Act, (Chapter 52, title 67, Idaho Code), and the Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01), all to the extent that the Rules of Administrative Procedure are not superseded by the Oil and Gas Conservation Act, and the Rules Governing Conservation of Oil and Natural Gas in the State of Idaho (IDAPA 20.07.02). The Rules of Practice and Procedure Before the Idaho Oil and Gas Commission (IDAPA 20.07.01), which preceded adoption of Chapter 52, title 67, Idaho Code, do not apply to these proceedings.

APPEARANCES

Attorney, Michael Christian appeared on behalf of the Applicants, AM Idaho, LLC and Alta Mesa Services, LP. The Applicants submitted their Integration Applications supported by sworn affidavits and the testimony of Wade Moore, III, a Landman, and the First Amended Affidavit of David Pepper. No uncommitted mineral interest owners or unleased parties or opponents to the Applications appeared at the hearings. Only one public witness appeared before the Director at the first hearing: Jim Classen, who is also currently a member of the Idaho Oil & Gas Conservation Commission.

On June 9, 2016, four uncommitted mineral interest owners of two separate parcels, Robert Bixby and Sue Bixby (Tract 86), and Luke Smith and Brynna Smith (Tract 62) filed general written responses to the Application in Docket No. CC-2016-OGR-01-001 covering the

spacing unit in Section 14, Township 8 North, Range 5 West, Boise Meridian, in Payette County, but none of those parties appeared at the hearing to oppose either Application based upon the elements of integration set out in Idaho Code § 47-322(d). Both written submissions from the Bixbys and the Smiths provided no evidentiary basis to challenge the integration elements alleged by the Applicants. The deadline for filing these responses and objections was June 9, 2016. Idaho Code § 47-324(c)(iii).

FINDINGS OF FACT

1. In the record before the Department of Lands are Applications filed by the Applicants on May 18, 2016, containing the materials responsive to the elements of integration set out in Idaho Code § 47-322(d).

2. This Order incorporates by reference herein the Applications and all other documents on file in the record at the Idaho Department of Lands, including correspondence, notices of hearing, responses, and hearing transcripts.

3. These Applications contain the name and address of the Applicants: AM Idaho, LLC, and Alta Mesa Services, LP, and their respective addresses.

4. These Applications each describe the spacing unit to be integrated. Docket No. CC-2016-OGR-01-001 proposes to integrate all the area within Section 14, Township 8 North, Range 5 West, Boise Meridian, in Payette County, Idaho. Docket No. CC-2016-OGR-01-002 proposes to integrate all the area within Section 19, Township 8 North, Range 4 West, Boise Meridian, in Payette County, Idaho. Exhibit A of each Application contains a plat depicting the section spacing unit to be integrated and by number identifying the component individual tracts by property owner.

5. Each Application contains a geologic statement regarding the likely presence of hydrocarbons. This geologic statement describes the porosity and permeability evidence in the target formations and references seismic data and geologic interpretation identifying a potential trap at a depth of about 3,400 feet subsurface. There is great reliance on seismic data since the wells proposed to be drilled are exploratory or “wildcat” wells.

6. Each Application contains a statement that the drill site is leased by the Applicants.

7. Each Application contains a statement of proposed operations, identifying the proposed Operator as Alta Mesa Services, LP, 15021 Katy Freeway, Suite 400, Houston, TX 77094. The statement identified that the purpose of these activities is exploratory and that these are wildcat wells, describing the proposed processing facilities, as well as the well pad equipment for operating these wells.

8. Each Application contains a proposed form lease and a proposed form of joint operating agreement [AAPL Form 610 Model Form Joint Operating Agreement (1989)], as Exhibits B and C to each Application.

9. Each Application contains a list of the names and last known addresses of proposed uncommitted mineral interest owners to be integrated, identified by their plat tract numbers, which corresponds with those component parcels of each spacing unit to be integrated as depicted on Exhibit A of each Application.

10. A May 24, 2016 letter clarifies that the owners of Tract 58 in Docket No. CC-2016-OGR-01-001 signed a lease with Alta Mesa. A June 9, 2016 response from the owners of Tract 1 and 8 in Docket No. CC-2016-OGR-01-001 stated that they had signed a lease with Alta Mesa. Thus, in Docket No. CC-2016-OGR-01-001, the owners of Tract 1, 8, and 58 are no longer uncommitted mineral interest owners to be integrated.

11. Each Application contains a First Amended Affidavit of David Pepper, a senior landman with Alta Mesa, which states, in paragraph three: “[p]ursuant to Idaho Code § 47-322(d)(viii), Alta Mesa has support from more than fifty-five percent (55%) of the mineral interest acres in the spacing unit” for each spacing unit proposed to be integrated. Mr. Pepper’s Affidavit also reports that the highest bonus paid in the spacing unit prior to the application for integration was \$100 per acre or \$50 per acre for tracts comprising less than an acre.

12. Each Application contains Exhibits E, F, and G, which document the Applicants’ efforts to contact and reach an agreement with uncommitted owners. Exhibit E is the résumé of efforts, which evidenced the two or greater attempts to make contact with each uncommitted mineral interest owner. Exhibit F attached to each application contains copies of the certified mailing slips for certified mailings to each uncommitted mineral interest owner. Exhibit “A” to the First Amended Affidavits of David Pepper contains an example or form letter of the mailings that were referenced in the Applications. This letter and the evidence of mailing show that the Applicants attempted to give actual prior notice to each of the uncommitted mineral interest owners at their last known address of the Applicants’ intent to develop the mineral resources in the spacing unit and a desire of the Applicants to reach an agreement with that owner, in accordance with Idaho Code § 47-322(d)(x). Exhibit G in each Application has an affidavit of publication in an effort to contact mineral interest owners who are unknown or cannot be found.

13. Each Application contains proposed terms of integration reflecting the five options for participation in the spacing unit as provided in Idaho Code § 47-322(c)(i)–(iv). Each Application describes five participatory options whereby a mineral interest owner could either: 1) become a working interest participant and bear their proportionate cost of participating in a well as provided in a joint operating agreement; 2) become a nonconsenting working interest

owner as provided in a joint operating agreement and ultimately receive their proportionate share of the revenue from the well as a carried interest, after incurring up to a 300% risk penalty; 3) become a lessee, leasing their mineral interest for a bonus and 1/8th royalty share of production attributable to their net mineral acres; 4) become an objector, whereby they would be deemed to have leased their interest in exchange for a 1/8th royalty interest attributable to their net mineral acreage; and 5) become a mineral interest owner failing to make an election in response to the notice of integration, in which case they shall be deemed to have leased their interest in exchange for a 1/8th royalty interest attributable to their net mineral acreage and a bonus equal to that paid by the operator to other mineral interest owners in the spacing unit prior to the issuance of any integration order.

14. While the Applications do not request a specific risk penalty, the Applicants clarified at hearing that it was requesting a 300% risk penalty for nonconsenting working interest owners.

15. Pursuant to IDAPA 04.11.01.602, the Department takes judicial notice that the Department mailed a copy of each pertinent Application and notice of hearing to all those uncommitted mineral interest owners identified as owning interests in each respective spacing unit as required by Idaho Code § 47-324(c)(iii). These Applications were sent to the uncommitted mineral interest owners via U.S. Mail, postage prepaid and certified mail, return receipt requested at their last known addresses provided in the Applications.

16. Each Application also contains an Affidavit of Publication by which unlocatable or unknown mineral interest owners in each respective spacing unit were notified of the Applicants' intent to develop the minerals and requested to contact the Applicants. On May 11, 2016, the

notice was published in the *Independent Enterprise*, a weekly newspaper of general circulation in Payette County, which is the county where the proposed spacing unit is located.

17. Wade Moore, III, a landman for the Applicants, testified about his efforts to contact Cody Gardner and Alicia Gardner, who recently purchased Tract 81 in Section 14, Township 8 North, Range 5 West, Boise Meridian, in Payette County, Idaho from Chad Roberts and Lisa Roberts. Mr. Moore testified that he spoke with Alicia Gardner by telephone six separate times and twice provided the Gardners with a proposed lease form. Ultimately, Mr. Moore testified that Mrs. Gardner told him that the Gardners were not interested in leasing and that they would appreciate if he did not contact them further.

18. On June 9, 2016, four uncommitted mineral interest owners of two separate parcels, Robert Bixby and Sue Bixby (Tract 86), and Luke Smith and Brynna Smith (Tract 62), filed general written responses to the Integration Application in Docket No. CC-2016-OGR-01-001 covering the spacing unit in Section 14, Township 8 North, Range 5 West, Boise Meridian, in Payette County, but none of these parties appeared at the hearing to oppose either Application based upon the elements of integration set out in Idaho Code § 47-322(d). Both written submissions from the Bixbys and the Smiths provided no evidentiary basis to address or challenge the integration elements alleged by the Applicants, AM Idaho, LLC and Alta Mesa Services, LP.

19. One public witness testified: Commissioner Jim Classen. Commissioner Classen testified that he had reviewed submitted proprietary seismic data, logs, test data, pressure data, and up to ten months production for prior wells drilled in the general area. His general opinion was that, given his interpretation of this data, the prior wells in the area are draining less than 640 acres. Consequently, he recommended that smaller spacing units ought to be utilized for future

wells, based upon this data and input from an operator and technical analysis by the Idaho Department of Lands staff. However, Commissioner Classen admitted that he had not specifically viewed the seismic data for these particular spacing units at issue.

CONCLUSIONS OF LAW

IOGC DOCKETS NO. CC-2016-OGR-01-001 and -002

1. The Director of the Idaho Department of Lands has authority over these matters pursuant to Idaho Code §§ 47-322(a) and 47-324(c).
2. Idaho Code § 47-321(3) directs that: “[e]xcept where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool.” In turn, IDAPA 20.07.02.120.02 mandates that a standard state-wide spacing unit area be initially employed for wells drilled for gas in the absence of a Commission order setting spacing units for the pool. This rule provides in pertinent part that: “[e]very well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool.”
3. Based on the current evidence available and provided in these Applications, establishing the state-wide spacing units for gas wells consisting of approximately 640 acres in Section 14, Township 8 North, Range 5 West, Boise Meridian, and approximately 640 acres in Section 19, Township 8 North, Range 4 West, Boise Meridian, both in Payette County, Idaho are, by operation of law, deemed to result in the most efficient and economic drainage of a common pool or source of supply.

4. Establishing and accepting this initial spacing of 640 acres best protects the correlative rights of mineral owners in the spacing unit, absent further information gained from drilling these exploratory wells. Moreover, other courts, when confronted with assertions of barren acreage within a pooled or integrated spacing unit have erred on the side of the inclusion of any questionable acreage. In Amoco Production Co. v. Ware, 602 S.W.2d 620 (Ark. 1981) the Arkansas Supreme Court reviewed whether Arkansas law imposed an implied covenant to take favorable administrative action upon a Lessee to exclude allegedly unproductive acreage from a unit for the benefit of its Lessor. The Court held that no such implied covenant existed in Arkansas, and observed that:

It is suggested that no one holding an interest outside the geological perimeter of the field should be permitted to share in the proceeds. That is a nice concept. However, drilling units and unitization are normally, if not always, determined by acreage and not by geographical lines that indicate whether oil may or may not be under the surface. What lies underneath the ground cannot be determined exactly unless wells are drilled. We cannot review the Commission's findings in this appeal; we cannot say it was absolutely wrong for the Commission to allow Murphy to share in the production.

Id. at 624.

Likewise, in Ward v. Corporation Commission, 470 P.2d 993 (Okla. 1970) the Oklahoma Supreme Court held that the fundamental legislative policy underlying Oklahoma's Well Spacing Act, which sought to conserve oil & gas resources, required that the regulatory agency should err on the side of restricting excessive drilling into a common source of supply and preventing waste whenever possible. Thus, the Department accepts and recognizes the initial state-wide spacing of 640 acres for gas wells under IDAPA 20.07.02.120.02 as applicable to the Applications under consideration.

5. Idaho Code § 47-322(a) provides in pertinent part:

In the absence of voluntary integration, the department, upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom.

Idaho Code § 47-322(d) also directs in pertinent part that:

An application shall not be required to be in any particular format. An application shall not be denied or refused for incompleteness if it complies substantially with the foregoing informational requirements.

6. Based on the substantial evidence within the hearing record and Applications, the Director concludes that the Applications clearly and substantially comply with all the elements of Idaho Code § 47-322(d).

7. Based on substantial evidence in the record, the Director concludes it is appropriate to integrate the uncommitted mineral interest owners the Applicants have named for the development and operation of the unit pursuant to Idaho Code § 47-322.

8. The five alternatives for these uncommitted mineral interest owners to participate in the spacing unit are just and reasonable. The Applicants' proposed form lease contains reasonable terms to govern the relationship between the Applicants and uncommitted mineral interest owners who lease, fail to make an election, or choose to be objectors. The joint operating agreement contains just and reasonable terms to govern the relationship between the Applicants and the uncommitted mineral interest owners who elect to participate as working interest owners or nonconsenting working interest owners.

9. Given that the drilling of these proposed wells are speculative "wildcat" wells entailing a higher degree of risk; and the significant distance of the well sites from well service contractors and the significant mobilization costs for transporting a drill rig, Alta Mesa Services, LP, as the Operator of each of the integrated spacing units, shall be entitled to recover from the

interest of any nonconsenting working interest owner three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well.

ORDERS FOR INTEGRATION

For the reasons stated above, pursuant to Idaho Code § 47-322 and based on the evidence in the record, the Director **HEREBY GRANTS** the Integration Applications in both Docket No. CC-2016-OGR-01-001 and Docket No. CC-2016-OGR-01-002 according to the terms and conditions requested by the Applicants, as modified by any terms and conditions contained herein.

- A. Alta Mesa Services, LP is the designated Operator of each well to be drilled within each respective spacing unit, and has the exclusive right to drill, equip, and operate each well within each respective spacing unit. Accordingly, all separate tracts within the respective spacing units are **HEREBY INTEGRATED** for the purpose of drilling, developing, and operating a well in each spacing unit, and for the sharing of all production therefrom from each spacing unit, in accordance with the terms and conditions of the above-captioned Integration Orders.
- B. Operations on any portion of a spacing unit will be deemed for all purposes the conduct of operations upon each separately owned tract in the spacing unit.
- C. Production allocated or applicable to a separately owned tract included in the spacing unit shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on that tract.
- D. **IT IS HEREBY ORDERED** that from and after this date all production from each respective spacing unit be integrated and allocated among the interest owners therein according to the proportion that each mineral interest owners' net mineral acreage bears

to the total mineral acreage of each respective spacing unit. All royalty interests in each respective spacing unit shall, in the absence of any voluntary agreement, be deemed to be integrated as of the date of the above-captioned Integration Orders without the necessity of any subsequent separate order.

E. ALL UNCOMMITTED OWNERS IN EACH RESPECTIVE SPACING UNIT ARE HEREBY NOTIFIED that they have 30 days from and after the date of the issuance of the above-captioned Integration Orders to make known to the Operator, Alta Mesa Services, LP, which of the following options they select for participation in the integrated spacing units. This selection shall be made in writing, and addressed to

Alta Mesa Services, LP
15021 Katy Freeway, Suite 400
Houston, TX 77094

by first class mail. Uncommitted mineral interest owners may either choose to participate as: a working interest owner; a nonconsenting working interest owner; a leased interest; or as an objector.

F. A failure to notify the Operator, Alta Mesa Services, LP, within 30 days of these Integration Orders shall result in that owner's interest being deemed leased.

G. Consistent with Idaho Code § 47-322(c)(i) - (v), the available participatory options are:

- a. Participate as a working interest owner and pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The Operator of the integrated spacing unit and working interest owners shall enter into the joint operating agreement approved in this Order.
- b. Participate as a nonconsenting working interest owner, who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner. Nonconsenting working interest owners will be entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until the Operator of the integrated spacing unit has recovered three

hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the joint operating agreement approved in this Order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well, and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The Operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved in this Order.

- c. Enter into a lease with the Operator of the integrated spacing unit under the terms and conditions in the proposed lease Alta Mca provided. The owner shall receive one-eighth (1/8) royalty and \$100 per net mineral acre bonus payment. The bonus payment for tracts less than one net mineral acre shall be \$50.
 - d. Object to any participation or involvement of any kind in the unit. An objecting owner's interest will be deemed leased under the terms and conditions in this Order. The owner shall receive one-eighth (1/8) royalty. An objecting owner may elect to have any funds to which he or she is entitled to transferred to the STEM action center.
 - e. If an owner fails to make an election within the 30 days set forth in this Order, such owner's interest will be deemed leased under the terms and conditions in this Order. The owner shall receive one-eighth (1/8) royalty and a \$100 per net mineral interest acre bonus payment. The bonus payment for tracts less than one net mineral acre shall be \$50.
- G. If one or more of the owners shall drill, equip, and operate, or operate, or pay the costs of drilling, equipping, and operating, or operating, a well for the benefit of another person as provided for in the Integration Order, then such owners or owner shall be entitled to the share of production from the spacing unit accruing to the interest of such other person, exclusive of a royalty not to exceed one-eighth (1/8) of the production, until the market value of such other person's share of the production, exclusive of such royalty, equals the sums payable by or charged to the interest of such other person.
- H. If there is a dispute as to the costs of drilling, equipping, or operating a well, the Department shall determine such costs.

- I. The terms and conditions of the above-described Integration Orders are hereby determined to be just and reasonable.
- J. Each owner will have thirty days (30) from issuance of this Order to make an election and communicate his election in writing to Alta Mesa.

PROCEDURES AND REVIEW

Pursuant to Idaho Code § 47-324(c) the above-captioned Integration Orders shall not be subject to any motion to reconsider or further review, except for appeal to the Idaho Oil and Gas Conservation Commission. Pursuant to Idaho Code § 47-324(d), these Integration Orders may be appealed to the commission by the Applicants or any owner who filed an objection or other response to the Applications within the time required. An appeal must be filed with the Director within fourteen (14) calendar days of the date of issuance of the Director's written decision. The date of issuance shall be August 8, 2016, which is three (3) calendar days after the Director deposits the decision in the U.S. mail. Such appeal shall include the reasons and authority for the appeal, and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings below, by certified mail, or by personal service. Any person who participated in the proceeding below may file a response to the appeal within five (5) calendar days of service of a copy of the appeal materials. The appellant shall provide the Director with proof of service of the appeal materials on other persons.

If no appeal is filed within the required time, this decision shall become the final order. Idaho Code § 47-324(f).

IT IS SO ORDERED.

Dated this ^{5th} day of August, 2016.

Tommy H. Butler

TOMMY H. BUTLER, Hearing Officer

Thomas M. Schultz, Jr.

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