

BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF:)

APPLICATION OF AM IDAHO, LLC, AND)
ALTA MESA SERVICES, LP, TO ESTABLISH)
A SPACING UNIT AND FOR THE)
INTEGRATION OF ALL UNCOMMITTED)
OWNERS IN THE PROPOSED UNIT)
CONSISTING OF THE SE ¼ OF SECTION 9, THE)
SW ¼ OF SECTION 10, THE NW ¼ OF)
OF SECTION 15, AND THE NE ¼ OF SECTION)
16, TOWNSHIP 8 NORTH, RANGE 5 WEST,)
BOISE MERIDIAN, PAYETTE COUNTY,)
IDAHO)

APPLICATION OF AM IDAHO, LLC, AND)
ALTA MESA SERVICES, LP, TO (a))
ESTABLISH SPACING UNIT; AND (b))
INTEGRATE UNLEASED MINERAL)
INTEREST OWNERS, IN THE PROPOSED)
UNIT CONSISTING OF THE SE ¼ OF SECTION)
10, THE SW ¼ OF SECTION 11, THE NW ¼)
OF SECTION 14, AND THE NE ¼ OF)
SECTION 15, TOWNSHIP 8 NORTH, RANGE)
5 WEST, BOISE MERIDIAN, PAYETTE)
COUNTY, IDAHO)

AM IDAHO, LLC, and)
ALTA MESA SERVICES, LP, Applicants.)

Docket No. CC-2016-OGR-01-004
Docket No. CC-2016-OGR-01-005

**BRIEF OF APPLICANT RE: Idaho
Code § 47-328**

DEPT. OF LANDS
2018 JUN -5 PM 12:52
BOISE, IDAHO

Applicant AM Idaho LLC files this brief to supplement the discussion of the issue of whether a hearing must be held on the applications in the above docket numbers despite the lack of timely response by any uncommitted mineral interest owner. The current applications seek amendment of the Final Orders in the above docket numbers, to extend the temporary unit periods and to modify the well proceeds escrow requirement. As Applicant understands the hearing officer's comments during the prehearing telephone conference held on June 4, 2018, because notice of hearing was provided to uncommitted mineral interest owners shortly after the

current applications were filed, unspecified due process concerns require that the hearing be held, irrespective of whether any uncommitted mineral interest owner timely filed a response to the applications as required by Idaho Code § 47-328(3).¹

The hearing officer's reasoning would effectively read the last part of Idaho Code § 47-328(3)(d) out of the statute, and as result is an impermissible statutory construction. §328(3)(b) requires the applicant² to provide notice of the hearing date to uncommitted mineral interest owners in the case of *every* application for an order regarding unit operations or integration of a drilling unit. § 328(3)(b) also provides that "[o]nly an uncommitted owner in the affected unit may file an objection or other response to the application, and the uncommitted owner shall file at least fourteen (14) calendar days before the hearing date provided in the notice." §328(3)(c) contains the same deadline. §328(3)(d) provides for hearings of applications by the administrator or a hearing officer, and also provides that "[w]hen applications are uncontested, the applicant may request, and the [administrator] may allow, approval without a hearing based on review of the merits of a verified application and the supporting exhibits."

§328(4) provides that the administrator's decision on an application "may be appealed to the commission by the applicant or any owner who filed an objection or other

¹ Applicant was informed during the prehearing conference call that mineral owners Alan and Glenda Grace filed a document in the -004 matter, and was provided a copy of the document after the call. While the document is dated May 28, 2018, it apparently was not received by the Department until after the May 31, 2018 deadline. It contains two date stamps: one of "May 32, 2018", and one of "June 1, 2018." Thus, the filing was untimely. In addition, it does not actually respond to any part of the application to amend the Final Order, but in substance contains only complaints about the terms of the *current* Final Order, and about oil and gas exploration generally. The hearing officer and the Director previously determined that speculative concerns about oil and gas exploration generally were not relevant to spacing issues. Even if the filing were timely, it would not constitute a proper response complying with Idaho Code §47-328(3)(b). No filing of any kind was made by any uncommitted mineral interest owner in the -005 matter.

² While Applicant did provide the required notice of hearing in this case, the Department also mailed a notice of hearing to all uncommitted mineral interest owners, although there is no requirement in §328 that it do so.

response to the application within the time required.” Thus, only a mineral interest owner who filed a timely response pursuant to § 328(3)(b) may appeal the administrator’s decision. This makes clear that only those mineral interest owners who filed a timely response may participate in a hearing on an application; it would be nonsensical to provide that mineral interest owners who failed to reply by the deadline in § 328(3)(b) could participate in the hearing, but then could not appeal the resulting decision. Thus, if no uncommitted mineral interest owner files a timely response to an application pursuant to §328(3)(b), the application is “uncontested” for purposes of §328(3)(d), and the administrator may dispense with a hearing.³

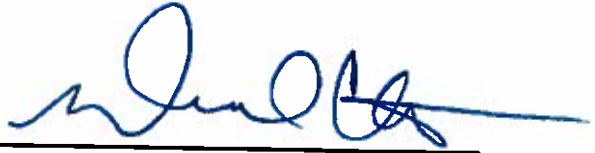
Because notice of a hearing is required in *every* case under §328(3)(b), the hearing officer’s reasoning --- that the delivery of the notice of hearing requires that a hearing be held – would effectively mean a hearing must be held in *every* case arising under §328(3)(b). This would effectively eliminate the last part of §328(3)(d) – allowing the administrator to dispense with a hearing where an application is uncontested – from the statute. However, a statute must be read so as to give meaning and effect to all of its parts, and it may not be interpreted in a manner that would nullify or render part of it meaningless. *E.g., Sampson v. Layton*, 86 Idaho 453, 387 P.2d 883 (1963); *Idaho Cardiology Associates, P.A. v. Idaho Physicians Network, Inc.*, 141 Idaho 223, 226, 108 P.3d 370, 373 (2005) (stating that “all parts of a statute should be given meaning,” and interpreted such that “no part is rendered superfluous or insignificant.”).

³ It is also nonsensical to read “uncontested” to mean that the administrator must wait to see whether any uncommitted mineral interest owner who did not file a timely reply nevertheless shows up at the hearing to “contest” the application. This similarly reads §328(3)(d) out of the statute. It contemplates that there is no proper objection asserted *before* the hearing, such that the administrator may then decide that the hearing will not occur.

Moreover, procedural due process does not require that a hearing be held in every instance. "[A]n individual must be provided with notice and an *opportunity* to be heard." *Spencer v. Kootenai County*, 145 Idaho 448, 454, 180 P.3d 487, 493 (2008) (emphasis added). Idaho Code §47-328(3) does this – but provides that an interested mineral owner must first appear in the action by timely filing a response. This is no different from requiring a litigant to timely appear in a lawsuit to avoid having a default entered. A defendant served with a summons and complaint who files no responsive pleading or appearance has no right to even receive notice of a motion for default. I.R.C.P. 55(a)(1). Similarly, under other Idaho statutory schemes, a person may waive the right to an administrative hearing by failing to timely request one following receipt of a notice. *See, e.g.*, Idaho Code § 18-8002A (providing that a driver who fails to request an administrative hearing within 7 days of receiving notice of a license suspension waives the right to a hearing); *Wanner v. State Dept. of Transp.*, 150 Idaho 164, 169-70, 244 P.3d 1250 (2011); *Peck v. State Dept. of Transp.*, 153 Idaho 37, 278 P.3d 439 (Ct. App. 2012) (applying the same). Nothing about Idaho Code § 47-328 is exceptional or requires any different result for due process purposes.

Applicant respectfully submits that the hearing officer's stated reasons for declining Applicant's request to the administrator pursuant to §328(3)(d) to dispense with a hearing are erroneous, and that good cause exists to dispense with the hearing. As was acknowledged during the prehearing conference call, holding a hearing imposes a financial and time burden on both the Applicant and on the Department – both the hearing officer and the Applicant's witness must travel from out of state. The applications concern very limited issues, which should be readily subject to administrative disposition where the applications are uncontested.

Dated this 5th day of June, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2018, I caused to be served a true and correct copy of the foregoing **BRIEF OF APPLICANT RE: Idaho Code § 47-328** in the above-referenced matter by the method indicated below, and addressed to the following:

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