

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF IDAHO**

Randy and Thana Kauffman, <i>Complainants</i> ,	)	
	)	Docket No. CC-2017-OGR-01-002
v.	)	
	)	
AM Idaho, LLC, and Alta Mesa Services, LP,	)	<b>BRIEF OF RESPONDENT</b>
<i>Respondents</i> .	)	<b>AM IDAHO, LLC, IN SUPPORT</b>
	)	<b>OF REQUEST FOR</b>
	)	<b>PROTECTIVE ORDER</b>
	)	

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Further to the hearing officer’s request during the June 12, 2018 continued prehearing conference call, Respondent AM Idaho LLC (“AM”) submits this brief in support of its request for a protective order pursuant to IDAPA 04.11.01.532 (“Rule 532”).

During the initial prehearing conference call, AM suggested that in an effort to resolve the Kauffmans’ complaint, it could make available documents available to them pursuant to Idaho Code § 47-332(4). AM has gathered the following categories of documents for review by the Kauffmans:

1. Well test reports
2. Liquid volume statements
3. Gas volume statements
4. Daily production reports
5. Plant volume settlement statements
6. Purchaser statements
7. Gas analysis reports

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Particularly the plant volume settlement statements and purchaser statements contain volume and financial information regarding production from wells other than the Kauffman #1-9 and Kauffman #1-34 wells in which the Kauffmans own a royalty interest – including other wells owned by AM in Idaho and facilities through which AM’s parent or

affiliate transports products from wells in other states. In some cases the documents display information by gathering or processing facility rather than well, such that it is impossible to redact information from the documents to display only that portion of the information relating to the two relevant wells.

In other words, AM's compliance with its obligations under Idaho Code § 47-332(4) is not simply a matter of providing the Kauffmans with copies of documents related solely to the two relevant wells. The documents contain operating and financial information that is confidential and proprietary business information of AM, and in some cases information of its parent or affiliate not operating in Idaho. The materials collected for review by the Kauffmans run in the hundreds of pages. Line by line review and redaction of information concerning wells or facilities in which the Kauffmans have no interest would be time consuming and expensive.

Moreover, Idaho Code § 47-332(4) does not direct that a lessee deliver hard copies of documents to a lessor. Rather, the statute provides that the "lessee must maintain . . . and make available to the lessor upon request" the relevant documents. "Make available" is clearly something less than "deliver" or "produce for copying." *Cf.* I.R.C.P. 34 (expressly providing for a litigant to "produce and permit the requesting party or its representative to inspect [or] copy" designated documents); *see also U.S. v. Baroid Corp.*, 346 F.Supp.2d 138, 143 (D.D.C. 2004) ("To make available' does not include the obligation to deliver or process."); *Wang v. Kidder, Mathews & Segner, Inc.*, Case No. 62034-7-1 (Wa. Ct. App. Div. I 2010) ("The PSA is unambiguous. . . . As the trial court instructed, "[M]ake available' means only that the subject matter is accessible or attainable [while] 'deliver' means delivery or physical transfer of possession.").

This is particularly true in the context of the purpose of I.C. § 47-332(4), which is explicitly to allow a lessor to “confirm” and “verify” the “gross production, disposition and market value” of oil and gas produced from a well in which the lessor owns a royalty interest. Interpretation of the term “make available” depends on this context. *E.g., State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011) (Statutory provisions “should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings.”). Requiring a lessee to deliver hard copies of designated documents to the lessor -- which may contain confidential business information, and may include information about wells in which the lessor has no interest – without restriction would allow the lessor to use the information in the documents for purposes far beyond the purposes of the statute, potentially including competitive uses.

Thus, the most reasonable interpretation of “make available” as used in I.C. § 47-332(4) is what it means on its face: the lessee must make the documents available to the lessor to review to the extent reasonably necessary to confirm and verify the gross production, disposition and market value of oil and gas produced. Any broader interpretation would impermissibly expand the statute beyond its plain terms.

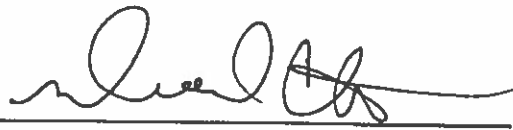
Because the documents AM has collected to make available to the Kauffmans for review include confidential business information, and many include such information regarding wells and facilities in which the Kauffmans have no interest, entry of a protective order limiting the disclosure of the information is appropriate. Rule 532 provides the hearing officer the authority to issue a protective order “limiting access to information generated during settlement negotiations, discovery, or hearing.” The current proceedings are in the vein of settlement

negotiations or informal discovery. Given the issues described above, it is reasonable and appropriate for the hearing officer to issue a protective order with the following requirements:

1. Documents made available by AM to the Kauffmans shall be reviewed by the Kauffmans or their designated representative or expert consultant at the offices of AM's counsel, or at another mutually agreeable place.
2. The Kauffmans, or their designated representatives or consultants, may not take hard copies of the documents. They may take notes regarding the documents. They may not disseminate the information in the documents to third parties other than their chosen legal representative or expert consultant, but may use the information solely for the purposes of I.C. § 47-332(4), i.e., to verify or confirm gross production, disposition and market value of oil and gas produced from the Kauffman #1-9 and Kauffman #1-34 wells.

AM will cooperate with the Kauffmans to facilitate the review of the documents by them or by their designated representative or expert consultant. AM does not seek at this time to place any time restriction on the Kauffmans' review. AM intends to fully comply with its obligation under I.C. § 47-332(4), while reasonably protecting its legitimate business interests.

Dated this 13<sup>th</sup> day of June, 2018.



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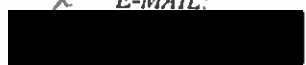
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of June, 2018, I caused to be served a true and correct copy of the foregoing **BRIEF OF RESPONDENT AM IDAHO, LLC, IN SUPPORT OF REQUEST FOR PROTECTIVE ORDER** in the above-referenced matter by the method indicated below, and addressed to the following:

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Division Administrator  
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