

Randy and Thana Kauffman, <i>Complainants</i> ,	)	Docket No. CC-2017-OGR-01-002
	)	
v.	)	<b>PREHEARING ORDER</b>
	)	<b>REGARDING REQUEST FOR</b>
AM Idaho, LLC and Alta Mesa Services, LP,	)	<b>PROTECTIVE ORDER</b>
<i>Respondents</i> .	)	
_____	)	

In the above captioned matter an informal prehearing conference was held on April 27, 2018. *Complainants* appeared personally and *Respondents* appeared through their counsel of record, Michael Christian. At the informal prehearing conference, the parties stipulated to the *Complainants* receiving certain documentation. The stipulation resulted in the entry of a *Prehearing Order* dated May 16, 2018. This Order required certain information to be produced to *Complainants* no later than May 30, 2018 (May 16, 2018 Prehearing Order ¶ 2).

In attempting to comply with the prehearing order, *Respondents* compiled “a substantial volume of documents” and made them available for *Complainants’* review at *Respondents’* attorney’s office. (May 28, 2018 correspondence from Michael Christian to Kauffmans). In addition, *Respondents* requested *Complainants* sign a nondisclosure agreement prior to viewing the compiled information. (May 28, 2018 correspondence from Michael Christian to Kauffmans). Thereafter, *Complainants* objected to signing a nondisclosure agreement. (May 30, 2018 correspondence from Kauffmans to Michael Christian).

On June 12, 2018 a second informal prehearing conference was convened. At the prehearing conference it became apparent *Complainants* also objected to the fact that *Respondents* were requiring the review of the documents in *Respondents’* attorney’s offices. After hearing argument on the issue, the Hearing Officer requested a brief written submission of

each party's position and the legal basis therefore. Written submissions were provided by both the *Complainants* and *Respondents* on June 13, 2018.

The issue currently before the Hearing Officer is the interpretation of what each party stipulated to at the initial prehearing conference on April 27, 2018. More specifically, not if the *Complainants* are entitled to the information they requested but how that information is provided to them. Given that the information was being exchanged under a mutual agreement between the parties, the Hearing Officer has no authority at this time to dictate what each side has or should stipulate to. Stipulations are an agreement between the parties, no party can be forced to agree to anything. While a stipulation appeared evident at the initial prehearing conference, it has now become apparent that no stipulation was in fact reached.

Essentially, this issue is a discovery dispute. Having a discovery dispute at this point during the proceedings is improper as neither party has requested discovery, nor has it been ordered. While the discovery request may be viewed as a mere formality, it is important that the procedural aspects of the hearing be adhered to out of fairness for all parties. Therefore, prior to the Hearing Officer being empowered to make a decision regarding the production of documents, there must first be a decision on whether or not document production is even going to be allowed in this matter.

This hearing is being conducted pursuant to the *Idaho Rules of Administrative Procedure* as enumerated in IDAPA 04.11.01.000 *et. seq.* These rules state:

**WHEN DISCOVERY AUTHORIZED.**

Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling

discovery need not conform to the timetables of the Idaho Rules of Civil Procedure.

IDAPA 04.11.01.521, also known as Rule 521.

Pursuant to the above stated rule it would be premature for the Hearing Officer to order the production of documents, whether under a protective order or not, prior to first crossing the bridge of whether or not discovery is allowed and is appropriate in this matter. While discovery requests were briefly mentioned at the initial prehearing conference, the issue was not ruled on as a result of the parties' apparent stipulation. As stated above, it appears a stipulation was not in fact reached. Therefore, all parties will be allowed an opportunity to request discovery at the third informal prehearing conference to be held on June 22, 2018 at 10:00 a.m.

As an initial matter, the parties should be advised that according to Idaho Code § 47-329 this matter appears to be a matter where discovery is authorized. All parties should be prepared to address the need and availability of discovery at the upcoming hearing. If and when discovery has been authorized, the Hearing Officer fully expects *Respondents* to reassert its position that certain materials requested need only be "made available" to *Complainants* at counsel's office and that said documents can be produced under a protective order. Once the procedural requirements have been satisfied at the hearing the Hearing Officer will make a decision regarding *Respondents* request.

IT IS SO ORDERED.

DATED this 20th day of June, 2018.

By:



JASON S. RISCH, Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of June, 2018, I caused to be served a true and correct copy of the following items in the Docket No: CC-2017-OGR-01-002: *Prehearing Order Regarding Request for Protective Order* by the method indicated below and addressed to the following:

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c/o Michael Christian  
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