

**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.)	
)	BRIEF OF RESPONDENTS RE:
AM Idaho, LLC, and Alta Mesa Services, LP,)	RECOMMENDED ORDER
<i>Respondents.</i>)	
)	
)	
)	

Pursuant to IDAPA 04.11.01.564 and their request at the September 24, 2018 prehearing telephone conference, Respondents AM Idaho, LLC and Alta Mesa Services, LP (collectively, "AM") submit this brief summarizing their position in this matter.

On December 7, 2017, Complainants the Kauffmans submitted a one-page letter to the Commission, which they styled as a "formal complaint to [the Commission], as provided for in Idaho Code 47-331(4)." However, on its face Idaho Code §47-331(4) only applies where an operator has failed to "make payments under the lease," or the royalty interest owner is "seeking payments under" § 331. The Kauffmans' complaint does not contain any request for specified unpaid royalties under their leases or for failure to timely pay royalties under § 331. The Complaint is directed toward "Alta Mesa," but does not clarify whether it is made against AM Idaho, LLC, Alta Mesa Services, LP, or both.

Beyond the inapplicability of Idaho Code § 47-331, the Kauffmans' complaint is vague. They first allege that they "have requested records [they] are entitled to under IC 47-332(4) and Alta Mesa has refused to provide those records to [them]." However, their complaint does not identify what records they contend AM has not provided, nor does it provide any evidence that they made a demand for such records before filing their complaint. Second, they

allege that AM has failed to “provide specific information on our check stubs” required by Idaho Code § 47-332(1), but their complaint does not identify what required information is not provided on their check stubs.

The Kauffmans’ complaint appears to seek relief in three areas. First, they demand that the Commission “compel” AMI to provide information under Idaho Code § 47-332(4). Again, their complaint does not identify what information they contend AMI should be “compelled” to provide. As discussed above, they never previously made any demand of AMI under Idaho Code § 47-332(4). Idaho Code § 47-333(1) indicates that a royalty interest owner’s remedy, if a written demand for an “accounting of the oil and gas produced” is not satisfied, is to file an action in district court to compel the accounting demanded and recover the payment or delivery of any royalty amount proved to be due. The Kauffmans have never made a demand of AMI under Idaho Code § 47-333.

Second, the Kauffmans demand that the Commission “compel” AMI to provide some unspecified additional information on their royalty check stubs. Again, the complaint does not identify what information is lacking from their check stubs.

Third, the Kauffmans demand that “all current and past producing wells (not just those on state lands) should be audited by a team of individuals qualified in oil and gas accounting and facilities,” and that “all data related to every well drilled in Idaho [apparently not just those drilled by AMI] be immediately available to the public[.]” Their complaint cites no factual or legal basis for this demand.¹

¹ The complaint also asserts that well data should be made available “as required in section IC 47-324 and 47-326,” but there is no assertion or indication that those records are not already publicly available as required by those statutes.

The Kauffmans alleged a failure to comply with Idaho Code § 47-332(4), but as AM pointed out previously, before the initial prehearing conference call they had never actually made a request of AM to make records available under the statute. AM suggested that they make such a request and AM would comply with it. AM then requested a protective order due to concerns that the Kauffmans intended to use the information for purposes beyond those intended by §332(4). Ultimately, on July 20, 2018, based in part on evidence regarding harm to AM if a protective order was not granted, as set forth in the Affidavit of Jerry Haney submitted June 29, 2018, the hearing officer treated the request as a discovery matter and granted a protective order. The protective order would have allowed the Kauffmans to use the information provided by AM for the purposes of §332(4), including disclosing the information to their chosen expert consultant.

However, the Kauffmans refused to accept the information made available to them by AM if it was to be subject to a protective order. On July 24, 2018, the Kauffmans submitted correspondence requesting relief from the protective order, simply asserting that no protective order was necessary, and stating that “[u]ntil the Protective Order is withdrawn, we further request Mr. Christian refrain from sending us said information.” On August 1, 2018, the hearing officer denied the Kauffmans’ request to vacate the protective order.

By email dated August 2, 2018, counsel for AM notified the hearing officer and the Kauffmans that documents subject to the protective order were available for the Kauffmans to review.

In email correspondence dated August 2, 2018, directed to the hearing officer, and August 16, 2016, directed to the hearing officer, IDL staff, members of the Commission,

legislators, and members of the governor's staff, the Kauffmans reiterated their objection to the protective order.

On September 13, 2018, the hearing officer issued his notice of hearing in the matter.

By email on September 17, 2018, the Kauffmans informed the hearing officer: "We have no exhibits, no witnesses, and any testimony we present would be repetitious. To spare yourself, Mr. Christian, the Commission, Ms. Fugate, and ourselves the time and trouble of attending the hearing at which we can present no new evidence, we formally request Mr. Risch to prepare a recommended order for the Commission's consideration in order for the Commission to make the final decision in this matter."

At a final prehearing conference on September 24, 2018, the Kauffmans indicated they had nothing more to add to their previous submittals. The hearing officer indicated his intent to prepare a recommended order. Pursuant to IDAPA 04.11.01.564, counsel for AM requested the opportunity to submit briefing prior to issuance of the recommended order, which the hearing officer granted.

IDAPA 04.11.01.240.02 requires that complaints "[f]ully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred," and "[r]efer to statutes, rules, orders or other controlling law involved." IDAPA 04.11.01.304 provides that a defective or insufficient pleading may be dismissed. IDAPA 04.11.01.430.01.d provides that a hearing officer may "issue a written decision . . . including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer."

AM respectfully submits that the hearing officer may either: (a) dismiss the Kauffmans' complaint as defective or insufficient under IDAPA 04.11.01.240.02 and 04.11.01.304, or (b) make findings of fact and conclusions of law that the Kauffmans have failed to present any evidence to support their claims for relief.

As noted, their complaint purports to be made pursuant to Idaho Code § 47-331(4), and contains conclusory allegations of failure to comply with Idaho Code §§ 47-332(4) and 47-332(1), but provides no facts to support those allegations. In other words, the complaint does not “[f]ully state the acts or things . . . omitted to be done by the persons complained against by reciting the facts constituting the . . . omissions and the dates when they occurred.” The Kauffmans have refused to accept documents made available to them by AM pursuant to the protective order. They have acknowledged that they have “no witnesses, no exhibits,” no testimony to present beyond the conclusory allegations contained in their complaint, and “can present no new evidence.”

The complaint does not establish by evidence of specific facts: (a) any failure of AM to properly pay royalty amounts; (b) any failure of AM to comply with a request under Idaho Code § 47-332(4); or (3) any deficiency in the information provided to the Kauffmans on their royalty check stubs pursuant to Idaho Code § 47-332(1). The Kauffmans have offered no further evidence and admit that they have none to offer. AM respectfully submits that the hearing officer may make findings of fact that none of the failures alleged by the Kauffmans have been established by substantial evidence in the record as a whole. AM further respectfully submits that the hearing officer may make conclusions of law that Idaho Code § 47-331(4) does not apply in this case because the Kauffman have made no allegation, and have provided no evidence, of any failure to pay a royalty amount under their leases or under that statutory section.

Dated this 5th day of October, 2018.



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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2018, I caused to be served a true and correct copy of the foregoing **BRIEF OF RESPONDENTS RE: RECOMMENDED ORDER** in the above-referenced matter by the method indicated below, and addressed to the following:

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A handwritten signature in blue ink, likely belonging to the certifier, written over a horizontal line.