

BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

Randy and Thana Kauffman, *Complainants*, ) Docket No. CC-2017-OGR-01-002  
)  
v. ) **ORDER REGARDING**  
) **PRODUCTION OF TRUCKING**  
AM Idaho, LLC and Alta Mesa Services, LP, ) **TICKETS AND END PURCHASER**  
*Respondents*. ) **RECORDS**  
)  
\_\_\_\_\_ )

*Complainants* in the above captioned matter have requested certain information from *Respondents* pertaining to their royalty interests in oil and gas operations conducted by *Respondents*. Specifically, as enumerated in *Complainants*' April 17, 2019 written request, the *Complainants* seek "all Kauffman 1-9 crude oil trucking tickets" and "all end purchaser records including price paid by end purchaser..." Written submissions having been filed, opportunity for discussion having occurred at various pre-hearings and for good cause appearing, this Hearing Officer hereby orders as follows:

**A. Controlling Authority.**

As lessors of oil and gas interests, *Complainants* are entitled to various information from *Respondents*. This point is clearly mandated in various aspects of Title 47 Chapter 3, including but not limited to the statute cited by *Complainants*:

The lessee must maintain, for a period of five (5) years, and make available to the lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the lessor may require to verify the gross production, disposition and market value.

Idaho Code § 47-332(4).

Further, this particular statute was at issue recently before the Idaho Oil & Gas Conservation Commission (“Commission”) in prior proceedings related to this Complaint. The Commission in its interpretation referred to this statute as a “broad mandate” and stated “that type of all-encompassing mandate plainly articulates an entitlement to those [statutorily mandated.] documents.” *Commission Final Order* dated February 6, 2019, Pg. 5.

**B. *Complainants* are entitled to the requested “trucking tickets.”**

Based upon the argument and submissions of *Complainants*, this Hearing Officer finds that the “trucking tickets,” as that term is used by *Complainants*, falls squarely within the realm of information referenced in Idaho Code § 47-332(4). *Respondents* do not appear to object to *Complainants*’ request and have indicated that they have or will produce this information. *Brief of Respondent AM Idaho Pursuant to April 23, 2019 Prehearing Order*, Pg. 1, ¶ 2-3.

**C. Dispute over “end purchaser” records.**

1. Are “end purchaser” records required to be produced?

*Complainants*, throughout their request and in their oral comments consistently refer to the term “end purchaser” when referring to various records they are requesting. *Complainants* even go so far as to cite Idaho Code § 47-310(6) which provides a clear statutory definition for “end purchaser.” The difficulty with *Complainants*’ argument is that while the term “end purchaser” is clearly defined, it is never used again throughout the chapter. Idaho Code Title 47, Chapter 3. Thus, this definition provides little to no assistance when interpreting and/or ruling on *Complainants*’ request.

In pre-hearing statements, it was made clear that *Respondents*’ position is it sells all minerals extracted to an entity known as ARM Energy Services. *Respondents* have taken the position that any records pertaining to what happens to the minerals after *Respondents* turn them

over to ARM Energy Services is a step removed from *Respondents'* control. There is no doubt that there is an argument between *Complainants* and *Respondents* as to what constitutes an “end purchaser.”

As stated above, since the term “end purchaser” is not used in any relevant code section beyond a standalone definition, the term provides no assistance in resolving *Complainants'* request. However, one need not look further than Idaho Code § 47-332(4) and the definition of “market value” found in Idaho Code § 47-310(11). Idaho Code § 47-332(4) clearly states that “the lessee must maintain... and make available to the lessor upon request... any other reports or records that the lessor may require to verify the gross production, disposition and *market value*.” Market value is defined by Idaho Code § 47-310(11) as “the price at the time of sale... which the oil and gas should bring in a competitive and open market...”

It is clear *Complainants* are attempting to verify market value. Nothing in Idaho Code § 47-332(4) limits *Complainants'* ability to receive documentation to only “end purchasers.” Therefore, to the extent that the *Respondents* are in possession of any document whatsoever that is requested by *Complainants* and which would assist *Complainants* in their efforts to “verify the gross production, disposition and market value,” *Respondents* are required to produce the same. This obligation to produce the relevant documentation exists regardless of whether or not the documentation is related to *Respondents*, to ARM Energy Services, to “end purchasers” or to another entity further down the line.

However, this statutory obligation<sup>1</sup> is limited to documents, records or reports in the possession, custody or control of *Respondents*. *Complainants* have asserted that *Respondents*

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<sup>1</sup> This Hearing Officer having previously ruled in its July 20, 2018 Order Regarding Discovery that *Complainants* are entitled to discovery, the same interpretation relating to statutory obligations to produce documents also applies to *Respondents'* duty to produce documents under the auspices of discovery requests.

have the additional obligation to provide records “regardless of how [Respondents have] to obtain them.” *Complainants’ April 17, 2019 Email Request*. This Hearing Officer finds nothing in the statutes nor in any other authorities cited by *Complainants* to support this demand. *Respondents* are under no obligation to seek out and obtain documents, records or reports from third parties. As far as the record reflects in this particular matter, there is nothing suggesting that ARM Energy Services is anything other than a third party.

2. What are Complainants requesting when they ask for “end purchaser” documents?

This order may lead to the next logical issue of exactly what the *Complainants* are requesting when the reference “end purchaser” materials. Thus, in order to expedite the process and avoid more hearings the following determination is made. While the statutory definition of “end purchaser” provided no assistance in determining the above it does provide guidance on what the *Complainants* are seeking. *Complainants* state in their request:

We also formally request all end purchaser records including price paid by end purchaser for all our natural gas, NGL’s, condensate, and crude oil sold since the inception of the Kauffman 1-34 and Kaufman 1-9 wells.

*Complainants’ April 17, 2019 Email Request*.

The relevant Idaho Code section states:

‘End purchaser’ means a third-party, arms-length purchaser of oil, gas or condensate that is ready for refining or other use, or a third-party, arms-length purchaser of other fluid or gaseous hydrocarbons that have been separated in a processing facility.

Idaho Code § 47-310(6).

Therefore, the *Complainants* are requesting, in restated terms, the following:

We also formally request all ~~end purchaser~~ [third-party, arms-length purchaser of oil, gas or condensate that is ready for refining or other use] records including price paid by ~~end~~ [said third party] purchaser for all our natural gas, NGL’s, condensate, and crude oil sold since the inception of the Kauffman 1-34 and Kaufman 1-9 wells.

Based upon the foregoing, IT IS THEREFORE ORDERED AND THIS DOES SO ORDER:

1. That the *Respondents* produce all “trucking tickets” related to the Kauffman wells.
2. That the *Respondents* produce the requested documents, records or reports as they will assist *Complainants* in verifying the gross production, disposition and market value related to the minerals extracted under the applicable lease.
3. Nothing in this Order shall be interpreted to mandate that *Respondents* attempt to obtain any documents, records or reports from third parties. However, to the extent that those documents are already in *Respondents*’ possession, custody or control, they must be produced.
4. All production ordered hereunder shall occur no later than July 26, 2019.

DATED this 16<sup>th</sup> day of July, 2019.

By:   
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JASON S. RISCH, Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of July, 2019, I caused to be served a true and correct copy of the following items in the Docket No: CC-2017-OGR-01-002: *Order Regarding Production of Tracking Tickets and End Purchaser Records* by the method indicated below and addressed to the following:

AM Idaho, LLC  
c/o Michael Christian  
Marcus, Christian, Hardee & Davies, LLP  
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Maggie Mallea