

BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

2018 AUG -1 PM 2:30
BOISE, IDAHO
OFFICE OF THE CLERK

Randy and Thana Kauffman, <i>Complainants</i> ,)	Docket No. CC-2017-OGR-04-002
)	
v.)	ORDER DENYING REQUEST
)	FOR RELIEF FROM
AM Idaho, LLC and Alta Mesa Services, LP,)	PROTECTIVE ORDER
<i>Respondents</i> .)	
_____)	

On July 20, 2018, this Hearing Officer entered a protective order that pertained to information to be produced by the *Respondents* in the above captioned matter. Paragraph 5 of the protective order stated:

Complainants are free to request from the Hearing Officer relief from this protective order if *Complainants* believe certain information, or parts thereof, are unnecessarily designated as confidential and/or should not be subject to protection under this Order.

Protective Order ¶ 5.

On July 24, 2018, *Complainants* submitted correspondence seeking relief from the protective order which stated in its entirety:

In response to Mr. Christian’s email; and, in accordance with the Protective Order item #5, we are requesting relief from the Protective Order as a whole. Since Alta Mesa has agreed to give us redacted information, there should be no need for a Protective Order. Until the Protective Order is withdrawn, we further request Mr. Christian refrain from sending us said information.

As stated in the *Order Regarding Discovery*, also entered on July 20, 2018, the purpose of the protective order is to protect *Respondents’* proprietary information from *all* of its wells. The protective order was not entered because the information produced contained information relating to wells unrelated to *Complainants*:

Simply because the *Complainants* are entitled to information as a result of being in a contract with *Respondents* does not mean *Complainants* are free to

share information that would constitute *Respondent's* proprietary information; further, *Respondents* have indicated that the information sought by *Complainants* cannot be separated from other confidential and proprietary information without extraordinary burden and expense.

After entry of the protective order, *Respondents* apparently overcame the extraordinary burden and expense, and redacted and separated some of the confidential and proprietary information relating to the other wells. This, however, does not alleviate the fact that the remaining information is still proprietary, even though it pertains only to the Kauffman wells.

The purpose of providing information through the discovery process is to allow the *Complainants* access to information necessary to prove their case. *Complainants* have made no argument that the protective order is preventing them from doing so. Further, Idaho Code § 47-332(4) makes certain documents, records and reports available to the *Complainants* for the purpose of “verify[ing] the gross production, disposition and market value.” Again, the *Complainants* have not stated any reason why the protective order prevents them from using the information to make this verification.

It is also important to note that Idaho Code § 47-332 mandates certain information be accompanied with an oil and gas royalty check stub without even being requested. The statute sets forth eleven subsections of such information (I.C. 47-332(1)(a-k)), but the legislature also chose to make other information available only upon request. (I.C. 47-332(4)). The fact that the legislature chose to separate various information demonstrates a distinction in how the legislature perceives that information. This Hearing Officer sees no conflict between the intent of the statute and making the information available under a protection order as it still allows royalty interest owners to use the information for its intended purpose, to make verifications. Indeed, the protective order allows *Complainants* to provide the information to the necessary consultants that

may be required to perform the verification. (*Protective Order* ¶ 2 (c and d)). For the reasons stated above the *Complainants'* request for relief from the protective order is hereby denied.

It should also be noted that *Complainants* requested the Hearing Officer reconsider its position entirely on the entry of the protective order. There is no procedure in IDAPA allowing for reconsideration of discovery orders, nor is this Hearing Officer inclined to do so as the reasons established for the protective order remain valid.

Because, *Complainants* have stated "Until the Protective Order is withdrawn, we further request Mr. Christian refrain from sending us said information" this prevented *Respondents* from producing the same by the stated July 25, 2018 deadline. The protective order will not be withdrawn. If the *Complainants* do not reassert their request by 5:00 p.m. on August 6, 2018, then the discovery dispute appears to be resolved and this matter appears ready to be set for a hearing to produce a recommended order to the Commission. If *Complainants* do reassert their request *Respondent*, shall produce the documents, redacted or otherwise, one business day after the request and the production will be protected under the protective order.

BE IT SO ORDERED.

DATED this 1st day of August, 2018.

By. 

JASON S. RISCH, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2018, I caused to be served a true and correct copy of the following items in the Docket No: CC-2017-OGR-01-002: *Order Denying Request for Relief from Protective Order* by the method indicated below and addressed to the following:

AM Idaho, LLC
c/o Michael Christian
Marcus, Christian, Hardee & Davies, LLP
737 North 7th Street
Boise ID 83702-5595

U.S. Mail, postage prepaid
 Hand Delivery
 Certified mail
 Email: mchristian@mch-lawyer.com

Randy and Thana Kauffman
4040 Little Willow Rd.
Payette ID 83661

U.S. Mail, postage prepaid
 Hand Delivery
 Certified mail
 Email: [REDACTED]

Mick Thomas
Division Administrator
Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

U.S. Mail, postage prepaid
 Hand Delivery
 Certified mail
 Email: mthomas@idl.idaho.gov

Kristina Fugate
Deputy Attorney General
PO Box 83720
Boise, Idaho 83720-0010

U.S. Mail, postage prepaid
 Hand Delivery
 Certified mail
 Email: kristina.fugate@ag.idaho.gov


Maggie Mallea