

BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

Randy and Thana Kauffman, *Complainants*, ) Docket No. CC-2017-OGR-01-002  
 )  
v. ) **FINAL ORDER**  
 )  
AM Idaho, LLC and Alta Mesa Services, LP, )  
*Respondents*. )  
\_\_\_\_\_ )

The hearing officer’s recommended order in Docket No. CC-2017-OGR-01-002 was issued on November 13, 2018. The Kauffmans filed exceptions to that recommended order on November 16, 2018. Alta Mesa filed its response on December 5, 2018.

The Oil and Gas Conservation Commission (“Commission”) heard oral argument from the parties at a duly noticed meeting on December 20, 2018. Based on the Commission’s review of the record below as set forth in the written submittals of the Kauffmans and Alta Mesa, the notices and orders issued by the hearing officer, and the oral argument taken by the Commission at its December 20, 2018 meeting, the Commission issues this Final Order.

**PROCEDURAL BACKGROUND**

The Commission incorporates the recommended order’s procedural background with the following additions. In their exceptions to the recommended order, the Kauffmans argued the recommended order was incorrect because the protective order should not have been issued. *Kauffman Br. Taking Exception to Recommended Order, Nov. 16, 2018 e-mail*. They argued this was because the requested information was “public under the plain language of Idaho law; and as royalty owners we are entitled to [this information] without being subject to a protective order.” *Id.* They cited Idaho Code §§ 47-324, 47-326, 47-327, and 47-332 in support. *Id.*

At the December 20, 2018 oral argument before the Commission, the Kauffmans further clarified their argument that Idaho Code § 47-332(4)'s plain language provided that royalty owners are entitled to copies of the described information without a protective order because Idaho Code § 47-332(4) does not indicate that any terms and conditions can be placed on the information. *Hearing Transcript Dec. 20, 2018 (Hr'g Tr.)* 3-4, ll. 109-18. In response to questions about why the Kauffmans put no evidence in the record and why they did not view the information subject to the protective order, the Kauffmans asserted that they did not believe a protective order was appropriate, so they did not want to set precedent by accepting the documents or introducing other evidence. *Hr'g Tr* 4, ll. 141-71. The Kauffmans stated that they would not have done anything differently. *Id.* at 5, ll. 176-187. Alta Mesa argued that the Kauffmans' complaint should be dismissed because it was an insufficient pleading and the Kauffmans failed to carry their burden of proof. *Id.* at 7-8, ll. 263-76.

### ANALYSIS

After review of the hearing officer's recommended order and the record below, the Commission acknowledges that the Kauffmans have introduced no evidence in support of their claims. The Kauffmans' exceptions to the recommended order and their written arguments throughout this proceeding do not dispute their own failure to introduce evidence in the record. Instead, the Kauffmans challenge the hearing officer's protective order and his interpretation of Idaho Code § 47-332(4). The Commission will therefore address: (1) its authority to review the protective order and (2) whether Idaho Code § 47-332(4) entitles a lessor royalty owner to the described information without that information being subject to a protective order.

**I. The Commission can review the recommended order and underlying protective order.**

In reviewing a hearing officer's recommended order, the Commission can draw its own conclusions of law. *See* Idaho Code §§ 67-5244, 67-5245; *See also Dupont v. Idaho State Bd. of Land Comm'rs*, 134 Idaho 618, 622, 7 P.3d 1095, 1099 (2000) (holding that an agency head reviews a hearing officer's recommendation and makes an independent determination). Further, the Administrative Procedure Act explains that:

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency in determining the matter on its merits . . . .

IDAPA 04.11.01.562. Because in reviewing a hearing officer's recommended order the Commission reviews the entire matter and draws its own conclusions of law, the Commission is not bound to follow the hearing officer's decision on procedural motions and objections.

The protective order was a procedural order issued as part of discovery. By appointing a hearing officer, the Commission delegated to the hearing officer the authority to issue procedural orders. However, the Commission also clearly retained its ability to make the final decision when it limited the hearing officer's authority to issuing a recommended order. IDAPA 04.11.01.720; *Notice of Appointment of Hearing Officer 1*. Given the Commission's retained authority, the Commission has the authority to review whether the hearing officer's protective order was correctly issued.

**II. The Commission vacates the protective order as it applies to the information in Idaho Code § 47-332(4) because the statute's plain language mandates royalty owners are entitled to the described information.**

When reviewing the hearing officer's decision to grant the protective order, the issue the Commission examined was whether the information in Idaho Code § 47-332(4) can be subject to a protective order. Idaho Code § 47-332(4) provides:

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.

Statutory interpretation is a question of law. *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 429 P.3d 168, 177 (2018). Statutory interpretation begins with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning. *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). The statute must also be construed as a whole. *Id.* If the statute's language is unambiguous, its plain language controls. *Id.*

Idaho Code § 47-332(4)'s plain language provides that lessors are entitled to certain information. The statute first reflects this entitlement with the use of the word "must" to mandate that the lessee make available certain documents upon request. This mandate to make documents available does not include any caveat or exceptions to its requirement.

Further, the statute goes on to articulate not only the specific examples of information subject to the mandate, but also "any other reports or records that the lessor may require to verify the gross production, disposition and market value." Idaho Code § 47-332(4). This broad mandate does not place any restrictions on the lessor's use of the information, nor does it restrict the lessor's ability to share the information.

The statute also mandates that all documents, records, and reports are to be provided as "copies." Copy is defined as "an imitation, transcript, or reproduction of an original work" and "duplicate." *Merriam Webster Dictionary*, <https://www.merriam-webster.com/dictionary/copy> (last visited Jan. 25, 2019). The word "copies" is not accompanied by mention of redactions nor specific limits on the distribution of those copies. Instead, the use of the word "copies" in

conjunction with the word “all” contemplates that a copy of each and every single document be available to the lessor. That type of all-encompassing mandate plainly articulates an entitlement to those documents.

Reading together the required mandate to make documents available for the purpose of verifying gross production, disposition, and market value, the requirement for copies, and the lack of any mention of protective order or other restriction on lessor’s entitlement, it is apparent that Idaho Code § 47-332(4)’s plain terms unambiguously mandate that lessors are entitled to the information described in Idaho Code § 47-332(4). From this mandatory entitlement it follows that the information provided subject to Idaho Code § 47-332(4) is not subject to protective order restrictions.

The hearing officer found Idaho Code § 47-332(4)’s requirement to make available copies as opposed to Idaho Code § 47-332(1)’s requirement to send check stub information “demonstrate[d] a distinction in how the legislature perceives that information.” *Order Denying Request for Relief from Protective Order 2*. Reading the statute as a whole and its plain language, the Commission does not find that the hearing officer’s distinction leads to the conclusion that the Legislature intended for Idaho Code § 47-332(4)’s information to be subject to protective order restrictions. Idaho Code § 47-332(1)’s check stub requirement applies to limited information that can easily be sent to a lessor royalty owner every month as a matter of course. However, Idaho Code § 47-332(4) allows lessor to request “copies of all documents, records or reports confirming the gross production, disposition and market value . . . lessor may require to verify the gross production, disposition and market value.” This is a much larger volume of information than that included on a check stub. It follows that a lessor’s “request” to receive that information allows lessors to choose whether and when they receive that larger

amount of information. However, the requirement for a request to make those documents available does not change the statute's requirement that lessors are entitled to all of that information without restriction.

Finally, Alta Mesa has argued that "make available" does not mean the documents must be delivered without restriction. *Resp. Br on Exceptions 1*. Alta Mesa has already redacted the information from other wells and has already said it would e-mail copies of the documents to the Kauffmans. *E-mail Correspondence from M. Christian to R. Kauffman July 24, 2018 10:38am*. Because Alta Mesa has already agreed to deliver copies, the Commission does not need to reach the question of whether "make available" requires that copies be delivered.

### **CONCLUSIONS OF LAW**

Based on the analysis above:

1. The Commission may review the protective order.
2. Idaho Code § 47-332(4)'s plain language requires that lessors are entitled to the articulated information without a protective order restriction.

### **ORDER**

As explained above, Idaho Code § 47-332(4)'s plain language requires that lessors are entitled to the articulated information without a protective order restriction. Because of Idaho Code § 47-332(4)'s plain language, the Commission declines to adopt the hearing officer's recommended order and adopts as its Final Order the following:

- (1) the hearing officer's protective order is vacated;
- (2) the hearing officer's Order Re: Discovery is vacated to the extent it enters a protective order as to the information in Idaho Code § 47-332(4);

- (3) Alta Mesa is required to provide to the Kauffmans the information articulated in Idaho Code § 47-332(4) as to the Kauffman #1-9 and Kauffman #1-34. Alta Mesa has already redacted the information from other wells and has already said it would give copies of the documents to the Kauffmans; and
- (4) This matter is remanded to the hearing officer for deadlines and further proceedings consistent with the directives of this Final Order.

### **PROCEDURES AND REVIEW**

This is the Commission's final order in this matter. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Commission will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See Idaho Code § 67-5246(4).*

Any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) a hearing was held; (2) the final agency action was taken; (3) the party seeking review of the order resides, or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency action is located. Idaho Code §§ 67-5270; 5272.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this Final Order or (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See Idaho Code § 67-5273.* The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

DATED this 6 day of February, 2019.



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MARC SHIGETA, Vice Chairman and Acting Chairman  
Idaho Oil and Gas Conservation Commission



**CERTIFICATE OF SERVICE**

I hereby certify that on this 6 day of February 2019, I caused to be served a true and correct copy of the forgoing document by the method indicated below and addressed to the following:

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