

Protective Orders

HB330

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ROYALTY AUDIT SECTION

- The Royalty Audit Section conducts audits of **state royalty and net profit payments**, as well as **Federal royalties** received from leases within Alaska.
- **Since FY03**, the section has conducted **91 audits** and collected an **additional \$270.6 million** as a result of audited payments
- The most common audit issues found during a royalty audit include **incorrect marine/pipeline deductions, incorrect starting values, and “higher of” calculation**

COMPUTING ROYALTIES

Royalty Rate and Calculation

36. VALUE. (a) For the purposes of computing royalties due under this lease, the value of royalty oil, gas, or associated substances shall not be less than the highest of:

- (1) the field price received by the lessee for the oil, gas, or associated substances;
- (2) the volume-weighted average of the three highest field prices received by other producers in the same field or area for oil of like grade and gravity, gas of like kind and quality, or associated substances of like kind and quality at the time the oil, gas, or associated substances are sold or removed from the leased or unit area or the gas is delivered to an extraction plant if that plant is located on the leased or unit area; if there are less than three prices reported by other producers, the volume-weighted average will be calculated using the lesser number of prices received by other producers in the field or area;

- Oil and Gas leases determine the **royalty rate** and the **method** for **calculating royalty payments** to the state
- Statutory minimum **royalty rate** is 12.5%
- All leases define **value** in relation to the sales of other producers'
- DNR's royalty is the higher of several values under the lease terms, including the lessee's field price, the posted field price and an average value which includes other lessees' field prices.
- Higher of calculations use other producers confidential sales information

WHY HB 330

- Royalty Audit Section relies on confidential price information **from other producers**
- **Lease provisions** require producers to share price information with the Division
- **When an audit is appealed** to the Commissioner, access to confidential sales information by the audited producer is necessary to provide the auditee with the higher of audit calculation
- Other producers have refused to voluntarily allow the Division to share confidential price information **with the audited producer** in connection with audits **even when a confidentiality agreement would protect the information and limits its disclosure**
- Currently seven royalty audits **totaling \$39.2 million are pending** due to confidentiality concerns

WHAT ARE PROTECTIVE ORDERS

HOW IT WORKS

- Protective orders are common tools used by courts, arbitrators, and certain agencies (Administration, Revenue)
- A typical protective order limits:
 - Access – who can view/access the information
 - Use – what the specific use of the information may be
 - Distribution – narrows distribution of the information
 - Disposition at the end of use – directs return or destruction of information
- Under HB330:
 - Commissioner determines disclosure is necessary
 - Notice is given to the owner of the information
 - Commissioner issues protective order w/ limits

HJUD AMENDMENTS

Two amendments were adopted in the House Judiciary committee

1. Technical changes, to
 - limit the applicability of this power to oil and gas issues,
 - to clarify that the word “lease” does not modify the words “appeal” or “request for reconsideration,” (this change was mooted by amendment 2) and
 - to ensure that net profit share audits are captured by this section, as net profit share payments are not considered royalty payments
2. Narrowed the scope of the bill to royalty audits only.
 - The bill previously included geologic and geophysical data under protective order

HB330

Section 1:

New provision adding to the Commissioner of Natural Resources duties and powers to include determining whether a disclosure is required for a royalty or NPSL audit, appeal or reconsideration

Mandates that if the commissioner determines disclosure is necessary, notice and opportunity to be heard must be provided to those affected

Allows the commissioner to issue a protective order limiting the persons who may have access to the information and the purposes for which it must be used

Section 2:

Conforming language to allow protective order to be issued as it relates to cost data and financial information submitted in support of applications, bonds, leases and similar items

Section 3:

Conforming language to statutes dealing with punishment for divulging confidential information allowing for protective orders to view confidential information during royalty or NPSL audits or appeals