

**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA**

FILED

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: NEWFIELD EXPLORATION)
MID-CONTINENT INC.)

RELIEF SOUGHT: LOCATION EXCEPTION) CAUSE CD NO.
DONNALETA 1-16H WELL) 201101043-T

LEGAL DESCRIPTION: SECTION 16, TOWNSHIP 11)
NORTH, RANGE 24 WEST,)
ROGER MILLS COUNTY,)
OKLAHOMA)

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF AN AMENDED EMERGENCY APPLICATION**

This Amended Emergency Application came on for hearing before **Curtis Johnson**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 26th day of April, 2011, in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission.

APPEARANCES: **William H. Huffman**, attorney, appeared for Newfield Exploration Mid-Continent Inc. ("Newfield"); **Charles L. Helm**, attorney, appeared for JMA Energy Company, LLC ("JMA"); **Michael D. Stack**, attorney, appeared for Cimarex Energy Company ("Cimarex"); **Richard K. Books**, attorney, appeared for Chesapeake Operating, Inc. and Chesapeake Exploration Limited Partnership ("Chesapeake") and **Jim Hamilton**, Deputy General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Amended Emergency Application to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 2nd day of May, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

NEWFIELD APPEALS the ALJ's recommendation of denial of the Amended emergency application. Newfield is the owner of the right to drill a well to the common sources of supply named in this application underlying the captioned property. On March 4, 2011, the Newfield filed its application for an Order permitting the drilling of the Donnaleta 1-16H well at an off-pattern location to test the Douglas, Tonkawa, Cottage Grove Sand, Cleveland, Cherokee, Shawnee, Hogshooter, Checkerboard and Marmaton common sources of supply. Since the filing of the application, Newfield has modified the well location to the following amended locations:

Surface Location: No closer than 100 feet FSL and no closer than 330 feet FEL of Section 16, T11N, R24W, Beckham County, Oklahoma.

Formation Entry Point: No closer than 0 feet FSL and no closer than 500 feet FEL of Section 16, T11N, R24W, Roger Mills County, Oklahoma.

First Perforation Point & Beginning of the Completion Interval: No closer than 300 feet FSL and no closer than 500 feet FEL of Section 16, T11N, R24W, Roger Mills County, Oklahoma.

Last Perforation Point & End of the Completion Interval: No closer than 300 feet FNL and no closer than 500 feet FEL of Section 16, T11N, R24W, Roger Mills County, Oklahoma.

Terminus End Point: No closer than 0 feet FNL and no closer than 500 feet FEL of Section 16, T11N, R24W, Roger Mills County, Oklahoma.

Lateral Tolerance: The tolerance for the lateral drilled hereunder will be 100 feet to the East and 100 feet to the West along the lateral to correct for deviation

This matter has been referred to an ALJ and is currently protested. Newfield has a rig under contract and is ready to drill this well. If operations are not commenced immediately, Newfield will suffer a financial loss. The denial of this application would result in economic waste. Additional financial loss will occur if Newfield is not permitted to complete and test the well prior to the issuance of a final order in this cause. This Application for Emergency Order is requested pursuant to OCC-OAC Rule 165:5-9-3.

Newfield requests that this Commission issue an Emergency Order permitting the drilling of a well on the 640 acre unit described as Section 16, T11N, R24W, Roger Mills County, Oklahoma at the locations set forth above, to a depth

sufficient to test the Douglas, Tonkawa, Cottage Grove Sand, Cleveland, Cherokee, Shawnee, Hogshooter, Checkerboard and Marmaton common sources of supply and permit Newfield to complete and test the well, all prior to the final determination in this Cause and make this Emergency Order effective on a date prior to the date of signing of this order.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ Curtis Johnson reported that the basis for Newfield's request for an emergency application was rig availability and that they needed a location at which to put the rig or they would have to be subject to paying standby costs. Newfield stated the costs for the rig would be \$375,000 if the emergency was not granted which is \$25,000 a day standby costs. Newfield said there were no other locations that the rig could go to which Newfield was currently ready to drill. However, there was evidence concerning numerous available locations. There was the Burrows well which was being protested on May 4, 2011 that has a location exception and density that is being protested by JMA. Then there was the Hainey well in Section 9 another potential location and that location is currently not protested. There was no reason given by Newfield why they couldn't file an emergency application for the Hainey well and proceed on that well with this rig. There was also the Patton well where there was a protest by Chesapeake concerning an operator fight that was another potential location for this rig. There was the Hill well where Newfield is the operator and the hearing on the merits on that is May 16, 2011 and an emergency could also have been filed on that application. Basically from the testimony that was presented to the ALJ it looked like there were two potential locations that weren't currently protested that Newfield could have moved the rig to. One of the arguments that also was raised by Newfield was that these locations weren't currently pooled and that drilling a well in an unpooled unit would present a risk to Newfield by proceeding to drill that well where the interest had not been pooled. However, the ALJ pointed out that it was even riskier to drill a well at the location that is currently in this case being protested at which Newfield if they did not prevail on the location exception would have just drilled the well that they could no longer use. That is more of a risk than drilling at a location that has not been pooled. The ALJ denied the emergency application because there were other potential locations that this rig could go to and that those locations did not present the amount of risk that would be present in the present cause which was protested. The protest on the present location exception is set on May 11, 12 and 13, 2011. The rig will be available and ready on May 15, 2011.

POSITIONS OF THE PARTIES

NEWFIELD

1) **William Huffman**, attorney, appearing on behalf of Newfield, argued the location exception and the amendments that were made moved the well back and is consistent with the other locations in the area. Newfield has a rig that has been contracted to drill the Royce well in Section 29 and that particular location was protested. The pooling was protested. This is a \$9.5 million well so when you drill a well like this certainly you don't want to have open interests in your particular well and that is a business decision that is made by Newfield. For the Burrows well in Section 27, T11N, R24W, Roger Mills County, Newfield filed the Burrows application in order to try to get that well going for the rig location. That particular location exception and pooling had been protested by JMA plus other parties are also protesting the pooling. So the Burrows unit could not be ready for the rig. Newfield had initially gotten an emergency on the Royce well in order to commence that well, however, it was after the emergency when the protest of the pooling occurred, after the emergency which put that particular well off. The Hainey well was filed but it's not ready and it has not been heard yet and hasn't come up on the docket yet at the time of the present emergency hearing so Newfield does not know whether it's going to be protested or not. The Patton well which is in Section 5, T10N, R24W is just south of this particular Donnaleta #1-16H location and is being protested-an operator's fight. The Hill well hearing which is in Section 23, T11N, R24W won't come up until the 16th of May. Newfield has no information whether that is going to be protested or not.

2) The bottom line is with regard to each of these locations none of them are ready to be drilled at this point. With regard to the Hainey well location and the Hill well location you have to first of all settle surface damages and you've got to have your well staked and your locations built, none of which has been done. Plus these particular units all have to be pooled. Once they're pooled, you have to wait for the elections, wait for the money to be paid in and determine the interest. As a result neither one of those locations are ready to accept the rig on May 15, 2011.

3) In the Donnaleta #1-16H well Newfield owns 100%. Newfield is going to pay 100% of the well costs for the Donnaleta and they are confident that this particular location is consistent with the locations of similar wells being drilled at this particular time in the area. Newfield believes this location will be granted and Newfield is willing to take that particular risk upfront. However, the other units aren't ready to accept the rig. The Donnaleta is ready to accept the rig and the only party that is protesting is JMA. None of the other operators in the area are protesting this particular location. It is incumbent

that Newfield gets this particular location ready to accept the rig and be able to put the rig up. Newfield also has a preset rig that has been contracted at \$40,000 to come in and preset this well.

4) Newfield believes there is a demonstrated emergency and Newfield should be permitted to commence operations immediately on the Donnaleta well; otherwise, Newfield will be looking at a \$375,000 loss for the rig itself plus another \$40,000 for the preset rig. Newfield believes that the ALJ's decision should be reversed and the emergency should be granted. To get a particular alternate location ready would be well after May 15, 2011 and approximately \$375,000 would be incurred.

JMA

1) **Charles L. Helm**, attorney, appearing on behalf of JMA, argued that the Commission should affirm the ALJ's recommendation to deny the emergency application of Newfield. The ALJ witnessed the demeanor of the Newfield witness and was able to observe and review the credibility of the witness. JMA believes the ALJ has made the proper decision.

2) JMA's recollection of the testimony was Newfield determined on April 18, 2011 that they wanted an emergency for this particular location. The Newfield witness testified that Newfield didn't even own an interest in this unit until on or about the day they filed their location exception application. They had top leases that would vest sometime around March of 2011 and if the top leases vested they would acquire a right in this section. This section was never considered in their drilling program for this particular rig because they never did own any interest in this section until they filed their application in March of 2011. This is not therefore anything that Newfield has had ongoing in trying to develop because they simply owned no interest until early March of 2011.

3) They filed the location exception application and they named JMA as the only offset operator. JMA is the only offset operator that received notice of this application. The testimony was at the hearing that JMA operates in a section toward which this well will be moving. Thus, there are no other operators that would be contesting this application. The initial hearing was March 28, 2011 and at that time JMA protested and this case was agreed to be set on the docket May 11, 12, and 13, 2011. The exhibit exchange will be held today. JMA is protesting the merits as they do not believe there is evidence that will support a location exception. JMA believes the Commission will deny the proposed location exception of Newfield.

4) After the exhibits are exchanged it will become clear that there is no reason for the Newfield proposed location exception. Initially it was filed 330 feet FEL. It was only amended a couple of weeks ago. Initially it was filed as a Marmaton well and at the first emergency hearing they recognized they left the Marmaton off of their application for emergency so they continued it for a week and refiled it. A few days before the emergency hearing JMA was informed that now it would be a Hogshooter well. It thus is fairly clear that this is an ongoing unit that Newfield is still trying to figure out how they are going to proceed. They still are trying to determine how they are going to develop this. They changed the location and they changed the zone so this is not a unit that has any ongoing implications as Newfield has owned the interest for a very short time and they have no expiration problems. They have several years left on this unit with regard to the interest that just vested.

5) The emergency was heard on the March 26, 2011 and at that time the witness for Newfield testified she had never seen this rig contract and didn't know any of the terms of the rig contract, except she was told by one of the Newfield engineers that there was a \$25,000 standby rate. She testified that she believed that the Newfield rig contract was entered into to drill the Royce #1-29H well. In the Royce well the location exception had an emergency and that emergency order is in place to drill the Royce #1-29H well with this rig that they are now asking this emergency for the Donnaleta well. The emergency Order No. 583188 issued on March 1, 2011 and they have 90 days to use this emergency order for the Royce #1-29H well. The Royce hearing apparently was scheduled for the next day, April 27, 2011, with the emergency being heard on the 26th of April, 2011. It was recommended on the 27th of April, 2011, uncontested. Thus, the location exception was approved. They have an emergency in place and the pooling was approved with absolutely no obstacle drilling the Royce well that the rig was contracted for.

6) Newfield testified to other locations in the area to which there were contested poolings or contested location exceptions. Two of their wells are not contested. They just don't come up until the first of next week, May 9, 2011. When the Newfield witness was asked why they wouldn't use this rig for these two wells or for the Royce well the witness responded that management told her to file this emergency for this rig and to drill the Donnaleta well because it didn't involve a pooling and they own a 100% and they wanted to go forward. They had all these other locations they could have used this rig for but they didn't want to. Newfield contracted for this rig to drill the Royce and it is ready, it is uncontested. All the regulatory work has been done. Newfield doesn't want to drill it.

7) It is the position of JMA that this is an abuse of the emergency powers of the Commission. There is no economic loss that the witness testified to. There's no evidence in the record of the drilling costs of the preset rig. There is a \$25,000 standby daily rate if they chose to take this rig to a location and let

it sit somewhere after the 15th of May, but they have no obligation to take the rig anywhere. There is no evidence they can't get this rig back at any time and drill whenever these cases are ready at the other locations that are coming up. There was no evidence of any loss if they don't use the rig. Newfield just can't sit the rig somewhere and then incur standby charges. Newfield shouldn't be allowed to go to the Commission and get an emergency order saying that they are going to incur standby charges. There is no evidence that they have any financial obligation dealing with this rig. There were no particulars testified to concerning the rig contract.

8) JMA's position is that they want the opportunity to hear the merits which is coming up on the docket next week and present evidence in opposition to the location exception. JMA knows from the past that if the well has already been drilled, JMA will not be given the same opportunity. If Newfield has spent the money, it is more than likely the Commission will grant the location exception. JMA is objecting to going forward in a protested case with an emergency in place. If you create this emergency, this will prejudice the rights of JMA. There is no evidence in this record that supports any financial loss that would be occasioned by not drilling this particular well.

9) In addition to the Royce location there are two other locations Newfield said they could drill. The Hainey well could be drilled which is set for hearing next Monday. It is in Section 9 of 10N-23W. The Hill well currently is not protested. It's set for hearing next week also and could be drilled by this rig. If they want to keep the rig they can go to those locations, however there is no economic sanction if they release the rig. There was also a Patton well in Section 5 that looked like it was a drillable location.

10) Thus, JMA is asking the Commission to uphold the recommendation of the ALJ to deny the emergency application and find as the ALJ did that there is a greater economic risk to drill at a location that is being contested than there would be in drilling a well that might have a current protest in a pooling that could be resolved. Newfield could own 99% and only be pooling 1%, but Newfield's witness did not know as none of these other wells were in her prospect area.

RESPONSE OF NEWFIELD

1) Mr. Huffman argued further that the arguments made by JMA beg the question of the very basis of the ruling that the ALJ made and that is you have alternate locations you need to go to. Newfield however was fortunate enough to acquire 100% of the interest in this Section 16 and when they saw that they had 100% of the interest, they immediately went over and started on this

Donnaleta well. That's exactly what ALJ Johnson said that Newfield needed to do and that is exactly what Newfield did do. Newfield owns 100% of this section and will take 100% of the risk and there is no problem concerning open interests when Newfield drills the well. This is a \$9.5 million well and if you have 20% or 10% of your well standing out there, for every 10% that's \$1 million worth of risk that you take.

2) There are two primary zones in all of this entire area, the Hogshooter and the Marmaton, both of which will be developed in all of these sections. They are all tight formations and that's the reason why horizontal wells are being drilled.

3) As for the location exception being denied, Newfield does not believe this as there are a dozen or more location exceptions filed by JMA with these same type of coordinates.

4) As far as the Patton well as an alternate location the Patton well is the one that there is an operator fight with Chesapeake. It is heavily contested. The Hill well is set the 16th of May, 2011 and hasn't come up yet and we don't know whether it's protested or not, so there is no assurance for that particular well. Also, that's another unit that there are outstanding interests in that need to be taken care of. They have to send out the subsequent well proposal and you have to get your location exception. Then you can propose the well to the particular party and then get them to come back and make their determination whether they want to participate or not. The landman testified that there were no other locations ready to be drilled at this particular time except for the Donnaleta location. If this particular location exception emergency is not granted, Newfield will incur a loss because they do not have a location that is ready to build the rig on and the ALJ should be reversed and the emergency granted to Newfield.

CONCLUSIONS

The Referee finds the Oral Report of the Administrative Law Judge should be affirmed and the Emergency Application denied.

1) The Referee finds that the ALJ's recommendation to deny the Newfield Emergency Application is supported by substantial evidence, free of reversible error and should be affirmed. The determination of whether a certain and definite financial loss was established under the emergency application to justify the ruling is a question of fact for the ALJ, the initial trier of fact. It is the ALJ's duty to listen to the expert opinions espoused before him and assign the appropriate weight to that opinion. *Grison Oil Corporation v. Corporation*

Commission, 99 P.2d 134 (Okl. 1940). The ALJ found that the Newfield evidence pertaining to its claim of financial loss was simply not compelling. The ALJ concluded that Newfield simply did not present substantial evidence to justify the granting of the emergency application.

2) As the Supreme Court stated in *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951):

Under the holding of this Court and that of courts generally, *Chicago, R.I. and P. Ry. Co. v. Pruitt*, 67 Okl. 219, 170 P. 1143; 22 C.J. 728, Sec. 823, 32 C.J.S., Evidence, §567, p. 378, the weight to be given opinion evidence is, within the bounds of reason, entirely for the determination of the jury or of the court, when trying an issue of fact, it taking into consideration the intelligence and experience of the witness and the degree of attention he gave to the matter. The rule should have peculiar force herein where by the terms of the Act the Commission is recognized as having peculiar power in weighing the evidence.

3) Apparently the rig contracted by Newfield was to drill the Royce #1-29H. There was an emergency Order No. 583188 which was issued March 1, 2011 and is effective until 90 days from February 15, 2011. In addition the case was heard uncontested on April 29, 2011 and recommended. There is also the Hill well in Section 23, T11N, R24W that is also available to be drilled by Newfield. The Hainey well in Section 9, T10N, R23W is another well that would be available for the contracted Newfield rig to develop. Also there was no evidence presented that Newfield would incur an economic sanction if Newfield released this rig.

4) The Referee finds that the ALJ had the opportunity to observe the witnesses and assess their demeanor and assign the weight to the Newfield expert opinion. In these circumstances, the Referee can find no reason to vary the determination of the ALJ.

RESPECTFULLY SUBMITTED THIS 3rd day of May, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Curtis Johnson
William H. Huffman
Charles L. Helm
Michael D. Stack
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