

**DECISION SHEET
OF THE OIL & GAS APPELLATE REFEREE**

FILED
OCT 03 2011

<u>APPLICANT:</u>	CIMAREX ENERGY CO.)	COURT CLERK'S OFFICE — OKC CORPORATION COMMISSION OF OKLAHOMA
<u>RELIEF SOUGHT:</u>	WELL LOCATION EXCEPTION)	CAUSE CD NO.
)	201104410-T
<u>LEGAL DESCRIPTION:</u>	SECTION 3, TOWNSHIP 13)	
	NORTH, RANGE 13 WEST,)	
	BLAINE COUNTY, OKLAHOMA)	

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE' RULING
ON AN APPLICATION FOR EMERGENCY ORDER**

Curtis M. Johnson, Administrative Law Judge, for the Oklahoma Corporation Commission, pursuant to proper notice, heard on the 27th day of September, 2011 the Application for Emergency Order in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma.

APPEARANCES: **Ron M. Barnes**, attorney, appeared for applicant, Cimarex Energy Company ("Cimarex"); **Richard A. Grimes**, attorney, appeared for QEP Energy Company ("QEP") **Gregory L. Mahaffey**, attorney, appeared for Chaparral Energy L.L.C. ("Chaparral"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Oral Arguments on the Oral Appeal were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 30th day of September, 2011. The Referee has considered the arguments of counsel and the record contained within this Cause.

ALJ Curtis M. Johnson recommended granting the Emergency Application giving Cimarex authority to commence drilling operations, complete, test, but not produce a horizontal well for the Mississippian, Woodford and Hunton common sources of supply. This off pattern horizontal well will be drilled from a surface location not closer than 200 feet FSL and not closer than 2,577 feet FWL of Section 3, T13N, R13W, Blaine County, Oklahoma with the first perf being no closer than 150 feet FSL and no closer than 2,310 feet FWL of Section 3 and the last perf being no closer than 150 feet FNL and no closer than 2,310 feet FWL of Section 3. The entire length of the lateral will be cemented such that the perforations will be isolated from beginning and end point of the lateral in order to protect the correlative rights

of the offset units. GHK opposes the granting of the emergency application. The protested hearing is currently set for October 4, 2011.

Cimarex owns 290 acres in the unit. Cimarex's title opinion for QEP shows that QEP owns 182 acres, however a new Canadian River survey which was conducted shows QEP could own 321 acres. The basis for the emergency application by Cimarex was that they have Pinnergy #6 Spudder Rig under contract with Cimarex to initially drill this well for three days and set the conductor casing. There is a daily standby rate of \$12,000 per day. The cost for the three days of drilling would be at \$7,000 per day or \$21,000. The large rig that will drill to total depth will move on location October 15th. Cimarex also has leases that were expiring on September 18, 2011 and September 24, 2011. Cimarex has built the road and well location. The value of the leases that will expire is \$186,000. By using the Pinnergy #6 Spudder Rig Cimarex will save approximately \$21,000 compared to using a large rig on the location.

Cimarex stated that they were prepared to accept the risk that the location exception application may be denied if the evidence shows that the proposed well could occasion waste or cause a violation of correlative rights of the owners within the common sources of supply. Cimarex understands they take the risk that QEP could be named operator or a penalty could be imposed upon the well. Cimarex was willing to take those risks.

The ALJ stated that based upon the financial loss of Cimarex concerning the potential for losing leases and also for the spudder rig standby costs, the emergency application should be granted to Cimarex.

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The Referee finds the ALJ should be affirmed. The Referee finds the ALJ's determination to recommend the granting of the emergency application to drill, complete, test, but not produce, the proposed horizontal well is supported by the weight of the evidence and in accordance with law. The evidence establishes that an emergency exists which will cause Cimarex to suffer economic loss unless an emergency order is entered. The ALJ's recommendation to grant the Cimarex emergency application is based on the showing of a certain and definite financial loss. 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 order to issue under the emergency application is a temporary order and the granting of the authority and the wells allowable are still subject to the merits. Cimarex takes the risk that the location exception application may be denied or the allowable restricted on the proposed well if there is evidence showing the proposed well could occasion waste or cause a violation of correlative rights of the owners within the common sources of supply.

The Referee notes that the ALJ found the financial loss was substantial under the evidence presented concerning the standby rig cost and the prospective expiration of leases and was sufficient to justify the granting of the emergency application. The Referee can find no reason to vary that determination.

QEP cited the case of *Wilds v. Universal Resources Corporation*, 662 P.2d 303 (Okl. 1983) for the proposition that a spudder rig could not be used to prevent leases from expiring and did not constitute good faith the commencement of drilling operations and therefore the leases would terminate automatically. The Referee, upon review of this case, has determined that the Supreme Court was dealing with whether a company had presented due diligence in commencing operations on a lease. The case concerned whether or not a lease had terminated at the end of the primary term because of the failure on a company's part to commence and prosecute drilling operations with due diligence. The Court stated:

In order to satisfy the terms of the commencement provision, Universal has to show not only that operations were commenced, but that operations were prosecuted with due diligence. In other words, a lessee will not be allowed simply to go through the motions by doing preparatory activity to satisfy the commencement requirement and then delay. Unless changed by contract a commencement clause of an oil and gas lease has been generally interpreted to mean that operations for the drilling of a well and not the actual drilling must be commenced prior to the end of the primary term with good faith intention of completing the operation. *Smith v. Gypsy Oil Co.*, 130 Okl. 135, 265 P. 647 (1928). In the Law of Oil and Gas, § 32.3, p. 67, Professor Kuntz explains the two-pronged requirement for commencement:

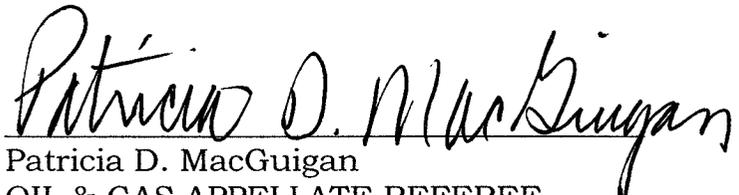
"A lessee has commenced a well if he has conducted operations on the land in good faith, preparation for the drilling of a well

for oil or gas and has continued the operation in good faith and with due diligence."

Thus, the Wilds case is not applicable in the present situation concerning whether there is a financial loss and whether an emergency exists concerning the drilling, testing and completion but not producing the Cimarex well in question.

Cimarex stated that it is aware that the emergency application is a temporary order and will not prejudice the hearing on the merits. Hence, Cimarex is willing to take the risk that the Commission may either deny the proposed location or establish a substantial penalty on production of the well at the proposed location under the merits of the application. In these circumstances, the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 3rd day of October, 2011.


Patricia D. MacGuigan
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PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
Ron M. Barnes
Gregory L. Mahaffey
Richard A. Grimes
Michael L. Decker, OAP Director
Oil-Law Records