

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: DEXXON, INC.)

RELIEF SOUGHT: POOLING)

) CAUSE CD NO.
) 201002722-T
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)
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LEGAL DESCRIPTION: NW/4 NE/4 SECTION 5,)
TOWNSHIP 17 NORTH, RANGE)
12 EAST, CREEK COUNTY,)
OKLAHOMA)

APPLICANT: DEXXON, INC.)

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REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Kathleen M. McKeown**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 9th day of September, 2010, at 8:30 a.m. in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **William H. Huffman**, attorney, appeared on behalf of applicant, Dexxon, Inc. ("Dexxon"); and **John B. Nicks** ("Nicks"), attorney, appeared Pro Se; and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 7th day of October, 2010, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions were referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 22nd day of November, 2010. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

DEXXON FILED EXCEPTIONS to the ALJ's recommendation to reopen the pooling applications for additional testimony as to the actual costs incurred by D Exxon for each well. The spacing application in CD 201002721-T which was granted is not on appeal.

D Exxon sought to establish two 40-acre spacing units for the Woodford, Wilcox, Tyner and Arbuckle formations underlying the subject lands and designating the two existing wells in the unit as permitted unit wells. D Exxon then sought to pool the interests underlying the two 40-acre units as to the spaced formations. Nicks is a respondent under the spacing application and the only named respondent under the pooling applications. Nicks had requested and been denied geological information used by D Exxon for the spacing. This request for information was also denied by the Commission pursuant to Nicks' Motion to Produce, initial hearing and appeal. Nicks objected to D Exxon's use of equivalent area service charges for the purpose of listed total well costs on the D Exxon authority for expenditures ("AFE") exhibits presented in support of well costs for the poolings. D Exxon used its own equipment and personnel for drilling and operating the existing wells and utilized the average rates charged by similar drilling and operating companies in the area on the list of well costs included in the AFEs. Nicks objected also to legal costs being included in the AFEs because these costs were incurred by D Exxon as a result of drilling a well without settling surface damages and then having to file and pay for an emergency walk-through intent to drill. Nicks lastly objected to the saltwater disposal costs.

DEXXON TAKES THE POSITION:

- (1) The Report of the Administrative Law Judge is contrary to both law and evidence and fails to protect the owners in the common sources of supply.
- (2) The ALJ recommended the reopening of the pooling causes in order to present evidence of the actual costs of drilling and saltwater disposal.

(3) The ALJ determined that similar costs used by D Exxon could be replaced by actual costs due to the passage of time. The ALJ apparently misunderstood the testimony. The evidence presented was that the actual invoices from third parties were utilized for services or materials used. Where D Exxon utilized its own equipment or personnel, a charge for similar services or equipment at market rates or less was utilized. These costs were compiled in February 2010, utilizing market rates at the time the wells were drilled. Nicks presented no contrary evidence that the costs were either unnecessary or unreasonable.

(4) D Exxon testified the saltwater disposal fee was through an agreement with Royal Hotshot Investments, Inc. ("Royal Hotshot"). Disposal was at an agreed rate of \$1 per barrel. There is no charge to the wells for the cost of drilling and equipping a disposal well or a disposal well access fee. The same rate negotiated by D Exxon is available to Nicks. Nicks presented no contrary evidence to the agreement.

(5) The emergency walk-through intent fee was addressed by the D Exxon witness. The surface damages had not been settled on the Stanwaite #2-B well prior to the commencement of the well. The intent was held pending settling the surface damages and determination of the ultimate well location. The delay caused by the surface owner resulted in walking through the intent to drill. This issue was addressed at the hearing and Nicks presented no contrary evidence that the fee was either unnecessary or unreasonable.

(6) Nicks, the sole protestant, exchanged no exhibits and presented no witness to controvert the evidence presented by D Exxon.

(7) The ALJ relied on the contention that actual expenditures must be utilized for all costs charged to the well. Essentially, if the operator does not have an out of pocket expense in the drilling of a well, then all participants should receive the drilled well for free. This Commission has adopted the market value approach for goods that had no associated transaction. Salvaged casing valued at market rates has been affirmed by the Supreme Court in *Woods v. Corporation Commission*, 268 P.2d 878 (Okl. 1953).

(8) The ALJ relied on *New Dominion L.L.C. v. Mason*, 217 P.3d 138 (Okl.Civ.App. 2009), for the proposition that only actual expenses for saltwater disposal can be charged. The ALJ overlooks the fact that the disposal well is owned by a separate entity. The *Mason* court stated "Had New Dominion subcontracted saltwater disposal to another entity for a \$.50 per barrel fee, or had another entity been designated operator and subcontracted the saltwater disposal to new Dominion for that fee, we would not disturb the Commission's approval of the charge." The uncontroverted testimony was D Exxon has contracted with Royal Hotshot to dispose of the saltwater.

(9) Based upon the above, the ALJ should be reversed and the pooling applications granted.

THE ALJ FOUND:

(1) DEXXON presented uncontroverted expert testimony regarding the necessity for spacing however the well costs presented were a combination of actual invoiced costs and average area costs for drilling wells.

(2) Nicks' requests for geological information on the well have previously been addressed by this Commission and ultimately denied. Nicks' concerns about the AFEs presented by DEXXON (specifically the use of average area rates for drilling and operating costs as well as inclusion of legal fees for defense of district court litigation) are justified as a respondent to the pooling applications.

(3) DEXXON presented evidence of the nature of the zones sought to be spaced through expert testimony regarding the historical overproduction of the area and the high amounts of water accompanying any type of oil production from the existing Wilcox wells. The Stanwaite #1-B and # 2-B wells should be designated the unit wells for the subject formations in light of the economic advantage of commingling the named zones in the wells as well as the limited production available from each of the formations for which 40-acre spacing is requested. In this way, development of the zones should occur and waste of the remaining reserves will be prevented while the correlative rights of the owners will be protected.

(4) Nicks did not present any controverting evidence as to the spacing requested by DEXXON. Nicks had previously filed a Motion to Produce geological information at the Commission and this motion was denied. In light of this and the evidence presented at the hearing by DEXXON, the ALJ granted the spacing application.

(5) Nicks did not present any expert testimony controverting the well costs presented by DEXXON, however, the ALJ believes that the evidence and testimony presented by DEXXON did not meet the Commission requirements for issuing a pooling order. Under 52 O.S. Section 87.1(e) the Commission must "make definite provisions for the payment of cost of the development and operation which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision."

(6) Testimony was presented by DEXXON supporting the pooling applications as to fair market value, times for election and payment of well costs and bonuses including subsequent well provisions for the units. Well costs for the wells were adjusted as to a mistake in legal charges for the Stanwaite #2-B;

and some charges were supported by the subcontractor invoices. These costs meet the requirements for costs to be properly included in a pooling order.

(7) However, copies of similar area charges were provided to justify well costs for work performed by DEXXON personnel utilizing DEXXON equipment. The ALJ does not find these "similar" charges persuasive as to a determination of the actual cost for drilling the wells. More than a year has passed since the wells were drilled and it should be easy to supply the actual costs incurred for drilling. If DEXXON supplied personnel and equipment to drill the wells, the costs paid to the personnel, depreciation of the equipment used, costs expended for the use of that equipment as to maintenance, etc. should be available to DEXXON as a matter of routine bookkeeping. These records should show the actual drilling costs of each well incurred by DEXXON and that is what a Commission pooling order requires for respondents to make informed elections. This is particularly true when wells have been drilled and poolings occur subsequent to such drilling. Additionally, actual costs of saltwater disposal must be presented to become a part of a pooling order. *New Dominion L.L.C. v. Mason*, 217 P.3d 138 (Ok.Civ.App. 2009). The ALJ finds this documentation should also exist in DEXXON's records and must be presented in light of the saltwater disposal well being operated/owned by the same entities that own DEXXON.

(8) Nicks' concerns about the Surface Damage Act and DEXXON drilling the Stanwaite #2-B before settling surface damages is a matter that is currently in district court. Testimony at the hearing indicated that DEXXON attempted to negotiate surface damages and when no agreement was reached, proceeded to drill the well. While surface damages are a proper part of drilling costs, the actual costs are an unknown at this time and DEXXON correctly noted that the total costs for the Stanwaite #2-B will have the actual costs of surface damage settlement added at a later date. The ALJ found the necessity of paying for a walk-through intent to drill was not addressed by DEXXON and should also be addressed at the reopening when DEXXON presents justification for the actual costs incurred on the wells.

(9) Thus, in light of the above, the ALJ recommended the spacing application in CD 201002721-T and that the pooling applications be reopened for additional testimony.

POSITIONS OF THE PARTIES

DEXXON

1) **William Huffman**, attorney, appearing on behalf of DEXXON, stated this case involves two poolings and the wells were drilled in July and August of

2009. In February 2010, Dexxon received a letter from Nicks indicating he owned an interest in the wells and wanted an accounting report. Pursuant to that letter, March 10, 2010 Dexxon provided the well costs and other production and revenue information to Nicks. Nicks replied stating the information was not satisfactory. In April 2010 Dexxon provided the back-up documentation for all those costs. The back-up documentation included costs of Dexxon's use of their own drilling rigs, backhoes, tank trucks, and other things. Dexxon indicated a "going rate" for a particular service or equipment and incorporated that cost into the overall well cost.

2) Dexxon summarizes Nick's argument by stating since Dexxon used their own drilling rig and didn't write a check for that expense, Nicks shouldn't be charged for it. When the case was set on the protest docket Nicks did not exchange any exhibits or witness list. When the case went to hearing there were no witnesses or exhibits presented. Dexxon stated that Nicks failed to review the information contained in Exhibit 1 prior to the exhibit exchange and the witness date.

3) The ALJ recommended that the cause be reopened to state the costs paid to personnel, the depreciation on the equipment used, and the costs expended for equipment as to maintenance. Dexxon argues when a company uses their own equipment, the equipment is a valuable asset and the Commission allows a company to charge a reasonable commensurate fee. Dexxon states their witness Mr. Rongey's testimony is an example of this practice. Rongey contacted a third party drilling contractor who would supply a similar type rig and asked what they would charge. The contractor stated \$175 per hour and that was entered. Dexxon argues in reality, someone could not hire a third party contractor for \$175 per hour. Rongey stated Duncan's expenditure calculation was based on actual invoices, comparable equipment, and market numbers in the area. Further, Rongey states that many of these services would cost more than those charged by Dexxon.

4) Dexxon argues that just because a check isn't written doesn't mean there was no actual expenditure. Dexxon states it's absurd to think that if a drilling contractor uses his own rig and doesn't write a check that he can't charge the other participants for the services received. *New Dominion, L.L.C. v. Mason*, 217 P.3d 138 (Ok. Civ. App. 2009) and *Woods Oil Co. v. Corporation Comm'n*, 268 P.2d 878 (Okla. 1953) are relevant cases. These cases deal with what one can and cannot charge. In *Woods* there was an existing wellbore that was already on a lease. Nobody paid anything for it. Woods wanted to charge the participants \$50,000. The Oklahoma Supreme Court held that Woods cannot charge this because they didn't pay anything for the particular lease or for the well. The second part of *Woods* involves casing that was in an existing well that was removed. Nobody paid for the casing or purchased that well. Some of the casing was kept at the yard. The Commission stated the casing had to be assigned a value, a fair market value. The *Woods* case stated the

Commission properly based its determination of value of oil and gas well casing and tubing on actual market value instead of a list of prices of pipes and tubing less depreciation. Therefore, DEXXON argues when there is no actual transaction that values it, the fair market value is supposed to be utilized for services and equipment. DEXXON states that the ALJ's decision is contrary to *Woods*, and should be overturned.

5) DEXXON states the other issue in this case involves intent to drill. The ALJ found that paying for a walk through was not addressed by DEXXON. DEXXON disagrees and states testimony was presented why DEXXON had to get an emergency intent to drill. The reason being there was wet weather and time was running out to drill the well. They were still negotiating with the landowners as to were to place the well. DEXXON states at the time those circumstances arose, the operator felt like it was necessary to get an emergency intent to drill.

6) DEXXON states saltwater disposal is a dollar per barrel. That is the contract DEXXON has with the owner of an injection well in the immediate vicinity. The saltwater disposal well is operated and owned by Royal Hotshot in which DEXXON owns an interest. DEXXON argues DEXXON and Hotshot are two separate entities. In the *New Dominion v. Mason* case, 13.93 cents per barrel for saltwater disposal included an access fee of \$175,000 plus a fee for actual disposal. DEXXON argues this is how they came up with the 13.93 cents per barrel. In this case there has been no access fee charged. DEXXON states in the present cause DEXXON is the operator of the well and Royal Hotshot owns the disposal facility, precisely the exception the Oklahoma Court of Appeals set forth. DEXXON states no evidence has been presented to prove the costs were not fair market value or that they were unreasonable. DEXXON argues that the ALJ's decision should be overturned and grant the pooling orders as DEXXON requested.

NICKS

1) **John B. Nicks**, appearing Pro Se, states that the ALJ did not misunderstand the testimony as DEXXON suggests. Nicks argues the issue in this case is whether or not DEXXON's evidence established the actual cost of drilling two wells in which Nick owned a small interest. Nicks argues the ALJ's conclusion was correct and that DEXXON should be required to reopen the pooling to present evidence of actual costs.

2) DEXXON's witness Rongey testified DEXXON owned the disposal well ever since they purchased it from Ramey Oil Corporation. Further, it has been used

at least for 40 years. Rongey states Royal Hotshot owns the saltwater well. Nicks argues it is unclear when Royal Hotshot acquired or how long they've actually owned the saltwater well. Nicks also points out that Royal Hotshot is owned by two shareholders, the same two who own Dexas. Nicks also states no money has ever been paid for the disposal of saltwater by Dexas. Therefore, this is not an arm's length transaction with a third party.

3) Nicks suggests it's reasonable for the ALJ to have concluded Dexas failed to put forward evidence of the actual cost of drilling. Nicks argues that Dexas tried to withhold the fact that nothing had been paid by Dexas for the disposal of the saltwater. Nicks was the one to bring forth that information.

RESPONSE OF DEXXON

1) Dexas points out that Nicks made a mistake when categorizing the type of corporation that Royal Hotshot is registered. Nicks argues there was no evidence of a contract with Royal Hotshot for the disposal of saltwater. Dexas points out that although the operator and the owner of the disposal well are the same, there still were no access fees. In lieu of an access fee, they settled on \$1.00 per barrel. Dexas points out that not only are there costs associated with saltwater disposal, but there's also a large risk associated with disposing of saltwater.

CONCLUSIONS

The Referee finds the Report of the Administrative Law Judge should be affirmed in part and reversed in part.

I.

INTRODUCTION

1) All aspects of the ALJ's Report should be affirmed other than the following discussed issues concerning well costs, salt water disposal costs and the walk-through intent to drill.

II.

REASONABLE WELL COSTS

1) Nicks filed a Motion to Produce on July 19, 2010 and pursuant to said Motion, Nicks received documents from DEXXON detailing specifically all of the work that was done on the drilling of these wells and the hours spent (See Exhibits 1). Thus Nicks had an opportunity to review the two Exhibit 1s before the hearing on the merits in these cases which took place on September 9, 2010. Nicks also had the opportunity to appear and present any kind of witness or evidence contrary to what was contained in the Exhibits 1. He did not however present any witnesses or evidence.

2) The transcript of the hearing on September 9, 2010 provides at page 33 beginning at line 16:

A. We just prepared these at fair market value.

Q. Okay.

A. As far as all the services. What I did is I looked back, you know, time to time we hire rigs, we hire dozers, you know, sometimes if our equipment is tied up I went back through actual invoices and comparable equipment and we just used market numbers for our area.

Q. Okay. So what you have set out then for the rates where you utilized your own equipment, you utilized the rate that was commensurate with a piece of equipment that you would hire from a third contractor?

A. Yes.

* * *

Q. How does \$187,000—\$188,000 compare to, I mean, from the standpoint of well costs, would that be high, low or average?

* * *

A. The comparative wells I've seen drilled and looked at this is as cheap as I've seen it done.

Q. Okay. So, in fact, in your opinion, if you had to utilize third party operator—or third party contractor to come and drill this particular well and complete this well, do you believe that it could be done for as little as \$188,000.00?

A. No.

Q. And so with regard to the well costs, do you believe that the well costs that you have reflected here utilizing your own equipment at the rates that you set forth is fair—is a fair cost for the drilling and completing and equipping of this well?

A. Yes.

3) These are 2500 feet Wilcox wells and one well cost \$187,809 and the other well cost \$188,037. From a cost standpoint the evidence was that these are incredibly low costs, which in part is the result of the fact the equipment was provided by DEXXON. It was charged at a rate that was equal to what is normally charged or less. When an operator uses their own equipment they are entitled to charge a reasonable charge for such services. There are also charges for supervision that don't necessarily result in a check being written. The Referee believes that Nicks received significant documentation of the reasonable well costs from DEXXON. As testified to by DEXXON, many of the services provided by DEXXON, if they had used a third party contractor, the charges would have actually been more than what DEXXON listed as a reasonable fair market value cost. Further, the transcript of the Hearing on September 9, 2010, states beginning on page 70, line 21:

Q. With respect to the pages that you've marked with the X's in Applicant's Exhibit 1 in each case, the information contained there is based solely (sic) upon your comparison to third party charges or invoices from other situations; is that correct?

A. Yes, some of it I called and got price quotes.

Q. Okay. It's all price quotes from third parties.

A. Third parties.

Q. Did you personally do all of that work or is some of it done by other people and some by yourself?

A. I did it myself.

4) Further, the transcript of the proceedings held on September 9, 2010 provides beginning at page 41 line 21:

Q. And, in fact, many of these services that you have, you actually would pay a third party contractor more than what you charged; would you not?

A. Yes there is no way we can get a rig at this \$175.00 rate.

5) 52 O.S. Section 87.1(e) provides in part:

Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision.

6) *Wood Oil Company v. Corporation Commission*, 268 P.2d 878 (Okla. 1953) was a case where the Supreme Court determined and discussed the meaning of "actual expenditures required". The Court stated:

Thus, there was competent evidentiary basis for the conclusion that the actual market values, or prices which, as a matter of actual practice, prevailed for such pipe, were higher than the theoretical or so-called "list" price for new pipe. We think the Commission was correct in basing its determination on "actual market values", the usual legal criteria in such matters, rather than the figures urged by Wood Oil. And in view of the testimony referred to, its order on

this phase of the case cannot be held to be unsupported by substantial evidence. In this connection, see *Cities Services Oil Company v. Anglin*, 204 Okl. 171, 228 P.2d 191; *Peppers Refining Company v. Corporation Commission*, 198 Okl. 451, 179 P.2d 899; *Pannell v. Farmers Union Co-Op Gin Association*, 192 Okl. 652, 138 P.2d 817.

- 7) Thus, where you don't have actual transactions you use the actual market values or fair market value of that particular service, that particular piece of equipment, etc. to determine the cost of the well. Thus, according to the Supreme Court, in situations where you don't have an actual cost, you can rely upon a transaction that equals the fair market value.
- 8) Thus, the Referee would recommend that the ALJ's Report be reversed concerning this particular issue.

III.

COSTS OF SALT WATER DISPOSAL ISSUE

- 1) Actual expenditures for salt water disposal must be contained in a pooling order. See *New Dominion, L.L.C. v. Mason*, 217 P.3d 138 (Okl. Civ. App. 2009). An operator must charge forced pooled participants the actual costs or fee for salt water disposal. The *New Dominion* case states:

Had New Dominion subcontracted saltwater disposal to another entity for \$.50 per barrel fee, or had another entity been designated operator and subcontracted the saltwater disposal to New Dominion for that fee, we would not disturb the Commission's approval of the charge.

- 2) In the present case the salt water disposal well is owned by Royal Hotshot, a C Corporation. A C corporation is a corporation that has shares of stock that can be traded with restrictions on who can buy, sell or trade the stock. D Exxon owns 50% of the interest in Royal Hotshot and the same entities that own D Exxon operate and own Royal Hotshot. There is a contract between D Exxon and Royal Hotshot for the disposal of the salt water for a \$1 per barrel. Two separate entities have contracted for the disposal of the salt water from these wells. Thus, the Referee believes that this was a transaction between the operator and the salt water disposal well owners. These particular well costs did not provide any kind of access fee. In lieu of an access fee, the

contract price was \$1 a barrel. Thus D Exxon, a separate entity, has contracted with another entity for a \$1 per barrel fee for disposal of salt water. The *New Dominion* case would uphold such transaction.

IV.

WALK-THROUGH INTENT TO DRILL ISSUE

1) Nicks had a question concerning the validity of the need to pay for an emergency walk-through for a drilling permit. The ALJ stated in her Report that:

The ALJ finds that the necessity of paying for a walk-through intent to drill was not addressed by D Exxon and should also be addressed at the reopening when D Exxon presents justification for the actual costs incurred on the wells.

2) The transcript of the hearing held on September 9, 2010 reflects on page 58, starting at line 7:

Q. In the information in Exhibit 1 for the 2-B well right after the last of those pages marked with an X the next page is for charges paid for an emergency walk-through, why was it necessary to do an emergency walk-through for a drilling permit?

A. We were faced with some weather issues with negotiations on that location had drawn out that's the one that's disputed. We were face with some weather issues we ran out of time so we needed to go ahead and get our permit as fast as possible.

Q. Running out of time on what?

A. Drilling the well with bad weather coming. We had run out of summer.

Q. Did you have a previous permit that was about to run out?

A. No. We hadn't got the permit. We were negotiating with the land owner exactly where to place the well and those negotiations finally just broke down and we were going to have to go ahead and hurry and drill the well. We knew we had wet weather coming, so, we decided to go ahead and place the well, you know, given up negotiation with him.

Q. So, it was negotiations with the land owner?

A. Yeah. We were hung up on negotiations with the land owner.

Q. And that's why you hadn't obtained the drilling permit?

A. Right.

3) Dexion did not obtain a permit because they were trying to settle the surface damages and the testimony was that the surface damages still had not been settled on this particular location and they had to get an emergency permit. They were concerned about the weather.

4) For the reasons stated above, the Referee determines that there was sufficient evidence presented to verify the need for a walk-through intent to drill. Nicks presented no evidence or testimony to refute Dexion's reasons for obtaining the walk-through intent to drill.

V.

EVIDENCE PRESENTED BY NICKS

1) Nicks presented no exhibits, and no witnesses. Nicks was provided with all of the information which was contained within the Exhibit 1s prior to the hearing. Nicks therefore had an opportunity to review the exhibits and present any kind of evidence contrary to what was contained within the exhibits. Nicks presented no evidence to show any of the costs presented by Dexion were unreasonable; presented no evidence concerning the emergency intent to drill; and presented no evidence concerning whether a \$1 per barrel was reasonable for salt water disposal. In the transcript of the oral arguments

on appeal heard on November 22, 2010 at page 22 beginning at line 15 Nicks states:

In most instances, the complaint is that I presented no contrary evidence or didn't present evidence. To the extent that the applicants complained that I presented no evidence, then I consent to that argument and agree that I did not present any evidence except to the extent that I brought it forward through cross examination.

The Referee has reviewed extensively the transcript of the proceedings held on September 9, 2010 and none of the testimony brought forth by Nicks on cross examination refutes the testimony of DEXXON's witness concerning; the DEXXON witness' testimony about well costs; DEXXON witness' testimony concerning the salt water disposal well costs; and DEXXON witness' testimony concerning the need for a walk-through intent to drill.

2) The Supreme Court in *Spillers v. Colby*, 391 P.2d 895 (Okla. 1964) stated:

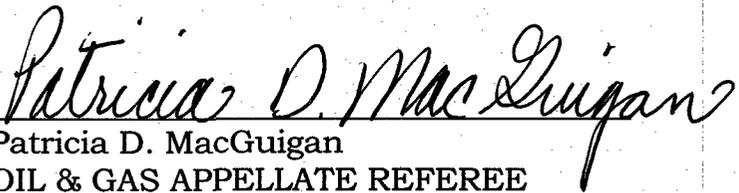
Where the positive testimony of the witness is uncontradicted and unimpeached, whether by other positive testimony or by circumstantial evidence, either intrinsic or extrinsic, and where it is not inherently improbable, either in itself or in connection with other circumstances, or where it does not contain contradictions in itself or with other evidence satisfying the court or jury of its falsity, it cannot be disregarded and must control the decision of the court or jury.

* * *

"Positive, uncontradicted and unimpeached testimony that it is not inherently improbable, nor self contradictory, cannot be disregarded, and must control the decision of the court or jury." *Edwards v. General Motors Assembly Division*, 63 P.3d 563, at 567 (Okla. App. 2003); *Koehn v. Fluman*, 126 P.2d 1002 (Okla. 1942).

3) Thus, the Referee finds that the recommendation of the ALJ should be reversed concerning the above stated issues. Thus, the ALJ's recommendation that the pooling applications in CDs 20102722-T and 20102723-T "be reopened for further testimony regarding actual costs incurred by DEXXON for all drilling operations and for actual costs incurred for salt water disposal" and the "walk-through intent to drill...should also be addressed" should be denied and said pooling applications should be granted in accordance with the testimony presented by DEXXON.

RESPECTFULLY SUBMITTED THIS 11th day of February, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Kathleen M. McKeown
William H. Huffman
John B. Nicks
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Michael L. Decker, OAP Director
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