

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED

APR 11 2011

COURT CLERK'S OFFICE — OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)

RELIEF SOUGHT: DIRECTIONAL AND BOTTOM)
HOLE SURVEY FOR THE)
WENDLANDT #2-17 WELL)

CAUSE CD NO.
201003262

LANDS COVERED: SECTION 17, TOWNSHIP 7)
NORTH, RANGE 20 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)

RELIEF SOUGHT: DIRECTIONAL AND BOTTOM)
HOLE SURVEY FOR THE)
MINNIE #1-17 WELL)

CAUSE CD NO.
201003263

LANDS COVERED: SECTION 17, TOWNSHIP 7)
NORTH, RANGE 20 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)

RELIEF SOUGHT: DIRECTIONAL AND BOTTOM)
HOLE SURVEY FOR THE)
WENDLANDT #3-17 WELL)

CAUSE CD NO.
201003264

LANDS COVERED: SECTION 17, TOWNSHIP 7)
NORTH, RANGE 20 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201003266
JOYCE #1-17 WELL)
LANDS COVERED: SECTION 17, TOWNSHIP 7)
NORTH, RANGE 20 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201003267
BESSIE GOODGAME #1-1)
WELL)
LANDS COVERED: SECTION 1, TOWNSHIP 7)
NORTH, RANGE 20 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201003268
GILLESPIE #2-20 WELL)
LANDS COVERED: SECTION 20, TOWNSHIP 6)
NORTH, RANGE 21 EAST,)
LATIMER COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201003269
GILLESPIE #1-20 WELL)
)
LEGAL DESCRIPTION: SECTION 20, TOWNSHIP 6)
NORTH, RANGE 21 EAST,)
LATIMER COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201003270
LYONS #1-27 WELL)
)
LEGAL DESCRIPTION: SECTION 27, TOWNSHIP 6)
NORTH, RANGE 21 EAST,)
LATIMER COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004020
GARTEN 33-1 WELL)
)
LANDS COVERED: SECTION 33, TOWNSHIP 9)
NORTH, RANGE 19 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004021
BEENE-BLAKE 1 WELL)
)
LANDS COVERED: SECTION 34, TOWNSHIP 8)
NORTH, RANGE 22 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004022
ABERNATHY 1 WELL)
)
LANDS COVERED: SECTION 34, TOWNSHIP 8)
NORTH, RANGE 23 EAST,)
LEFLORE COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004023
BLEDSOE 1-26 WELL)
)
LANDS COVERED: SECTION 26, TOWNSHIP 8)
NORTH, RANGE 23 EAST,)
LEFLORE COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004024
STROUD 25-1 WELL)
)
LANDS COVERED: SECTION 25, TOWNSHIP 8)
NORTH, RANGE 23 EAST,)
LEFLORE COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004025
BLEDSON 25-1 WELL)
)
LANDS COVERED: SECTION 25, TOWNSHIP 8)
NORTH, RANGE 23 EAST,)
LEFLORE COUNTY,)
OKLAHOMA)

APPLICANT: BP AMERICA PRODUCTION)
COMPANY)
)
RELIEF SOUGHT: DIRECTIONAL AND BOTTOM) CAUSE CD NO.
HOLE SURVEY FOR THE) 201004026
GOLDSTEIN 1-17 WELL)
)
LANDS COVERED: SECTION 17, TOWNSHIP 7)
NORTH, RANGE 21 EAST,)
HASKELL COUNTY,)
OKLAHOMA)

<u>APPLICANT:</u>	BP AMERICA PRODUCTION COMPANY)))
<u>RELIEF SOUGHT:</u>	DIRECTIONAL AND BOTTOM HOLE SURVEY FOR THE WHITE 2 WELL) CAUSE CD NO. 201004027))
<u>LANDS COVERED:</u>	SECTION 12, TOWNSHIP 6 NORTH, RANGE 17 EAST, LATIMER COUNTY, OKLAHOMA))))

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF AMENDED MOTION TO DISMISS**

This Amended Motion came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 18th day of November, 2010, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, 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: **Richard K. Books**, attorney, appeared for applicant, BP America Production Company ("BP"); **David E. Pepper**, attorney, appeared for movant, Mustang Fuel Corporation ("Mustang"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued her Oral Ruling on the Amended Motion to Dismiss 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 4th day of March, 2011. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

BP APPEALS the Oral Recommendations of the ALJ entered in the captioned matters on November 18, 2010 that Mustang's Amended Motion to Dismiss each of the above referenced Causes be granted. BP filed applications in each of the above listed causes requesting that the Commission order Mustang to prepare and run a directional and/or bottomhole survey on the wells named in each of the causes and provide the same to BP and the Oklahoma Corporation Commission. BP alleged that these wells were in an area where geologic conditions indicated that the well may have significant deviation from the surface location and Mustang's wells may be encroaching upon production from BP. Thus, it was important for BP to learn the actual location of the wells. The only respondent to each of these above listed applications by BP was Mustang.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ Susan R. Osburn reported it was her recommendation that the Amended Motion to Dismiss filed in each of the above listed causes be granted. Mustang argues that these causes are retaliatory and are the result of their obtaining a recommendation to survey the location of the BP Black Bear well, which is offsetting a Mustang well in Haskell County.

Mustang argued that BP has shown no other basis for testing these Mustang wells, other than stating that the wells are in an area where geologic conditions indicate the well may have significant deviation. Mustang argued this was not a sufficient basis to support BP's request. BP argues that the motion should be denied as BP will show good cause to support their request at the merit hearing.

Mustang notes that prior to Mustang's hearing for a survey on the newly drilled BP Black Bear #1-21 in Section 21-7W-20E, Haskell County, Oklahoma, Cause CD 200903316, that Mustang had survey data showing the well's deviation averaged about 7 degrees. BP stopped surveying when deviation was increasing with depth and measuring 11 degrees, just a little over one-half of the well's total depth. Mustang witnesses pointed out the wells BP seeks to survey are older wells. The youngest well is 11 years old with the remaining wells ranging from 15 to 37 years. All of these except for one has information

from drilling reports, which show calculated average deviation of approximately 4 degrees to total depth. The highest deviation was 8 degrees.

This is a different situation from the BP Black Bear #1-21 case. In the BP Black Bear #1-21 case there was evidence of significant increase in deviation that spurred Mustang's pursuit of a directional survey. These wells are not in the same situation. Further, these wells are older wells nearing the end of their productive lives, i.e. poor producers.

The ALJ disagrees however that the BP's applications herein represent a collateral attack on the location exception orders for these various wells. The ALJ believes this to be merely a request per Rule 165:10-3-27(d), which provides that the Commission, for good cause, may order such directional survey run upon application, notice and hearing, and in any case involving a well location upon a motion of an affected party or upon the Commission's own motion.

BP argues that it will show good cause at the merit hearing. However, the ALJ finds it difficult to see BP as suddenly an affected party in circumstances where the offset wells to their unit have produced numerous years. The youngest well is 11 years old and the rest of the wells range from 15 years up to 37 years old. BP's witnesses at the Black Bear #1-21 hearing indicated if the Commission grants Mustang's request for the Black Bear #1-21 well survey, this would give rise to a large number of similar requests by BP to survey Mustang wells in order to protect BP's interests. The ALJ notes that these causes have now been filed. Exhibit A, the letter dated 2-17-2010 from BP to Mustang, indicates that unless Mustang reconsidered their position regarding the Black Bear #1-21 well that BP would have to protect itself. This sounds like BP would back off protecting itself should Mustang reconsider their one request to have the Black Bear #1-21 well surveyed. The ALJ believes the language here suggests coercion.

The ALJ is of the opinion that BP's position is entirely different here than that of Mustang's position.

First, there is no immediacy here as the Mustang wells are older, with most nearing the end of their productive life. The Black Bear #1-21 well sought by

Mustang for the directional survey was spud June 4, 2009. Mustang timely filed their application for a survey on October 26, 2009.

Second, Mustang filed their application based on good cause due to a review of drilling reports and well information specific to the Black Bear #1-21 well. However, in the present causes BP states each of these wells are in an area where geologic conditions indicate there "might be" significant deviation. This is not very specific.

Third, the tone of Exhibit "A" implies that BP will not pursue their request for surveying numerous Mustang wells provided that Mustang reconsiders their position on the Black Bear #1-21 well survey. The ALJ believes that if BP were truly concerned about harm to BP's interests due to Mustang's location exception wells, authorized by final orders years ago, that BP would have pursued these applications much sooner. If BP truly believed that their well interests were being harmed, the ALJ believes that BP would not have offered to drop their survey requests based on Mustang's dropping their survey request on the Black Bear #1-21 well.

Lastly, the ALJ notes that Mustang's motion witness testified that these wells have a calculated average deviation of 4 degrees to total depth. The greatest deviation discovered was 8 degrees on these Mustang wells. The last measured deviation of 11 degrees was found on the Black Bear #1-21 well. The ALJ notes that the 11 degrees of deviation was found a little over half way to total depth. At this point BP stopped surveying the well whereupon deviation had been increasing with depth. The ALJ would thus recommend that the Amended Motion to Dismiss each of these causes listed above be granted.

POSITIONS OF THE PARTIES

BP

1) **Richard K. Books**, attorney, appearing on behalf of BP, stated that Mustang styles their relief as a motion to dismiss allegedly for evidentiary issues, not legal issues. BP thinks Mustang's motion would better fit a title of motion for summary judgment which only the District Court has power to deal with. BP believes that Mustang's relief is really a motion for summary

judgment in disguise under a Motion to Dismiss title. BP agrees with Mustang insofar as there are legal reasons for an application to be dismissed. However BP asserts there is no Commission rule that requires parties prior to the merit hearing being had to present their full case at a motion hearing. Thus, BP declined to put on evidence to combat the little evidence presented by Mustang here due to such belief. BP believes that an ALJ at the merit hearing would reasonably conclude that a directional survey would be applicable to most if not all of these 16 Mustang wells.

2) BP references to the Court the ALJ Report in Cause CD 200903316 which entered Interim Order No. 582052 on 1-18-2011. Order No. 582052 requested BP to run a directional and/or bottomhole survey on the Black Bear #1-21 well in Section 21 of Haskell County with a reopening date 60 days later to allow BP to present the survey to the Commission. Further, BP acknowledges that CDs 201003262, 201003263, 201003264 and 201003266 of the 16 filed present applications are direct offsets to the Black Bear #1-21 well in crooked hole country.

3) BP believes the question for the Commission is whether there is any reasonable scenario under which BP could win at the merit hearing over Mustang's arguments/evidence. BP believes it would have the evidence to support the relief requested. BP believes the Commission should allow the applications to proceed to merit hearing to resolve these disputed facts.

4) BP brings to the court's attention the evidence that BP would put on at a future merit hearing to resolve these disputed issues. BP notes the subject wells in Haskell County, Latimer County and LeFlore County are located in what is referred to as "crooked hole country." Further, BP would be able to possibly present daily drilling reports, etc from the well owners in these locations as further proof of BP's relief request. In this case, BP would also have the Black Bear #1-21 survey.

5) BP disputes Mustang's reasons for its filed Amended Motion to Dismiss. First, BP states the age of a well is irrelevant as such would be for the merit ALJ to decide. Second, BP notes that all wells are permitted prior to being drilled. BP further notes it is impossible to know in advance whether well deviation will occur and if such occurs, whether it would warrant a directional survey being performed. Third, BP agrees it has no reason to dispute Mustang's statement that the operations of these 16 wells are proper. Fourth, BP believes the amount of well production, i.e. low volume, has no significance here to a party's request for a survey. Fifth, BP agrees the impetus/focus in this area was the previous Black Bear #1-21 case. However BP disagrees that these 16 applications were filed to intimidate Mustang to

back off from its request for BP to perform the bottomhole survey test on the Black Bear #1-21 well.

6) BP notes the Commission presumes that a well, not directionally drilled, is at the bottomhole location below the surface hole location. BP notes that few wells here in these three counties have had directional surveys done. BP admits that should one well's deviation affect another well it would affect other interest owners rights, i.e. a domino affect. BP notes this could result in all wells located in crooked hole country to ultimately have surveys required to be run.

7) BP notes that Exhibit "A" references the letter BP sent to Mustang wherein it indicated that unless Mustang reconsidered their position regarding the Black Bear #1-21 well that BP might request similar surveys to protect its own interests in crooked hole country. BP thinks the ALJ may have misinterpreted this letter as retaliation due to Mustang's one request for a directional survey on one BP well. BP's language was not meant to be taken in a malevolent way, in bad faith or as a threat. BP further notes that even if the letter's language had been a threat, which it was not, that alone is not a reason to deny BP's request for an opportunity to show good cause why a directional survey is needed for these 16 wells. BP believes the survey requests here are business matters, not threats. BP was simply stating to Mustang that what goes around comes around, i.e. it goes both ways.

8) BP notes that all wells deviate at varying rates, yet implies that wells located in crooked hole country deviate more than normal. BP admits at this time BP has no way to actually know what evidence it would present at the merit hearing due to BP's preparation to defend against Mustang's filed Amended Motion to Dismiss here. Once the Amended Motion to Dismiss has been dealt with, only then can BP then focus on preparation on the upcoming merit hearings on these disputed facts.

9) In view of the fact that the Commission does not have authority for summary judgment, BP disputes the Commission requiring BP to conduct or not conduct discovery in order to develop BP's case here. BP does not believe the Commission can determine from what little evidence that has been presented that BP would be unable to furnish sufficient evidence to show good cause for granting of the directional surveys for any of these 16 wells. BP respectfully requests that the Commission allow these applications to proceed onward to merit hearing for proper resolution of these disputed issues.

MUSTANG

1) **David Pepper**, attorney, appearing on behalf of Mustang, stated Mustang disagrees with BP's analysis of this case being a motion for summary judgment. Mustang points out for such relief the movant would be required to tell the Court there were no disputed facts here and request the Court rule as a matter of law on the issues. The Court would then allow the other parties to disagree and request the Court to rule in their favor over that of the movant. Mustang submits this is not the case here. Further, Mustang believes that whether or not a party to a disputed issue has a chance of prevailing is irrelevant here.

2) Mustang agrees with BP in that the genesis of all 16 applications being filed by BP is due to the Black Bear #1-21 well in CD 200903316. Mustang still believes that BP has shown no evidence of good cause to support BP's request for directional survey on Mustang wells in Haskell, Latimer and LeFlore Counties.

3) Mustang points out in the previous CD 200903316 case, the Black Bear #1-21 well was already drilled by the time Mustang had gained access to drilling reports which indicated a significant surface deviation of approximately 11%. Mustang noted that there were 5000 feet left to be drilled when BP stopped their survey. After that, Mustang notes that BP just let the well go wherever it wanted to. Mustang believes that BP cannot tell either Mustang or the Commission where the Black Bear #1-21 well deviated to. Mustang notes it was also concerned with BP's fast drilling approach on the Black Bear well. Mustang filed CD 200903316 and presented evidence to support their request for a well survey test which the ALJ found to be a valid request and which was upheld by the Commission.

4) Mustang notes that BP seems overly concerned about the Mustang wells in crooked hole country. Mustang's expert witness had experience in drilling wells in this area, which BP's witness did not possess. Mustang had to point out to BP that their drilling could have been slowed down if BP had placed weight on the drill bit to avoid well drift or deviation. Mustang thus disagrees with BP's belief that all wells in crooked hole country drift when drilling. Mustang asserts that such deviation is controllable when an operator utilizes proper procedure when drilling here. Mustang disagrees that just because a well is located in crooked hole country that alone is a reason to show good cause to reverse the ALJ's decision on these 16 applications.

5) Mustang notes after the ALJ Report issued in CD 200903316 on June 10, 2010, thereafter BP promptly filed these 16 applications for surveys of

Mustang's wells in Haskell, Latimer and LeFlore Counties. Mustang suspects that BP located all of Mustang's location exception wells in this general area and then filed applications on same, without any evidence to support alleged deviation affecting BP's interest in this area.

6) Mustang notes to the Court that if BP was so concerned about deviation, then BP should have made these survey requests shortly after the wells were initially drilled years ago. Mustang notes the age of these wells vary from 11 to 37 years old. Mustang wonders why BP waited until after the Black Bear #1-21 well case to take corrective action now. Mustang points out to the Court that Mustang presented compelling evidence to support their requested relief in Cause CD 200903316, yet BP here has failed to furnish any evidence of support.

7) Mustang agrees with BP as to Exhibit "A" yet points out the ALJ used the word "coercion" in her reference to such exhibit. Mustang interprets this letter to be that BP implies, should Mustang go ahead with the Black Bear #1-21 survey request that BP will in turn file for bottomhole surveys on most of Mustang wells. Mustang believes, like the ALJ, that BP simply does not want to run the requested directional survey in the Black Bear #1-21 well which is required by Interim Order No. 582052.

8) Mustang notes that BP's pre-filing data showed: 1) the Lyons #1-27 well had not produced; and 2) one well had only gotten to 1500 feet before it developed circulation problems in a straight hole drill. Mustang does not understand why BP would need bottomhole surveys performed on either a straight hole well that had circulation problems or on a nonproducing well.

9) Mustang notes these facts about the four referenced BP wells: 1) the Wendlandt #2-17 well, 17 MCFPD in 2010, 20 years old; 2) the Minnie Mouse #1-17 well, 8 MCFPD, 15 years old; 3) the Wendlandt #3-17 well, 60 MCFPD, 15 years old; and 4) the Joyce #1-17 well, 13.8 MCFPD, 11 years old. In Mustang's opinion, these 4 wells are near the end of their productive life. Mustang believes the data from these four wells would be irrelevant with regard to the major deviation that BP believes has occurred since these wells were drilled years ago.

10) Mustang notes the Black Bear #1-21 well had only 9 shot points prior to BP's stopping the bottomhole surveys whereas Mustang's wells have shot points from 19 to 75. Mustang urged that BP show its evidence of alleged well deviation, yet BP declined to do so.

11) Mustang notes that while the ALJ disagreed with Mustang's allegation that BP's applications were an impermissible collateral attacks on Order No. 582052, Mustang opted not to appeal that ruling.

12) Mustang notes that BP has no data to back up their survey request for these 16 wells yet wants Mustang to supply BP with data for them to use against Mustang for an upcoming merit hearing. Mustang asserts these 16 applications to be retaliatory in nature due to the lone Black Bear #1-21 request for one well survey test. Mustang reminds the Court that only Mustang presented evidence here, not BP. Mustang notes that the initial ALJ who heard Cause D 2009-3316 also heard the Motion to Dismiss which is on appeal today. Mustang believes the ALJ had a proper factual background to hear the case and made an appropriate decision.

13) Mustang believes the Court on review will find that the ALJ did not believe that BP was an affected party here. Mustang agrees that BP did attempt to coerce these filings. Further Mustang believes the ALJ was correct that BP had insufficient evidence to support these 16 requests.

14) Mustang finds it would be unwise/unwarranted for the Commission to force a merit hearing wasting the time of all parties, including the Commission, where BP has no basis for their 16 applications.

15) Mustang agrees with the ALJ's decision in dismissing the 16 BP applications. Mustang respectfully requests the Court to review the record and the arguments herein and uphold the ALJ's decision as it is proper and follows the law.

RESPONSE OF BP

1) BP acknowledges there were no disputed facts here that might give BP a vehicle for filing for summary judgment. Yet BP believes there are unresolved disputed facts herein due to no merit hearing being held for all parties to present evidence before an ALJ. BP still asserts that there is no legal requirement for BP to put on its merit case at a motion to dismiss hearing.

2) BP would like the opportunity to present evidence about factors that Mustang mentioned, such as the fast drilling, the shot points and the high deviation rates. BP notes that Mustang has no idea of the data that BP has acquired from nonoperators in this area. BP points out that Mustang assumes that BP has no evidence as BP has not brought it forth. BP will gladly inform Mustang and the Commission at an appropriate forum, but believes this Motion to dismiss hearing is improper.

3) BP agrees with Mustang's statement that BP did stop the directional survey in the Black Bear well. BP saw no reason to continue the survey due to the hole was straightening out, with almost 5000 feet left to drill. BP admits that in the past BP has run voluntary directional surveys where necessary, even though such were not required by the Commission rules. BP notes that Mustang did point out that the solution to preventing fast drilling was for the operator to place weight on the drill bit to slow down the drilling speed. BP notes that the extra evidence of bit weight, speed of drilling, etc., is not before the Court at this time. BP is uncertain where these facts are relevant to the disputed issues herein, however, BP submits that once the merit hearing is held such matters can be decided by the ALJ.

4) BP, with the Commission's permission, will present the necessary well data to support their relief request at the upcoming merit hearing. BP notes that Mustang is not privy to all of BP's tentative evidence to be presented at the merit hearing. BP therefore respectfully submits the Court reverse the ALJ and allow these causes to proceed to merit hearing/trial.

CONCLUSIONS

The Referee finds that the Oral Report of the Administrative Law Judge should be affirmed.

1) Each of the Mustang wells listed above was drilled, completed and first produced many years ago. The youngest well, the Joyce #1-17, was drilled and completed in 1999, 11 years ago. The oldest well, the Gillespie #1-20, was completed in 1973, 37 years ago. With the exception of the Joyce #1-17, none of the other wells are less than 15 years old. The Minnie #1-17 and Wendlandt #3-17 are each 15 years old. The Wendlandt #2-17 well is 20 years old; the Gillespie #2-20 well is 19 years old; the Bessie Goodgame #1-1 well is 23 years old; and the Lyons #1-27 well is 34 years old. Each of these wells was drilled as straight holes pursuant to location exception orders issued by the Commission after notice and hearing. 52 O.S. Section 87.1(c). The evidence presented by Mustang was that one of the wells, the Lyons #1-27, does not produce. Another of the wells was targeted for 9,000 feet but it only got to 1,500 feet because they had lost circulation problems. The question becomes why would BP be interested in a survey on these wells that do not produce. The evidence also reflected that the four wells near BP's Black Bear #1-21 well do not produce significantly and are at the end of their life in production. The Wendlandt #2-17 well makes a total of 17 MCFPD and is 20 years old. The Minnie Mouse #1-17 well produces 8 MCFPD and is 15 years old. The

Wendlandt #3-17 well makes 60 MCFPD and is 15 years old. The Joyce #1-17 well makes 13.8 MCFPD and is 11 years old.

2) The Mustang application in Cause CD 200903316 in which Mustang requested the Commission require BP to conduct a directional bottomhole survey for the Black Bear #1-21 in Section 21-T7N-R20E, Haskell County, Oklahoma, was timely made. The Black Bear #1-21 well was drilled in 2009 and was only months old when the Mustang application was filed in October of 2009. Also, Mustang had survey data that the Black Bear #1-21 well showed the deviation of that well averaged about 7 degrees. When deviation was increasing with depth and measuring about 11 degrees, BP stopped surveying at a little over one-half of the well's total depth. With 5,000 feet left to drill in the well and it deviating a significant 11 degrees from the surface, BP stopped running surveys. Thus, Mustang also had good cause to request BP to run this survey on the Black Bear #1-21 well.

3) The Referee agrees with the ALJ that BP has failed to state a claim upon which this Commission can grant the specific relief requested. BP does not allege, a sufficient basis for "good cause" under OCC Rule 165:10-3-27(d) to grant the relief requested. OAC-OCC Rule 165:10-3-27(d) provides:

Required directional and bottomhole surveys. For good cause, the Commission may order an operator to run directional and/or bottomhole surveys for a common source of supply in a well;

(1) upon application, notice and hearing; or

(2) in any case involving the location of a well, upon motion of an affected party or upon the Commission's own motion.

Given the length of time that the Mustang above listed wells have been producing, BP's applications are untimely as a matter of law and as a matter of prudent regulation by the Commission. Nor has BP suffered a particularized harm which would warrant the relief requested.

4) As pointed out by the ALJ, BP's motive and timing behind the filing of these applications must be considered by the Commission. The filing of the BP applications appears to be made in retaliation for an application filed by Mustang in Cause CD 200903316 concerning the Black Bear #1-21 well. Exhibit A, a letter from BP dated February 17, 2010, indicates that BP will not pursue their request for surveying the numerous Mustang wells listed above if

CDS 201003262, 201003263, 201003264, 201003266, 201003267, 201003268,
201003269, 201003270, 201004020, 201004021, 201004022, 201004023,
201004024, 201004025, 201004026 & 201004027 - BP AMERICA

Mustang will reconsider their position on the Black Bear #1-21 survey. Thus, Exhibit A and the untimely filings of these applications by BP show that BP has not suffered any particularized harm and thus has not presented "good cause" within the meaning of OAC-OCC Rule 165:10-3-27(d) to compel the down-hole surveys. See *Dyer v. State*, 52 P.2d 1080 (Okla. Cr. 1935).

5) For the reasons stated above, the Referee can find no reason to vary the ALJ's determination and the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 11th day of April, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Susan R. Osburn
Richard K. Books
David E. Pepper
Office of General Counsel
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks - 1
Commission Files