

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED

SEP 19 2011

COURT CLERK'S OFFICE — OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CONCORDE RESOURCES)
CORPORATION)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: NW/4 OF SECTION 17,)
TOWNSHIP 11 NORTH, RANGE)
17 EAST, MCINTOSH COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201003960-T

APPLICANT: CONCORDE RESOURCES)
CORPORATION)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: SW/4 OF SECTION 17,)
TOWNSHIP 11 NORTH, RANGE)
17 EAST, MCINTOSH COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201003961-T

APPLICANT: CHECOTAH PARTNERS, L.L.C.)
)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: NW/4 OF SECTION 17,)
TOWNSHIP 11 NORTH, RANGE)
17 EAST, MCINTOSH COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201101910-T

STATEMENT OF THE CASE

CONCORDE APPEALS the ALJ's recommendation that Onapa Gas Company, L.L.C. ("Onapa"), the operating entity of Checotah, be named the operator in these Orders because Checotah has a majority interest in the SW/4 and it has the same interest as Concorde in the NW/4. Checotah has developed more of the area and holds more acreage in this area. For these reasons the ALJ recommended Onapa be named operator in the Orders to issue.

CD No. 201003960-T and CD No. 201003961-T, the pooling applications of Concorde, seek to pool the Hartshorne, Georges Fork, Spiro, Wapanucka, Cromwell, Woodford, Hunton, Viola, Wilcox, Oil Creek, Arbuckle and Booch common sources of supply in the NW/4 and SW/4 of Section 17, T11N, R17E, McIntosh County, Oklahoma. Checotah filed competing pooling applications, CD No. 201101910-T, and CD No. 201101911-T, seeking to pool the Bartlesville, Booch, Senora, Hartshorne, Upper Atoka, Georges Fork, Middle Atoka (Gilcrease) and Spiro common sources of supply in the NW/4 and SW/4 of Section 17, T11N, R17E, McIntosh County, Oklahoma. Concorde and Onapa, the Checotah operating entity, both seek the right to be named operator in the Orders to issue in these Causes.

CONCORDE TAKES THE POSITION:

- (1) The ALJ Report is contrary to the evidence and to law.
- (2) The ALJ's recommendation, if adopted, will result in injustice.
- (3) Onapa is not qualified by experience or otherwise to operate the proposed wells in the NW/4 and SW/4 of Section 17.
- (4) Concorde requests that it be designated as operator.

THE ALJ FOUND:

- (1) The ALJ recommended that Onapa/Checotah be named operator in the Orders to issue in these Causes.
- (2) In determining who will operate the wells pursuant to the pooling orders, the ALJ relied upon the Charles Nesbitt article, *A Primer On Forced Pooling Of Oil And Gas Interests In Oklahoma*, Oklahoma Bar Journal, Vol. 50, No. 13 Page 648, where on page 653 Nesbitt lays out the analysis for "Designation of Operator". Under this analysis Nesbitt concluded that "[a]ll other things being

equal, the owner of the largest share of the working interest has the best claim to operations." Id.

(3) Checotah currently owns 96.833 acres of the unit in the NW/4 of Section 17, CD 201101910-T, while Concorde owns 52 acres in that unit, CD 201003960-T. If the majority of working interest ownership is the only factor to consider, then clearly Checotah has the best claim to operations of the proposed well in the NW/4 of Section 17. However, Checotah and Concorde both hold 80 acres in the SW/4 of Section 17, CD 201101911-T and CD 201003961-T. Therefore each party has equal claim to operations as far as ownership within the unit is concerned.

(4) However, the Nesbitt analysis goes on to provide that "... other factors can outweigh majority ownership". Id. These other factors Nesbitt considers that can outweigh majority ownership are "...actual bona fide exploration activity.., number of wells operated in the vicinity, the extent of developed and undeveloped lease ownership, the availability of operating personnel and facilities, a comparison of proposed costs of drilling and operating the well, and, rarely, the relative experience and competence of the contenders for operating rights". Id.

(5) The ALJ stated that both companies are competent and prudent operators. However, one Company must prevail as operator because both of them cannot operate each well. Taking these other factors into consideration, the ALJ contends that Checotah's activity in this area does outweigh Concorde's activity in this area. The undisputed testimony established Checotah has drilled one well in this area, leased 4000 acres of minerals, and conducted title research on another 20,000 acres. Checotah currently has field personnel operating in this area. Checotah has also obtained 3 miles of pipeline right-of-way at a cost of \$100,000. Checotah has contacted a rig company to drill the proposed wells and is ready to sign a contract to procure the rig as soon as Onapa, Checotah's operating entity, is named operator.

(6) On the other hand, Concorde only holds an interest in two quarter sections, 52 acres in the NW/4 and 80 acres in the SW/4, for a total of 132 acres in the subject area. Concorde operates no wells in this area. Concorde was the first to file a Pooling Application for the subject unit. However, Nesbitt did note that "actual bona fide exploration activity. . . is not a simple race to the courthouse, with the earliest applicant getting the nod, but involves such matters as when a well was first proposed and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for, and so on." Id. Therefore, the ALJ must conclude that under Nesbitt's other factors, Checotah must prevail as to both units.

(7) The AFE costs are not comparable for the purpose of determining who should be named operator in the Pooling Order. First, testimony established Concorde's AFE contained costs for drilling to formations deeper than the Spiro, while Onapa's AFE did not include these costs. Both parties are proposing to drill a Spiro test and the formations below the Spiro were dismissed during the pooling hearing. Second, Onapa's AFE includes casing and lifting costs, while Concorde's did not. For these reasons the ALJ contends the AFE costs should not be included as a factor in determining operations.

(8) The ALJ contends that when we apply all of Nesbitt's factors, Checotah's commanding ownership position in the NW/4 unit and equal ownership in the SW/4, accompanied with its edge in development in the area, and edge in ownership in the play, dictate Onapa/Checotah should be named operator of both units. Thus, the ALJ recommended that Checotah's edge in experience and holdings in this play dictate that Onapa/Checotah should be named operator of both units. Thus, the ALJ recommended that the applications of Concorde in Cause CD No. 201003960-T, and CD No. 201003961-T, seeking to pool the Booch, Hartshorne, Georges Fork and Spiro common sources of supply in NW/4 and SW/4 of Section 17, T11N, R17E, McIntosh County, Oklahoma and Checotah's pooling applications, CD No. 201101910-T, and CD No. 201101911-T, seeking to pool the Bartlesville, Booch, Senora, Hartshorne, Upper Atoka, Georges Fork, Middle Atoka (Gilcrease) and Spiro common sources of supply in NW/4 and SW/4 of Section 17, T11N, R17E, McIntosh County, Oklahoma be granted with Onapa/Checotah's operating entity, as the named operator in the Orders to issue in these Causes.

POSITIONS OF THE PARTIES

CONCORDE

1) **Russell Walker**, attorney, appearing on behalf of Concorde, appeals the ALJ's recommendation that Onapa, an affiliate of Checotah, be designated as operator. Concorde and Checotah both filed pooling applications in each of the two quarter sections involved: (1) the NW/4 of Section 17, T11N, R17E, McIntosh County; (2) the SW/4 of Section 17, T11N, R17E, McIntosh County.

2) Concorde takes the position that the ALJ ignored the criteria that this Commission usually applies in designating an operator. Concorde filed its applications seven months before Checotah filed its applications, and has the same interest as Checotah in one unit, and a slightly smaller but still significant interest in the other unit. Concorde's personnel have drilled hundreds of these types of wells in this area. Onapa does not own an interest and a right to drill in either of these units.

CHECOTAH

- 1) **Ron Barnes**, attorney, appearing on behalf of Checotah, stated that Checotah has ownership and operates in an adjoining unit, and that Onapa has drilled the only other well in the general area for these formations. Checotah states that the disposal well that is drilled in an adjoining unit was drilled by Onapa.
- 2) Checotah contracted with Onapa to operate wells for them, and they have the contractual right to drill. There are contractual operators all of the time, and there is no requirement to have an actual ownership interest in it. Checotah does not operate their own wells, rather, Onapa operates them under contract, and that is where they glean their right to drill.
- 3) Checotah has ownership in 4,000 acres in this area. Concorde, only has 80 acres in one of the 160s, and 52 acres, approximately, in the other 160, and that is the extent of their interest. The ALJ took into consideration the fact that this is going to be a multi-unit drilling project for Checotah and Onapa, and considered economy of scale among other issues. However, Concorde's appeal was limited to Onapa's ability.
- 4) The principal of Onapa is Sid Risner, an owner in Checotah. He will be the engineer responsible for Onapa in drilling the wells. Risner, a petroleum engineer, has a degree in industrial engineering and lacks only his dissertation for his Masters in petroleum engineering. Risner has approximately 30 years of experience and has drilled 250 or so wells in this particular area.
- 5) Checotah has the right to drill, they are competent to drill, and there is substantial evidence to uphold the finding of the ALJ.

RESPONSE OF CONCORDE

- 1) Concorde addresses Checotah's concerns about the content of Concorde's written exceptions to the ALJ's Report, which includes the word "or otherwise." Concorde was concerned that if they had pointed out earlier that Onapa did not own an interest and therefore could not be operator, that Checotah would take steps to correct that deficiency before this hearing. Therefore, Concorde stated that Onapa was "not qualified by experience or

otherwise to operate," which includes the fact that Onapa is not an owner of an interest and the right to drill.

2) Regarding Checotah's claim that there is an agreement between Onapa and Checotah, Concorde takes the position that there is only one known example where the Commission has even remotely acknowledged such an agreement. That example concerns Chesapeake Exploration, L.L.C. operating through its agent Chesapeake Operating, Inc., with whom it had a written agreement that was presented into evidence at the Commission. There was an actual written agreement in that record. In this case there is not a request on the record regarding Checotah being designated as operator and subsequently operating through its agent Onapa. Rather, the request is that Onapa be designated as operator and it is not qualified to be operator because it does not own an interest and the right to drill.

3) Concorde is the only party who is seeking operatorship here who is qualified by the criteria of owning an interest and the right to drill. Concorde is also well qualified by all other criteria. Therefore it should be designated as operator.

CONCLUSIONS

The Referee finds the Report of the Administrative Law Judge should be affirmed, but clarified.

1) The Referee finds that the ALJ's recommendation to award operations to the applicant, Checotah, in Causes CD No. 201101910-T and CD No. 201101911-T is supported by the weight of the evidence, by law and free of reversible error. The ALJ wrote a well-reasoned report balancing the normal factors considered by the Commission in the award of operations under a pooling application.

2) The ALJ is the initial finder of fact. It is the ALJ's duty as the finder of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Grison Oil Corp. v. Corporation Commission*, 99 P.2d 134 (Okla. 1940); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okla. 1951).

3) The Commission has focused on a number of different factors in the award of operations. Charles Nesbitt in his article, A Premier on Forced Pooling of Oil and Gas Interests In Oklahoma, 50 Okl.B.J. 648 (1979) set forth a review of the factors considered and the importance that the Commission attaches thereto. Mr. Nesbitt states:

DESIGNATION OF OPERATOR

A deceptively important provision of the pooling order is the designation of the operator of the proposed well. In most cases the applicant already owns the majority interest in the spacing unit, and is routinely named operator. However, there are notable exceptions where a spirited battle occurs between lessees over operations. The working interest ownership of non-participating pooled owners inures to the operator, at least in absence of a claim by other participants to share therein. A lessee who is promoting the proposed well for a carried interest, or similar remuneration, has a significant financial stake in being designated operator.

Several factors are considered in the selection of the operator, the most important being working interest ownership. All other things being equal, the owner of the largest share of the working interest has the best claim to operations. However, this is not always true, and other factors can outweigh majority ownership.

Second in importance is actual bona fide exploration activity. This is not a simple race to the courthouse, with the earliest applicant getting the nod, but involves such matters as when a well was first proposed and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for, and so on.

Other factors having a bearing on the final selection include the number of wells operated in the vicinity, the extent of developed and undeveloped lease ownership, the availability of operating personnel and facilities, a comparison of proposed costs of drilling and operating the well, and, rarely, the relative

experience and competence of the contenders for operating rights.

4) As Nesbitt states, the ownership position of the parties and the actual bona fide exploration activity are the two factors of most importance. Checotah currently owns 96.833 acres of the units in the NW/4 of Section 17, while Concorde owns 52 acres in that NW/4 unit. Both Checotah and Concorde hold 80 acres in the SW/4 of Section 17. The ALJ found that both Checotah and Concorde are competent and prudent operators.

5) The ALJ found however that Checotah had been the primary mover in the area. The ALJ found in paragraph 4 on page 9 of his Report:

Taking these other factors into consideration, the ALJ contends that Checotah's activity in this area does outweigh Concorde's activity in this area. The undisputed testimony established Checotah has drilled one well in this area, leased 4000 acres of minerals, and conducted title research on another 20,000 acres. Checotah currently has field personnel operating in this area. Checotah has also obtained 3 miles of pipeline right-of-way at a cost of \$100,000. Checotah has contacted a rig to drill the proposed Wells and is ready to sign a contract to procure the rig as soon as Onapa, Checotah's operating entity, is named operator. On the other hand, Concorde only holds an interest in two quarter sections, 52 acres in the NW/4 and 80 acres in the SW/4 for a total of 132 acres in the subject area. Concorde operates no wells in this area. Concorde was the first to file a Pooling Application for the subject Unit. However, Nesbitt did note that "actual bona fide exploration activity...is not a simple race to the courthouse, with the earliest applicant getting the nod, but involves such matters as when a well was first proposed and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for, and so on." *Id.* Therefore, the ALJ must conclude that under Nesbitt's other factors, Checotah must prevail as to both Units.

6) Thus, where the ALJ has considered the factors normally considered by the Commission and arrived at a determination that is supported by the weight of the evidence, the Referee believes the Report should be affirmed. However, in one respect, the Referee believes that the determination of the ALJ should be clarified as to who exactly should be declared operator of these units.

7) It should be pointed out that contrary to Concorde's assertion that Checotah did not request to be designated as operator, Checotah's applications in CD No. 201101910-T and CD No. 201101911-T state in paragraph 4 on page 2:

Relief Sought:...and designate Applicant or some other party as operator of the proposed well and all subsequent wells drilled in the unit;...

8) 52 O.S. Section 87.1 emphasizes that an "operator" must be an "owner". 52 O.S. Section 86.1 in relevant part states as follows:

4. "Owner" means a person who has the right to drill into and to produce from any common source of supply and to appropriate the production, either for that person or for that person and others;

9) Thus, the above listed statutes and case law in *O'Neill v. American Quasar Petroleum Company*, 617 P.2d 181 (Okl. 1980) contemplate that an owner shall be the operator and the one to drill the unit well, not a contract person who has no right to drill into and to produce from any common source of supply and to appropriate the production, either for himself or for others.

10) As stated by the Court in *Crest Resources and Exploration Corporation v. Corporation Commission*, 617 P.2d 215 (Okl. 1980):

The managerial responsibility of a designated unit operator in developing for, producing and selling oil or gas from the unitized pool is an exercise of the state police power...

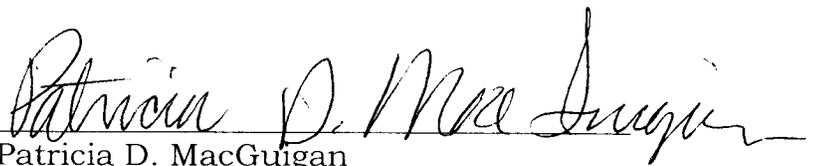
The Commission requires an operator to be an owner in the unit to insure that the operator has a financial stake in the well and is one of the original risk takers in the well so that the operator can be held liable for its actions. If something occurs within the unit, the Commission then may hold the operator responsible knowing that the operator has an interest in the unit.

11) The fact that Checotah may hire or use a contract driller such as Onapa has no bearing on the case. As noted in *Crest Resources*, supra:

In short, while the unit operator is free to subcontract any task that is to be performed in developing for, producing or selling oil and gas from the unitized pool, he may not redelegate to anyone else his Commission-conferred power to operate the leaseholds as a unit and to safeguard the correlative rights of the interest holders.

12) Thus, the ALJ's recommendation should be made clear that operation is to be awarded to the applicant Checotah with Checotah being named as operator in the orders to issue in these causes.

RESPECTFULLY SUBMITTED THIS 19th day of September, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Curtis Johnson
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