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

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CONTINENTAL RESOURCES,)
INC.)

RELIEF SOUGHT: DETERMINE THE VALIDITY)
AND EFFECTIVENESS OF)
POOLING ORDER NO. 547017)

CAUSE CD NO.
201101857

LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 5)
NORTH, RANGE 15 EAST,)
PITTSBURG COUNTY,)
OKLAHOMA)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Michael Norris**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 30th day of November, 1st and 2nd day of December, 2011 and on 25th day of January, 2012 at 8:30 a.m. 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 the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **David Pepper**, attorney, appeared on behalf of applicant, Continental Resources, Inc. ("Continental"); **John R. Reeves**, attorney, appeared on behalf of Antero Resources Inc. ("Antero"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 28th day of June, 2012, to which Exceptions were timely filed 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 24th day of August, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

ANTERO TAKES EXCEPTION to the ALJ's recommendation that the Continental application, requesting the relief of determination of the validity and effectiveness of pooling Order No. 547017, should be determined to be valid and effective with the application being approved.

Order No. 547017 dated November 27, 2007, pooled the interest and adjudicated the rights and equities of oil and gas owners in various common sources of supply underlying the captioned lands. Continental was designated the operator, and was required to commence operations through the drilling of a horizontal well within one year from the date of said order. Continental successfully commenced operations and drilled the well to test the Woodford common source of supply. Said well is mechanically unable to be completed in the Woodford and up hole production was currently being evaluated. A dispute rose over the continued validity and effectiveness of Order No. 547017. Antero, a participant in said well, has contended that said order was no longer in full force and effect and had expired by its own terms. Continental alleged that said order was in full force and effect and continues to be effective from and after the date said order was signed. Continental requested that the Commission determine that Order No. 547017 has not expired and continues to be in full force and effect and is effective as to all respondents.

ANTERO TAKES THE POSITION:

1) The Report of the ALJ is contrary to law and the evidence presented. The ALJ Report is arbitrary, unreasonable and discriminatory and if adopted, would not prevent or assist in preventing the various types of waste and would not protect or assist in protecting correlative rights.

2) The ALJ recommended "that the application of Continental Resources, Inc. filed in Cause CD No. 201101857 to establish that Pooling Order No. 547017 is valid and effective should be granted". The ALJ is recommending that the Commission find that pooling Order No. 547017 remains "valid and effective". However, both Antero and Continental agreed that pooling Order No. 547017 had terminated and is not currently valid and effective. Continental asserted that such pooling order expired on June 27, 2010, while Antero asserted that such pooling order expired on April 20, 2009. The issue before the ALJ was not whether pooling Order No. 547017 is currently valid and effective, but rather when did such pooling order expire. The ALJ erred in not determining the controlling and critical issue presented to him.

3) The ALJ stated that "Continental established that awaiting the 3-D seismic was a prudent decision that allowed them to drill successful wells that

resulted in economic benefits to all parties involved in the wells." The ALJ further stated that "[a]lthough the delay in this cause was extensive, this set of circumstances could not be controlled by Continental." The ALJ further found that Continental "made the best decision in a difficult situation" and that such "was proven by the fact that successful wells occurred from the benefit of the seismic data." The ALJ apparently found that Continental complied with its obligations under pooling Order No. 547017 to "diligently prosecute" operations thereunder by doing nothing, except waiting on 3-D seismic for over a year after the expiration of the one-year time period to commence operations under such pooling order. The ALJ does not address the specific obligations of Continental, as operator, under pooling Order No. 547017. The ALJ appears to ignore the specific language of pooling Order No. 547017 and the specific obligations on Continental as operator to conduct operations under such pooling order.

4) The ALJ found that "the set of circumstances could not be controlled by Continental" and that Continental made "the best decision in a difficult situation." However, the ALJ then finds that Antero "had valid arguments for resolving this issue such as the filing of the motion to extend" and that "monetary considerations should not be the controlling factor in the decision to file a motion when there is so much import to the parties." The evidence showed that Continental, as operator, was in complete control of the situation concerning the operations to be conducted under pooling Order No. 547017; that Antero and the other parties covered by such pooling order had no control over such situation; that Continental never informed Antero or any of the other parties covered by such pooling order of the reason for Continental's failure to diligently prosecute operations under such pooling order; and that Continental, because of monetary considerations, chose not to file a motion to extend time to commence operations under such pooling order. In this case, Continental's "best decision" resulted in Continental failing to prosecute (in any manner) any operations under pooling Order No. 547017 for an "extensive" period of time. The ALJ erred in not finding that such "extensive" cessation of all operations under pooling Order No. 547017 resulted in such order terminating as of April 20, 2009 pursuant to the terms thereof.

5) The ALJ stated that Antero was "involved in both wells (the Marilyn No. 1-29H Well and the Hartley No. 1-1 H Well) and chose to stay in the prolific well and to protest the unsuccessful one." The ALJ stated that Antero "accepted the risk in both wells and should be obligated in both." These statements by the ALJ show that the ALJ did not understand that under pooling Order No. 547017, the obligations to keep such order from becoming "null and void" did not fall on Antero, but fell solely upon Continental as the operator under such pooling order. The ALJ in his analysis failed to recognize or just ignored the specific obligations on Continental as set forth in pooling Order No. 547017 to avoid such order becoming "null and void".

6) Paragraph 10 of the ordering portion of Pooling Order No. 547017 provides "...That Continental Resources, Inc. must commence operations for the drilling and other operations with respect to the well covered hereby within one (1) year from the date of this Order, and diligently prosecute the same to completion in a reasonably prudent manner or this Order shall be null and void except as to the payment of cash bonuses." Paragraph 10 is the only provision in Pooling Order No. 547017 which deals with the termination or expiration of such pooling order. The obligations to avoid such order becoming "null and void" falls solely upon Continental, and no other party. Antero has no obligation or duty in regard to keeping such order in full force and effect or to avoid such order becoming "null and void". Under paragraph 10, Continental was required to commence operations for the drilling and other operations with respect to the Hartley #1-1H well within one-year from November 27, 2007, or on or before November 27, 2008. Under such paragraph, if Continental complied with its first obligation as set forth in said paragraph 10 concerning commencement of operation within the applicable one year time period, then Continental had the secondary obligation of diligently prosecuting the drilling and other operations on the Hartley #1-1H Well (as commenced during such one-year time period) to completion in a reasonably prudent manner. If Continental failed to meet either one of its obligations under said paragraph 10, Pooling Order No. 547017 would become null and void. The ALJ in his Recommendations and Conclusions portion of his Report does not even mention these obligations and does not provide any analysis concerning whether Continental complied with the specific provisions of paragraph 10 of the ordering portion of pooling Order No. 547017. The ALJ failed to comment on the fact that while paragraph 10 of the ordering portion of such pooling order required Continental to "diligently prosecute" any operations commenced under such pooling order within the one-year time period described above (running through November 27, 2008), Continental failed to conduct any operations under such pooling order, other than the running of a meaningless log, for 361 days after the expiration of such one-year time period. Such failure to conduct any operations for such time period should not be considered as fulfilling Continental's obligation to "diligently prosecute" operations on the initial well under such pooling order.

7) The ALJ failed to comment on the fact that while Continental did commence some operations on the lands covered by pooling Order No. 547017 within the applicable one-year time period provided for in such order, such operations were commenced with a spudder rig which was not capable of drilling the proposed initial well covered by such pooling order, being a proposed horizontal well in the Woodford common source of supply. The borehole drilled by Continental with such spudder rig was drilled to a total depth of only 1,993 feet, while the initial well to be drilled under pooling Order No. 547017 was intended to be drilled to a depth of over 15,000 feet. Such spudder rig was moved on to the lands covered by pooling Order No. 547017 on

October 23, 2008 and was moved off on November 8, 2008, after drilling to only 1,993 feet. The evidence presented showed that at the time Continental drilled the borehole of the initial vertical well with the above-described spudder rig, Continental knew that it would not be receiving 3-D seismic until December, 2009. The evidence presented by Continental showed that at the time Continental commenced operations with the above-described spudder rig, Continental had no intention at that time of prosecuting (diligently or otherwise) any further operations under pooling Order No. 547017 until after December 2009, when Continental anticipated receiving the 3-0 seismic data. The evidence presented by Continental showed that Continental never intended to "diligently prosecute" any operations commenced under such pooling order on or before November 27, 2008 and that Continental failed to "diligently prosecute" such operations.

8) The evidence presented showed that the above-described spudder rig was moved on to the lands involved herein on October 23, 2008 and that such spudder rig was released on November 8, 2008. The one-year time period to commence operations under pooling Order No. 547017 expired on November 27, 2008. On January 20, 2009, Continental ran a wireline log in the borehole of the vertical well drilled with such spudder rig, which borehole had been drilled to a depth of only 1,993 feet. There was no information gained from such log concerning the primary objective of the initial well involved herein, being the Woodford common source of supply. After moving the above-described spudder rig off location, Continental failed to conduct any operations on the lands involved herein under pooling Order No. 547017 for 73 days (until Continental ran the above-described meaningless log in the borehole of the vertical well). After running such log, Continental did not conduct any further operations on the lands involved herein until November 24, 2009 when Continental moved in a rig capable of drilling the initial well covered by pooling Order No. 547017, being a horizontal well in the Woodford common source of supply. For 307 days, Continental failed to conduct any operations on the lands involved herein after running the above-described logs on January 20, 2009. For the 380-day period from the release of the above-described spudder rig to moving in a drilling rig capable of drilling the initial well covered by pooling Order No. 547017, Continental did not inform any of the parties covered by such pooling order of its activities (or lack thereof) or the reasons therefor. At no time prior to the hearing on this cause were any of the parties covered by pooling Order No. 547017 or the Commission ever informed that Continental had decided not to conduct any further operations on the lands covered by such pooling order because Continental was waiting on 3-0 seismic.

9) Prior to Continental being aware that there was a dispute concerning its failure to diligently prosecute operations under pooling Order No. 547017, Continental filed with the Commission a completion report, Form 1002A, on the Hartley #1-1H well as a straight hole. (See Exhibit 17) In such completion report, Continental stated that such well was a straight hole (not a horizontal

hole), was spud on October 25, 2008 and was completed on November 6, 2008, with such straight hole having been drilled to a total depth of 1,993 feet. Continental on such completion report stated that such well was "TA", which meant that such well was temporarily abandoned. Continental further stated under the "Other remarks" portion of such report that "Drilling was interrupted and well was shut in due to economic circumstances. Plans are to commence the drilling of this well in the near future." Such completion report was executed by a representative of Continental on November 17, 2009. In such completion report, such representative stated that such representative had knowledge of the contents of such completion report, that such representative was authorized by Continental to make such report and that the facts stated in such report were true, correct and complete. As of November 17, 2009, Continental stated that operations on the Hartley #1-1H well had been interrupted due to "economic circumstances" and not due to waiting on 3-D seismic. The evidence presented showed that in October, 2008, there was a significant adverse change in the overall economy and specifically in the oil and gas industry. The ALJ failed to even address this obvious admission. Furthermore, after drilling the Hartley #1-1H well as a horizontal well to a total depth of 12,585 feet, Continental filed a completion report, Form 1002A, for such well stating and admitting that such well as a horizontal well in the Woodford common source of supply was spud on December 8, 2009 and was completed on June 23, 2010. (See Exhibit 19) The spud date of December 8, 2009 for the horizontal well, labeled as the Hartley #1-1H well, was approximately 376 days after the expiration of the one-year time period under pooling Order No. 547017 within which to commence operations under such pooling order. The admissions made by Continental in the above described completion report concerning the straight hole well and the horizontal well drilled by Continental in the lands involved herein show that Continental failed to meet its obligations under pooling Order No. 547017.

10) Pooling Order No. 547017 made no reference to Continental being able to cease all operations under such pooling order for an "extensive" period of time after the expiration of the one-year time period in such order waiting on 3-D seismic. Even though the land witness for Continental at the hearing in this cause stated that the one-year time period under pooling Order No. 547017 within which to commence operations on the initial well was requested to wait on 3-D seismic, the transcript of such prior hearing showed that such land witness was wrong and that such one-year time period was not requested because of 3-13 seismic, but was requested because Continental was waiting on production information from a well offsetting the lands involved herein (being the Mary #1-6H well).

11) As indicated above, the ALJ appears to find that pooling Order No. 547017 is currently valid and effective even though both Continental and Antero agreed that such pooling order has expired, with Continental asserting that such pooling order expired on June 27, 2010 and Antero asserting that

such pooling order expired on April 20, 2009. In viewing the evidence in the most favorable light for Continental, Continental had commenced some operations on the lands involved herein (with a spudder rig) before the expiration of the one-year time period provided for in pooling Order No. 547017 within which to commence operations under such pooling order. As described above, there was then a 73-day period in which Continental failed to conduct any operation on the lands involved herein after moving the above-described spudder rig off such lands.. As described above, at the end of such 73-day dead period, Continental ran a meaningless log in the borehole which had been to a depth of only 1,993 feet. After running such log, there was a period of 307 days in which Continental failed to conduct any operation on the lands involved here under such pooling order. The issue presented to the ALJ, which the ALJ did not address, was whether or not such cessation of operations under such pooling order for such extended periods of time caused the pooling order involved herein to terminate (and be "null and void") because of Continental's failure to "diligently prosecute the same to completion in a reasonably prudent manner". In evaluating whether or not Continental failed to diligently prosecute the operations commenced within the applicable one-year time period under the pooling order involved herein, the Commission must rely upon custom and practice in the oil and gas industry, specifically within the area in and around the lands involved herein. The uncontroverted evidence presented showed that the custom and practice in the oil and gas industry in the lands involved herein was that if an operator was conducting operations in such lands at the expiration of the primary term of an oil and gas lease in such lands, such operator would have the right to continue such operations provided that there was no cessation of such operations for more than 90 consecutive days. This is the provision contained within the standard oil and gas lease form used by Continental, Antero and St. Mary Land & Exploration Company in the lands covered thereby and in the general area involved herein. Giving Continental the benefit of the doubt and assuming that the running of the log in the borehole drilled to a depth of 1,993 feet was a relevant operation under the pooling order, Continental ceased any operations under the pooling order involved herein on the lands covered hereby for 307 days, which is significantly greater than the custom and practice in the industry as adopted by Continental in its oil and gas leases in the lands involved herein. Applying the 90-day period for cessation of operations as derived from Continental's oil and gas leases in the lands involved herein which evidence the custom and practice in the industry in this area, pooling Order No. 547017 expired on April 20, 2009, being 90 days after the running of the above-described log on January 20, 2009. The ALJ in the Report failed to address this issue.

12) The actions of Continental in the lands involved herein under pooling Order No. 547017 were not sufficient to hold in full force and effect Continental's oil and gas leases in such lands. Continental acquired new oil and gas leases from its prior lessors in the lands involved herein and paid such parties additional cash bonus for such new leases. Continental is treating

such lessors as being subject to the subsequently acquired oil and gas leases. If the actions of Continental in the lands involved herein are not sufficient to maintain Continental's oil and gas leases in such lands, the Commission should determine that such operations are not sufficient to hold the pooling order involved herein in full force and effect. The ALJ in the Report failed to address this issue.

13) The ALJ in the Report did state that Antero had valid arguments for resolving the issues involved herein such as the filing of a motion to extend the time to commence operations under the pooling order involved herein. The ALJ further stated that monetary considerations in connection with such a motion to extend the time to commence operations should not be the controlling factor in the decision to file such a motion. While the ALJ is correct in making these findings, the ALJ failed to point out that Continental could have filed a motion to extend the time to commence operations under the pooling order involved herein, but Continental chose not to file such motion because of "monetary considerations" in that Continental did not want to pay any additional cash bonus to the parties who had elected or were deemed to have elected not to participate under such pooling order. The ALJ failed to point out that while Continental did not want to pay additional cash bonus to the non-participating parties under the pooling order involved herein, Continental was more than willing to pay a significant amount of cash bonus to its prior lessors in the lands involved herein to extend Continental's oil and gas leases that had expired because of Continental's lack of activity on the lands involved herein. At no time did Continental even inform such non-participating parties under the pooling order involved herein of its decision and actions to deprive such parties of additional cash bonus while at the same time providing benefits (through the payment of additional cash bonus) to other owners in the lands involved herein. Such actions of Continental are inequitable and unfair, and should not be condoned by the Commission.

14) The ALJ in the Report failed to understand the obligations of Continental as the operator under pooling Order No. 547017 and failed to analyze such obligations in the context of the facts involved herein. While Continental asserted at the hearing herein that its failure to diligently prosecute drilling operations under the pooling order involved herein for almost a year after the expiration of the one year time period provided for in such pooling order for the commencement of operations was due to its decision to wait on 3-D seismic, such position was never asserted or made known to any owner in the Hartley #1-1H well prior to the hearing in this cause. Continental's assertions at the hearing herein are in direct conflict with the admissions made by Continental in the completion reports filed with the Commission. Continental should have filed a motion to extend the time to commence operations under the pooling order involved herein so that the reasons for Continental's failure to diligently prosecute operations under such pooling order would be fully disclosed to all of the owners in the Hartley #1-1H well and to the Commission and so that

Continental would be required to meet its financial obligations to the non-participating owners in such well under such pooling order as to the payment of additional cash bonus. The Commission should not condone the actions of Continental under the pooling order involved herein. The Commission should find that the pooling order involved herein became "null and void" as of April 20, 2009 because of Continental's failure to diligently prosecute operations on the initial well covered by such pooling order for an unreasonable length of time after the expiration of the one-year time period provided for in such pooling order.

15) Antero respectfully requests the Commission not adopt the Report of the ALJ filed in this cause on June 28, 2012. The Commission should determine that pooling Order No. 547017 expired on April 20, 2009 due to the failure of Continental to comply with its obligations under such pooling order concerning the diligent prosecution of drilling and other operations with respect to the initial well under such pooling order.

THE ALJ FOUND:

1) The completion of the Woodford horizontal well in this cause was delayed because Continental did not timely receive 3-D seismic data for which it had contracted. It was demonstrated that this delay was not created by Continental but by the seismic provider. The other activities and length of delay were all a result of a lack of timely seismic data.

2) Continental demonstrated that the 3-D seismic was critical to this area. The area has a very complex geology and it was imprudent to attempt wells without the benefit of the data. As in many difficult situations, some decisions by Continental were not successful. Other decisions and actions were beneficial and resulted in economic wells being completed. The most critical and effective decision was to not drill any wells in the area without the benefit of 3-D seismic. Continental believes that the action to delay the Hartley #1-1H well until receipt of the seismic information was necessary to protect the interest of all parties involved in all the wells in the area and is the primary consideration to continue the effectiveness of this pooling order.

3) Antero rejects this depiction and stresses that the length of the delay is excessive and Continental did not diligently prosecute the completion of the Hartley #1-1H well in a reasonably prudent manner. Antero asserts that the pooling order should have expired because of the delays and lack of activity by Continental. Antero also believes that Continental should have filed a Motion to Extend the pooling order. The exigent circumstances should not be considered according to Antero.

4) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause, it was the ALJ's recommendation that

the application of Continental filed in CD No. 201101857 to establish that pooling Order No. 547017 is valid and effective should be granted.

5) Continental established that awaiting the 3-D seismic was a prudent decision that allowed them to drill successful wells that resulted in economic benefits to all parties involved in the wells.

6) Although the delay in this cause was extensive, this set of circumstances could not be controlled by Continental. The evidence showed that they made the best decision in a difficult situation. This was proven by the fact that successful wells occurred from the benefit of the seismic data. It was admitted that the results would most likely have been different if the data had not been utilized.

7) Antero had valid arguments for resolving this issue such as the filing of the motion to extend. The monetary considerations should not be the controlling factor in the decision to file a motion when there is so much import to the parties.

8) Antero stated that the delay in both wells (Marilyn #1-29H and Hartley #1-1H) was the same. They argued that the order in the Hartley #1-1H well should have expired. However, it was noted that they were involved in both wells and chose to stay in the prolific well and to protest the unsuccessful one. They accepted the risk in both wells and should be obligated in both.

POSITIONS OF THE PARTIES

ANTERO

1) **John R. Reeves**, attorney, appearing on behalf of Antero, stated that all of the witnesses and evidence presented by Continental were merely attempts to provide excuses for why they failed to comply with pooling Order No. 547017.

2) Antero contends they were disappointed in the ALJ's analysis, claiming the ALJ failed to address the very key issues in this case. Antero argues, citing page 2 of the Recommendations, that the ALJ's analysis is: "The pooling order should be determined to be valid and effective. Continental's actions were reasonable under these circumstances. A motion to extend should be considered in such pooling issues."

3) Antero states this case falls within the Commission's jurisdiction to determine whether or not the operations of an operator were in compliance with a pooling order or whether the order is terminated for failure to comply

with the order. Antero cites *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okla. 1985), as being the relevant case on point.

4) Antero argues the Commission has two things to do in these cases; first, look at the terms and provisions of the pooling order, and then second look at the actions of the operator in context of their obligations under the pooling order. Antero states the ALJ failed to do this analysis.

5) Antero states the ALJ erred in determining the pooling order is valid and effective. Antero contends both parties, Continental and Antero, agreed the pooling order had expired, and that the only dispute was as to the date of expiration. Antero argues the pooling order expired April 20, 2009, while Continental claims the order expired June 27, 2010. Antero claims the ALJ, "didn't address the critical issue, didn't grasp the critical issue when did the pooling order expire."

6) Antero cites page 23 of the ALJ's report as stating that Continental's decision to wait on a 3-D seismic survey was a prudent decision in a difficult situation. Antero argues this highlights the ALJ's lack of analysis, because the ALJ did not even address the actions of Continental in the context of their obligations under the pooling order.

7) Antero contends the ALJ stated in his report that the 3-D seismic data resulted in successful wells. Antero argues the ALJ failed to address the fact that the Hartley well was unsuccessful. Antero argues Continental's own witness, Mr. Kerrihard, admitted the 3-D seismic data "really didn't benefit all the owners in the Hartley #1-1H well."

8) Antero asserts the ALJ stated in his report that Antero had valid reasons for arguing that Continental could have filed a motion to extend the time to commence operations under the order. Antero argues the ALJ made this statement and then failed to follow through with the analysis as to this argument which is that Continental did not file the motion to extend because they didn't want to pay additional cash bonus to the parties who did not participate under pooling Order 547017.

9) Antero contends the problem with the ALJ's analysis is that he focuses on Antero instead of Continental. Antero asserts they are not the operator, and in this case the analysis should center on the obligations of the operator; not on what Antero thought, said, or did. Antero argues the Commission can't adopt the ALJ's recommendations because he did not comply with what the Supreme Court is telling him he should be doing in his analysis.

10) Antero states the obligations under the pooling order fall entirely on Continental. Antero states the pooling order provides that Continental must commence operations with respect to the initial well within one year from the date of the order, November 27, 2008. Antero argues the second obligation

under the pooling order requires Continental, if operations are commenced within the one year period, to diligently prosecute those operations in a reasonable and prudent manner. Antero claims if either of these two obligations are not met, the pooling order is null and void.

11) Antero states the initial well in this pooling order was intended to be a horizontal well in the Woodford formation, requiring a depth of roughly 15,000 feet. Antero states Continental's excuse throughout these proceedings has been that they were waiting on a 3-D seismic survey. Antero argues according to Exhibit 29, an e-mail between the 3-D seismic survey operators and Continental, Continental was informed the 3-D seismic survey could not be performed until December of 2009.

12) Antero states on October 23, 2008, Continental used a spudder rig to spud the well and drill to a depth of 1,993 feet. Antero contends Continental then stopped operations, moving the spudder rig off on November 8, 2008. Antero alleges, "when you put together the email, the spudder rig- which had no ability to drill to 15,000 feet – and move off on November 8, 2008, the only conclusion you can reasonably draw from...they had no intention of continuing operations on this well until they got the 3-D seismic, which they knew they weren't going to get until December of 2009, no intention of going forward with it and they didn't."

13) Antero states the one-year time period ended under the order on November 27, 2008. Antero contends nothing happened on this section until January 20, 2009 when Continental ran a log in the hole that had been drilled to 1,993 feet. Antero argues that log will not contain any information relevant to the Woodford formation, which is at 15,000 feet. Antero states this was a 73 day dead period of nothing happening on the well.

14) Antero contends Continental was able to receive their 3-D seismic test earlier than the original December date and were able to get it on September 26, 2009. Antero alleges Continental then sent Antero a letter on November 10, 2009, which basically stated Continental was going to continue operations on the Hartley #1-1H well. Antero contends this was the first contact they had received from Continental regarding Section 1, "since the very beginning."

15) Antero states Continental filed a completion report for the vertical well on November 24, 2009. Antero cites this 1002A as Exhibit 17. Antero argues the ALJ completely ignored some of the admissions the 1002A contained. Antero states the 1002A claims this vertical, not horizontal well, was spud October 25, 2008 and completed November 6, 2008. Antero then states the 1002A revealed that the well had been temporarily abandoned, with the remarks section stating this was due to economic circumstances. Antero argues the 1002A remarks section did not contain a mention of 3-D seismic testing.

16) Antero argues in October 2008 it became "very evident...that the great recession had hit us and hit us hard." Antero claims Antero fully understands why this well would be abandoned for economic reasons, but that it had nothing to do with a 3-D seismic test.

17) Antero asserts, "If somebody has abandoned the operations and states that to this commission in a document that is told to be true and correct, that is completely inconsistent with the idea of diligently prosecuting...and the ALJ didn't mention that."

18) Antero states Continental then moved a "real drilling rig" onto location which was capable of drilling to 15,000 feet, and commenced operations on November 24, 2009. Antero argues if you discount the "meaningless" log run on January 20, 2009, there was actually a dead period of 380 days between the spudding of the well and the next real operations on this well (November 8, 2008 to November 24, 2009).

19) Antero claims Exhibit 19, the second 1002A filed on the Hartley #1-1H well, contained an admission which the ALJ failed to address. Antero states in the second 1002A, Continental now correctly describes this well as a horizontal well with a spud date of December 8, 2009; not October 25, 2008 as the first 1002A indicated. Antero reasserts a spud date of December 8, 2009 would fall 376 days after the expiration of the one-year time period required under the pooling Order No. 547017.

20) Antero argues Continental never informed them or anyone else during these extensive dead periods as to why they were not doing anything in this section.

21) Antero contends that, "...what this Judge is saying is that by Continental doing nothing for 380 days, maybe 307 days – by doing nothing Continental was diligently prosecuting operations under the pooling order." Antero asserts this reasoning highlights the lack of analysis by the ALJ.

22) Antero states the pooling order had very specific obligations in which to comply with and that Continental failed to do so. Antero claims that what the ALJ has in fact done in this case is to change those obligations which subsequently changed the pooling order. Antero, citing *Amoco Production v. Corp. Com'n of Okla.*, 751 P.2d 203 (OK.CIV.APP. 1986), argues this is a violation of substantive due process.

23) Antero argues that the ALJ did find that there was an extensive time period, but that he did not do anything about this delay. Antero contends one of the big issues in this case is how long of a delay is too long. Antero admits Continental did start operations within the one-year period; however, Antero states the question remains if the extensive periods of delay were too long.

24) Antero cites Exhibit 20 as containing all of the oil and gas leases of Continental in Section 1. Antero states these leases contain a provision which provides if the lessee has commenced operations within the primary term, then the lessee can continue with these operations past the primary term so long as operations don't stop for 90 consecutive days. Antero contends all the leases have expired by virtue of this provision for lack of operations for 90 consecutive days. Antero argues this is the only standard the ALJ had in this case, and that he failed to recognize it in his analysis.

25) Antero states after all the leases cited in Exhibit 20 expired, Continental then renewed all the leases covering 144.16 acres. Antero contends by paying out new cash bonuses to renew the leases, Continental is treating all of the lessors subject to the new oil and gas leases and the old ones as expired. Antero alleges Continental's position of the difference in treatment from their leases as opposed to the pooling order is "inconsistent" and "disingenuous."

26) Antero contends, "Their operations didn't hold their leases, they weren't diligently prosecuting anything under their leases....it should not hold the pooling order involved here."

27) Antero argues there was evidence that Continental didn't file a motion to extend the pooling order because they did not want to pay the additional cash bonuses to all of those subject to the pooling order. Antero contends those who remained subject to the pooling order who elected not to participate were, "...actually deprived of a cash bonus they were probably entitled to under the pooling order because Continental just didn't want to file a motion to extend where they had the obligation to pay the additional cash bonus, even though they were more than willing to go out and renew their leases to pay it to the lessors."

28) Antero contends they originally entered into an agreement with Continental to be bound by this pooling order to save Continental time, because they believed Continental wanted to begin operations quickly in this section. Antero argues they were never informed about the delay or the reasons for the delay from Continental.

29) Antero concludes by stating the ALJ's analysis is lacking, and that the determination that the order was in full force and effect was contrary to both parties. Antero argues the proper analysis will deem the pooling order expired as of April 20, 2009. Antero contends if the ALJ's analysis is upheld, "...it is great for the operators because all they have to do is ignore the order, carte blanche to do whatever they want. And that's what you may get out of this decision."

CONTINENTAL

1) **David E. Pepper**, attorney, appeared on behalf of Continental, stated Antero suggests the evidence in this case is an attempt by Continental to make an excuse for not complying with the pooling order. Continental contends Antero's entire protest is actually an excuse for Antero to not pay their bill.

2) Continental contends Antero failed to discuss the case law which deals with prudent operators and the standard of due diligence. Continental cites page 23, paragraph 2, of the ALJ's report as stating: "Continental established that awaiting the 3-D seismic was a prudent decision that allowed them to drill successful wells that resulted in economic benefits to all parties involved in the wells. Page 23, paragraph 3, of the ALJ Report states: "Although the delay in this cause was extensive, this set of circumstances could not be controlled by Continental." The evidence showed that they made the best decision in a difficult situation." Continental states this shows that an analysis of the evidence was conducted by the ALJ.

3) Continental states Article 9, Section 20 of the Constitution mandates the substantial evidence test to be the standard for the ALJ and Referee. See *MCI Communications Corp. v. State*, 823 P.2d 351 (Okl. 1991).

4) Continental, cites *El Paso v. Corporation Commission*, 640 P.2d 1316 (Okl. 1981), as finding that the determination of whether substantial evidence exists to support a Commission order does not require the evidence be weighed, but only that there be evidence tending to support such an order.

5) Continental states they agree with Antero as to their assertion that the issues to be determined in this case are whether Continental commenced operations within one year, and second whether Continental pursued these operations in a prudent and diligent manner. Continental states both parties agree Continental did commence operations within one year.

6) Continental contends "prudent operator" is a term of art in the oil and gas industry. Continental cites *U.S. v. City of Pawhuska*, 502 F.2d 821 (10th Cir. 1974), as stating the "prudent operator rule imposes an implied duty on a lessee 'to do whatever in the circumstances would be reasonably expected of a prudent operator of a particular lease, having a rightful regard for the interest of both the lessor and lessee.'"

7) Continental cites *Gregg et al. v. Harper-Turner Oil Co. et al*, 199 F.2d 1 (10th Cir. 1952), for the proposition that in cases of determining whether there has been unreasonable delay, each case depends on its own facts and circumstances. Continental argues despite the wishes of Antero, there are no "hard and fast" rules as to what constitutes unreasonable delay.

8) Continental cites *Meeker v. Ambassador Oil*, 308 F.2d 875 (10th Cir. 1962), for the proposition that due diligence is measured by what a reasonably prudent operator would do under the then existing facts and circumstances. Continental contends this ties due diligence to prudent operations.

9) Continental further cites *Sun Oil v. Frantz*, 291 F.2d 52 (10th Cir. 1961), as finding the prudent operator standard to be a rule which, imposes the implied duty to do whatever in the circumstances would be reasonably expected of a prudent operator, and each case stands on its own facts, and rules of fair play must be applied.

10) Continental cites *Newell v. Phillips Petroleum Co.*, 144 F.2d 338 (10th Cir. 1944) which states:

Operating an oil and gas well "prudently and with reasonable diligence" means doing of that which an experienced operator of ordinary care and prudence would do in similar circumstances, or failure to do that which such an operator would not do in similar circumstances, having due regards for rights, interest, and advantages of both lessor and lessee.

11) Continental contends their landman, Mr. Schooley, testified about notice as to spacing to Antero as well as "basically everybody" that could have been involved in pooling Order No. 547017. Continental argues contrary to Antero's assertions, Continental in this case is not seeking to clarify this pooling order, but rather is attempting to determine if the pooling order was complied with.

12) Continental states their landman, Mr. Schooley, testified as to Order No. 591254, Exhibit 2. Continental argues Order No. 591254 was a case very similar to the case at bar.

13) Continental states in the case that resulted in Order No. 591254 they used a spud rig to drill not only the Hartley #1-1H well, but also the Marilyn #1-29H and Florenzano #1-29H wells. Continental contends they made the determination that they needed 3-D seismic surveys before they drilled deeper.

14) Continental argues that in the case involving the Marilyn #1-29H well, after receiving the 3-D seismic survey the well was then drilled to completion. Continental asserts Antero was in the Marilyn #1-29H well which turned out to be a successful well.

15) Continental alleges Antero disputed the validity of the pooling order in both the Marilyn #1-29H and the Hartley #1-1H wells. Continental states they filed the same type of applications in both wells, and that the day the protested

hearing came up for the Marilyn #1-29H well, Antero withdrew their protest. Continental suggests Antero withdrew their protest because the Marilyn #1-29H well was a successful producing well.

16) Continental states in the Marilyn #1-29H well protest, ALJ Leavitt issued an order based on the same evidence the ALJ heard in this case. Continental states ALJ Leavitt found they acted in a prudent manner with due diligence, and as such the pooling order was in full force and effect. Continental states this is Exhibit 11 in this case.

17) Continental states their landman, Mr. Schooley, testified that after the well was drilled with the spud rig and after the 3-D seismic information was received and evaluated, he sent out letters to all the parties with an interest in the Marilyn #1-29H and the Hartley #1-1H wells. Continental states these letters informed all of the parties that they were resuming operations. Continental contends roughly 40 phone calls took place between Mr. Schooley and Antero between the period of time when the operations resumed and the period of time in August when Antero put their position in writing as to the pooling order. Continental argues this displays there was, "plenty of discussion about what was going on."

18) Continental states their geophysicist, Ken Ainsworth, testified that no one in the industry disputes the idea that a 3-D seismic survey is a much more effective tool than a 2-D. Continental argues they did drill two wells using 2-D seismic. Continental states one of these wells, the Mary #1-6H well, was drilled in the spring of 2007. Continental argues this well had poor depth interpretation, missed the Woodford targeted formation, and subsequently is a poor well which will never be profitable.

19) Continental argues after the failure of the Mary #1-6H well, they signed a \$3.4 million contract for a 3-D seismic survey with a third party. Continental contends they were informed it would take between nine months and one year for the 3-D seismic survey; an acceptable timeframe according to Mr. Ainsworth and his years of experience in the industry.

20) Continental states in early 2008 they drilled the Emma Lou #1-32H well despite not having the 3-D seismic. Continental argues they thought they had a good 2-D line along with a need to get the well drilled, but again this well wasn't landed properly, hit a fault and will not be a profitable well.

21) Continental states after the poor outcome of the Emma Lou #1-32H well, Mr. Ainsworth recommended Continental not drill any more wells without the 3-D seismic survey. Continental contends Mr. Ainsworth testified that in the spring of 2008 Continental became aware they would not be receiving the 3-D seismic data as soon as they originally believed they would. Continental

alleges this is when the decisions were made to wait to drill any more wells until they had the results of the 3-D seismic survey.

22) Continental, according to Mr. Ainsworth's testimony, alleges they considered running their own seismic sheet once they began to realize their contracted seismic survey was going to take longer than originally anticipated. Continental argues the decision was made that they did not feel they could get the seismic information any more timely than by simply waiting on the one they had already contracted to receive.

23) Continental argues Mr. Ainsworth testified that, "...in all his years of experience this was the worst situation he'd been involved in obtaining the data that he had paid for. But they did get it. And they immediately analyzed it, and they moved in rigs to drill the Marilyn #1-29H and the Hartley #1-1H well." Continental states they moved in the rigs to drill the Marilyn #1-29H well and the Hartley #1-1H well in the fall of 2009.

24) Continental states there were three wells in which they were waiting for the 3-D seismic survey; the Marilyn #1-20H, Hartley #1-1H and Florenzano #1-36H wells.

25) Continental argues they chose not to drill the Florenzano #1-36H well due to the information the 3-D seismic revealed about the section and its heavy faults. Continental contends they removed the spudder well and refunded all the money to the people that had paid for the spudder rig on the Florenzano #1-36H well. Continental alleges "if that's not good faith, I don't know what is."

26) Continental contends they changed the angle at which they planned to drill the Marilyn #1-29H well after receiving the 3-D seismic survey. Continental asserts the Marilyn #1-29H well has been a very successful well; the best Continental well in Pittsburg County. Continental argues the Marilyn #1-29H well is the well which Antero does not take issue with.

27) Continental argues the angle was also changed on the Hartley #1-1H well once the 3-D seismic survey was reviewed. Continental contends the Hartley #1-1H was still not a successful well, but that it had nothing to do with the geophysical information. Continental argues the Hartley #1-1H well was not successful because of sloughing of the reservoir.

28) Continental states reservoir engineer, Ken Kerrihard, testified as to the analysis he had conducted on the wells that had been drilled without 3-D seismic information as well as those drilled with 3-D seismic information. Continental states Mr. Kerrihard testified that the over \$14 million that was spent on the Emma Lou #1-32H and Mary #1-6H wells would never be paid back. Continental argues Mr. Kerrihard testified that, "...after those two wells were drilled Continental could not continue with those kinds of results and had

to get something better out there." 3-D seismic gives the best chance of navigating drilling hazards and faults.

29) Continental contends they used the 3-D seismic survey to drill five wells. Continental asserts while all five wells do produce, the Hartley #1-1H well is the only one that will not pay out and be successful due to mechanical difficulties. Continental argues the 3-D seismic survey benefitted all the working interest owners including Antero in the wells, particularly the Marilyn #1-29H well.

30) Continental argues drilling engineer, Glenn Cox, testified that the 3-D seismic made his job much easier as to landing and steering the well. Continental contends the wells that were drilled with the 2-D seismic survey contained unseen faults that would have been seen using a 3-D seismic survey.

31) Continental alleges Mr. Ainsworth provided testimony and a number of maps which showed all the wells before-and-after the 3-D seismic survey. Continental states Mr. Ainsworth's testimony showed it was prudent they use 3-D seismic based on the money they were spending and the results they hoped to obtain.

32) Continental states the only witness Antero presented to rebut their prima facie case was Max Green, a landman who has been in the business about three years. Continental argues Antero's witness, Mr. Green, testified he believed the pooling order expired ninety days from the last activity on the well. Continental alleges Antero did not have that opinion while all these events were taking place, but instead came up with it later in an attempt for "why they shouldn't pay their bill."

33) Continental asserts Antero did not bring a geophysicist of their own to argue Mr. Ainsworth was wrong. Continental further asserts Antero did not bring in an engineer to argue Mr. Cox and Mr. Kerrihard were incorrect in stating the 3-D seismic surveys were needed for successful wells. Continental argues instead, Antero only introduced a landman to testify that "we should somehow adopt oil-and-gas lease terms in our pooling order across the board in the area."

34) Continental argues the case law says due diligence is based on a case-by-case analysis. Continental contends they acted in good faith as to all of these wells, moving forward when they could and ultimately taking the correct course.

35) Continental contends despite Antero's argument, a motion to extend the pooling would not have done anything for Antero. Continental states these motions only provide compensation for people that take cash under the pooling order.

36) Continental argues Antero's discussion of the 1002A is "just a distraction away from the real issue, the evidence suggesting prudent operations and due diligence." Continental states the Commission made them file this 1002A to get a permit to resume the drilling.

37) Continental alleges that if the Hartley well had been a good well, the parties would not be in this dispute; rather, Continental alleges this order would have been entered similar to the Marilyn well.

38) Continental argues prudent and diligent operations should not be based on whether the well was ultimately successful or not. Continental states this is not the law.

39) Continental contends Antero did not notify them they did not agree the pooling order was still in effect, until ten months after Continental had notified Antero they were resuming operations.

40) Continental states they have an 87.5% interest in the Hartley #1-1H well and Antero had the remaining 12.5%. Continental argues they were really bearing the risk in this well.

41) Continental states they agree with Antero and did not contest that the pooling order expired in June of 2010.

42) Continental concludes by stating and requesting, "...that it was prudent and it was the best they could do to get it done when they did, we would request that you would affirm the report of Judge Norris."

RESPONSE OF ANTERO

1) Antero argues Continental essentially is arguing that by only waiting, they complied with the diligently prosecuting component of the pooling order.

2) Antero argues the second 1002A contains admissions that the well was temporarily abandoned by Continental.

3) Antero contends Continental knew when they brought the spudder rig on location on October 23, 2008, that they would not be getting the 3-D seismic survey until sometime in December of 2009. Antero argues this is an admission against the diligent prosecution of operations by Continental.

4) Antero asserts the substantial evidence rule is not the standard to apply to this case, but instead the preponderance of the evidence is the standard for the Referee to apply.

5) Antero states all of the cases cited by Continental are federal cases, with no Oklahoma cases being cited. Antero alleges, "...in this case we have standards that have been accepted by the Applicant, by the Protestant and by third-party operators in the area about the 90-day cessation."

6) Antero contends Continental, "did an extraordinarily good job of prejudicing Judge Norris against us because of the Marilyn #1-29H order that we let go."

7) Antero argues they did not protest the Marilyn #1-29H pooling order because it had no benefit to them because it was a productive well. Antero argues the only people who would have benefitted from them protesting would have been those parties who elected not to participate. Antero argues the only party that would have been hurt had they decided to protest would have been Continental. Antero further argues they do not have "unlimited time and money to come down here and protest a case out of sheer principle to benefit some third party that...would have an opportunity to come back in to a producing well...That would really be more vengeful of Antero against Continental. We didn't do that."

8) Antero argues the mention of the Marilyn #1-29H pooling is all a red herring, and that all that is relevant is the actions of Continental under the Hartley #1-1H order.

9) Antero states the evidence in the Marilyn #1-29H case and this Hartley #1-1H case are different with different sets of facts.

10) Antero argues because they did not protest the Marilyn #1-29H order, Continental's witnesses were not subject to cross-examination and could say things without being contested. Antero asserts uncontested cases contain certain things that aren't tested.

11) Antero concludes by requesting, "Don't be prejudiced by an uncontested order entered on the Marilyn well, which we chose not to protest because it had no benefit to us, and parties should not be required to protest every application for a principle because it may impact something they do. You have got to limit it to the facts of this case. I submit that the report should not be adopted."

CONCLUSIONS

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

- 1) Paragraph 10, page 5 of pooling Order No. 547017 states:

That Continental Resources, Inc, must commence operations for the drilling and other operations with respect to the well covered hereby within one (1) year from the date of this Order, and diligently prosecute the same to completion in a reasonably prudent manner or this Order shall be null and void except as to the payment of cash bonuses.

- 2) In July 2007 Continental contracted for 3-D seismic in this area and anticipated having the 3-D seismic data within one year, prior to the expiration of the one year pooling Order No. 547017. Continental staked the Hartley #1-1H well location in October of 2007 and pooling Order No. 547017 was issued November 27, 2007. Continental built the location and pit and obtained a permit to drill and began constructing location. Continental contracted a spud rig, spud the well, drilled a couple thousand feet and set surface and intermediate casing in anticipation of having the 3-D seismic data by the fall of 2008. Continental released the spud rig in November of 2008 and ran logs in January of 2009. Continental received 3-D seismic on September 26, 2009. On November 24, 2009, they moved in the Victory #4 rig which was capable of drilling to total depth and drilled the Hartley #1-1H well. Continental had to bring in a second rig because the Victory Drilling Company went bankrupt during the drilling process and the Victory #4 rig was released on January 27, 2010. Continental had to wait for the second rig and it moved in, the Patterson #4-21 rig, on May 4, 2010. After the new rig was moved in for the Hartley #1-1H well it drilled into the Woodford laterally and eventually lost the hole and a tool. Ultimately due to the mechanical problems Continental had to pull out of the hole and on June 27, 2010 they released the rig. Continental's contention is that this pooling Order No. 547017 is effective until June 27, 2010 when the new rig, the Patterson #4-21 rig was released.

- 3) Antero acknowledges and states in their August 10, 2010 letter to Continental, Exhibit 10, that: "We understand that Continental did spud the referenced well on or about October 25, 2008, which was within the one year period established by the Order." Continental informed Antero on November 11, 2009 by certified mail, Exhibit 4, that:

("Continental") previously spud the Hartley #1-1H well located in Section 1-5N-15E, Pittsburg County. The purpose of this letter is to inform you that Continental intends to continue drilling the Hartley #1-1H Woodford test well as originally proposed.

Exhibit 8, an e-mail from Antero to Continental on May 6, 2010 requested:

I was just looking for an update on the Marilyn and Hartley wells. Anything that you could give me would be helpful i.e., have they been completed, are they flowing, how do they look etc....Thank you!

Exhibit 10 is a letter from Antero to Continental on August 10, 2010 which states in part:

We understand that Continental did spud the referenced well on or about October 25, 2008, which was within the one year period established by the Order. Further, it is our understanding that Continental drilled the well to an approximate depth of 1,995 feet and ceased any further operations on the well on or about November 6, 2008. Lastly, Continental had no further operations on the well until December 1, 2009, or roughly thirteen (13) months later....Because of Continental's lack of operations stated above on the Hartley 1-1H well, it is Antero's position that the Pooling Order expired under its own terms and is no longer in effect.

4) As stated above the completion of the Woodford Hartley #1-1H horizontal well was delayed because Continental did not timely receive 3-D seismic data for which it had contracted. The evidence provided demonstrated that this delay was not created by Continental but by the seismic provider. The ALJ states in his Report on page 23, paragraph 2:

Continental established that awaiting the 3-D seismic was a prudent decision that allowed them to drill successful wells that resulted in economic benefits to all parties involved in the wells.

The ALJ in his Report in paragraph 3 on page 23 further states:

Although the delay in this cause was extensive, this set of circumstances could not be controlled by Continental. The evidence showed that they made the best decision in a difficult situation.

5) Antero agrees that Continental complied with pooling Order No. 547017, paragraph 10 by commencing operations "for the drilling and other operations with respect to the well covered hereby within one (1) year from the date of this order." Antero in its letter of August 10, 2010 to Continental states

that Continental did spud the Hartley #1-1H well within the one year period established by Order No. 547017. The question then becomes whether Continental "diligently prosecuted the same to completion in a reasonably prudent manner." See paragraph 10 of pooling Order No. 547017.

6) Continental used a spud rig to drill not only the Hartley #1-1H well but also the Marilyn #1-29H well and the Florenzano #1-36H well. Continental made the determination that they needed 3-D seismic surveys before they drilled deeper in these wells. Continental sent out letters to all of the parties with an interest in the Marilyn #1-29H and the Hartley #1-1H wells in November of 2009 after they received the 3-D seismic information which was evaluated. Continental in these letters informed all the parties they were resuming operations in these wells. The Marilyn #1-29H well after receiving the 3-D seismic survey was drilled to completion and was a successful well. The day the protested hearing concerning the Marilyn #1-29H well came on for hearing, Antero withdrew their protest apparently because the Marilyn #1-29H well was a successful producing well. The ALJ in Order No. 591254, which was the order issued by the Commission concerning the Marilyn #1-29H well, found that Continental "exercised due diligence and acted as a prudent operator in awaiting the delivery of the seismic information." The ALJ therefore found that Pooling Order No. 544255 was valid and in full force and effect and "has been perpetuated by the activities of Continental Resources, Inc." The ALJ further found in Order No. 591254 that "Continental Resources, Inc. timely drilled the well and prosecuted the same to completion in a reasonably prudent manner."

7) There was significant evidence presented concerning the value of 3-D seismic rather than 2-D seismic. Continental presented evidence that they drilled the Mary #1-6H well in the spring of 2007 which used 2-D seismic and had poor depth interpretation, missed the Woodford targeted formation and subsequently is a poor well which will never be profitable. In early 2008 Continental drilled the Emma Lou #1-32H well despite not having the 3-D seismic yet. Continental thought they had a good 2-D seismic survey and needed to get the well drilled. However they hit a fault and the Emma Lou #1-32H will not be a profitable well. Continental then decided that they would not drill anymore wells without the 3-D seismic survey. In the spring of 2008 Continental found out that they would not be receiving the 3-D seismic data as soon as they originally believed they would within the year after they made the seismic contract. However, Continental then made the decision that they would still wait to drill any more wells until they had the results from the 3-D seismic survey. After having signed the seismic contract in August of 2007 they received the 3-D seismic covering the Hartley #1-1H location and the Marilyn #1-29H location in September of 2009. They immediately analyzed it and moved rigs to drill the Marilyn #1-29 well and the Hartley #1-1H well. Continental chose not to drill the Florenzano #1-36H well due to the information the 3-D seismic revealed about the section and its heavy faults.

While the Hartley #1-1H was not a successful well it had nothing to do with the geophysical information but was due to mechanical problems. The 3-D seismic survey therefore benefitted all the working interest owners including Antero in the wells, particularly the Marilyn #1-29H well.

8) The Referee agrees with the ALJ that Continental pursued its operations obligation in the Hartley #1-1H well in a prudent and diligent manner. *United States v. City of Pawhuska*, 502 F.2d 821 (10th Cir. 1974) states:

The prudent operator rule imposes an implied duty on a lessee "to do whatever in the circumstances would be reasonably expected of a prudent operator of a particular lease, having a rightful regard for the interest of both the lessor and lessee....in Oklahoma the prudent operator rule, like other rules of equity, "is not inflexible."

9) Due diligence in drilling an oil and gas well is measured by what a reasonably prudent operator would do under the existing facts and circumstances. See *Meeker v. Ambassador Oil Company*, 308 F.2d 875 (10th Cir., 1962). The Court in *Sun Oil Company v. Frantz*, 291 F.2d 52 (10th Cir. 1961) stated:

Basically the prudent operator rule applies and imposes upon the lessee "the implied duty to do whatever in the circumstances would be reasonably expected of a prudent operator of a particular lease, having a rightful regard for the interest of both the lessor and the lessee". Each case stands on its own facts and "the cardinal principles that govern the mutual duty of fair play" must be applied.

10) In *Newell v. Phillips Petroleum Company*, 144 F.2d 338 (10th Cir. 1944) the Court stated:

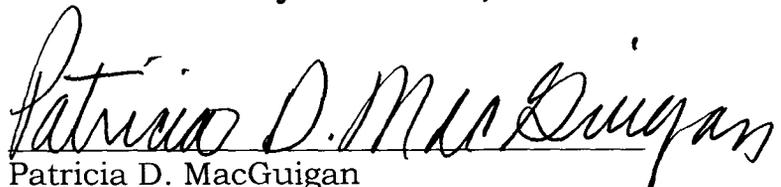
Operating an oil and gas well "prudently and with reasonable diligence" means doing of that which an experienced operator of ordinary care and prudence would do in similar circumstances, or failure to do that with such operator would not do in similar circumstances, having due regards for rights, interest and advantages of both lessor and lessee".

Lastly the Court in *Gregg et al v. Harper-Turner Oil Co., et al.*, 199 F.2d 1 (10th Cir. 1952) stated that in cases of determining whether there had been unreasonable delay in drilling additional wells, "each case depends upon its own peculiar facts and circumstances, since no hard or fast rule can be laid down as to what constitutes unreasonable delay."

11) The Referee agrees that Continental presented substantial evidence that it was prudent that Continental use 3-D seismic based on the money they were spending and the results they hoped to obtain from the wells. 3-D seismic made Continental's job much easier as to landing and steering the well and in determining unseen faults that would have not been seen using a 2-D seismic survey. The evidence clearly reflected that 3-D seismic surveys were needed for successful wells.

12) The determination of whether substantial evidence exists does not require that the evidence be weighed, but only that there be evidence tending to support such order, i.e. the proof must be "more than mere scintilla". *MCI Communications Corporation v. State*, 823 P.2d 351 (Ok. 1991). "The "substantiality" of the evidence must take into account whatever in the record fairly detracts from its weight. Searching a record for its substantial evidence "does not entail a comparison of the parties' evidence to determine that which is most convincing but only that the evidence supportive of the order be considered to determine whether it implies a quality of proof inducing a conviction that the evidence furnished a substantial basis of facts from which the issue could be reasonably resolved." *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Ok.Civ.App. 1995). For the above stated reason the Referee agrees with the Conclusions and Recommendations of the ALJ that Continental presented substantial evidence that waiting for the 3-D seismic was a prudent decision that allowed Continental to drill successful wells which resulted in economic benefits to all parties involved in the wells. The Referee also agrees that the delay from August 2007 when the seismic contract was signed by Continental and receiving the 3-D seismic in September of 2009 was not the fault of Continental and could not be controlled by Continental. The Referee agrees that Continental acted in good faith and pursued the operations in a reasonably prudent and diligent manner.

RESPECTFULLY SUBMITTED THIS 29th day of October, 2012.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Michael Norris
David Pepper
John R. Reeves
Office of General Counsel
Michael L. Decker, OAP Director
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