

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
JUN 05 2012

APPLICANT: CONTINENTAL RESOURCES,
INC.

RELIEF SOUGHT: POOLING

LANDS COVERED: SECTION 25, TOWNSHIP 16
NORTH, RANGE 13 WEST,
BLAINE COUNTY, OKLAHOMA

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CORPORATION COMMISSION
OF OKLAHOMA

) CAUSE CD NO.
) 201103915
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REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 26th 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 E. Pepper**, attorney, appeared on behalf of applicant, Continental Resources, Inc. ("Continental"); **Charles L. Helm**, attorney, appeared on behalf of JMA Energy Company, LLC ("JMA"); **Emily Smith**, attorney, appeared on behalf of Chesapeake Operating, Inc. and Chesapeake Exploration, LLC ("Chesapeake"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 24th day of February, 2012, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Oral argument concerning the Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 27th day of April, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

JMA filed exceptions concerning the ALJ's recommendation to grant the application in CD 201103915 seeking to pool Section 25, T16N, R13W, Blaine County, Oklahoma for the Tonkawa, Cottage Grove, Hogshooter, Checkerboard, Cleveland, Oswego, Cherokee, Red Fork, Inola, Atoka, Morrow, Springer, Chester, Mississippi, Kinderhook and Woodford; that fair market values be established as \$1,000 per acre and a 3/16th total royalty, or \$500 an acre and a 1/5th total royalty, or no cash and a 1/4th total royalty; that the subsequent well provision include language indicating that in order to propose a well a party must obtain the necessary regulatory orders before making such proposal; and that the order provide participants the option to share in force pooled acreage.

At the time of the hearing the Hunton was dismissed on motion of Continental. Continental seeks to establish fair market value for the pooling order in this case and JMA is opposed to the values sought by Continental. Continental seeks to establish fair market value as \$1,000 per acre and a 3/16th total royalty, or \$500 an acre and a 1/5th total royalty, or no cash and 1/4th total royalty. Continental indicated those are the highest terms that have been paid in the last year except for a 2.5 acre transaction which occurred after they filed their application to pool this unit. Continental seeks to distinguish that small transaction taken after the pooling as not reflective of fair market value since they believe it was taken in anticipation of the pooling action and the drilling of the well here. Continental has considered leases going back for a 12 month period from the hearing date and have tied some of the lease values to gas prices which they track on the NYMEX. Further as gas prices have gone down Continental decided to move out of Blaine County and into Grady County where the gas there is more oil and liquid rich and they feel this change in development, based on product prices, also affects fair market value. JMA has recommended a higher value of \$2,200 per acre and a 3/16th total royalty, \$2,100 per acre and a 1/5th total royalty or no cash and a 1/4th total royalty. These values are based on leases taken in the nine section area back in 2010 and also in reliance upon the recent 2.5 acre lease taken in the unit being pooled, which they acknowledge was taken after the application to pool had been filed. JMA did not believe that a distinction should be made based on product prices and in fact disagreed with Continental testimony about this not being a liquid or oil rich gas play in Blaine County. Additionally JMA has asked for the subsequent well provision requiring that in order to propose a subsequent well here that any party seeking to propose the well would have to have obtained any necessary regulatory authority for the proposed well before they propose it to other working interest owners in the unit. Continental opposes such a provision.

JMA TAKES THE POSITION:

- (1) The Report of the Administrative Law Judge is contrary to the law and to the evidence.
- (2) The matter before the Commission is a pooling application covering Section 25, T16N, R13W, Blaine County, Oklahoma. Continental is the Applicant and JMA is a respondent.
- (3) At issue is the proper bonus consideration to be given for a 1/5th royalty option. The ALJ recommended respondents be given the option of \$500 per acre bonus for a 1/5th royalty. JMA recommended respondents be given the option of \$2,100 per acre bonus for a 1/5th royalty. Continental recommended respondents be given the option of \$500 per acre bonus for a 1/5th royalty.
- (4) Both Continental and JMA have taken leases in Section 25, T16N, R13W, Blaine County, Oklahoma, for a 1/5th royalty. Continental took 1/5th royalty leases in March, 2010 and paid \$1,000 per acre cash bonus. JMA took 1/5th royalty leases in June, September and November, 2010 and paid \$1,100, \$2,100 and \$1,850 per acre cash bonus respectively. No evidence was submitted regarding any other 1/5th royalty transactions in the unit or any of the eight contiguous offset sections, except the 1/5th royalty leases in Section 25, T16N, R13W, Blaine County, Oklahoma, taken by Continental and JMA. The only evidence of cash bonus transaction for a 1/5th royalty were the Continental and JMA leases where bonus ranged from \$1,000 to \$2,100 for a 1/5th royalty.
- (5) The last six transactions in the unit being pooled, Section 25, were taken in 2010 and 2011 in the following order: (a) \$1,600 at 3/16th; (b) \$1,850 at 1/5th; (c) \$2,100 at 1/5th; (d) \$1,100 at 1/5th; (e) \$1,000 at 1/5th; and (f) \$1,000 at 1/5th.
- (6) Without regard to any of the "actual" transactions from leasing activity in Section 25, the unit being pooled, the ALJ found that fair market value in Section 25, T16N, R13W, Blaine County, Oklahoma, should be as follows: (a) \$1,000 at 3/16th; (b) \$500 at 1/5th; (c) No cash and a 1/4th.
- (7) For every lease transaction in Section 25, T16N, R13W, Blaine County, Oklahoma in the calendar years 2010 and 2011 where a bonus was paid for a 3/16th or 1/5th royalty, the same was higher than the bonus recommended by the ALJ.

(8) The ALJ erred in finding that the value of mineral interest in Section 25 was somehow less than the value actually paid by Continental, Greenstar and JMA in Section 25, T16N, R13W, Blaine County, Oklahoma.

(8) The ALJ erred in finding that the value of mineral interest in Section 25 must be lower than actually paid by Continental, Greenstar and JMA because the price of gas was less on the day of the hearing than it was eleven months earlier.

(9) The ALJ erred in finding that the value of mineral interest in Section 25 must be lower than actually paid by Continental, Greenstar and JMA because "Here the product price has fluctuated but has trended down, so much so that Continental is curtailing this development here and moving to other areas."

(10) The ALJ erred in finding that the value of mineral interest in Section 25 must be lower than actually paid by Continental, Greenstar and JMA because "Also several companies are packaging acreages here to sell and there is no indication that they have been successful in selling off their acreage yet."

(11) The ALJ erred in finding that the Commission should not consider the most recent transaction in Section 25 for value purposes where Greenstar paid \$1,600 an acre and a 3/16th. The Greenstar lease is the most recent transaction in Section 25 and is for a greater bonus of \$1,600 than the ALJ recommended for a 3/16 royalty of \$1,000.

(12) The ALJ's reasoning for discounting the Greenstar lease was that "The value looks anomalous in the overall trend down in values and appears to be a small lease amount taken for a premium amount in anticipation of the pooling and drilling of a well here."

(13) First, the ALJ erred in finding the lease was taken for a premium amount in anticipation of the pooling and drilling of a well here. The evidence at the hearing was just the opposite. JMA's land witness said his brokers contacted Greenstar and they did not say they paid a premium in anticipation of the pooling and drilling of a well here.

(14) Secondly, the ALJ erred in finding the value looks anomalous. Greenstar paid \$1,600 bonus and 3/16th royalty. The prior two leases taken in Section 25, the unit being pooled, were for \$1,850 and \$2,100 bonuses respectively. There was evidence presented that Continental paid \$2,000 and 3/16th for a lease in Section 25, the unit being pooled; \$1,500 and 3/16th for leases in Section 23, T16N, R13W; and \$1,500 and 3/16th for leases in Section 30, T16N, R12W, and that Crow Creek paid \$1,500 and 3/16th in Section 36, T16N, R13W, Blaine County, Oklahoma.

(15) JMA respectfully requests that the Report of the ALJ be reversed and that the Commission issue a pooling order with values and options consistent with values paid in Section 25, T16N, R13W, Blaine County, Oklahoma, and more particularly, provide for an option of \$2,100 cash bonus and a 1/15th royalty.

THE ALJ FOUND:

(1) After taking into consideration all the facts, circumstances, evidence and testimony presented in this cause, it is the recommendation of the ALJ that the application of Continental seeking to pool Section 25, T16N, R13W, Blaine County, Oklahoma as to the Tonkawa, Cottage Grove, Hogshooter, Checkerboard, Cleveland, Oswego, Cherokee, Red Fork, Inola, Atoka, Morrow, Springer, Chester, Mississippi, Kinderhook and Woodford common sources of supply be granted. That the only protested issues are the fair market value and the inclusion of certain language in the subsequent operation's provisions. It is the recommendation of the ALJ that as to well costs, timeframes and operator that the order include the unprotested recommendation of applicant's landman.

(2) As to the issue of fair market value it is the recommendation of the ALJ that fair market value be established as recommended by Continental's landman of \$1,000 per acre and a 3/16th total royalty or \$500 an acre and a 1/5th total royalty or no cash and a 1/4th total royalty. Continental reviewed transactions from the date of the protested hearing on the merits and back one year. Protestant noted that there are higher transactions if one reviews one year back from the date of the filing. They note the Commission can review back that far and can also look back as much as two or three years from the hearing date to determine fair market value. The ALJ did review all of those referenced transactions. Values have trended down from the higher values paid in mid to late 2010 and earlier. While applicant tied this downward trend in values to overall falling product prices protestant did not feel that would be an applicable consideration. It is the opinion of the ALJ that over time product price has an impact on industry development overall and eventually can impact fair market value. Certainly it would depend on timing and area and on what the product is. Here the product price has fluctuated but has trended down, so much so that Continental is curtailing their development here and moving to other areas. Also several companies are packaging acreages here to sell and there is no indication that they have been successful in selling off their acreage yet. JMA objected to the distinction of a small 2.5 acre transaction for \$1,600 an acre in the unit which was taken after the filing of the application to pool. The ALJ finds the distinction is reasonable. The value looks anomalous in the overall trend down in values and appears to be a small lease amount taken for a premium amount in anticipation of the pooling and drilling of a well here. Protestant charged that distinguishing this transaction created a narrow

window of review in that applicant was seeking to limit review to a six month period beginning around the end of January 2011 and not considering any transactions after the May 2011 transactions which Continental had noted. It is the opinion of the ALJ that the review is not so limited, that applicant only sought to eliminate from consideration the small acreage transaction taken in anticipation of a well being drilled after the pooling application had been filed. This distinction, if it can be made, is commonly used by applicants in establishing fair market value. Protestant also charged that applicant was manipulating the timeframe for fair market value review by only going back one year from the date of the hearing on the merits. The ALJ notes that often times there is a delay in getting a case set for hearing because the companies and/or the attorneys are extremely busy. Here there were five months or so between the time applicant filed in August 2010 and the case came to trial at the end of January 2012. There was no indication on the record that this delay was deliberately engineered by Continental in an effort to avoid discussing higher transactions occurring earlier in time. As was pointed out earlier in this Report, the ALJ did review all the referenced transactions and also considered the trend in values for leases and the overall trend in product prices in making her recommendation as to fair market value.

(3) As to the language JMA requested to be included in the subsequent operations provision it is the opinion of the ALJ that it would be reasonable for any party proposing a subsequent well to obtain all the necessary regulatory orders first. Continental offered on the record to JMA a side agreement so that upon proposal of a well JMA could delay payments of cost so that their participation monies would not be held for a lengthy time if Continental needed additional time to get their regulatory orders in place after proposing the subsequent well. It is the opinion of the ALJ that in order to propose a subsequent well that those regulatory orders should be in place and that it would be less than fair for Continental to give a side agreement to JMA to not pay their costs upon a proposal while regulatory orders are then obtained and yet have other participants pay their costs within 25 days from the date of the proposal and have their monies held. Therefore, it is the recommendation of the ALJ that this disputed language as to regulatory orders be included in the subsequent operations provision.

POSITIONS OF THE PARTIES

JMA

1) **Charles Helm**, attorney, appeared on behalf of JMA and asserted that the sole issue concerning the exceptions is the measure of compensation to be

provided under the pooling agreement to owners that elect not to participate. JMA contends that specifically the bonus that accompanies the 1/5th royalty election is at issue.

2) JMA asserts that it owns approximately 45 acres in the pooled unit in Section 25. JMA contends that for its three leases in the unit for which it provided a 1/5th royalty, JMA paid a \$1,100 bonus, a \$1,850 bonus, and a \$2,100 bonus. JMA cites Exhibit 2, Exhibit 3, and Exhibit 4. JMA asserts that Continental paid \$1,000 bonuses for its two 1/5th royalty leases. JMA contends that no other 1/5th royalty leases in the unit or any of the eight offset units were provided as evidence. JMA reasserts that the only 1/5th royalty leases provided as evidence in this matter were the leases taken by JMA and Continental.

3) JMA contends that at hearing the land expert provided by Continental recommended a \$500 bonus to accompany a 1/5th royalty lease.

4) JMA asserts that it recommended a \$2,100 bonus and a 1/5th royalty, which was the highest price paid in the unit.

5) JMA states that the ALJ recommended \$500 to accompany a 1/5th royalty lease. JMA cites pages 18-20 of the ALJ's Report.

6) JMA contends that the recommendation of a \$500 bonus was not based on any transaction. JMA asserts the recommendation is below any existing 1/5th royalty bonus or transaction that has been given in the unit being pooled. JMA contends that the ALJ's recommendation is based upon prices in the natural gas market. JMA cites paragraph 18 of the Report of the ALJ.

7) JMA asserts that the land witness for Continental provided historical gas pricing at the hearing. JMA contends that testimony was given that in January 2009, the price of natural gas was \$4.64 per MCF; that in April 2009, the price of natural gas was \$2.60 per MCF; that in September 2009, the price of natural gas was \$2.47 per MCF; that in October 2009, the price of natural gas was \$3.50 per MCF; that in November 2010, the price of natural gas was \$3.03 per MCF; that in February 2011, the price of natural gas was \$4.40 per MCF; and that in January 2012, the price of natural gas was \$2.73 per MCF.

8) JMA contends that contrary to the statements of the ALJ that gas prices are trending downward, the price of natural gas is fluctuating and subject to broad interpretation.

9) JMA asserts that the ALJ ought to have based her decision on the evidence of gas prices in the record. JMA contends that there was evidence

that gas was selling at \$3.03 per MCF when Continental took one of their 1/5th royalty leases in the unit.

10) JMA contends that gas prices are the same at present as when the leases were taken. JMA asserts that natural gas market prices cannot be relied upon to reduce the amount of bonus and royalty provided because current natural gas prices are comparable to natural gas prices at the time that the existing leases were taken.

11) JMA contends that the consideration given to the market value of gas is contrary to Oklahoma law.

12) JMA cites *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) to support the contentions that the Commission is to use open market conditions in determining the fair market value, and that the Commission is to value leases comparably to existing leases in the unit. JMA asserts that the current low pricing is the result of panic, and that *Miller* specifically restricts the court from relying on panicked pricing in determining fair market value.

13) JMA reasserts that the ALJ did not rely upon any existing 1/5th royalty leases in the unit in determining that a \$500 bonus should accompany an election of 1/5th royalty. JMA reasserts that the ALJ based her recommendation on extrapolations from the current price of natural gas.

14) JMA paid \$1100, \$850 and \$2100 with a 1/5th royalty. Greenstar paid \$1600 for a 3/16th. Continental paid \$1000 and 1/5th. Continental also paid \$2000 and 3/16th.

15) JMA contends that there is no evidence supporting the ALJ's recommendations of \$1,000 and 3/16th royalty, \$500 and 1/5th royalty, or no cash bonus and 1/4th royalty.

16) JMA asserts that the ALJ excluded all evidence of existing leases, and relied only upon the speculation of what the value should be given the price of gas today.

17) JMA contends that its suggestion of \$2,100 cash bonus for 1/5th royalty was based upon the highest and best price in the unit.

18) JMA asserts that Commission practice and Oklahoma case law provide that the highest and best price paid in the unit is to be taken as market value. JMA cites *Coogan v. Arkla Exploration Co.*, 589 P.2d 1061 (Okl. 1979); *Home-Stake Royalty Corp. v. Corporation Commission*, 594 P.2d 1207 (Okl. 1979); and *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) in support.

19) JMA contends that the ALJ deviated from established law regarding market price. JMA reasserts that market price is to be determined under open market conditions without regard to panic or speculation. JMA asserts that the Commission must rely upon the details of the existing leases in the unit.

20) JMA contends that there was no evidence supporting the ALJ's determination of a \$500 bonus and a 1/5th royalty. JMA requests that the ruling of the ALJ be reversed.

CONTINENTAL

1) **David Pepper**, attorney, appeared on behalf of Continental, and asserted that the ALJ's recommendation was not based upon a downward trend in natural gas pricing.

2) Continental references Charles Nesbitt's primer on forced pooling, which states that in determining market value, little attention is to be given to leases outside the nine section area and to leases taken during a period of hot activity which has since cooled.

3) Continental cites *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981), which provides that evidence relied upon in determining fair market value may include factors beyond prices previously paid in the area.

4) Continental asserts that the leases referenced by JMA were taken more than a year ago, and that contemporary leases in the nine-section area have been much lower than the cost of the leases advanced by JMA. Sixteen leases have been taken in the nine section area since the last lease referenced by JMA and one pooling order has issued in the nine section area. All of the 16 leases, except that one lease of 2.5 acres for \$1600 and 3/16th royalty, were for less than what JMA recommended.

5) Continental reasserts that all contemporary leases taken in the area, excepting a 2.5 acre lease for 3/16th royalty with a \$1,600 bonus, were taken at terms well below the price JMA is requesting. Continental contends that the 2.5 acre lease is distinguishable from the others because of its small size and because it was taken after this pooling was filed.

6) Continental asserts that the ALJ was required to balance the recommendation of the expert witness, Mr. Justine Biggs, of \$500 bonus and a 1/5th royalty with JMA's request of \$2,100 bonus and a 1/5th royalty. Continental contends that the basis of JMA's request was too remote in time to be given much weight.

7) Continental asserts that *Home-Stake Royalty Corp. v. Corporation Commission*, 594 P.2d 1207 (Okla. 1979) provided that future value of an oil well is speculative and that valuation in a pooling proceeding is to be determined by present market value.

8) Continental references Charles Nesbitt's Bar Journal article *A Primer On Forced Pooling of Oil and Gas Interests in Oklahoma*, which provides that periods of high activity that have since slowed are to be ignored in a forced pooling. Continental contends that the area had been a high activity area, but at present, most rigs in the area are being moved elsewhere. Continental asserts that panic has not entered into current lease valuation. Continental contends that present lease valuation in the area is based upon rational business decisions.

9) Continental references again Charles Nesbitt's Bar Journal article, which states that lessees that are forced pooled and elect not to participate are seldom satisfied with the cash bonus received unless it is much greater than the amount that the lessee paid to the lessor. Continental asserts that the present matter falls within the above statement, and that JMA will not be satisfied with any cash bonus unless it is what they paid or more than they paid.

10) Continental contends that the Commission should not be concerned with the business decisions of JMA and like parties. Continental asserts that the current evidence of the 16 leases in the area supports a cash bonus much less than the bonus advanced by JMA. Continental requests that the ruling of the ALJ be upheld.

RESPONSE OF JMA

1) JMA asserts that the leases referenced by Continental were taken 13 months prior.

2) JMA contends that the Greenstar lease was taken in the summer of 2011, and that the lease taken by Continental in March 2010 prior to the Greenstar lease was for a 1/5th royalty and \$1,000 cash bonus. That is the last lease Continental has taken in Section 25.

3) JMA asserts that though *Miller* does allow for consideration of leases in the same area. The case specifically provides for determination of fair market value as a comparable lease in the unit.

4) JMA contends that the 16 leases referenced by Continental were not 1/5th royalty leases. The only 1/5th royalty leases are in Section 25. There are five 1/5th royalty options.

5) JMA contends that bonuses for 1/5th royalty leases in Section 25 were between \$1,000 and \$2,100, and the last 1/5th royalty lease taken by Continental was \$1,000.00 and the last 1/5th royalty lease taken by JMA had a bonus of \$1,800.

6) JMA asserts that offset wells will not be drilled, and therefore offset lease values will not be comparable to the leases in Section 25. JMA contends that offset comparisons, to be instructive, must have comparable terms and circumstances to the leases in the area subject to pooling.

CONCLUSIONS

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

1) The Referee finds that the ALJ should be affirmed in establishing fair-market value at \$1,000 per acre and a 3/16th total royalty, or \$500 an acre and a 1/5th total royalty, or no cash and a 1/4th total royalty. The ALJ should be affirmed in rejecting a small 2.5 acre transaction for \$1600 an acre and a 3/16th total royalty as it was taken August 17, 2011 (Greenstar) which was after Continental's filing of this application to pool which was filed on August 9, 2011 by Continental. The transaction appears to be a small lease amount taken for a premium amount in anticipation of the pooling and drilling of a well here. The transaction can be considered as other than unusual and ordinary transactions between willing buyers and willing sellers in the normal course of business.

2) As stated by the Court in *Miller v. Corporation Commission*, 635 P.2d 1006 (Okla. 1981):

The measure of compensation for forcibly pooled minerals is their "fair market value"-the level at which this interest can be sold, on open-market negotiations, by an owner willing, but not obliged, to sell to a buyer willing, but not obliged, to buy. Evidence of comparable terms and prices previously paid for leases in the same area is relevant to, but not always conclusive of, the fair market value. Other factors may

command or merit additional consideration. The difference in lease terms, the distance from other leaseholds subject to forced pooling and the nature of formations within different leaseholds-to name but a few variants-may be of great moment.

The value to be arrived at is that paid for comparable leases in the unit. It is best extracted from transactions under usual and ordinary circumstances which occurred in a free and open market. The price levels reached under free and open market conditions are deemed to be barren of the distortive elements which are generally present in panic, auction or speculative sales. The latter so often reflect either depressed or inflated prices. An open market transaction contemplates face-to-face negotiations between two or more parties, dealing at arm's length, for the purpose of arriving at an agreed level. (Footnotes omitted)

3) The Referee notes that often the Commission discounts transactions that result from a party trying to acquire acreage after a pooling application or pooling order has been issued for the purpose of participation and gaining well information, as usually such prices are inflated and speculative based on the fact that a well will most likely be drilled.

4) The testimony reflects that 16 leases were found in offsets taken since December 31, of 2010 and, excluding the Greenstar lease, none of those 16 leases came close to what JMA was recommending for this pooling. From the summer of 2010 to November of 2010 there were leases taken by Continental and JMA from \$1850 and 1/5th royalty up to \$2100 and 1/5th royalty.

5) The ALJ in her Report on page 18 states:

Applicant reviewed transactions from the date of the protested hearing on the merits and back one year. Protestant noted that there are higher transactions if one reviews one year back from the date of the filing; they note the Commission can review back that far and can also look back as much as two or three years from the hearing date to determine fair market value. The ALJ did review all of those referenced transactions. That values have trended down from the higher values paid in mid to late 2010 and earlier.

While applicant tied this downward trend in values to overall falling product prices protestant did not feel that would be an applicable consideration. It is the opinion of the ALJ that over time product price has an impact on industry development overall and eventually can impact fair market value. Certainly it would depend on timing and area and on what the product is. Here the product price has fluctuated but has trended down, so much so that Continental is curtailing their development here and moving to other areas. Also several companies are packaging acreages here to sell and there is no indication that they have been successful in selling off their acreage yet.

* * *

As was pointed out earlier in this Report, the ALJ did review all the referenced transactions and also considered the trend in values for leases and the overall trend in product prices in making her recommendation as to fair market value.

6) As noted by Charles Nesbitt in his article. "*A Primer On Forced Pooling of Oil and Gas Interests in Oklahoma*", 50 O.B.J. 648 (1978):

...the amount and elements in the bonus are intended to equal the current fair market value of an oil and gas lease; that is, the bonus which would be paid for a lease between willing contracting parties, neither under compulsion.

In practice, this generally becomes an inquiry into the "highest price actually paid" for an oil and gas lease in the vicinity. Scant consideration is paid to transactions outside a nine section area of which the subject section is the center, or to a lease bonus paid during a past period of hot activity which since has cooled.

7) The Referee agrees with the ALJ and Charles Nesbitt that in this particular case that the trend in values for leases has decreased and the activity in the area has "cooled". Thus, the evidence would warrant that the

fair market values established by the ALJ are reasonable in accordance with the evidence presented, and the findings and conclusions of the ALJ are sustained by the law and substantial evidence. See *Central Oklahoma Freight Lines Inc. v. Corporation Commission*, 484 P.2d 877 (Okl. 1971); *GMC Oil & Gas Company v. Texas Oil & Gas Corporation*, 586 P.2d 731 (Okl. 1978).

8) Therefore, while the Referee acknowledges the arguments and positions of JMA, under the law as established within the State of Oklahoma, the Referee would affirm the establishment of fair market value as recommended by the ALJ as it is based upon the weight of the evidence presented.

RESPECTFULLY SUBMITTED THIS 5th day of June, 2012.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Susan R. Osburn
David Pepper
Charles L. Helm
Emily Smith
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Michael L. Decker, OAP Director
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