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CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	**TERRITORY RESOURCES, LLC**	)
RELIEF SOUGHT:	**POOLING**	) **CAUSE CD NO. 201104064-T**
LEGAL DESCRIPTION:	**SECTION 13, TOWNSHIP 24 NORTH, RANGE 2 EAST, NOBLE COUNTY, OKLAHOMA**	)

APPLICANT:	**TERRITORY RESOURCES, LLC**	)
RELIEF SOUGHT:	**POOLING**	) **CAUSE CD NO. 201104106-T**
LEGAL DESCRIPTION:	**SECTION 18, TOWNSHIP 24 NORTH, RANGE 3 EAST, NOBLE COUNTY, OKLAHOMA**	)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Kathleen M. McKeown**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 12th day of January, 2012, at 8:30 a.m. in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Michael D. Stack**, attorney, appeared on behalf of applicant, Territory Resources, LLC ("Territory"); **David E. Pepper**, attorney, appeared on behalf of Mustang Fuel Corporation ("Mustang"); 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 3rd day of February, 2012, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The argument concerning the Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 23rd day of April, 2012. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

MUSTANG TAKES EXCEPTION to the ALJ's recommendation to grant the applications of Territory requesting the Corporation Commission to pool the interests and adjudicate the rights and equities of oil and gas owners in the drilling and spacing unit comprised of Section 13 (640 acres) in T24N, R2E, Noble County, Oklahoma and Section 18 (640 acres) in T24N, R3E, Noble County, Oklahoma. Territory's applications also request Territory be named the operator for the first six months in Sections 18 and 13 with Mustang to take over operations for the remainder of the one year commencement time period if Territory fails to timely commence wells in those units.

Territory and Mustang seek to be named operator of the Mississippian common source of supply as it underlies Sections 18 and 13. Territory and Mustang agree on all initial and subsequent elections, fair market values and total drilling time periods to be included in any orders issued from Cause CD 201104064-T pertaining to Section 13, T24N, R2E, Noble County, Oklahoma and Cause CD 201104106-T pertaining to Section 18, T24N, R3W, Noble County, Oklahoma. The dispute centers on ownership, operations experience, well proposals and well costs.

MUSTANG TAKES THE POSITION:

1) The ALJ's Report is contrary to law, contrary to the evidence and fails to effect the means of the prevention of waste and protection of correlative rights.

2) The ALJ erred in designating Territory as operator of Sections 18-24N-3E and 13-24N-2E, Noble County, Oklahoma. The disparity in ownership is just too great to not allow Mustang to protect their vastly superior working interest position by operating the wells.

3) Territory admitted that Mustang was capable of drilling these wells. Territory has recommended designating Mustang as operator of two prior units, recognizing that Mustang is more than capable of drilling a Mississippi well at these depths.

4) Mustang would remind the Commission of Charles Nesbitt's well respected law review article on forced pooling, that ownership is the single most important factor in determining operator. While other factors can be considered, this overwhelming majority should not be ignored.

5) The ALJ erred in concluding that Territory can take advantage of a Mustang pipeline if it cannot negotiate a contract with Superior. There was no evidence to that effect, in fact Mustang indicated that Territory had rejected their most recent offer. It was admitted that Territory was flaring gas from existing wells, and Mustang will have a pipeline by March. Therefore gas will not need to be flared.

6) It is inconceivable that an owner of an interest of over 70% of a unit, and admittedly capable of drilling a well should not be designated as the operator. This Commission, while admittedly authorized to designate an operator, should not ignore the financial risks to be expended by the parties. This is a business decision in which the Commission should not take that issue lightly. Therefore, a qualified operator with a significant majority interest should be designated as operator under these pooling orders.

7) Wherefore, Mustang respectfully requests that the Initial Report of the ALJ be reversed, and that Mustang be designated as operator under the existing applications.

THE ALJ FOUND:

1) Territory and Mustang agreed on the fair market value and options concerning participation for the orders issuing in each section. The various response times under initial and subsequent operations were also agreed to by the parties as was the definition of what would be timely commencement for a well by the designated operator.

2) The question of well operations revolves around several factors including, but not limited to, unit interest and experience. While Mustang is the majority interest owner in the subject units, Territory is the moving party and has the most experience drilling these types of wells. The primary reason Mustang is being recommended as the operator in Section 31 is due to the agreements reached by the parties in the other area units as to operations and the proximity of Section 31 to Section 30 which will allow drilling two wells from one well pad resulting in well cost savings. Territory was the only party to propose wells in the units and file pooling applications. Territory has a disposal well in place. Territory based its AFE on one of the eight Mississippi Chat wells it has drilled and operated. Most importantly Territory is familiar with the Mississippi Chat production in the area which has allowed it to learn

the importance of placement of the laterals, completion techniques and what is to be expected from drilling which includes high volumes of water production.

3) While Mustang has proven that it is committed to the area through its leasing activity and seismic shots, it will be using Tres Management ("Tres") for the actual drilling and the AFE presented by Mustang and Tres at the hearing is a "generic" Mississippi AFE. Mustang does not have a saltwater disposal well in place. While a pipeline to the Mustang Gas Products gathering system should be in place by mid-March, Territory can take advantage of that pipeline if it cannot negotiate a contract with Superior. The disparity between the parties regarding anticipated water production also raises a concern in that the high water production the Territory AFE anticipates is based on the actual experience Territory has had from drilling. None of the Mustang or Tres witnesses had reviewed any of the Territory production data and statements of water production anticipated at a rate of 500 to 1500 BWPD reflects this lack of familiarity. While it is not unusual to make decisions or changes while a well is being drilled, the participating owners should be able to take advantage of the knowledge Territory has already gained through its drilling. Therefore, it is the recommendation of the ALJ that in Sections 13 and 18 Territory should be named operator for the first 6 months with Mustang to be named operator for the last 6 months if Territory does not timely commence a well.

4) Thus, in light of the aforementioned conclusions, it is the recommendation of the ALJ that the applications in CD 201104064-T and CD 201104106-T be granted. Any orders issuing out of these causes should contain the recommendations provided herein.

POSITIONS OF THE PARTIES

MUSTANG

1) **David E. Pepper**, attorney, appeared on behalf of Mustang, the protestant in Cause CD No. 201104064-T and Cause CD No. 201104106-T. Mustang states that these are Pooling Applications which were consolidated for hearing.

2) Mustang asserts that as to Cause CD 201103205-T, the applicant, Territory, recommended Mustang be designated as operator under that Pooling Application. Mustang states CD 201103205-T is not being appealed, only CD 201104064-T and CD 201104106-T are being appealed.

3) Mustang states the units in question are Section 18, T24N, R3E, Noble County, Oklahoma as well as Section 13, T24N, R2E, Noble County, Oklahoma. Mustang contends as to Section 18, Mustang owns 77.4% of the working

interest while Territory owns 21.96%. Mustang contends as to Section 13, Mustang owns 62.5% of the working interest while Territory owns 37.5%.

4) Mustang states that both parties, Mustang and Territory, are licensed operators. Mustang asserts that according to testimony from Territory's petroleum engineer Ed Gallegos and others, both parties concede that the other is capable of drilling the well. Mustang asserts that Territory has drilled approximately six horizontal Mississippi wells in the area. Mustang states they have drilled none. Mustang states that both parties own considerable amounts of acreage in the area.

5) Mustang restates they own a significant acreage position in the area and that they have drilled a number of vertical Cleveland wells in the area.

6) Mustang states that Territory is a significant owner further to the west in this area, while Mustang owns farther to the east. Mustang claims the area in dispute is where the two interests meet and begin to overlap.

7) Mustang asserts they have a non-industry partner, Liberty Insurance Company ("Liberty"), in their acreage. Mustang claims Liberty has an option to take up to one-half of Mustang's interest in each of the prospects, but Mustang states Liberty is not required to take such an interest. Mustang asserts Liberty is a silent partner. Mustang states they speak for Liberty and further have agreed to operate on their behalf and take care of their money.

8) Mustang states they are in the process of laying a pipeline to the area with the hope it would be completed by March of this year. Mustang states that at the time of the hearing Territory had an oral agreement for a contract with Superior Pipeline ("Superior") to begin laying a pipeline, but that to the best of Mustang's knowledge Superior had not yet begun laying a pipeline in this area.

9) Mustang asserts Territory has a disposal well. Mustang claims they are going to drill a disposal well and that an Authority for Expenditure ("AFE") has been presented to that effect. Mustang further claims they have considerable surface acreage available to it nearby, via the Red Rock Ranch.

10) Mustang states they are a 62 year old company operating in four states.

11) Mustang states while Territory has drilled six wells in the immediate area, only one has been drilled to the Mississippi Chat. Mustang states the particular wells in question are to be targeted to the Mississippi Chat.

12) Mustang states that because the costs will be borne by Mustang in a relatively high ratio compared to Territory, they are very concerned about being named operator.

13) Mustang cites an article published in the Oklahoma Bar Journal by Charles Nesbitt titled "*The Primer on Forced Pooling,*" for the proposition that the most important factor to be considered in the selection of an operator is the size of the working interest.

14) Mustang states that even if Mustang's non-industry partner, Liberty elects to join, Mustang's interest in Section 18 will remain the majority interest. Mustang also states that Liberty does not appear in the billings, and that Mustang speaks for them.

15) Mustang asserts they do not believe that Territory is ahead of Mustang on the learning curve simply because they have drilled more Mississippi wells. Mustang states they have retained the services of Tres, a consulting outfit that drills wells for highly reputable companies.

16) Mustang claims Territory's petroleum engineer, Ed Gallegos, testified that Territory does not need or want such consultants as Tres; because they believe they have experienced people on their staff.

17) Mustang states Tres has drilled 20 horizontal Mississippi wells in the Kay and Noble County area.

18) Mustang claims Territory has been venting gas from wells in the area since the fall of 2011. Mustang states they do not believe it is appropriate for Territory to be venting gas when a majority of the gas being vented in both units belongs to Mustang.

19) Mustang contends Territory's position is that they have to show the pipeline company that there is a well capable of producing before the pipeline company will lay a line to them. Mustang asserts this is incorrect, and that testimony from an officer from Mustang's separate gathering company states the correct method is for the pipeline to be laid to the well and then hooked up about the time the well is completed.

20) Mustang states they are a considerably older and larger company than Territory.

21) Mustang contends they have access to dozens of water wells, via the Red Rock Ranch. Mustang claims Territory indicated they had to take some water out of the Arkansas River to utilize the wells. Mustang asserts there is an opportunity for savings for everyone if Mustang can use their water from the Red Rock Ranch.

22) Mustang states Territory's petroleum engineer, Ed Gallegos, on cross-examination refused to give information on the well Territory had drilled to the Mississippi Chat citing proprietary information. Mustang states this same witness on rebuttal stated that the well in question produced roughly 6,500

BWPD. Mustang contends that such a high level of water production is "not a good thing," further arguing this does not weigh in favor of Territory being designated as operator.

TERRITORY

1) **Michael D. Stack**, attorney, appeared on behalf of Territory, citing Randolph Specht's "*Pooling Orders: A Helpful Review of Historical and Contemporary Issues in Pooling Cases*," which cites Charles Nesbitt's "*The Primer on Forced Pooling of Oil and Gas Interests in Oklahoma, 50 Okl. B.J. 648 (1979)*", arguing that other factors can outweigh majority of ownership when designating an operator.

2) Territory, citing Nesbitt, argues that the second most important factor in designating an operator is "actual bona fide exploration activity." Territory, citing Nesbitt, states "actual bona fide exploration activity" includes, "when a well was first proposed, and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for." Territory, continuing to quote Nesbitt, states "Other factors having a bearing on the final selection include the number of wells operated in the vicinity, the extent of developed and undeveloped lease ownership, the availability of operating personnel and facilities, a comparison of proposed costs of drilling and operating the well, and, rarely, the relative experience and competence of the contenders for operating rights." Territory argues these factors weigh in their favor.

3) Territory, citing Specht, contends that one factor in the award of operations is the "gut feeling" of the ALJ. Territory argues this "gut feeling" is based on the observations and assessment of witnesses by the ALJ.

4) Territory, citing Specht, argues for the proposition that, "the Commission has always favored that particular working interest owner who has been the moving force in development both in the unit and the area." Territory argues factors involved in determining who has been the "moving force," include who generated the prospect, the number of wells actually drilled in the prospect, who has negotiated surface damages in the area, who has prepared AFEs, and who has filed with the Commission.

5) Territory, citing Specht, states the third factor in awarding operations is "experience." Territory argues this refers to the experience of the owner seeking operations and to who can truly develop to the best benefit.

6) Territory, citing Specht, contends the fourth factor in awarding operations is "proposed costs."

7) Territory, citing Specht, states the fifth factor in awarding operations is the size of the company, experience of the staff, and the location of their offices.

8) Territory states they have drilled eight horizontal Mississippi wells and not six as Mustang claimed.

9) Territory argues that the potential 50% ownership interest of Liberty in Mustang's interest was never brought up in the initial hearing and Report of the ALJ. Territory contends that Mustang has 50 assignments of 50% interests to Liberty in nine different counties. Territory argues that at the time of the hearing, Mustang was aware of these arrangements and failed to present it to the ALJ. Territory argues that when this 50% interest of Liberty is put into context, Territory will be spending more money than any other individual operator.

10) Territory argues that the ALJ ruled in their favor despite the lack of knowledge of Liberty's interest which potentially can cut Mustang's interest in half.

11) Territory states that Liberty is participating in an offset well in this area, the "Truth Well." Territory asserts that Mustang has not proposed the operations in question to Liberty, presumably for the purpose of being able to argue to the Commission how large their interest is at this time. Territory argues that Mustang was not being "up-front" with those parties involved including the ALJ. Territory argues Mustang owes a fiduciary responsibility to be straightforward with people.

12) Territory argues they sent an AFE to Mustang June 29th of 2011. Territory states they never received an AFE from Mustang until nine days before the hearing, January of 2012. Territory states that unlike a reasonable operator, Mustang never looked at their AFE for six months.

13) Territory states Mustang uses an inadequately small tubing size in their AFE. Territory states Mustang uses 2 3/8 inch tubing in their AFE compared to Territory's 2 7/8 tubing in their AFE. Territory claims that Mustang's proposed tubing can only produce up to 1,800 BWPD. Territory argues that the wells in question produce between 4,000 to 6,000 BWPD.

14) Territory contends that Mustang's saltwater disposal AFE used 3½ inch tubing compared to Territory's 5½ inch tubing. Territory argues 3½-inch tubing can dispose of a maximum of 3,000 BWPD. Territory reasserts the wells in question will produce between 4,000 to 6,000 BWPD.

15) Territory argues that Mustang's AFEs are not practical and are unusable.

16) Territory states their petroleum engineer, Ed Gallegos, testified the Mississippian Chat is a very complex reservoir. Territory argues this complexity makes experience important. Territory argues the experience they have gained in drilling eight horizontal wells in the Mississippian formation has allowed them to double their Estimated Ultimate Recovery ("EUR") from their first well.

17) Territory argues that, on their own recommendation, the ALJ awarded operations to Mustang as to one well. Territory states that as to this well their interest was smaller, and to allow Mustang to begin gaining some experience, Territory recommended and agreed that Mustang be named operator as to this one well.

18) Territory states that as to the one well Mustang has been awarded operations, Mustang will be able to use one pad for two wells. Territory states that because the ALJ awarded the two wells in dispute to Territory, they will also be able to use one pad. Territory asserts that by utilizing one pad for two wells, there will be a savings of over $100,000 per well.

19) Territory contends the gas lines they are currently flaring are legal. Territory further asserts that the gas being flared is minimal, while also stating that Mustang themselves have some Cleveland wells that are flaring gas at this time.

20) Territory states they contacted Superior about laying a pipeline because they did not like the terms Mustang was offering. Territory contends that Superior stated they would not bring a pipeline to the land in question without knowing if there are any wells in this area.

21) Territory argues, based on the testimony of their petroleum engineer Ed Gallegos, the contract they signed with Superior afforded them a much better deal which will result in all the parties under their contract making more money.

22) Territory states, based on the testimony of their petroleum engineer Ed Gallegos, their pipeline should be in place around July 1st. Territory states based on this testimony, the pipeline will be in place when the wells in question are drilled.

23) Territory claims they use individual people with high levels of experience rather than hiring consultants as Mustang does. Territory states their employee, Tony Potts, has drilled over 250 wells for various clients, including 150 horizontal wells.

24) Territory asserts that Mustang's witness believed that the wells in question would produce 500 BWPD, while in fact these wells will produce between 4,000 and 6,000 BWPD.

25) Territory states, based on the testimony of Ed Gallegos, drilling into the Mississippi Chat, the target of the wells in question, is easier than drilling into the Mississippi with regards to time spent drilling.

26) Territory argues, based on the testimony of Ed Gallegos, Territory should operate because of the millions of dollars they have expended in diagnostic analysis of the Mississippi in this area. Territory states they know where to place the laterals as well as where to stimulate the wells.

27) Territory argues, based on the testimony of Wayne Smith with Tres, Mustang does not know exactly who from Tres would be working on the wells in question should Mustang be awarded operations. Territory argues based on this testimony, Tres could send someone with zero experience of this complex area. Territory further argues based on Mr. Smith's testimony, Tres could provide Mustang with different people working on the two different wells in question.

28) Territory argues that Mustang's witness, Wayne Smith an expert from Tres, believed they were drilling a Mississippi Solid well instead of a Mississippi Chat well. Territory states the next witness for Mustang, a Mustang employee Tom Verhulst, corrected the prior witness by testifying the intended well was a Mississippi Chat well.

29) Territory argues, based on the testimony of Tom Verhulst, Mustang believes that because they are an old company they believe they can wait until the last minute to get all the specifics correct before drilling the well. Tom Verhulst testified that Mustang had never drilled a horizontal well, nor a Mississippi well.

30) Territory asserts, based on the testimony of Mustang employee Jim Hill, that Mr. Hill will be making the decisions on the wells in question despite never having drilled a horizontal well in the Mississippi.

31) Territory contends that Mustang did not put a submerged pump in their AFE. Territory claims that there must be a submerged pump on these wells. Territory states that these submerged pumps cost roughly $200,000 which is missing from Mustang's AFE.

32) Territory reasserts the five components of Randolph Specht's article. Territory contends the ALJ correctly referred to them in her report and was ultimately correct in awarding Territory operations of the wells in question.

RESPONSE OF MUSTANG

1) Mustang states that they were not hiding anything with regards to their non-industry partner Liberty. Mustang states when the issue was brought up to reopen the case for that issue, Mustang did not dispute.

2) Mustang reasserts that Liberty's participating interest is an option for them. Mustang reasserts Mustang is responsible for this area non-industry partner, the Liberty interest. It is entrusted to Mustang.

3) Mustang reasserts Territory has only drilled one Mississippi Chat well. Mustang contends Mustang did not know how much water that one well was producing because that information was never made available by Territory to Mustang. Mustang claims had they known this information, Mustang would have designed the tubing in their AFE differently.

4) Mustang reasserts their concern with the amount of water being produced by the one Mississippi Chat well Territory is currently operating.

5) Mustang claims they have been laying a pipeline, because they believe the pipeline should be in place before the wells are in place. Mustang states this is the same business practice which large companies, such as Sandridge and Chesapeake, currently do. Mustang asserts this is a fundamental difference from the way Territory conducts its business.

6) Mustang argues Territory is venting gas rather than flaring gas from the nearby wells. Mustang states this venting of gas for months at a time is "money that's going up in the air," which Mustang contends by a majority ownership is Mustang's and Liberty's should they choose to participate.

7) Mustang argues that despite all of the experience Territory states their personnel enjoys, only Ed Gallegos testified at the hearing. Mustang states that while Ed Gallegos did testify, he will not be the one managing the operations of the wells in question.

8) Mustang contends Territory's "gut feeling" argument is simply applicable in every case and therefore without merit. Mustang contends a reading of the ALJ's Report does not include references to her "gut feeling," but rather with issues regarding water production and saltwater disposal.

9) Mustang asserts the ALJ's Report is incorrect in stating Territory will be able to use Mustang's pipeline, because Territory has stated they are going to wait on their own pipeline.

10) Mustang reasserts that unlike Territory, Mustang has access to acreage in the area which they can draw from for disposal and water purposes.

11) Mustang reasserts they along with their consultants, Tres, "certainly" have enough experience to drill a horizontal Mississippi well.

CONCLUSIONS

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

1) The Referee finds the ALJ's recommendation to grant the pooling applications of Territory with Territory being named the operator for the first six months in Sections 18 and 13, with Mustang to take over operations for the remainder of the one year commencement time period if Territory fails to timely commence wells in those units, is supported by the weight of the evidence and free of reversible error. The ALJ in her Report balanced the normal factors considered by the Commission in the award of operations under a pooling application.

2) The ALJ is the initial finder of fact. It is the ALJ's duty as the finder of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Grison Oil Corp. v. Corporation Commission*, 99 P.2d 134 (Okl. 1940); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951); *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953).

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

DESIGNATION OF OPERATOR

> A deceptively important provision of the pooling order is the designation of the operator of the proposed well. In most cases the applicant already owns the majority interest in the spacing unit, and is routinely named operator. However, there are notable exceptions where a spirited battle occurs between lessees over operations. The working interest ownership of non-participating pooled owners inures

> to the operator, at least in absence of a claim by other participants to share therein. A lessee who is promoting the proposed well for a carried interest, or similar remuneration , has a significant financial stake in being designated operator.
>
> Several factors are considered in the selection of the operator, the most important being working interest ownership. All other things being equal, the owner of the largest share of the working interest has the best claim to operations. However, this is not always true, and other factors can outweigh majority ownership.
>
> Second in importance is actual bona fide exploration activity. This is not a simple race to the courthouse, with the earliest applicant getting the nod, but involves such matters as when a well was first proposed and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for, and so on.
>
> Other factors having a bearing on the final selection include the number of wells operated in the vicinity, the extent of developed and undeveloped lease ownership, the availability of operating personnel and facilities, a comparison of proposed costs of drilling and operating the well, and, rarely, the relative experience and competence of the contenders for operating rights.

As the article reflects the ownership position of the parties and the actual bonafide exploration activity are the two factors of most importance.

4) The Referee notes that the ALJ addressed the factors usually considered by the Commission under the Nesbitt article. The ALJ states in her Report in her Recommendations on page 5 paragraph 2:

> The question of well operations revolves around several factors including, but not limited to, unit interest and experience. While Mustang is the majority interest owner in the subject units, Territory is the moving party and has the most experience drilling these types

> of wells....Territory was the only party to propose wells in the units and file pooling applications; Territory has a disposal well in place; Territory based its AFE on one of the 8 Mississippi Chat wells it has drilled and operated; most importantly Territory is familiar with the Mississippi Chat production in the area which has allowed it to learn the importance of placement of the laterals, completion techniques and what is to be expected from drilling which includes high volumes of water production.

5) Former Oil and Gas Appellant Referee Randolph S. Specht in his reports concerning pooling applications determining who should be the proper operator of a well within a drilling and spacing unit stated the following:

> One unspoken factor in the award of operations is what one must call the "gut feeling" of the ALJ who observes the witnesses and assesses their demeanor and its effect on the award of operations. From experience, the Referee knows that often during the presentation of the case the trier of fact will ascertain which owner should be named the operator based on the trier of fact's perceptions established by the witnesses in the presentation of their operations request."

6) The evidence reflected additionally that Mustang used a generic Mississippi AFE. The tubing size used in Mustang's AFE was 2 3/8 inch tubing compared to Territory's 2 7/8 inch tubing in their AFE. Mustang's proposed tubing could only produce approximately 1800 BWPD while Territory's tubing could produce between 4000 to 6000 BWPD. The AFE for the Mustang salt water disposal ("SWD") well used 3½ inch tubing compared to Territory's 5½ inch tubing in their SWD AFE. Using 3½ inch tubing can dispose of a maximum of 3000 BWPD while using 5½ inch tubing Territory can produce/dispose of between 4000 to 6000 BWPD. Mustang's witness testified that the wells to be drilled would produce 500 BWPD while in fact these wells will produce between 4000 to 6000 BWPD.

7) Further, the evidence reflected that Territory and Superior's contract provides that the pipeline will be in place by July 1, 2012.

8) The Referee again points out that the ALJ chose to consider all of the factors as is normal in operator fights. The ALJ established the basis for her determination from the evidence before her. The ALJ determined that Territory is the primary mover in these units and area and Territory has significant

horizontal experience in the Mississippi. The Referee can find no reason to vary the ALJ's determination that the applications of Territory should be granted with Territory being named operator for the first six months in Sections 18 and 13 with Mustang to take over operations of the remainder of the one year commencement time period if Territory fails to timely commence wells in those units. The Referee also would affirm the recommendation of the ALJ that any orders issuing out of these causes should contain the recommendations provided in the ALJ's Report issued February 3, 2012.

RESPECTFULLY SUBMITTED THIS 14th day of June, 2012.

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Kathleen M. McKeown
Michael D. Stack
David E. Pepper
Office of General Counsel
Michael L. Decker, OAP Director
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