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CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:	**CONTINENTAL RESOURCES, INC.**	)
RELIEF SOUGHT:	**POOLING**	) **CAUSE CD NO. 201104506**
LEGAL DESCRIPTION:	**SECTION 30, TOWNSHIP 17 NORTH, RANGE 15 WEST, DEWEY 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 5th and 6th 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"); **Charles Helm**, attorney, appeared on behalf of JMA Energy Company, LLC ("JMA"); ;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 30th day of March, 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 25th day of June, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

JMA takes exception to the ALJ's recommendation that the application of Continental should be granted with the value stated by Continental of $1400 per acre bonus and a 3/16th royalty, $1,000 per acre bonus and a 1/5th royalty and no cash bonus and a 1/4th royalty be established as the fair market values.

The ALJ further recommended that the subsequent well provision should include language that the necessary regulatory orders must be approved before proposing a subsequent well. In addition, the ALJ found that the provision for participants to receive timely well information, production information and title opinions regarding the unit should not be required in the order. Continental is the applicant in this cause seeking to pool Section 30, T17N, R15W in Dewey County. JMA protests the fair market values. Continental established values based upon their survey of the surrounding area. They offered previous transactions, the current status of development, diminishing gas prices and the facts they believe distinguish certain transactions as proof of these being fair market values. JMA demonstrated factors opposing these transactions and offering their opinion of fair market values.

JMA TAKES THE POSITION:

1) The ALJ's report is contrary to the law and contrary to the evidence.

2) The matter before the Commission is a Continental pooling application covering Section 30, T17N, R15W, Dewey County, Oklahoma with JMA being the only respondent.

a) At issue is the proper options to be afforded to JMA in lieu of participation; b) The ALJ recommended JMA be given the options of $1,400 per acre bonus and a 3/16th royalty; $1,000 per acre bonus and a 1/5th royalty; or no cash and a 1/4th royalty; c) JMA recommended the options of $2,500 per acre bonus for a 3/16th royalty; $1,250 per acre bonus and a 1/5th royalty; or $500 cash and 1/4th royalty; and d) Continental recommended JMA be given the options described above in subparagraph b).

3) The unit being pooled is Section 30, T17N, R15W, Dewey County, Oklahoma. The only respondent is JMA. The only evidence of values paid in Section 30 was the transactions described as follows:

a) Leases dated August 11, 2010, but effective October 23, 2010, wherein JMA took two leases covering 40 acres in Section 30 for $2500 and 3/16th; and b) No other transactions in Section 30 were discussed.

4) Continental's expert landman discussed the following transactions and values: a) $2,500 and 3/16th (Section 30); b) $1,200 and 3/16th (Section 20); $1,000 and 3/16th (Section 29); $1,250 and 1/5th (Section 24); $850 and 1/5th (Section 20); $2,000 and 1/4th (Section 36); $500 and 1/4th (Section 20); and no cash and 1/4th (Section 20).

JMA's landman added the following transaction and value: $1,000 and 1/4th (Section 19).

5) The ALJ's Report recommends: a) $1,400 and 3/16th; b) $1,000 and 1/5th; and c) no cash and 1/4th.

There was no evidence of a transaction for $1,400 and 3/16th . There was no evidence of a transaction for $1,000 and 1/5th . The no cash and 1/4th recommendation is the lowest value of the four 1/4th transactions which were for $2,000 and 1/4th; $1,000 and 1/4th; $500 and 1/5th; and no cash and 1/4th.

6) The ALJ erred in concluding values are decreasing as of January, 2012 when the recommendation is based upon no transactions.

7) The ALJ erred in finding that current fair market value should be determined by: a) Declining product prices; b) Collapsing general economy; c) Forecasting future operations; d) Reduced activity of one company (Continental); and e) The assumptions that the above conditions "usually results in a reduction in value".

8) The ALJ erred in determining fair market value without regard to actual transactions.

9) The ALJ erred in failing to find that the highest and best values actually paid in the unit and offset do not represent fair market value.

10) The ALJ erred in finding the $2,500 and 3/16th paid by JMA in Section 30 was not a proper value or option under the proposed pooling. Evidence shows the transaction was arms length without compulsion to buy or sell. The $2,500 and 3/16th is the highest and best 3/16th lease taken in the unit being pooled.

11) Wherefore, JMA respectfully requests that the Report of the ALJ be reversed and that the Commission issue a pooling order with values and options of $2,500 and a 3/16th royalty; $1,250 and a 1/5th royalty; and $500 and 1/4th royalty.

THE ALJ FOUND:

1) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause, the ALJ Recommended that the application of Continental filed in Cause CD No. 201104506 be granted. The protested issues were: a) Fair market value; b) Language in the subsequent well provisions concerning regulatory approvals; and c) Well information provided to participants.

2) The fair market values offered by the applicant are recommended as the valid fair market values for this unit. Those are $1,400 per acre and a 3/16th total royalty, $1,000 per acre unit and a 1/5th total royalty and zero dollars per acre and a 1/4th total royalty. The applicant supplied transactions back one year from the date of the protested hearing. The protestants provided higher transactions in its reviews one-year back from the date of the application filing. The submissions indicate that the values have decreased from the higher values in July and August, 2010 to January, 2012.

3) Continental demonstrated that product prices have steadily decreased, the general economy has suffered a collapse, Continental has moved from Dewey County and some companies are packaging their acreage and selling it. JMA has asserted that these factors do not directly affect their fair market value. Continental presented credible evidence of the circumstances that occurred that influenced the decrease in value in this area and was the most persuasive. The factors elicited are common indicators relied upon by many businesses to forecast future operations. It is reasonable for a company to reduce activity in an area they deem to be trending downward. This usually results in a reduction in value as asserted by Continental. JMA stated that the higher value they paid for the Oakes leases was for the last 40 acres in the unit, there was competition for the acreage and JMA wanted in this unit. All of these facts can definitely increase the price a party will pay and may be distinguished as being higher than fair market value. During the extended time from the JMA lease to the present hearing the downward trend happened and the prices decreased.

4) It is a reasonable requirement that all necessary regulatory orders be obtained before a party could propose a subsequent well. The protestant presented convincing argument for the inclusion of this requirement. It gives any potential participant more information concerning future development and reduces delay in the time from the well proposal to commencement of the well. It is recommended that such language be in the order.

5) JMA proposed that the order provide that any participating parties receive timely well information, production information and title opinions regarding the unit. Parties are usually entitled to such information as participants and by agreement of the parties and such language is not included

in the order. Therefore, it is not recommended that such a provision be included.

POSITIONS OF THE PARTIES

JMA

1) **Charles L. Helm**, attorney, appearing on behalf of JMA, stated JMA is the only respondent to Continental's pooling application in Cause CD No. 201104506.

2) JMA states the land in question involves Section 30 of 17N-15W, Dewey County, Oklahoma. JMA contends that the pooling application originally had named a number of different common sources of supply, but after some were dismissed, only those sources above and including the Woodford common source of supply remain in this pooling application.

3) JMA states Continental proposed a Woodford horizontal well to JMA on July 5, 2011. JMA argues the testimony presented showed this area in question saw significant competition for leases and development between Devon and Continental.

4) JMA contends Continental's landman testified that he believed Devon Energy Production Company, L.P. ("Devon') was first to file a pooling in Section 30, but by agreement Devon later dismissed their pooling. JMA states Continental then proposed their well and filed a pooling in Section 30.

5) JMA states Continental filed a pooling in Cause CD No. 201103600 in which they named JMA and other parties as respondents. JMA states they own 40 acres in Section 30, acquired by two leases. JMA states these leases are dated August 11, 2010 and became effective October 23, 2010.

6) JMA states upon receiving the "first" (Cause CD No. 201103600) pooling application, they compared it with the well proposal sent on July 5th. JMA contends after comparing the options they decided to protest the pooling on the day of the hearing, August 15th, 2011. JMA argues they protested that pooling because they paid higher values in the unit and the offsetting lands than were offered by Continental.

7) JMA states Continental then dismissed JMA from the proceeding and continued to pool the unit with regard to the remaining respondents. JMA argues after listening to the tape of that proceeding, there was no mention of the leases JMA took in Section 30 at this "first" (Cause CD No. 201103600) pooling hearing.

8) JMA states they received pooling Order No. 588714 on August 30th, 2011. JMA states the options provided in the pooling order were $1,200 and a 3/16th royalty or no cash and a 1/4th royalty. JMA contends pooling Order No. 588714 did not have an option of a 1/5th royalty consideration, despite the fact Continental's own pre-pooling proposal letter offered a $750 and 1/5th royalty option.

9) JMA argues Continental testified they went forward with the pooling without JMA because they wanted to drill the well and not go through the protest. JMA states Continental then drilled the well; the Oakes #130-H well.

10) JMA contends they took the lease from the Oakes' mineral owners. JMA argues the Oakes #130-H well was then drilled on the Oakes' estate, surface and/or mineral estate. JMA states this is now the subject of the "second" (Cause CD No. 201104506) pooling application Continental has filed with JMA being named a respondent. JMA restates that as to this pooling application, Cause CD No. 201104506, JMA is the only respondent.

11) JMA states the hearing for Cause CD No. 201104506 took place on January 5th and 6th of 2012. JMA contends their expert landman testified to recommending three options for the proposed pooling order: a) $2,500 bonus and a 3/16th royalty interest, based on the value they paid for the 40-acre leases they acquired in Section 30; b) $1,250 bonus and a 1/5th royalty interest, based on the actual transaction paid by JMA in Section 24 for 40 acres; or c) $500 bonus and a 1/4th royalty interest, based upon an actual transaction paid by JMA in offsetting Section 20.

12) JMA argues their recommended three options for the proposed order were simply a request to the Court to find the highest and best values paid in the unit or the offset as being fair market value. JMA contends every option they recommended was based on an arm's length transaction.

13) JMA alleges Continental's expert landman testified to recommending these three options for the proposed pooling order: a) $1,400 bonus and a 3/16th royalty interest; b) $1,000 bonus and a 1/5th royalty interest; or c) zero bonus and a 1/4th royalty interest

14) JMA argues Continental testified to the decline in gas prices and the fact they were moving out of the area to support their recommendations.

15) JMA alleges Continental's suggested $1,400 and a 3/16th royalty interest and $1,000 and a 1/5th royalty interest were not based on any transactions, but instead based on a Devon pooling in an offset in Section 29 CD No. 201103819. JMA argues Continental's landman made this recommendation based on these values. JMA states the ALJ subsequently adopted Continental's recommendations in his report.

16) JMA alleges, "Continental and the ALJ adopted Devon's pooling terms as establishing the fair market value for JMA's 40-acre interest in Section 30 rather than the value actually paid by JMA to acquire their interest in Section 30."

17) JMA argues that the terms argued to the Commission in Devon's pooling, which were subsequently adopted by Continental's landman and the ALJ, lacked any evidence and failed to mention one transaction. JMA argues Devon's landman simply recommended a set of fair market values, testified to them being the highest and best values available in the surrounding area, and the ALJ then issued an order recommending those values based on that testimony. JMA alleges Devon recommended values less than what were actually paid in the area.

18) JMA contends the value of their interest in Section 30 is not based on any transaction, but instead, "...based upon what a landman for Devon told the Commission fair market value was without presenting any evidence." JMA argues because Devon presented no evidence at the hearing, the Commission did not hear any evidence that JMA paid $2,500 and a 3/16th in Section 30, $1,200 and a 1/5th in Section 24, a $1,000 and a 1/4th in Section 19, a $500 and 1/4th in Section 20, or that Continental paid $2,000 and 1/4th in Section 36.

19) JMA, citing paragraph 8 on page 3 of JMA's exceptions, argues the ALJ stated current fair market value "should be established by considering declining product prices, collapsing general economy, forecasting future operations, and reduced activities of one of the companies in the area – i.e. Continental." JMA contends the ALJ then made his assumption the values in the area are declining based on those considerations.

20) JMA argues the actual prices paid in arm's length transactions for an interest is a better indicator of fair market value rather than "an arbitrary determination attempting to factor in product price, collapsing general economy, forecasting future operations and reduced activity of a company."

21) JMA cites *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) as an influential case outlining Oklahoma law dealing with the issue of fair market value. JMA argues in *Miller*, "the testimony showed that the highest price paid for leasing in the unit was the fair market value for the purposes of the pooling order in question." JMA, quoting *Miller*, argues "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."

22) JMA contends it is important for the Referee to note that the *Miller* decision was issued three years after a bar journal article written by Charles

Nesbitt. JMA argues the Court in *Miller* does not cite Charles Nesbitt's Oklahoma Bar Journal article for authority anywhere in the decision.

23) JMA argues, contrary to Continental and the ALJ's suggestion that market prices are trending down; values in the area are actually trending up. JMA contends on August 15, 2011, the first Continental pooling CD No. 201107098 in Section 30, the Commission found the values in Section 30 to be $1,200 and 3/16th; two weeks later the Commission issued an order where the values went up $200 an acre for a 3/16th royalty. JMA argues this demonstrates a "substantial increase in the values two weeks previous." JMA states this is the last activity Section 30 has had with regard to poolings where the Commission made a determination of value.

24) JMA contends because a producing well has now been completed on their interest, the value of their interest has "done nothing but gone up." JMA alleges there is nothing to suggest the value of their interest has decreased from what they paid in an arm's length transaction, "...especially given the fact that we now have a producing unit."

25) JMA argues it would not be fair for Continental to acquire the Oakes' mineral lease for less value than what a company actually paid for in an arm's length transaction.

26) JMA alleges that Continental and Devon both had the opportunity to acquire the Oakes' lease, but instead the Oakes negotiated a lease with JMA. JMA contends it is unfair for Continental to be able to acquire the Oakes' lease without paying the Oakes anything while also not paying JMA the amount they initially paid to acquire the interest.

27) JMA concludes by requesting the Referee reverse, modify, or amend the fair market value options made available under the pooling order.

CONTINENTAL

1) **David E. Pepper**, attorney, appearing on behalf of Continental, stated while Continental agree with JMA that there have been no other transactions in Section 30, this is because JMA is the sole respondent to this pooling.

2) Continental argues within the last year there have been 19 leases taken in the nine-section area; 12 by Continental and 7 by Devon. Continental alleges all of these leases were taken for less than what Continental's expert landman, Michael Booze, recommended as fair market value for Section 30.

3) Continental contends their landman, Mr. Booze, testified to the Commission that in his opinion, Continental was moving out of the area because of the decline in gas prices. Continental states JMA's landman, Mr. Brown, testified that he could not dispute Mr. Booze's opinion.

4) Continental states Mr. Booze then testified to his analysis of how gas prices had declined and what Continental's decision-making process was at that time in January of 2012. Continental argues Mr. Booze's analysis has proved to be correct since that January testimony; gas prices have continued trending downward.

5) Continental states Mr. Booze, based on the Devon pooling, recommended fair market value be $1,400 and 3/16th. Continental argues Mr. Booze testified to essentially saying, "If you had to twist his arm...the fair market value in this unit would probably be less." Continental alleges in the 19 nearby leases taken within the last year, the price ranged anywhere from $1,200 an acre to $1,000 an acre or less.

6) Continental argues JMA's strategy of bringing up prior poolings is nothing more than an attack on a prior pooling which has nothing to do with the current pooling.

7) Continental argues JMA's landman, Mr. Brown, did not look at the 19 leases that had been taken in the surrounding units in the last year. Continental alleges Mr. Brown did not look at these 19 leases, because Mr. Brown believed the standard of the Commission for fair market value was that fair market value was established by taking the highest lease value in the area no matter what.

8) Continental alleges in determining fair market value, they believed gas prices were declining; they were moving out of the area; and their expert landman looked in the past year to see what had happened in the surrounding area. Continental alleges in contrast, JMA did not look at the 19 leases paid for within the last year and only focused on what they paid.

9) Continental argues JMA's landman, Mr. Brown, standard for determining fair market value is, "the highest and best no matter what. He doesn't look at the real conditions."

10) Continental argues the Oklahoma Bar Journal article written by Charles Nesbitt has been quoted in a fair market value dispute by the Referee recently in a report issued on June 5, 2012, Cause CD No. 201103915. Continental contends the Referee quoted the section of the article in which Nesbitt talks about "transactions which occurred in a free and open market barren of the distortive elements which are present in panic, auction, or speculative transactions." Continental further contends the Referee referred to the Nesbitt article to describe periods when prices have "cooled." Continental

alleges that values should not be taken when the prices were hotter because of activity and then subsequently cooled. Continental contends that is what happened here; prices were "hotter" because of activity and now are "cooler".

11) Continental contends the Referee is confronted with essentially the same facts as in Cause CD No. 201103915.

12) Continental request the Referee confirm the ALJ's report.

RESPONSE OF JMA

1) JMA states that every case regarding fair market value stands on its own facts; as such the prior case Continental has referred to (Cause CD No. 201103915) "has nothing to do with this case."

2) JMA states you will not find that Continental took 12 leases in the last year. JMA argues Continental may be confusing the record with a company called Continental Land. JMA states Continental Land works for Devon. JMA alleges Continental's landman in this case didn't know about any transactions regarding Continental's activity because there had not been any. JMA argues Continental leased all the land they wanted in Section 30 prior to the first pooling and have had no new transactions since the first pooling.

3) JMA states Continental's attorney stated Continental took 12 leases in Section 29. JMA argues in fact it was Continental Land that took these leases which is actually Devon.

4) JMA contends Continental stated Continental Land took 12 leases in Section 29 for $1,000 and 3/16th. JMA argues the $1,000 and 3/16th was not recommended as fair market value. JMA states, "These leases that Mr. Pepper wants to tell you that were testified to that somehow set the value, in fact, were all done before the Devon pooling..." JMA further argues, "So, the Commission has already considered those and found they aren't fair market value...they have no bearing on the present value...Two expert landman have testified before the Commission. Neither one of them mentioned those leases as having any effect on fair market value."

5) JMA argues Section 29 is actually the unit that Devon recommended $1,400 and 3/16th, $1,000 and 1/5th or no cash and a 1/4th.

6) JMA contends that Continental believes that only transactions within the past 12 months should be used in determining fair market value. JMA argues this is not the law despite it being Continental's position.

7) JMA argues Continental did not mention the leasing that JMA has done in offsets in the past 12 months. JMA states, referring to the ALJ's report and their exceptions, JMA leased in an offset, 40 acres in Section 24, within the past 12 months for $1,200 and a 1/5th; higher than what Continental and the ALJ recommended in the current case.

8) JMA argues Continental failed to mention a lease in which Continental themselves paid $2,000 and a 1/4th for 640 acres in Section 36. JMA contends all of these transactions were done prior to the poolings in this case.

9) JMA alleges, "with this talk of gas pricing, how is it that within two weeks, the values go up? If they are plummeting because of gas prices, how do we go from $1,200 and 3/16th, that the Commission found on August 15th, to $1,400 and 3/16th two weeks later, or $1,000 and a 1/5th, two weeks later. Values are going up."

10) JMA contends, despite Continental advising the Referee to not look at prior poolings, Continental's landman himself acknowledged his recommendations for pooling in Section 30 were based on Devon's pooling in Section 29. JMA argues Continental is putting forth a "circuitous argument."

11) JMA argues after looking at the facts of this case, the Referee can either decide fair market value based on what Devon told the Commission without evidence, or based on an actual arm's length transaction.

12) JMA asserts *Miller* sets forth that fair market value cannot be determined by making up a value that's never been testified to in any transaction, but rather fair market value should be determined based on actual transactions.

13) JMA reasserts a reading of *Miller* suggests, "...under the facts of this case, the value of JMA's mineral interest has not declined since they acquired it. If anything, it has gone up in value."

14) JMA concludes by stating they believe the options they have recommended should be established as fair market value.

CONCLUSIONS

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

1) The only issue presented by JMA in its Exceptions To The Report of the ALJ is the determination of the proper options/fair market value to be afforded JMA in lieu of participation. Charles Nesbitt in his article "*A Primer on Forced*

Pooling of Oil and Gas Interests in Oklahoma," 50 O.B.J. 648 (1978) defined "fair market value" as the "...bonus which would be paid for a lease between willing contracting parties, neither under compulsion." In *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) the Supreme Court defined "fair market value" as:

> 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)

2) Continental initially filed an application to pool Section 30 on July 21, 2011 in CD No. 201103600. The hearing came on before an ALJ on August 15, 2011 concerning the pooling in CD No. 201103600. Order No. 588714 was issued concerning this initial pooling on August 30, 2011. Order No. 588714 offered a cash bonus of $1200 per acre plus a total royalty of 3/16th and no cash bonus plus a total royalty of 1/4th. JMA was dismissed as a respondent in CD No. 201103600. Continental proposed its well on July 5, 2011 before it filed its pooling application on July 21, 2011 in CD No. 201103600. The terms

in their proposal was a cash bonus of $1000 per acre plus a 3/16th total royalty, $750 per acre bonus plus a 1/5th total royalty and no cash bonus plus a 1/4th total royalty. On September 6, 2011 Continental filed its application in the present cause CD No. 201104506 seeking to pool one respondent, JMA, in Section 30. Continental proposed in the present pooling to recommend $1400 per acre and 3/16th, $1000 per acre and a 1/5th and no cash bonus and 1/4th as fair market value.

3) Devon filed a pooling application in cause CD No. 201103819 on August 3, 2011. Section 29 is an offset to Section 30. On September 14, 2011, Order No. 589151 was issued pooling Section 29 by Devon offering a cash bonus of $1400 per acre plus a total royalty of 3/16th; a cash bonus of $1000 per acre plus a total royalty of 1/5th; and no cash bonus plus a total royalty of 1/4th. These two units, Section 29 and Section 30, were pooled and heard 14 to 15 days apart with the Continental pooling proposing $1200 and 3/16th and no cash and a 1/4th.

4) JMA's leases are dated August 11, 2010, but were effective October 23, 2010, and cover 40 acres in Section 30 for $2500 and 3/16th. Other transactions and values in the area surrounding Section 30 were testified to as being:

> $1200 and 3/16th for Section 20; $1000 and 3/16th for Section 29; $1250 and 1/5th for Section 24; $850 and 1/5th for Section 20; $2000 and 1/4th for Section 36; $500 and 1/4th for Section 20; no cash and 1/4th for Section 20; and $1000 and 1/4th for Section 19.

5) None of these leases testified to were taken after August of 2011 or after this pooling application in this cause was filed by Continental on September 6, 2011. Continental's witness asserted that the lease taken by JMA for $2500 and 3/16th was dated August 11, 2010 which was more than one year before the filing of Continental's pooling application in this cause. The effective date of the lease was October 23, 2010. The testimony further reflected that the present Continental pooling in this cause CD 201104506 and the Devon pooling in Cause CD 201103819 occurred since August of 2011 in this Section 30 and in the offsetting Devon Section 29. Both of these poolings were for less than what JMA is recommending. The ALJ in his Report on page 13 states:

> Continental demonstrated that product prices have steadily decreased, the general economy has suffered a collapse, Continental has moved from Dewey County and some companies are packaging their acreage and selling it. JMA has asserted that

> these factors do not directly affect fair market value. Continental presented credible evidence of the circumstances that occurred that influenced the decrease in value in this area and was the most persuasive. The factors elicited are common indicators relied upon by many businesses to forecast future operations. It is reasonable for a company to reduce activity in an area they deem to be trending downward. This usually results in a reduction in value as asserted by Continental. JMA stated that the higher value they paid for the Oakes leases was for the last forty acres in the unit, there was competition for the acreage and JMA wanted in this unit. All of these facts can definitely increase the price a party will pay and may be distinguished as being higher than fair market value. During the extended time from the JMA lease to the present hearing the downward trend happened and the prices decreased.

6) Charles Nesbitt in his article referenced above states:

> ...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 ALJ as the initial finder of fact observes the demeanor of the witnesses, assesses their credibility and assigns the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951); and *Haymaker v. Oklahoma Corporation Commission*, 731 P.2d 1008 (Okl.App. 1986).

8) After a thorough review of the transcripts of this proceeding and the record presented, the Referee finds no reason to vary the determination of the ALJ concerning his fair market value findings.

RESPECTFULLY SUBMITTED THIS 17th day of August, 2012.

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

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