



The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 19th day of January, 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 9th day of March, 2012. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

### **STATEMENT OF THE CASE**

**AMERICAN NATURAL APPEALS** the ALJ's recommendation to deny the Spacing Application of American Natural and the further recommendation of the ALJ that the Pooling Application of American Natural be granted as to the Hunton Lime formation only. On the 13<sup>th</sup> day of September, 2011 American Natural filed its application for an order establishing 40 acre drilling and spacing units for the production of oil from the Calvin, Senora, Earlsboro, Bartlesville, Brown Lime, Booch, Gilcrease, Cromwell, Jefferson, Caney, Mayes, Woodford, Misener, Hunton, Sylvan, Viola, First Wilcox, Second Wilcox, McLish, Oil Creek and Arbuckle common sources of supply underlying the lands in the NW/4 SW/4 of Section 18, T8N, R7E, Seminole County, Oklahoma. American Natural also on September 13, 2011 filed a pooling application requesting the Commission enter an order pooling the interests and adjudicating the rights and equities of oil and gas owners in the Calvin, Senora, Earlsboro, Bartlesville, Brown Lime, Booch, Gilcrease, Cromwell, Jefferson, Caney, Mayes, Woodford, Misener, Hunton, Sylvan, Viola, First Wilcox, Second Wilcox, McLish, Oil Creek and Arbuckle common sources of supply underlying the 40 acre drilling and spacing units comprised of the NW/4 SW/4 of Section 18, T8N, R7E, Seminole County, Oklahoma and designating American Natural as operator of the unit well. American Natural dismissed the McLish, Oil Creek and Arbuckle formations from the pooling application at the protested hearing on the merits on November 16, 2011. The Forest and Mary #1-18 well was drilled by American Natural pursuant to Emergency Order No. 590262 which allowed American Natural to obtain a permit to drill said well.

### **AMERICAN NATURAL TAKES THE POSITION:**

(1) The ALJ Report is contrary to law and the evidence. The ALJ Report is also arbitrary, unreasonable and discriminatory, and fails to effect the ends of the prevention of waste and the protection of correlative rights as is required by applicable laws of the State of Oklahoma.

(2) The recommendation of the ALJ that the spacing application in Cause CD 201104690 be denied because American Natural did not give proper notice to all parties who have the right to production from the proposed unit should be reversed as it is not supported by the evidence or law as follows:

(a) The only evidence in the record relating to notice is that all owners of the right to drill in the proposed units were on the respondent list.

(b) American Natural's position is that Amtex is not a record title owner of the right to drill in the proposed unit and that is the issue in the lawsuit. Amtex claims an interest, but it is irrelevant to this case because Amtex entered a general appearance herein.

(c) The assignee of all the assignments referred to by the ALJ on which American Natural's landman "missed certain critical attachments" was Amtex and the property involved in said assignments was not the proposed unit but the offsetting unit. This is also irrelevant as Amtex entered a general appearance in this case.

(d) The landman was aware of the lawsuit, which is solely between American Natural and Amtex, and reviewing it in the Court Clerk's office would not have resulted in the addition of any respondents.

(e) The landman testified truthfully that all record title owners of the right to drill in the proposed unit were on the Exhibit "A" respondent list and had been notified either by mail or by publication.

(f) There was neither testimony nor exhibits (no evidence) that any owner of the right to drill in the proposed unit was not named as a respondent except for Amtex.

(g) Pursuant to *Union Texas Petroleum, A division of Allied Chemical Corporation v. Corporation Commission of the State of Oklahoma*, 651 P.2d 652 at 659 (Okla. 1981), failure to notify a party in a spacing case results in the spacing not being effective as to that party but is effective as to all parties who were notified.

(h) Amtex had no standing to protest on the basis of lack of notice, as it had actual notice. *Ranola Oil Company v. Corporation Commission*, 460 P.2d 415 at 417 (Okla. 1969).

(i) Amtex protested only on the basis that Amtex was not a respondent and that Amtex is entitled to notice. *Independent School District No. 9 of Tulsa County v. Glass*, 639 P.2d 1233 at 1237, (Okla. 1982).

(j) There is no conflict between American Natural's spacing application and the existing Hunton spacing (Order No. 22084).

(k) The pooling should be granted on the terms provided by American Natural as to all common sources of supply named in the spacing application in Cause CD No. 201104690, as well as the Hunton.

(2) Therefore American Natural requests that the Report of the ALJ should be reversed and the spacing and pooling applications of American Natural should be granted.

**THE ALJ FOUND:**

**CD 201104690 - SPACING**

(1) The parties to this cause are in absolute agreement that Amtex did not receive notice as required by Commission rule OAC-OCC 165:5-7-6. However; the purpose of the notice requirement is to alert persons or governmental entities, which have the right to participate in production from the proposed unit, that a unit is to be formed or modified. This alert, to the parties, is so that they can timely protect whatever interests they may have in the unit. This protection of their interest would include having time to prepare an adequate answer to an application or prepare to contest the application. The parties also agree, there is District Court quiet title litigation pending which will determine what the ownership interests are.

(2) The application requesting the formation of a drilling and spacing unit in the NW/4 SW/4 of Section 18, T8N, R7E, Seminole County, Oklahoma was filed September 13, 2011. The cause was set for a hearing on October 10, 2011 at the time of filing via a Notice of Hearing filed on September 13, 2011. On October 10, 2011, American Natural filed a Motion to Set on Protest Docket. In the body of the Motion to Set on Protest Docket filed by American Natural, it indicates on or around the date of the initial filing, (September 13, 2011) Amtex entered an appearance and protest in CD 201104690 and CD 201104691. There is no written filing in the Court file to show the appearance and protest of the application by Amtex that is dated on or about September 13, 2011. There is an Entry of Appearance and Notice of Protest filed on October 17, 2011 by Amtex. There is also a Prehearing Conference Agreement dated October 16, 2011 and filed October 18, 2011 showing the appearance of Amtex. In the Emergency order entered October 20, 2011, Amtex was not shown as a respondent in spite of the filed Notice of Appearance and Prehearing Conference Agreement. The Motion to Set on Protest Docket was dismissed by the Commissioners on October 24, 2011.

(3) It appears Amtex was somehow alerted that American Natural was attempting to do something in the NW/4 SW/4 of Section 18, T8N, R7E, Seminole County, Oklahoma. Amtex did not enter a special appearance in the cause and submitted itself to the jurisdiction of the court by its actions. Amtex fully participated in the hearing held on November 16, 2011. Amtex did extensive cross-examination of American Natural's land and geologic witnesses regarding the spacing and pooling applications. The ALJ finds American Natural was deficient in the notice it was required to give to persons/entities entitled to notice. However, Amtex had actual notice rather than mailed notices and/or publication. There was no showing that Amtex was prejudiced by not receiving the notice required by Commission rules. The lack of notice to Amtex was the main thrust of the protest by Amtex.

(4) The evidence, though dated, shows the formations are present in the proposed unit. Amtex did challenge Mr. Overall's opinion by a thorough cross-examination. It is the opinion of the ALJ that substantial evidence was shown of the presence of the formations in the proposed unit.

(5) Mr. Overall testified he anticipated the formations to be productive of oil and casing head gas. The exhibits show oil symbols on the existing wells. It is reasonable to postulate that wells in the proposed unit would also produce oil as the hydrocarbon. The evidence that production would be oil was not challenged by Amtex. The ALJ finds there was substantial evidence produced by testimony and exhibits to indicate the primary hydrocarbon to be produced would be oil.

(6) Mr. Overall also testified he used surrounding wells to establish the tops of the formations. Primarily he used the Wayne #1 well in Section 18 for the formation data. The testimony offered indicated the formations were relatively flat with little change in elevation across Section 18. It is reasonable to assume that wells in the proposed unit would be at similar depths as wells in the adjoining Section 18 unit. Amtex, participant in the Wayne #1 well, would have access to formation data and would have challenged the depths if they were not as Mr. Overall testified. The evidence regarding the depths of the tops of the formations was not challenged by Amtex. The ALJ finds there is substantial evidence to accept the tops of the formations as shown on Exhibit 2.

(7) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause the ALJ recommends the application in CD 201104690 be denied. The ALJ believes that notice given was not given properly to all parties who have the right to production from the proposed unit.

(8) The ALJ does not believe American Natural exercised due diligence in developing its Exhibit "A" to the application. Had American Natural done so,

the interests of Amtex would have been discovered. This would have been before cross-examination brought out Mr. Hoffman's admissions. Twice he missed certain critical attachments to leases his own company had taken from other parties. He also admitted he did not personally look at an assignment. He was aware of that assignment from a title opinion. He even admitted that he only reviewed leases taken by his company, Easton Enterprises, from 2008 forward. He further admitted he did not examine the Court Clerk's records concerning the lawsuit filed by Amtex. The ALJ is not convinced with substantial evidence that the respondent list, Exhibit "A" to the application is complete. The lack of due diligence casts doubt that American Natural ensured all the proper parties were notified. Based on the lack of a thorough examination of the records other necessary parties may not have been made aware of these proceedings.

(9) It should be noted, if the recommendation to deny this application is not affirmed, there is potential conflict between the requested spacing and Commission Order No. 22084 regarding the spacing of the Hunton Lime in the unit.

#### **CD 201104691 - POOLING**

(10) The spacing requested in this cause is recommended for denial. Without the spacing requested, the pooling application would fail as well except for one formation. Commission Order No. 22084 spaced 40-acre units for the Hunton Lime in the S/2 of Section 18, T8N, R7E, Seminole County, Oklahoma. This spacing order is still in effect.

(11) As in the spacing, all parties agree Amtex did not receive notice in the pooling cause. American Natural claims it does not need to provide notice as Amtex does not have an interest in the unit. Alternatively, American Natural claims, if Amtex does have the right to drill, American Natural does not have to include all owners of the right to drill in the notice. This is based on the ruling in *Marathon Oil Co. v. Corporation Commission*, 651 P.2d 1051 (Okl. 1982).

(12) The ALJ finds that Amtex was not a named respondent. There is no legal duty for American Natural to name them in the pooling application. Thus, Amtex was owed no duty under the Commission's rules to be noticed in this cause.

(13) There was considerable testimony regarding the AFE submitted by American Natural. Amtex countered with testimony regarding costs associated with wells about 20 miles away. It is not necessary to address the AFE at this time. No named respondent protested the amount of the expenses. The costs associated with this well are similar to wells drilled in the immediate vicinity. These costs do not appear to be excessive at this time. However; if named

parties find the costs are unreasonable and unnecessary, the Commission retains jurisdiction to determine the costs upon proper application.

(14) There was no dispute regarding the value of \$125 and a 1/8th royalty or \$100 and a 3/16th royalty options instead of participation in the unit. There also was no dispute regarding 20 days to make an election, 25 days for participants to pay costs, or American Natural having 35 days to pay the bonuses to those who elect or are deemed to elect not to participate in the initial well.

(15) There was no disagreement with subsequent well provisions requiring an election, from participants in the initial well within 20 days of the receipt of a certified letter containing an AFE and a proposal for a subsequent well. There was no dispute with a party having 25 days from the date of receipt of the proposal to pay costs, or American Natural having 35 days to pay bonuses to those who elect or are deemed to have elected not to participate in the subsequent well. Any subsequent well would need to commence within 180 days of the date of the proposal or the parties are restored to their prior positions.

(16) Amtex asked that it or a designee be named operator of the well. Amtex has participated in many wells but American Natural currently operates several wells in and around Seminole County.

(17) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause the ALJ recommends the pooling application in CD 201104691 be granted but only for the Hunton Lime, spaced under Commission Order No. 22084. American Natural should be named operator for the unit well in the Hunton Lime.

## **POSITIONS OF THE PARTIES**

### **AMERICAN NATURAL**

- 1) **Richard J. Gore**, attorney, appeared on behalf of American Natural, and asserts that the central issue in this matter is notice.
- 2) American Natural contends that spacing was denied by the ALJ because the respondent list attached to the application as Exhibit "A" was incomplete. American Natural takes exception to this characterization. American Natural asserts that notice was given to all record title owners entitled to share in production in the area covered by the spacing application.
- 3) American Natural states that it will not address the pooling, and contends that there is no issue or problem with the pooling.
- 4) American Natural contends that the record of notice on pages seven and eight of the hearing transcript support that record notice was given to all record title owners. American Natural asserts that it searched the county title records, checked the local phone books, checked the probate records, conducted online searches, and reviewed obituaries.
- 5) American Natural contends that a witness for Amtex stated at hearing that Amtex does not possess an interest in the land in question.
- 6) American Natural asserts that there was no rebuttal evidence stating that the attachment to the application was not complete and accurate.
- 7) American Natural contends that there was irrelevant discussion of an offset 40-acre unit, Lot 4, at hearing which is not involved in the present case. Lot 3 is the property involved in the present case.
- 8) American Natural asserts that Amtex is the only protestant in this case and that Amtex entered an appearance and waived the notice requirement. American Natural contends that though American Natural did not provide notice to Amtex, Amtex has actual knowledge of the proceedings from their beginning. American Natural asserts that because Amtex had this actual knowledge, Amtex possessed all the rights that it was entitled to. American Natural cites *Ranola Oil Co. v. Corp. Comm'n*, 460 P.2d 415 (Okl. 1969), to support the contention that actual notice, despite procedural defect, is sufficient to convey notice.

- 9) American Natural asserts that Amtex attempted to invoke the rights of third parties at the hearing. American Natural cites *Independent School District No. 9 of Tulsa County v. Glass*, 639 P.2d 1233 (Okl. 1982), in support of the assertion that a party must assert its own rights and that a party cannot base a claim for relief upon the rights or interests of a third party.
- 10) American Natural contends that at page 15 of the recommendation the ALJ stated a belief that American Natural did not exercise due diligence in developing Exhibit "A" of the application, and that had American Natural fulfilled its obligation, Amtex would have been discovered.
- 11) American Natural asserts that the land witness for American Natural, Mr. Hoffman had knowledge of the lawsuit between American Natural and Amtex, and that the lawsuit did not affect the mineral interest underlying the tract.
- 12) American Natural contends that the lawsuit concerned the assignment of leases, a quiet title action, and that Amtex was not a record title owner.
- 13) American Natural reasserts that contrary to the report of the ALJ, American Natural had knowledge of the lawsuit and exercised due diligence. American Natural reasserts that Amtex was not a record title owner.
- 14) American Natural contends that the landman stated on page 38 of the hearing transcript that he relied upon county records to determine record title owners.
- 15) American Natural asserts that any additional parties could not be found by examining the lawsuit because American Natural and Amtex were the only two parties to the lawsuit. American Natural reasserts that Mr. Hoffman, American Natural's land witness, had knowledge of the lawsuit.
- 16) American Natural cites *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982), to support the proposition that it is proper to rely on county records for notice purposes and that reference prior to hearing is sufficient. American Natural cites *Anson Corp. v. Corporation Commission*, 839 P.2d 676 (Ok.Civ.App. 1992), to support the proposition that reliance upon land records is proper for notice purposes.
- 17) American Natural asserts that the lease attachments overlooked by Mr. Hoffman concerned Lot 4, which is adjacent to the land in question, Lot 3. American Natural contends that Mr. Hoffman mistakenly thought all of those leases contained Pugh Clauses. American Natural asserts that a Pugh Clause is a lease term that extinguishes unproductive acreage in a lease at the end of the primary term.

- 18) American Natural reasserts that all respondents were accounted for in the spacing case and the existence or non-existence of a Pugh Clause for the leases in question does not affect this determination. American Natural contends that the existence or non-existence of a Pugh Clause would only affect the pooling procedure.
- 19) American Natural contends that Amtex is claiming ownership of an interest in Lot 3 by virtue of leases.
- 20) American Natural reasserts that the only difference there would be is that there would probably be some extra parties in the pooling that wouldn't be there otherwise.
- 21) American Natural asserts that an assignment is the basis of Amtex's claim to own an interest in Lot 3.
- 22) American Natural contends that Amtex does not have an interest because the assignment was a wellbore assignment, meaning when the leases were assigned, Amtex was assigned an interest in the wellbore only.
- 23) American Natural reasserts that the landman checked county records, local phone books and probate records in search of anyone that might have been deceased in order to find probates or heirs.
- 24) American Natural contends that it is clear that Mr. Hoffman did a record title search from patent forward and everybody entitled to share in production is listed.
- 25) American Natural asserts that nowhere in the record does anybody put on any evidence that everybody entitled to share in production in Lot 3 is not there, with the exception of Amtex.
- 26) American Natural reasserts that while Amtex might claim they should have been there, Amtex did waive notice.
- 27) American Natural contends that while Mr. Hoffman admitted he did not examine the court clerk's records concerning the lawsuit filed by Amtex, it was not necessary because the lis pendens notice told him what the lawsuit was and put him on notice.
- 28) American Natural contends that if the only two parties to the lawsuit are Amtex and American Natural, then there are no new respondents and Mr. Hoffman would have gained nothing by going and looking at the lawsuit.
- 29) American Natural reasserts that the ALJ was mistaken by saying that Mr. Hoffman did not do his due diligence in completing the respondent list.

30) American Natural contends that it is a waste of resources for the ALJ to deny something just because the ALJ thinks that there are some more respondents that exist without saying who these people may be or what reasons are there to believe they exist.

31) American Natural asserts that Amtex is not objecting to the actual merits of the spacing but rather protesting because Amtex is claiming an interest through the assignment agreements.

32) American Natural contends that there is not an objection to the pooling by Amtex but also cites *Marathon Oil Co. v. Corp. Comm'n*, 651 P.2d 1051 (Okl. 1982), in support of the proposition that one can pick and choose respondents in a pooling and that there are no requirements for anyone in particular.

33) American Natural cites *Union Texas v. Corp. Comm'n*, 651 P.2d 652 (Okl. 1981), which states that if a party is omitted from a spacing order they are not affected by the spacing, to support the contention that if Amtex had not entered a general appearance and waived notice as a party, they would not have been affected by spacing.

34) American Natural reasserts that the landman relied on county records as the law and Commission requires and to refile would be a waste when there is no evidence of any other respondents.

### **AMTEX**

1) **John E. Lee III**, attorney, appeared on behalf of Amtex, stated the subject section is Correction Section 18, with the SW/4 SW/4 being Lot 4 and the NW/4 SW/4 being Lot 3.

2) Amtex contends that American Natural was incorrect in asserting that respondents in the spacing application are limited to the parties who have the right to share in production of record.

3) Amtex cites OCC-OAC Rule 165:5-7-6(b) that speaks to drilling and spacing units stating “[w]hen an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit, or the existing drilling and spacing unit.”

- 4) Amtex asserts that this rule does not say anything about record title, but instead refers to anybody that has a right to share in production.
- 5) Amtex contends that Mr. Hoffman's examination of the records was deficient and had he talked to his client and looked at his clients records, he would have found that there were other parties entitled to share in production from Lot 3 because Lot 3 is the subject of multiple agreements that are not of record that are in American Natural's possession that bring other parties into this tract.
- 6) Amtex contends that the lis pendens of record does not speak to wellbores or production payments, but rather to oil and gas leases that are not only in Section 18, but in multiple sections.
- 7) Amtex asserts that Mr. Hoffman by his own admission was wrong and did not pay any attention to the record ownership in the SW/4 SW/4 Lot 4 because all the leases American Natural said had expired as to anything outside the unit because of the Pugh clause.
- 8) Amtex contends that the testimony from Mr. Overall and Mr. Hoffman and Ms. Abney indicated that that there are two producing wells in the SW/4 SW/4, the Wayne #1 and the Wayne #2, with the Wayne #3 also being a potential producer.
- 9) Amtex asserts that it undisputedly owned 60% of the acreage of those wells.
- 10) Amtex asserts that the ongoing litigation between Amtex and American Natural is based on a previous vote of the working interest to remove American Natural as operator. This litigation was filed in Seminole County.
- 11) Amtex contends that American Natural filed an emergency order to drill a well, the Forest & Mary in Lot 3, the NW/4 SW/4, and drilled the well under an emergency basis without giving notice to Amtex.
- 12) Amtex asserts that it was entitled to notice that it did not receive not only as an owner of oil and gas leases in that particular tract, but also under the aforementioned operating agreement as well as another agreement, the Business Opportunities Contract.
- 13) Amtex contends that American Natural is abusing the process of the Commission to overlook the rights of Amtex and other parties that are similarly situated to Amtex.

- 14) Amtex contends that Mr. Hoffman did not pick up the leases from Ann Harrington, Lawrence Altman, and Andrew Altman that covered the entire 80 acres.
- 15) Amtex asserts that Mr. Hoffman admitted that the rule on notice does not just mean record owners but rather anybody that has the right to share in production.
- 16) Amtex reasserts that Mr. Hoffman did not check the records of American Natural and did not go any further than checking the probate records at the court clerk's office.
- 17) Amtex contends that the lis pendens did not affect minerals but it does list the claims of Amtex against American Natural.
- 18) Amtex contends that the testimony of Patty Abney speaks to how Amtex became a part of this deal, the ownership of Amtex, how much money Amtex has paid American Natural, and how all the working interest owners have voted to remove them.
- 19) Amtex contends that American Natural intentionally did not give Amtex or any other parties that are entitled to notice, notice of these two applications, in order to thwart Amtex's interest that it paid for, not only in Lot 4 but in Lot 3 and all through Section 18.
- 20) Amtex contends that American Natural is correct in stating that part of the litigation in Seminole County is by wellbore assignment and not by assignment of the leasehold.
- 21) Amtex asserts that had Mr. Hoffman examined the pleadings of the lawsuit, he would have seen that Amtex had a claim to share in production from Lot 3 and to also participate in the wells.
- 22) Amtex reasserts that Mr. Hoffman did not exercise diligence in trying to find all the respondents and there probably exists assignees of these leases without Pugh clauses that Mr. Hoffman did not pick up, besides Amtex, Management Petroleum, and Texas Oil & Gas.
- 23) Amtex asserts that American Natural was incorrect in stating that Amtex has no objection to the spacing.
- 24) Amtex contends that Ms. Abney testified that the Wayne #1 and Wayne #3 drilled could drain reserves out of Lot 3, the NW/4 SW/4 and that there has been no showing by American Natural of any drainage study.

- 25) Amtex contends that the ALJ found that the formations that were listed to be spaced probably underlie Lot 3.
- 26) Amtex asserts that there was no showing that one well would drain 20, 40, or 80 acres or any prima facie case about the appropriate size of the spacing. There was no drainage study presented.
- 27) Amtex contends that American Natural was incorrect in stating that a well has paid out because while Amtex paid \$650,000 reflecting their 60% interest in the acreage in the well, they have only received \$136,000 back and therefore the well has not paid out.
- 28) Amtex asserts that though it does not know the gross production of the Wayne #1 because it cannot get those records, it is clear that the Wayne #1 could not drain Lot 3 or the NW/4 SW/4, due to a lack of evidence.
- 29) Amtex contends that American Natural did not acknowledge Amtex's rights under the existing contracts to have notice of American Natural's well proposals or proposed pooling.
- 30) Amtex asserts that though it is still being adjudicated, Amtex claims rights in oil and gas leases, working interest, and development of this area of Lot 3.
- 31) Amtex contends that the ALJ was correct in finding that a thorough examination of the records was not completed and other necessary parties may not have been aware of these proceedings. Amtex asserts that the above is sufficient grounds to deny the spacing application.
- 32) Amtex reasserts that there is not any evidence that the well contemplated by American Natural can drain 40, 80, or 160 acres, nor is there any evidence that the well in Lot 4, the SW/4 SW/4 is draining into Amtex's acreage in Lot 3.
- 33) Amtex asserts that it objects to the pooling because they have 64% working interest and should be designated operator. Amtex contends that the well costs are overblown, that only reasonable and necessary costs are to be charged under a pooling, and American Natural could get a great profit off of this turnkey price that it is charging to pooling respondents who participated.
- 34) Amtex contends that the Referee should make a de novo review of the record in making the decision to grant or deny the pooling application, by reviewing the ALJ's report but also by taking note of the pooling as to well costs, and the lack of technical evidence to support an order of the Commission granting spacing.

35) Amtex asserts that there has been no change in condition to vacate prior spacing as American Natural requests.

36) Amtex reasserts that the ALJ's report should be sustained on the basis set out in the report but an independent review of the record in total would support the denial as recommended.

### **RESPONSE OF AMERICAN NATURAL**

1) American Natural reasserts that the issue is whether one gives notice to those who are entitled to share in production or does one give notice to people who claim an interest in the unit. American Natural contends by Amtex's own admission, it only claims an interest and does not in fact own anything and that this interest is claimed through a Joint Operating Agreement.

2) American Natural contends that Amtex is not a proper party to the pooling under any circumstances because they only have a JOA and have already reached an agreement.

3) American Natural asserts that pooling is only done when an agreement has not been reached so if Amtex owns anything that American Natural already has an agreement with them about, then they would not be pooled.

4) American Natural asserts that Amtex does not have any case law that is precedential that says that the Commission takes notice of people who have unrecorded instruments, but rather case law supports the proposition that it looks at record title ownership. American Natural contends that it is unreasonable to expect the landman to check all of his client's records.

5) American Natural contends that it was a conscious decision not to include Amtex as a respondent because had they been named as a respondent in this case at the Commission, Amtex would have taken the piece of paper to District Court and say that American Natural recognizes that Amtex owns something.

6) American Natural contends that it is ridiculous to say that Mr. Hoffman did not look at the assignments of the leases and therefore did not know if there are other people because those are American Natural leases and American Natural knows who it assigned leases to and the landman did what he was supposed to do independent of the client.

- 7) American Natural asserts that just because Amtex filed a lawsuit does not mean Amtex is entitled to share in production.
- 8) American Natural reasserts that Mr. Hoffman did check the county records.
- 9) American Natural contends that Amtex did not have its own landman testify and alleges that the landman probably would not have supported Amtex's case. American Natural contends that Amtex did not present any evidence that anyone was absent in this case and the only evidence is from Mr. Hoffman who states that he checked the county records.
- 10) American Natural reasserts that Amtex cannot assert rights of third parties as Amtex is doing here by saying there are phantom parties who have not been identified.
- 11) American Natural contends that Amtex did not appeal the decision of the ALJ but rather argued that the Referee should reverse the pooling and make Amtex the operator. American Natural asserts that Mr. Overall testified about the AFE and stated that any party who elects to participate under the pooling order would just pay actual costs.
- 12) American Natural contends that it notified everybody entitled to share in production in accordance with the county records as the Commission rules required and there is no reason American Natural should have to refile this case with the exact same respondents and start over again.

## **CONCLUSIONS**

**The Referee finds the Report of the Administrative Law Judge should be reversed and the American Natural spacing application and pooling application should be granted.**

1) The referee finds the ALJ's recommendation to deny the American Natural spacing and pooling applications is contrary to the weight of the evidence, contrary to the law and constitutes reversible error.

2) The ALJ denied American Natural's application to extend Order No. 557471 to establish 40-acre drilling and spacing units for the production of oil from the Calvin, Senora, Earlsboro, Booch, Gilcrease, Cromwell, Jefferson, Caney, Mayes, Woodford, Misener, Viola, First Wilcox and Second Wilcox common sources of supply underlying the NW/4 of the SW/4 of Section 18 and establish 40-acre drilling and spacing units for the production of oil from the Bartlesville, BrownLime, Sylvan, McLish, Oil Creek and Arbuckle common sources of supply underlying the NW/4 of the SW/4 of Section 18. American Natural also sought in its pooling application to pool the interests and adjudicate the rights and equities of oil and gas owners in the Calvin, Senora, Earlsboro, Bartlesville, BrownLime, Booch, Gilcrease, Cromwell, Jefferson, Caney, Mayes, Woodford, Misener, Hunton, Sylvan, Viola, First Wilcox and Second Wilcox common sources of supply underlying the 40-acre drilling and spacing units comprised of the NW/4 of the SW/4 of Section 18. The pooling application sought by American Natural requested that American Natural be designated operator.

3) The application by American Natural requesting the formation of the above-stated drilling and spacing unit was filed on September 13, 2011. The Notice of Hearing filed by American Natural on September 13, 2011, provided that the cause was set for hearing on October 10, 2011. On October 10, 2011, American Natural filed a notice to set on protest docket. Amtex entered an appearance and a protest in both the pooling application and the spacing application of American Natural on October 17, 2011. There is a pre-hearing conference agreement dated October 16, 2011 and filed October 18, 2011 showing the appearance of Amtex and stating that the protested issues would be operations and the "need for well". Emergency Order No. 590262 was entered on October 20, 2011 granting authority to American Natural to commence the drilling of a well, the Forest and Mary #1-18 well, to test the common sources of supply listed in American Natural's drilling and spacing application.

4) The ALJ in his report on page 14 states:

"It appears AMTEX was somehow alerted that ANR was attempting to do something in the NW/4 of the SW/4 of Section 18, Township 8 North, Range 7 East, Seminole County, Oklahoma. AMTEX did not enter a special appearance in the cause and submitted itself to the jurisdiction of the court by its actions. AMTEX fully participated in the hearing held on November 16, 2011. AMTEX did extensive cross-examination of ANR's land and geologic witnesses regarding the spacing and pooling applications. The ALJ finds ANR was deficient in the notice it was required to give to persons/entities entitled to notice. However, AMTEX had actual notice rather than mailed notices and/or publication. There was no showing that AMTEX was prejudiced by not receiving the notice required by Commission rules. The lack of notice to AMTEX was the main thrust of the protest by AMTEX."

5) Failure to notify a party in a drilling and spacing cause results in the order's attempt to adjudicate rights of such party, being ineffective and a nullity in so far as it purported to affect the interests of Amtex. *Union Texas Petroleum, A Division of Allied Chemical Corporation v. Corporation Commission of the State of Oklahoma*, 651 P.2d 652 (Okl. 1981). However, in the present case Amtex had actual notice of these proceedings and actively participated in the protested hearing on November 16, 2011. *Ranola Oil Company v. Corporation Commission*, 460 P.2d 415 (Okl. 1969).

6) Amtex did not present any evidence that anyone was absent who should have received notice in this case and Amtex cannot assert rights of third parties and cannot assert that other parties have not received notice. Amtex did not have its own landman testify. A party must assert their own legal rights and interests and cannot rest their claim for relief on the rights or interests of third parties. *Warth v. Sedlin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed. 2<sup>nd</sup> 343, 355 (1975); *Independent School District #9 of Tulsa County v. Glass*, 639 P.2d 1233 (Okl. 1982).

7) The Commission derives its jurisdiction under the State's conservation laws primarily from the spacing statute, 52 O.S. § 87.1. 52 O.S. § 87.1 provides in relevant part:

a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Corporation Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source

of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma;...

8) 52 O.S. § 86.1 (3) defines the term "common source of supply" as it pertains to the spacing statute and provides:

"Common Source of Supply" comprises and includes that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid, by a common accumulation of oil or gas or both.

9) It is clear under the conservation laws that American Natural, as an owner with an interest in the minerals or a right to drill in the common sources of supply covered by the spacing application, has the right to apply for spacing of either the actual or prospective common sources of supply so that development of those common sources of supply can be pursued, waste prevented, and correlative rights protected. *May Petroleum, Incorporated v. Corporation Commission of the State of Oklahoma*, 663 P.2d 716 (Okl. 1982); 52 O.S. § 87.1; *Cameron v. Corporation Commission*, 418 P.2d 932 (Okl. 1966).

10) The transcript shows that there was substantial evidence presented as to the presence of the formations in the proposed unit. There was also evidence presented by testimony and exhibits which indicated the hydrocarbon to be produced would be oil. This was not challenged by Amtex. The transcript also shows the evidence provided was that the formations were relatively flat with little change in elevation across Section 18. Amtex did not challenge the evidence presented by American Natural concerning the depth/tops of the formations.

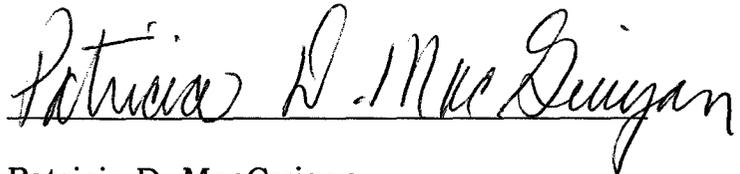
11) Thus the referee finds that the American Natural evidence adduced before the Commission satisfies the terms of the statute and the case law and American Natural's drilling and spacing application should therefore be granted.

12) The ALJ recommended after considering all the facts, circumstances, testimony and evidence that the American Natural pooling application in CD 201104691 should be granted but only for the Hunton lime, which was spaced under Oklahoma Corporation Commission Order No. 22084 for the 40-acre units in the south half of Section 18. The ALJ also found that American Natural should be named operator of the unit for the Forest and Mary #1-18 well under the pooling. The ALJ found that there was no named respondent who protested the amount of expenses contained in the AFE and that the costs associated with the Forest and Mary#1-18 well was similar to wells drilled in the immediate vicinity. The ALJ also found that there was no dispute

regarding the values recommended by American Natural or the election time frame. There was also no disagreement with subsequent well provisions requiring an election. Amtex did however, ask to be designated as operator of the well, but the ALJ found that Amtex, although participating in many wells, American Natural currently operates several wells in and around Seminole County.

13) After reviewing the transcript, the Referee would affirm the decision of the ALJ to grant the pooling application of American Natural as to the Hunton lime and designate American Natural as operator. However, for the above-stated reasons concerning the recommendation that the spacing application of American Natural should be granted, the Referee would also recommend that the pooling application of American Natural be granted concerning all of the common sources of supply requested in American Natural's pooling application other than the McLish, Oil Creek and Arbuckle formations which were dismissed by American Natural at the hearing. The Referee believes that the transcript reflects there is substantial evidence to support the granting of American Natural's pooling application. See *Application of Choctaw Express Co.*, 253 P.2d 822 (Okl. 1953); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951)

**RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> day of April, 2012.**



Patricia D. MacGuigan

OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy  
Commissioner Anthony  
Commissioner Douglas  
Jim Hamilton  
ALJ Michael Porter  
Richard J. Gore  
John E. Lee, III  
Office of General Counsel  
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			APR 11 2011
			FBI - MEMPHIS
			Page No. 21