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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**INCREASED DENSITY**	**CAUSE CD NO. 201105041-T**
LEGAL DESCRIPTION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	
APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**SEPARATE ALLOWABLE ROBERT 11-36H WELL**	**CAUSE CD NO. 201105042-T**
LEGAL DESCRIPTION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	
APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**LOCATION EXCEPTION ROBERT 11-36H WELL**	
LEGAL DESCRIPTION:		**CAUSE CD NO. 201105043-T**
SURFACE LOCATION:	**SECTION 25, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	
BOTTOM HOLE LOCATION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**EXCEPTION OR VARIANCE TO OCCGR 165:10-3-28(c)(2)(B) FOR THE ROBERT 11-36H WELL**	**CAUSE CD NO. 201105044-T**
LEGAL DESCRIPTION:	**SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**SEPARATE ALLOWABLE BRADY 12-36H WELL**	**CAUSE CD NO. 201105045-T**
LEGAL DESCRIPTION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**LOCATION EXCEPTION BRADY 12-36H WELL**	
LEGAL DESCRIPTION:		**CAUSE CD NO. 201105046-T**
SURFACE LOCATION:	**SECTION 25, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	
BOTTOM HOLE LOCATION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**EXCEPTION OR VARIANCE TO OCCGR 165:10-3-28(c)(2)(B) FOR THE BRADY 12-36H WELL**	**CAUSE CD NO. 201105047-T**
LEGAL DESCRIPTION:	**SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**SEPARATE ALLOWABLE SARA 13-36H WELL**	**CAUSE CD NO. 201105048-T**
LEGAL DESCRIPTION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	
RELIEF SOUGHT:	**LOCATION EXCEPTION SARA 13-36H WELL**	
LEGAL DESCRIPTION:		**CAUSE CD NO. 201105049-T**
SURFACE LOCATION:	**SECTION 25, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	
BOTTOM HOLE LOCATION:	**ALL OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	

APPLICANT:	**SM ENERGY COMPANY**	)
RELIEF SOUGHT:	**EXCEPTION OR VARIANCE TO OCCGR 165:10-3-28(c)(2)(B) FOR THE SARA 13-36H WELL**	) **CAUSE CD NO. 201105050-T**
LEGAL DESCRIPTION:	**SECTION 36, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM 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 15th day of December, 2011, 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: **John C. Moricoli, Jr.**, attorney, appeared on behalf of applicants, SM Energy Company ("SM"); **Charles L. Helm**, attorney, appeared on behalf of JMA Energy Company, L.L.C. ("JMA"); **Rick Taber**, attorney, appeared on behalf of Richland Resources Corporation ("Richland"); **Emily Smith**, attorney, appeared on behalf of Chesapeake Operating, Inc. ("Chesapeake"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 23rd 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

JMA filed exceptions concerning the ALJ's recommendation that all of the SM applications should be granted. SM seeks to drill three additional horizontal wells targeting the Marmaton "B" member of the Des Moines underlying Section 36. Due to the presence of vertical wells in the unit, an exception to the rules is requested for each well allowing the wellbores to come to within 400 feet of each other. A separate allowable is also requested for each well and a location exception for each well is necessary to allow the laterals of the horizontal wells to be sufficiently long to efficiently produce the reserves underlying the unit. SM is currently drilling the Derald #10-36, a horizontal well targeting the Marmaton "B" and, based on area drilling and production, SM believes that four horizontal wells per unit is the most economic way to produce the Marmaton "B".

JMA seeks denial of the subject applications because the first horizontal well in the unit is not completed and they assert any anticipated production is merely speculative at the present time. Without further well information specifically regarding the Des Moines as it underlies the subject unit, JMA feels it should not be forced to decide whether to participate or not in the newly proposed SM wells.

JMA TAKES THE POSITION:

(1) The Report of the Administrative Law Judge ("ALJ") is both contrary to the law and contrary to the evidence.

(2) The ALJ erred in the Recommendations paragraph on Page 4 of the Report stating: "SM presented testimony and evidence regarding the area production history of the Des Moines, in particular the Marmaton B".

(3) The ALJ erred in the Recommendations paragraph on Page 7 of the Report stating: "Evidently SM believes the economics justifies the addition of 3 wells and this request is the same as the other units where SM has drilled 4 horizontal wells to develop the Des Moines formation".

(4) The ALJ erred in granting three horizontal increased density wells targeting the Marmaton "B" formation before any horizontal well has been drilled and completed in Section 36 from the Marmaton "B". Contrary to the ALJ's erroneous recommendations and conclusions, SM presented no evidence regarding the Marmaton "B" area production. At the hearing, evidence was presented by SM that one older vertical well, the Baker #8-36, was commingled in the "B", "C", "D" and "E" members of the Des Moines and that SM is drilling the Derald #10-36H well which will be the first horizontal Marmaton "B" well. It is fundamentally unreasonable to approve three increased density horizontal wells for the Marmaton "B" before the first horizontal Marmaton "B" well has been drilled.

(5) The ALJ erred in failing to consider economic waste in arriving at the Conclusions and Recommendations. The cost to drill and complete a Marmaton "B" horizontal well is in excess of $8 million. The Derald #10-36H well is the first Marmaton "B" horizontal well in Section 34 and is expected to cost approximately $8 million. By approving three horizontal Marmaton "B" density wells, in effect, the ALJ has approved a $32 million drilling operation before establishing any evidence that one well can be economically drilled and completed.

(6) The ALJ erred in failing to consider or discuss the absence of a change of conditions since increased density was previously authorized in the unit.

(7) The ALJ erred in failing to consider or discuss the variance in the Marmaton "B" reservoir across Section 36.

(8) Wherefore, JMA respectfully requests that the Report of the ALJ be reversed and that the Commission deny the applications of SM in Cause CD Nos. 201105041-T, 201105042-T, 201105043-T, 201105044-T, 201105045-T, 201105046-T, 201105047-T, 201105048-T, 201105049-T, and 201105050-T, or in the alternative, require the density relief be stayed until the Derald #10-36H well is drilled and completed as the first Marmaton "B" well in Section 36.

THE ALJ FOUND:

(1) All of the applications of SM should be granted. SM presented testimony and evidence regarding the area production history of the Des Moines, in particular the Marmaton "B". There is sufficient evidence that, without the three increased density horizontal wells, and the supporting requests for location exception, separate allowable and exception to the rules, reserves will go unrecovered. SM has targeted the Marmaton "B" member of the Des Moines in the area for development and operates all of the Des Moines wells in Section

36. As the party with the most experience in the Des Moines and the information presented, it is in the interests of prevention of waste and protection of correlative rights that SM be allowed to proceed in the expeditious recovery of reserves underlying the unit.

(2) SM is an active operator developing the Marmaton "B" (as well as other members of the Des Moines common source of supply) in the area. Based on its expertise with the production of the formation, SM presented substantial evidence proving the need for three additional horizontal wells in Section 36. While there are currently not as many Des Moines horizontal wells in the area as there are vertical Des Moines wells, that should not be a reason to deny further development utilizing horizontal technology when limited drainage is an issue. Granting the applications allowing the proposed locations and the exceptions to the rule regarding proximity of the horizontal wellbores to the vertical producers will not result in any adverse effect but will result in more efficient recovery of reserves that would otherwise go unrecovered. In addition, the well costs for the additional wells and the fact that nothing or a very limited production amount will be the only allowable available justifies the granting of the separate allowable applications. Investing the millions of dollars required to recover the reserves can only be encouraged by the availability of separate allowables and such cannot be viewed as economic waste.

(3) The concerns raised by JMA are not persuasive. In addition to JMA being a very small interest owner in the unit, the request to deny the applications until additional production information is received and evaluated, is based on perceived economics of the JMA witness and the 2.8 BCF required to "break even" when JMA is not an active or experienced operator in the area. Evidently SM believes the economics justifies the addition of three wells and this request is the same as the other units where SM has drilled four horizontal wells to develop the Des Moines formation. JMA always has the option to participate in one or none of the proposed SM wells and it must make that decision without any further delay of the applications.

(4) Thus, in light of the aforementioned conclusions, it is the recommendation of the ALJ that all of the subject applications of SM be granted. Any orders issuing out of these causes should *contain* the recommendations provided herein.

POSITIONS OF THE PARTIES

JMA

1) **Charles Helm**, attorney, appeared on behalf of JMA Energy Company, LLC ("JMA") taking exception to the recommendation of the Administrative Law Judge. JMA requests that the Appellate Referee find that it is not proper at this time to grant SM's request for an increased density exception, which seeks three additional Des Moines horizontal wells. JMA asserts that the increased density wells sought will also require location exceptions and variances.

2) JMA states that this matter was heard on December 15, 2011, in Tulsa by Administrative Law Judge McKeown, and that the ALJ recommended granting all of SM's applications. JMA requests that its filed exceptions be incorporated into its oral arguments and be considered if left unaddressed by oral argument.

3) JMA notes that the lands involved are Section 36, Township 11 North Range 26 West, Beckham County, Oklahoma, and that the formation involved is the Des Moines. JMA references Exhibit 1.

4) JMA asserts that the spacing is for the Des Moines (Lower Granite Wash), and that Exhibit 4 referenced a portion of the Des Moines formation as the Marmaton. JMA states that its references to the Des Moines common source of supply should be taken to include the Marmaton. JMA states that it will focus upon the Marmaton B and D intervals.

5) JMA references Exhibit A, and focuses upon three vertical wells in Section 36, the Baker 5-36, the Baker 8-36, and the Hinson Twin 7-36. JMA states that the referenced three wells were drilled by SM, and that SM operates one horizontal well in the unit, the Baker 9-36H. JMA states that the well is a horizontal well in the Marmaton D interval. JMA contends that it is of importance that the Baker 9-36H is several hundred feet below the B interval, which is the target formation for the new wells.

6) JMA asserts that SM has abandoned the D interval and is focusing on the B interval. JMA contends that the B interval is uphole. JMA asserts that the B interval is subject to three increased density requests.

7) JMA contends that the Baker 9-36H well, completed in the D interval, experienced rapid decline in production and that the wells ultimate recovery will be 1.6 Bcf.

8) JMA asserts that the expert for SM testified that the B interval and the D interval are unrelated. JMA contends that this was the only evidence presented in support of the requested wells.

9) JMA asserts that the Baker 8-36 vertical well has perforated the B interval and that is the only well that has been completed in the B interval.

10) JMA contends that the ALJ's assumptions that SM based its increased density request upon economics (at page 4, ¶ 1 and at page 7, ¶ 3) was in error for two reasons: first, that SM presented no evidence regarding economics; and, second, that production from the D interval has been abandoned for the B interval.

11) JMA asserts that, contrary to the report of the ALJ, SM has not drilled four wells in the Des Moines in the area. JMA contends that Exhibit 1 shows one horizontal well drilled in the Des Moines at interval D, and that the well experienced rapid decline in production and is no longer viable. JMA asserts that there is one horizontal well in Section 35 and one horizontal well in Section 6. JMA reasserts that there is no evidence of a unit with four Des Moines wells in the area.

12) JMA contends that the expert for JMA, Mr. Mike Davis, testified that the development of the B interval wells will cost approximately $8,000,000.00 per well. JMA asserts that Mr. Davis testified that the break even point for the wells would be a production of 2.8 Bcf per well.

13) JMA contends that the 9-36H well, completed in the D interval, will have an ultimate recovery of 1.6 Bcf. JMA asserts that SM is moving uphole because the D interval is not sufficiently productive. JMA contends that SM invested $8,000,000.00 in the 9-36H well. JMA asserts that it has participated in each well as a working interest owner.

14) JMA asserts that the Derald 10-36H well, which is absent from Exhibit 1, is currently being drilled west of the Baker 9-36H in the B interval. JMA contends that this well was approved in CD No. 2011-1523, on June 29, 2011.

15) JMA asserts in that matter, SM presented evidence that 270 Bcf underlie the well in the Des Moines Lower Granite Wash. JMA contends that SM presented evidence that the well would recover 3.3 Bcf or gas, and therefore 266 Bcf of original gas would remain. JMA asserts that the Derald 10-36H appears in exhibits as a proposed horizontal wellbore.

16) JMA contends that SM sought increased density for the Des Moines B interval before completion or production of a well in that interval. JMA asserts that only a small amount of production has been obtained from the B interval from a vertical well that came on in 2007.

17) JMA contends that SM is asking for approval of $32,000,000.00 of development without establishment that the wells will be economically viable. JMA asserts that an increased density exception would be contrary to evidence and contrary to law. JMA contends that when the Commission established 640-acre units for the Des Moines in 1978, for increased density, a change in condition suggesting the need for additional development had to be shown.

18) JMA asserts that SM followed Commission procedure until the time of the drilling of the Baker 9-36H well. JMA contends that at the time SM sought an increased density exception for the Baker 9-36H well, it estimated reserves of 69 Bcf in the Des Moines Lower Granite Wash. JMA asserts that SM has changed its estimate to 270 Bcf, even with the poor results of the D interval well intervening.

19) JMA states that SM has estimated recoverable reserves of 16 Bcf on Exhibit 5 from the B interval. JMA contends that the only well producing from the B interval, the Baker 8-36, has only produced 17 Mmcf and will have an ultimate recovery of 28 Mmcf. JMA asserts that SM has no support for the contention that the Derald 10-36H well will have an ultimate recovery of 3 Bcf.

20) JMA contends that there are only two wells in the area producing from the B interval, in Section 35 and Section 6, and that SM did not provide any evidence regarding these wells.

21) JMA asserts that the ALJ did not understand the initial productive rate of a potential B interval well, or that the initial productive rate did not matter to the ALJ. JMA cites the ALJ's estimates in the report at page 6, ¶ 6B.

22) JMA requests that the Commission delay the approval of the increased density wells until the information from the Derald 10-36H well is collected. JMA contends that the request is not unreasonable when considering the failure of the horizontal well drilled in the D interval. JMA requests that the Recommendation of the ALJ be reversed and that the matter be remanded with consideration of the status of the Derald 10-36H.

23) JMA asserts that its seven percent working interest is not of insignificance, and that small working interest owners ought to be given the same consideration as large interest owners. JMA contends that it is the Commissions obligation to protect correlative rights.

24) JMA asserts that for an increased density exception, a change in condition must be shown. JMA contends that because the current increased density well, the Derald 10-36H, has not been drilled to completion, there is no information available supporting a change in condition. JMA asserts that there

has been no change in condition since the Commission found that 270 Bcf underlie the section.

25) JMA contends that the granting of three additional wells in the section is violative of correlative rights. JMA reasserts that the first horizontal well in the B interval must be completed before additional wells are granted.

SM

1) **John Moricoli**, attorney, appeared on behalf of the Applicant, SM.

2) SM asserts that the original spacing order, Order 147147 referenced the Des Moines Lower Granite Wash, which the industry and the Commission have construed as meaning the entire Des Moines interval. SM contends that the development of the Des Moines interval in the area has occurred through the drilling of vertical wells. SM asserts that Exhibit 1 is only a small representation of the area, and that a map of the entire area would show numerous wells completed in the Des Moines (Lower Granite Wash). SM contends that the great number of wells drilled in the formation shows that a single well will not effectively and efficiently drain the Des Moines common source of supply, and that many wells will be needed to produce the underlying oil and gas.

3) SM asserts that Exhibit 4, the Baker well logs, contain data supporting the conclusion that the B interval is reservoir rock and will be productive. SM contends that over time it was realized within the industry that vertical wells would not effectively produce the formation. SM asserts that horizontal drilling and fracturing enhance natural permeability of reservoir rock and improve well recovery.

4) SM contends that JMA is incorrect in its assertion that four wells will not effectively produce the formation. SM asserts that JMA does not desire to participate in the development of the area.

5) SM notes, referencing Exhibit 4, that the Baker 9-36H well completed in the D interval did have a decline in production, but asserts that SM has not abandoned the well. SM contends that the well is under further study.

6) SM asserts that many horizontal wells have been drilled in the area: the Carl Dean 1-35H in Section 35; the McGuire 1-6H in Section 6 (10 North, 25 West); the Norma Sage and Alec in Section 34; and the Bill, the Price, the Winn, and the McIntire in Section 27. SM reasserts that many B interval horizontal wells have been drilled in the area by SM and other companies.

7) SM contends that the statement of the ALJ in her Report at page 6, ¶ 6B that the wells were expected to come on at 3 Bcf was likely a typographical error, and that the testimony was that the wells were expected to come on at 3 million cubic feet of gas per day.

8) SM asserts that the evidence derived from the development of the area supports its application for an increased density exception. SM contends that JMA did not and cannot contest the volumetrics and mapping prepared by SM's geologist. SM asserts that the evidence is irrefutable that the B interval will be productive. SM contends that four wells will be required to develop the section and that the use of four wells will be economical.

9) SM asserts that the economics of the increased density are supported by the data derived from Section 36 and also from the data derived from the offset sections and the area at large.

10) SM contends that analysis of well logs, production pressure information, and type curve analysis show that the Derald 10-36H well will be productive and that four wells in the section will be necessary.

11) SM asserts that the four wells will be distributed evenly through the unit, and that the Derald 10-36H well nearly overlies the Baker 9-36H but will not go as deep as it is only going to the B interval.

12) SM reasserts that information derived from nearby wells and type curve analysis support that the wells will have an initial production of three million cubic feet of gas per day.

13) SM contends that the data for the area gathered over the prior 35 to 40 years show that a single well cannot effectively drain a spaced unit. SM asserts that effective draining of the B interval will require significant development.

14) SM contends that it would not have proposed the wells if it thought they would not be economical. SM asserts that JMA can elect not to participate if it believes the wells will not be economical.

15) SM reasserts that the data show that four wells will be necessary in the section. SM contends that JMA submitted no evidence to refute the above contention. SM asserts that JMA's only argument is that the granting of an increased density exception was premature.

16) SM cites the report of the ALJ (at page 7, ¶ 3), which states the concerns of JMA are unpersuasive.

17) SM contends that the 69.5 Bcf estimate in Order 575465 cited by JMA was regarding the D interval. SM asserts that the 270 Bcf estimate in Order 586777 was based upon the entire reservoir, from interval A to interval F. SM cites the depiction in Exhibit 4. SM contends that in this matter its estimates focused only upon the interval to be drilled, the Marmaton B. SM cites Exhibit 5. SM requests that the recommendation of the ALJ be upheld.

RESPONSE OF JMA

1) JMA requests that the court limit the scope of its evaluation to the report of the ALJ. JMA asserts that information regarding other horizontal wells was not presented at hearing. JMA contends that the court is confined to the record.

2) JMA asserts that in 1978, when the area was originally spaced, there was no significant horizontal development in the area.

3) JMA contends that SM's assertion that JMA does not want to participate in horizontal drilling in the area is incorrect. JMA asserts that it has participated in each well that SM has drilled in the area, and that it is presently participating in the Derald 10-36H well. JMA contends that it participated in the last well drilled in the D interval.

4) JMA asserts that there is no evidence that it will continue to oppose horizontal development, as asserted by SM.

5) JMA contends that the ALJ intended to state that the well will ultimately recover 3 Bcf, as presented in Exhibit 5. JMA asserts that there is no evidence concerning the initial rate of each well.

6) JMA contends that the witnesses presented by SM did not have experience in the region, and that the testimony of these witnesses was unreliable. JMA asserts that the witnesses should have evaluated a nearby B interval well operated by Chesapeake. JMA contends that SM presented no evidence regarding B interval production from horizontal wells in the area, and that the evidence presented derived from B interval vertical wells was unpersuasive.

7) JMA reasserts that it is participating in the horizontal well presently being drilled.

15) JMA contends that the increased density exception ought to be delayed in order that it may make an informed decision whether to participate. JMA asserts that it will continue to participate in productive wells.

CONCLUSIONS

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

1) The Referee finds that the Report of the ALJ should be concerning her recommendation to grant SM's request for increased density for 3 additional Des Moines wells targeting the Marmaton "B" member of the Des Moines underlying Section 36. The Referee would further affirm the ALJ's recommendation to grant, due to the presence of vertical wells in the unit, an exception to the rules for each well allowing the well bores to come to within 400 feet of each other, and to grant a separate allowable as requested for each well and a location exception for each well as being necessary to allow the laterals of the horizontal wells to be sufficiently long to efficiently produce the reserves underlying the unit. The Referee finds that the ALJ's recommendations are supported by the weight of the evidence, by law and free of reversible error. The ALJ is the initial finder of fact. As the finder of fact the ALJ has the duty to observe the demeanor of the witnesses, assess their credibility, and assign the appropriate weight to their opinions. See *Grison Oil v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).

2) The ALJ had the opportunity to observe the demeanor of the various expert witnesses while they were testifying. Deference is given to a judge's opportunity to view the witnesses first hand. In *Williams v. Volkswagen Aktungesllschaft, et al,* 226 Cal. Rpter. 306 (1986 California) the court held:

> "Common Sense dictates the rule. It is the trial judge who is at the best vantage point to surveil the grenades, the darts, the slings and arrows of outrageous forensic conduct, rather than the reviewer who, with the delayed deliberate attachment of a coroner examines the cold body of the record only after the warm life of trial has expired and its rattlings have ceased."

3) When it comes to applying weight to an expert opinion, it is clear the Commission must follow the procedure set forth in *Haymaker v. Oklahoma Corporation Commission* 731 P.2d 1008 (Okl. App. 1986) wherein the court stated:

"Proper appraisal of the expert testimony requires observance of the following benchmark principle approved in *Downs v. Longfellow Corporation*, 351 P.2d 999 (Okl. 1960);

> "The reasons given in support of the opinions [of an expert witness] rather than the abstract opinions are of importance, and the opinion is of no greater value than the reasons given in its support. If no rational basis for the opinion appears, or if the facts from which the opinion was derived do not justify it, the opinion is of no probotive force, and it does not constitute evidence sufficient to...sustain a finding or verdict."

4) The ALJ found in her Recommendations on page 7 of her report in paragraph 2:

> "SM is an active operator developing Marmaton "B" (as well as other members of the Des Moines common source of supply) in the area. Based on its expertise with the production of the formation, it presented substantial evidence proving the need for 3 additional horizontal wells in Section 36. While there are currently not as many Des Moines horizontal wells in the area as there are vertical Des Moines wells, that should not be reason to deny further development utilizing horizontal technology when limited drainage is an issue."

The evidence in exhibits presented by SM make it clear that the ALJ followed the principles and procedures set forth in *Haymaker v. Oklahoma Corporation Commission, supra,* when she made her determination.

5) The ALJ set forth the facts, circumstances, testimony and evidence presented before her in her report. It is clear that the ALJ considered the evidence presented within the cause, reviewed the basis of the expert opinions, and determined that more weight should be placed upon the opinions of the SM experts than that of JMA experts which resulted in a granting of the increased density application and the location exception applications and an exception to the rules requesting for each well to be allowed to come to within 400 feet of each other. The ALJ granted SM's request for authority to drill the horizontal component of the increased density wells no closer than 400 feet to existing vertical Des Moines producers operated by SM.

6) The Derald 10-36H well is drilling in the west 1/2 of Section 36 at a depth 100 feet shallower than the Baker 9-36H (a Marmaton "D" producer) and will target the Marmaton "B" at the same location. There are currently no producing horizontal Marmaton "B" producers in the unit. SM mapped the gross Marmaton "B" interval at slightly more than 150 feet thick underlying

Section 36 which is why 3 additional horizontal wells are required to produce the reserves. SM projects the Section 36 original recovery reserves in place to be 16.164 BCF with estimated ultimate recovery by the Baker 8-36 and the Derald 10-36H to be 3,028 BCF leaving remaining reserves in the unit of 13,136 BCF Thus 3 additional wells would be needed to recover the additional reserves. JMA did not refute or contest the volumetrics and mapping prepared by SM.

7) The Referee finds that JMA has failed to satisfy its burden of persuasion and its burden of production by the weight of the evidence. It is the duty of the ALJ to assign the weight to the expert opinion presented before her. In administrative proceedings, the applicant seeking relief has two burdens: the burden of persuasion (that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose); and the burden of production (a party's obligation to come forth with evidence in support of its claim). *Director, Office of Workers' Compensation Program, Department of Labor v. Maher Terminals, Inc.,* 512 U.S. 267, 272, 275 (U.S. 1994).

8) The Oklahoma Supreme Court in *Palmer Oil v. Phillips,* 231 P.2d 997 (Okl. 1951) stated:

> "Under the holding of this court and that of courts generally, *Chicago, R.I.&P.Ry.Co. v. Pruitt,* 67 Okl. 219, 170 P. 1143: 22 C.J.728, sec. 823, 32 C.J.S., Evidence, Section 567, p.378, the weight to be given opinion evidence is, within the bounds of reason, entirely for the determination of the jury or of the court, when trying an issue of fact, taking into consideration the intelligence and experience of the witness and the degree of attention he gave to the matter. The rules should have peculiar force herein whereby the terms of the Act the Commission is recognized as having peculiar power in weighing the evidence. Since the evidence before the Commission was competent and sufficient if believed, to sustain the order we must, and do, hold that the order is sustained by the evidence and that the contention is without merit. *Ft. Smith W.Ry.Co. v. State,* 25 Okl. 866, 108 P.407; *Bromide Crushed Rock Co. v. Dolese Bros. Co.,* 121 Okl. 40, 247 P.74."

9) Thus, based on the preceeding rationale, the Referee recommends that the Report of the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 7th day of May, 2012.

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Kathleen M. McKeown
John C. Moricoli, Jr.
Charles L. Helm
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