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**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

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| **APPLICANT:** | **CIMAREX ENERGY CO.** | ) |
| **RELIEF SOUGHT:** | **POOLING** | ) **CAUSE CD NO. 201105978** |
| **LEGAL DESCRIPTION:** | **ALL OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 7 WEST, CANADIAN COUNTY, OKLAHOMA** | ) |

# REPORT OF THE OIL AND GAS APPELLATE REFEREE ON AN ORAL APPEAL OF A MOTION FOR PRODUCTION OF DOCUMENTS

This Motion came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 23rd day of January, 2012, 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 purpose of taking testimony and reporting to the Commission.

**APPEARANCES:** **John C. Moricoli, Jr.**, attorney, appeared for applicant, Cimarex Energy Co. ("Cimarex"); **Richard K. Books**, attorney, appeared for James L. Sykora ("Sykora"); **Gregory L. Mahaffey,** attorney, appeared for Newfield Exploration Mid-Continent, Inc. ("Newfield"); **Richard A. Grimes**, attorney, appeared for Kirkpatrick Oil and gas, Inc. ("Kirkpatrick"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Report on the Motion to which Oral Exceptions were timely lodged 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 16th day of March, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

## STATEMENT OF THE CASE

The Motion for Production of Documents relates to information from a recently drilled well known as the Rock Island 1H-14 in Section 14, T14N, R7W, Canadian County, Oklahoma. The Rock Island 1H-14 is a horizontal well testing the Woodford, Hunton, and Sylvan common sources of supply below Section 14. The Rock Island 1H-14 was drilled in 2011 by Newfield in the 640 acre spacing unit comprised of Section 14 (Notice of Spud date was July 30, 2011). Prior to the commencement of the Rock Island 1H-14 well, Newfield instituted a pooling application, but then dismissed it and drilled the well without a pooling order or agreement for unit development impacting the three mineral interest owners appearing in the Motion. Later, on November 7, 2011, Cimarex filed its *Application for Pooling,* CD 201105978, for Section 14, requesting that it or some other party be designated operator of the unit and for other relief. The Movant, Sykora, as an unleased mineral owner not subject to an agreement regarding unit development, was named a respondent to Cimarex's application. Sykora requests information regarding the Rock Island #1H-14 well including actual well costs (as evidenced in "joint interest billings, invoices, and other documents reflecting all operations undertaken and all costs incurred in performing said operations, including drilling, completion, and operation of the well" and monthly production and revenue from the well. Newfield declined to provide information about the Rock Island 1H-14 well to the extent requested by Sykora. Cimarex and Kirkpatrick support Sykora's request for production of documents.

The issues presented by the motion are: (1) Whether Newfield should be required to produce documents relating to the Rock Island 1H-14 well in Section 14, T14N, R7W, Canadian County, Oklahoma, including: (a) Any and all well costs, joint interest billings, invoices, and other documents reflecting all operations undertaken and all costs incurred in performing said operations, including drilling, completion, and operation of the well; (b) Monthly production from inception to date; and (c) Monthly revenue from inception to date.

## REPORT OF THE ADMINISTRATIVE LAW JUDGE

**ALJ Michael L. Decker** stated that after review of the pleadings, the ALJ recommended the following regarding the Motion for Production of Documents of Sykora.

1. The Motion for Production of Documents should be granted insofar as Newfield should be required to provide the respondents to CD 201105978 an Authorization for Expenditure (AFE) for the Rock Island 1H-14 well in Section 14-14N-7W, Canadian County, Oklahoma, based

on actual expenditures for the well pursuant to Okla. Stat., tit. 52, Section 87.1(e). At the time the AFE is offered into evidence, it should be prepared or revised within forty-five (45) days of the date of the hearing when it is submitted. [1]

2. The costs for the Rock Island 1H-14 well must be the actual expenditures, which are required, reasonable, and necessary.[2] If the accuracy of Newfield's AFE is disputed by respondents to the instant application as to its delineation of the actual expenditures for Rock Island 1H-14 well, then parties willing to so move the Commission, should have recourse to take the deposition of Newfield employees who can explain and provide back-up materials for the AFE.[3]

3. The Motion for Production of Documents should be granted to require Newfield to provide Sykora with information about the production and revenue from the Rock Island 1H-14 well since the date of its first sale of product in 2011. The respondents to the instant application have the right under the statute to receive the benefits of a Commission pooling order, which "...shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense the owner's just and fair share of the oil and gas."[4] Sykora's just and fair share of the oil and gas from the Rock Island 1H-14 well cannot be determined without the right to review the production and revenue information requested in the motion. Eventually this information will be required to be provided to Sykora pursuant to the *Production Revenue Standards Act;*[5] therefore, under the parallel rights provided by Okla. Stat., tit. 52, Section 87.1(e), Sykora should have access to the information from the subject well in the context of the hearing process of the instant application.

The ALJ reported that early on in the exercise of the Commission's forced pooling authority pursuant to the 1947 amendments to 52 O.S. Section 87.1, the Oklahoma appellate courts recognized the prerogative of a mineral owner, who is not subject to an agreement about the development of a spacing unit, to petition the Commission under the statute to ensure that rights in the unit are properly adjudicated. Under the present form of the statute, the mineral owners have the right, after notice and hearing, to gain the benefits of a Commission order that will adjudicate their interests in the spacing unit, "...upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive

[1] OCC-OAC 165:5-7-7(d)
[2] *W.L. Kirkman, Inc. v. Corporation Commission,* 1983 OK CIV APP 73, ¶¶11-21, 676 P.2d 283.
[3] OCC-OAC 165:5-11-1(a).
[4] Okla. Stat., tit. 52, Section 87.1(e).
[5] Okla. Stat., tit. 52, Section 570.10(B)(1)(a).

without unnecessary expense the owner's just and fair share of the oil and gas." See *Wood Oil Co. v. Corporation Commission,* 239 P.2d 1023 (Okl. 1950).

In *Wood Oil Co. v. Corporation Commission,* supra, the court considered the circumstances of a mineral interest owner impacted by a spacing order (dated April 1, 1947) that contained a "pooling" provision, which stated: "That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development for the unit, then the rights and equities shall be adjusted as provided for by subsection D of Section 4, Chapter 3, Title 52, Oklahoma Session Laws, 1945.

This provision in Order No. 19890, CD No. 1375, *Application of Sinclair Prairie Oil Co., Extension of Spacing for the Hunton Common Source of Supply in the Wayne Pool,* McClain County, Oklahoma, (April 1, 1947), was similar to other provisions of spacing orders which appeared following the enactment of the *Oil and Gas Conservation Act of 1933.* See, e.g., Order No. 9775, CD No. 265, *Application of E.H. Moore for an Order Establishing Well Spacing and/or Drilling Units for the Upper Simpson Series in Fitts Area,* Pontotoc County, Oklahoma (November 21, 1935) at Order ¶6, pp.5-6; Order No. 9858, CD No. 269, *Application of Continental Oil Co., for an Order Establishing Well Spacing and/or Drilling Units for the Jesse Pool,* Pontotoc County, Oklahoma (December 21, 1935), at Order ¶5, pp. 6-7; and Order No. 10519, CD No. 340, *Application of J.E. Crosbie, Inc. for an Order Establishing Well Spacing and Drilling Units in the Fitts Pool,* Pontotoc County, Oklahoma (October 15, 1936), at Order ¶5, p. 4. These provisions were based upon the statutory pooling procedure enacted by *Session Laws of Oklahoma,* 1935, Chapter 59, Oil and Gas, Article 1, Section 3, *Proration of Common Source of Supply – Rules and Regulations – Drilling Units,* Amending Section 4, Chapter 131, *Session Laws of Oklahoma,* 1933, Pursuant to Amendment in Section 4(c), (April 30, 1935). The statutory provision for pooling and election to participate in unit wells enacted by the 1935 amendments to the *Oil and Gas Conservation Act of 1933* is recited in full at Order ¶5, pp.6-7, Order No. 9858, CD No. 269, *supra.*

The *Wood* order establishing a spacing and drilling unit impacted a producing well. After several months of activity under the terms of the order, the operator (Wood Oil Co.) and a non-operating mineral interest owner (Toklan Production Co.) could not reach an agreement concerning rights in the unit, so Toklan filed an application (July 1, 1947) with the Commission to determine the rights of the parties. Thereafter, the Commission entered its order, which found that Tokian was entitled, upon payment of their proportionate share of the cost of the drilling, completing and producing of the well, "to take therefrom their proportionate share of the oil and gas, and to participate in the seven eighths (7/8ths) working interests in the well." *Wood Oil Co. v. Corporation Commission, supra at 1024.* The Commission's July 1, 1947 order fixed the cost of the developing and equipping of the well at a definite figure. Then the

Commission order "adjudged": "That the Wood Oil Company furnish to the Toklan Production Company and J.G. Catlett, Inc., within 10 days from the date of this order, a statement of the total cost of the completion, development and production of the well located on the SE/4 of the NE/4 of the NW/4 of Section 14, Township 5 North, Range 2 West, McClain County, Oklahoma; that the Wood Oil Company credit their actual expenditures with 7/8ths of the production from the well from the date of its first production to the date of the statement provided for herein; that within 10 days alter receipt of such statement by the Toklan Production Company and J.G. Catlett, Inc., that they pay to the Wood Oil Company their proportionate share of the cost of completing and equipping the well, less the credit to such cost of the production from said well; that their proportionate share be determined in the relation that the acreage owned by them bears to the total acreage in the unit." *Wood Oil Co. v. Corporation Commission, supra at 1024.*

On appeal, the court upheld the authority of the Commission to adjudicate the rights of the parties in the spacing unit as a proper exercise of its police power pursuant to the statute, but reversed the order and remanded the application for further proceedings not inconsistent with the court's decision, because the order granted Toklan the right to participate in revenues from the well from the date of first production. The court, however, recognized Toklan's right to share in the production from the pre-existing well from the date of the establishment of the spacing unit forward. *Wood Oil Co. v. Corporation Commission, supra at 1025.*

The court held that "[t]he right of Toklan to share in the production was not dependent upon the order of the commission. The power of the commission was directed to the terms and conditions upon which the right was to be enjoyed." Ultimately, the Supreme Court in the *Wood Oil* case determined that: "It is contemplated by the law that the owners of the working interest shall bear the cost of development and equipping a well in proportion to their respective interests in the production to be had therefrom. Hence, the proportionate share of Toklan and Catlett in the cost of completing and equipping the well must be determined in the relation that the acreage owned by them bears to the total acreage in the spacing unit, without deduction for any production prior to the date of the pooling." *Wood Oil Co. v. Corporation Commission, supra at 1025.*

The *Wood* case certainly adds credence to Sykora's request to receive information about actual costs, production, and revenue for the Rock Island 1H-14 well pursuant to the language of the 1947 version of 52 O.S. Section 87.1(e), which is the same as the present form of the statute.

Later jurisprudence in Oklahoma has recognized the exclusive authority of the Commission to adjudicate the question of operator in a spacing and drilling

unit when there is no private agreement for unit operations covering that determination. See *Crest Resources and Exploration Corp. v. Corporation Commission,* 617 P.2d 215 (Okl. 1980) and *Samson Resources v. Corporation Commission*, 702 P.2d 19(Okl. 1985). In the instant matter, no private agreement covering unit operations is in place and there is no forced pooling order designating a unit operator. Cimarex, therefore, has the prerogative to file its application seeking a Commission order to determine the operatorship issue along with other "...terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense the owner's just and fair share of the oil and gas." 52 O.S. § 87.1(e).

Newfield's contention that the production and revenue information should not be discoverable, because Sykora should obtain the information on his own from public sources, should not be followed by the Commission in the instant case. From the timing of the late 2011 completion of the Rock Island #1H-14 well, it is likely that no publicly accessible production information is available at the present time. Kirkpatrick's counsel argued that the production information would not be publicly available from the Oklahoma Tax Commission because of a computer software problem. Whether or not such is the case, it is apparent from the ALJ's review of the Commission's publicly accessible information about the Rock Island #1H-14 that only a Form 1000 and Form 1000A are available for easy public viewing. Likewise, there would be no publicly available information about the revenue from the Rock Island #1H-14 well.

Based on the circumstances of the instant motion, the ALJ recommends that the rationale utilized by the Commission in the *Applications of Aexco Petroleum Inc.,* CD 200511735 and CD 200511736, *and Application of r.c. Taylor Companies, Inc.,* CD 200900272, should not be adopted in the present dispute. It appears the holding of *Wood Oil Co. v. Corporation Commission, 239 P.2d 1023 (Okl. 1950),* the impact of the *Production Revenue Standards Act,* 42 O.S. 570.10(B)(1)(a) and 52 O.S. Section 87.1(e) on the impact of Sykora's rights to receive the requested information should prevail as controlling law in the instant motion proceeding.

## POSITIONS OF THE PARTIES

### NEWFIELD

1) **Gregory L. Mahaffey**, attorney, appeared on behalf of the Appellant, Newfield. The applicant is Cimarex and the relief sought is pooling. The legal description of the land in question is Section 14, 14 North, 7 West, Canadian County, Oklahoma.

2) Newfield asserts that it owns in excess of 92 percent of this particular unit in Canadian County.

3) Newfield does not dispute that it has drilled and completed the Rock Island 1H-14 Well in the Woodford and that is a wildcat well. Newfield asserts that it elected to drill the well without pooling the minority interest that was outstanding as it is their option to do. Newfield cites *Marathon v. Corporation Commission* which held that a company can pick and choose who it pools. Newfield contends that while it initially might have contemplated pooling and filed something, it dismissed it and decided to drill the well on its own and own 100 percent of the well and take 100 percent of the risks of the well.

4) Newfield contends that the application was filed by Cimarex who owns a small interest. Newfield contends that this interest was picked up as a lease from Kirkpatrick Oil and Gas sometime after Newfield had already drilled the well. Newfield contends that Cimarex is trying to reverse pool, meaning they are trying to pool their way into the well.

5) Newfield contends that James Sykora is a lawyer who owns some minerals. Newfield asserts that Cimarex filed the pooling and named as respondents Sykora and Kirkpatrick. Newfield contends that all of the respondents combined only own a small interest. Newfield contends that respondents are trying to determine how good of a well this well is before they have to decide if the want to be in or out.

6) Newfield contends that under current law, as a co-tenant, absent jurisdiction from the Corporation Commission, Sykora and Kirkpatrick could go to the district court and seek an accounting, but as a co-tenant they would have no right to participate in profits until the cost of drilling, completing, and operating the well had paid out. Then at that time they could come in for their share, but they have no liability.

7) Newfield reasserts that Cimarex is trying to get well information and wants to know how good the well is by asking for joint interest billings, invoices, and documents reflecting all operations undertaken, including drilling, completion, and operation of the well. Cimarex wants to know the monthly production and monthly revenue.

8) Newfield contends that the pooling by Cimarex is defective pooling and at the time of the hearing, Cimarex did not send out any proposal letter before they filed the pooling.

9) Newfield reasserts that this is a fishing expedition by Cimarex to get information about the Rock Island 1h-14 Well. Newfield asserts that its objection to having to five out detailed information upfront is that it does not know if the respondents are going to participate or not.

10) Newfield contends that it understands the ALJ's ruling that Newfield should give an AFE, but that the real issue is to what extent Newfield has to furnish some revenue data.

11) Newfield asserts that while production data is public information, Newfield should not be required to give the respondents revenue data so that the respondents can tell how good or how poor the well is.

12) Newfield contends that it had a right to incur 100 percent of the risk and expense and that over time it will have to account to any others in the drilling and spacing unit as co-tenants.

13) Newfield contends that it is not trying to invoke the Commission's jurisdiction to pool while Cimarex is.

14) Newfield reasserts that it should not be required to furnish the proprietary data on how good or bad the well is.

15) Newfield contends that in a prior Cause No., CD 200900272 for *R.C. Taylor Companies, Inc.,* the late Appellate Referee Specht determined that even public data about well production could not be discoverable from the files of a party to a Commission oil and gas conservation application, if those seeking the information could obtain the data from the public source at their own expense.

16) Newfield reasserts that the respondents can obtain the production data from public sources and reiterates that it should not be required to furnish production revenue.

17) Newfield contends that the ALJ was incorrect in ruling that Newfield should be required to furnish under the Production Revenue Standards Act ("PRSA") because the PRSA regulates when royalties must be paid.

18) Newfield asserts that the Corporation Commission has no jurisdiction to enforce the Production and Revenue Standards Act.

19) Newfield contends that if an unleased mineral owner is pooled, they are deemed to be a working interest owner to the extent of 7/8ths and that they still get the 1/8th royalty.

20) Newfield contends that it is not aware if Sykora is an unleased mineral owner, but if they had unleased minerals and Newfield did not pay

them within six months from the date of first production of the 1/8th royalty, the unleased mineral owner would have a cause of action in district court as a violation of PRSA.

21) Newfield contends that the previous fact situation does not apply to working interest owners and is also not a basis for the Commission to require Newfield to furnish revenue data because respondents could sue in the district court as a violation of the PRSA.

22) Newfield contends that while it does not agree with the ALJ's ruling on delineating expenses, it had given the parties a detailed AFE prior to trial that included a breakdown of the total costs of this almost $10 million-dollar well, $9.8 million to drill and $100,000 in operating expenses.

23) Newfield asserts that it objects to having to give the respondents any other well information or detailed revenue data that would let the respondents see the results of the well before they have to make a decision.

24) Newfield contends that based on what the costs data are, that if respondents want to participate and then claim unreasonable costs the respondents can come back to the Commission and litigate that and if the respondents choose to participate in the well and then claim that Newfield has not accounted for revenue, then the respondents have a district court remedy.

25) Newfield asserts for these reasons that the ALJ was in error in requiring Newfield to furnish any other detailed data about the well, and in particular revenue data, prior to the time these parties make a decision about whether they are going to participate in the well.

# SYKORA

1) **Richard K. Books**, attorney, appeared on behalf of Respondent James L. Sykora, a mineral owner.

2) Sykora contends that the ALJ followed the law and that Newfield could have avoided all of these issues but it chose to voluntarily dismiss the pooling Newfield filed back in May of 2011.

3) Sykora asserts that he is a working interest owner and Cimarex has filed an application for pooling. Sykora asserts that the ALJ was correct in concluding that he is going to be required to pay reasonable and necessary costs actually expended. Sykora contends that before a well is drilled, the only alternative the Commission has is to come up with its best estimate and that is why AFEs are used and the Commission retains jurisdiction. Sykora asserts that the statute is clear in stating that all he can be required to pay is reasonable and necessary costs actually expended.

4) Sykora asserts that because Newfield elected to drill a well before the pooling, respondents have to determine in these proceedings what are the reasonable and necessary costs which were actually expended. Sykora contends that first what was actually expended needs to be determined because if it was not in fact expended, then Sykora does not have to put his share up and furthermore, the parties need to go one step further to determine whether what was reasonable and necessary expenditures. The law is clear from case law that all he can be charged at this point are the reasonable and necessary portion of costs that were actually expended.

5) Sykora asserts that not only are costs relevant, but he does not have to pay in advance money that is due to him now. Sykora contends that if the costs of the well are $10 million, and the well has only produced $9.9 million, Newfield wants Sykora to put up his share of the $10 million, when all is due is his share of $.4 million. Sykora asserts that this is contrary to the statute and that he does not have to make an election, put up his share of the money that is due to him from somebody who had a pooling, dismissed it, and then decided to drill a well.

6) Sykora contends that he cannot be required to put up his share of money that is no longer owing and the only way to find that out is for Sykora to know the revenue information. Sykora asserts that he is entitled to revenue information and the only way to know the revenue is correct and to verify that it is correct, and know exactly what Sykora owes, is to get both the production amounts and the revenue amounts and make sure the number is correct.

7) Sykora contends that Newfield was correct in stating that it has the right to pick and choose who it names in the pooling, however Newfield must bear the consequences of doing so and those consequences are that Newfield cannot force Sykora to put up his share of $10 million when he is owed money from Newfield.

8) Sykora contends that what Newfield wants is contrary to the statute and makes no logical sense and Newfield has to tell him how much hew owes and to determine how much he owes he needs to know what the actual, reasonable and necessary expenses are and Sykora needs to know and account for how much is due Sykora's interest.

9) Sykora asserts that Newfield cannot, by invoking the jurisdiction of the state, make him borrow money or use money that is in a bank account and put up his share of $10 million when what he really wants is his share of 1 million, or a-tenth-of-a-million, or 5 million, or whatever the number is and the only way to arrive at that is for Sykora to know what the revenue is and account for the revenue.

10) Sykora contends that Newfield is arguing that Sykora could go file a case in district court, pay legal fees to get an accounting and find out this information; however, in this instance Sykora thinks it unreasonable in the present case when Newfield is exerting the police power of the state against Sykora, Sykora cannot get that information from Newfield. Sykora asserts that here, a party that has not invoked the jurisdiction at all is having the police power of the state keeping him from getting the information. Sykora contends that this is contrary to the statute, contrary to common sense, and contrary to fundamental fariness. Sykora reasserts that while Newfield had the right to dismiss their pooling, it must take the consequences. Sykora asserts that he is not embarking on a fishing expedition as Newfield seems to suggest, and this is evidenced by the fact that he did not ask for logs, or drill-stem tests, or daily drilling reports or pressure information but rather he asked for what was the only way he could find out what he actually owed.

11) Sykora contends that Newfield is correct in saying that it does not know whether he will participate or not because he will make that decision based on how much he owes and how much he can afford but that decision cannot be made until he knows what the bill is because Newfield chose to drill this unspooled and as a result can only charge him reasonable, necessary, actually incurred costs, less what is owed.

12) Sykora reasserts that the only way to get this information about what he is owed is to get the information about the costs and all the information about the revenue. Sykora asserts that while he has not filed anything at the Commission, he is going to be the one to lose his rights unless he puts up his share of reasonable, actual incurred costs, less what is owed to his interest.

13) Sykora contends that Newfield was incorrect in stating that he filed a pooling because that is not true and he was perfectly content with the situation he was in; however, he is being pooled now and his rights are going to be taken away except to the extent that he puts up the money that is necessary to preserve his interest, or as much of it as he can.

14) Sykora reasserts that the only way he can put up his money to preserve as much interest as he can is to know what the costs are minus what is owed to him, and what share of production is entitled to his interest.

15) Sykora asserts that what he has asked for is what he is clearly entitled to under the statute in order to calculate the amount of money that he would owe to participate. The only way Sykora can do this is to know what the actual, reasonable, necessary costs are, minus the amount of production attributable to Sykora's interests.

## KIRKPATRICK OIL AND GAS, INC.

1) **Richard A. Grimes**, attorney, appeared on behalf of the Respondent Kirkpatrick.

2) Kirkpatrick contends that Sykora was correct in stating that this situation is rare when a well has been drilled for a substantial length of time before a pooling is filed. Kirkpatrick asserts that it did not file the pooling application and that it was in fact Cimarex that did, however, Kirkpatrick was a named party.

3) Kirkpatrick contends that at common law if a party is a co-tenant, it can decide to drill a well without reaching an agreement, either by a private Operating Agreement or creating a relationship through the pooling, but the party will have to carry the other party's interests. Kirkpatrick asserts that under this common law, the party who chooses to make that decision to drill the well without reaching a relationship with the other is, in fact, obligated to account and when the accounting reveals that the owner who the party carried has vested by payout occurring, then that party is back in the well. Kirkpatrick contends that the party who drilled the well has the right not to have them in the well, but under common law, if the well pays out, there is a vesting of the working interests of that party and from that time forward, they have an obligation to pay the other party. Kirkpatrick contends that this analysis of the common law s applicable because if the well has paid out, then Kirkpatrick is already vested with an interest in the well.

4) Kirkpatrick contends that it does not know if the well has paid out and the only way for the Commission to discern whether it has and to know how these circumstances will affect the pooling, Kirkpatrick has to know the costs

and revenues. Kirkpatick asserts that it has not filed a pooling in this case and has been thrust into this cause by virtue of the actions of Cimarex and Newfield and because poolings should be done on terms that are just and reasonable, it is appropriate for Kirkpatrick to know the requested data. Kirkpatrick contends that it does not want to pay Newfield 100 percent of the well costs if it is already owed money back because that should be a credit to their account.

5) Kirkpatrick contends that this is a complex circumstance and while there has been speculation that this well is producing but Kirkpatrick is not certain of this and in order to be treated in a fair and just fashion, it should have this information.

## CIMAREX ENERGY COMPANY

1) **John C. Moricoli, Jr.**, attorney, appeared on behalf of the Applicant Cimarex.

2) Cimarex contends that no information from Newfield that was public in nature, for example production information, is available today, nothing that has been submitted to the Commission.

3) Cimarex contends that a party, such as Newfield, cannot exclude a co-tenant from access and possession of common premises. Cimarex contends that if this cause was at the courthouse and the parties were engaging in an accounting, Cimarex would have the right, if that accounting showed the well had not paid out, to write a check for its proportionate part of the balance in order to step in to possession of its interest in the common premise.

4) Cimarex asserts it wants to participate in the well and it did not just file the pooling out of the blue. Cimarex has attempted to talk with Newfield for months and get them to acknowledge its interests but Newfield would not respond to Cimarex's numerous requests.

5) Cimarex asserts that there is nothing surreptitious about it trying to get information to make a decision about whether or not to participate in the well because it has been seeking to participate for months and this is its only avenue to do so.

## NEWFIELD

1) Newfield contends that the risk has been taken out of drilling the well for the respondents. Newfield asserts that the respondents can get public data on what is produced and therefore back-in with a pretty good idea of what the revenue is.

2) Newfield contends that it is not forcing the respondents to do anything and it is not asking Sykora to put up any money and the respondents can take no risk at all and let this well payout. Newfield asserts therefore that the only reason the respondents want to pool is to get the well information.

3) Newfield contends that when the respondents mentioned co-tenancy law, they failed to mention that under the laws of co-tenancy, you have no right to information, no right to participate in decisions of how the co-tenant is drilling a well, but rather all they have is a right to an accounting at some point to see if there is a profit.

4) Newfield further contends that if there is a profit, then the parties have an opportunity to come in and get their share of the profit but that is a private right's dispute and should be handled in district court. Newfield asserts that if the respondents believe that the well has paid out and there has not been an accounting, they have a remedy at district court to get interests or costs of attorney fees but the Commission has no jurisdiction over that.

5) Newfield contends that all other pooling orders entered have costs and the parties should elect and make their decisions based upon that and whether the party wants to take the risk to participate, not based on if they get a credit.

6) Newfield contends that if the respondents participated, an accounting of whatever production or revenues to their interests would be required.

7) Newfield asserts that the respondents are trying to force it to eventually give them the well data that would help them as a competitor, in perhaps the drilling or not drilling of offsets and the location of offsets. Newfield contends that no authority states that it is supposed to give the respondents revenue data.

8) Newfield contends that it has complied with paragraph 1 of the ALJ's ruling and gave the respondents a detailed AFE based on actual costs.

9) Newfield contends that what it had exchanged originally was just a summary of its drilling and completion costs and said drilling and completion costs on January 31, 2012 were $9.63 million.

10) Newfield reasserts that there is not authority that says it needs to give all the information to the respondents.

11) Newfield contends that is furnishing the AFE data as recommended by the ALJ but the recommendation that it should give the revenue data should be denied.

# CONCLUSIONS

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

1) The Referee finds the ALJ's Oral Report of the Administrative Law Judge In Response To Motion for Production of Documents filed January 30, 2012 should be affirmed and is in accordance with the weight of the evidence, prior interpretations of the Commission's discovery rules and free of reversible error.

2) It was Newfield's choice to dismiss the initial pooling application and carry the parties involved in the instant matter. Sykora disputed Newfield's contention that information about the Rock Island 1H-14 well was publicly available. The well's amount of production and level of revenue were appropriately discoverable factors under 52 O.S. § 87.1. Under the pooling statute there must be a fair, just and reasonable method adopted by the Commission for paying Sykora for his share of revenue. The referee agrees that it would be fair, just and reasonable for the Commission to determine, if Sykora elected to participate in the well, that revenues from the well should be offset against his share of the actual well costs. The instant Cimarex application constitutes a legitimate response to Newfield's decision to dismiss its initial pooling application. The well has been drilled so actual cost information should be provided to Sykora. Any revenues accrued to Sykora's interests in the Rock Island 1H-14 well should be offset against its share of the actual costs for the well.

3) It is true that Newfield has the right to pick and choose who they name in a pooling application and has the right to drill the Rock Island 1H- 14 well without pooling anyone. Sykora, however, has the right to request to receive information about actual costs, production, and revenue for the Rock Island 1H-14 well, pursuant to the languge of 52 O.S. § 87.1(e). To determine how much Sykora owes of the actual costs of drilling the well, then Sykora needs to know what are the actual, reasonable and necessary costs and expenses of the Rock Island 1H-14 well along with the amount of production since the date of its first sale of production in 2011. Sykora has the right under the Statute to receive the benefits of a Commission pooling order, which "...shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas." 52 O.S. § 87.1(e). Because Newfield chose to drill this Rock Island 1H-14 well unpooled, and because they can only charge Sykora reasonable, necessary and actually incurred costs minus what the revenue from the well has been, then such amounts can only be

determined by getting all the information about the costs and all the information about the revenue.

4) The costs for the Rock Island 1H-14 well must be the actual expenditures, which are required, reasonable, and necessary. *W.L. Kirkman, Inc. v. Corporation Commission*, 676 P.2d 283 (Okl. App. 1983).

5) It is reasonable for Sykora to request to receive information about actual costs, production and revenue for the Rock Island 1H-14 well. *Wood Oil Company v. Corporation Commission*, 239 P.2d 1023 (Okl. 1950).

6) OCC-OAC 165:5-11-1(b)(3) provides in relevent part:

> (3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably tint or lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

7) Generally, when the Commission's rules are not specific, the Commission's procedures for discovery matters follow the Oklahoma code of civil procedure 12 O.S. §3226, the general provisions covering discovery, provides in relevant part:

> "A.1. DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Except as provided in this section or unless the court orders otherwise under this section, the frequency of use of these methods is not limited.
>
> B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:
>
> 1. IN GENERAL.
>
> a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things

> and the identity and locations of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissable at the trial if the information sought appears reasonably calculated to lead to the discovery of admissable evidence."

8) In the case of *Boswell v. Schultz,* 175 P.3d 390 (Okl. 2007), the Supreme Court determined:

> "The purpose of modern discovery practice and procedure is to promote the discovery of the true facts and circumstances of the controversy, rather than to aid in their concealment."

10) In *State exrel, Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484 (Okl. App. 2007) the Court of Appeals determined:

> "Civil trials no longer are to be conducted in the dark. Discovery, consistent with recognized privileges, provides for the parties to obtain the fullest possible knowledge of the issues and facts before trial. *Rozier v. Ford Motor Company*, 573 F.2d 1332, 1346 (5th Cir. 1978). "The aim of these liberal discovery rules is to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent..."

11) The Motion for Production of Documents filed by Sykora on January 17, 2012 in the present case is in conformance with the Commission's discovery rules listed above. Therefore, the Referee would affirm the findings and recommendation found on pages 7 and 8 of the written Oral Report of the Administrative Law Judge In Response To Motion for Production of Documents filed on January 30, 2012.

**RESPECTFULLY SUBMITTED THIS 2nd day of May, 2012.**

PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
Michael L. Decker, ALJ/OAP Director
John C. Moricoli, Jr.
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