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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT:	**JOHN C. AND SUSAN L. MITCHELL AND STEVEN V. AND CONNIE R. REDGATE**	)
RELIEF SOUGHT:	**DRILLING AND SPACING UNITS**	) **CAUSE CD NO. 201106111**
LEGAL DESCRIPTION:	**SECTION 5, TOWNSHIP 24 NORTH, RANGE 13 WEST, WOODS COUNTY, OKLAHOMA**	)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 30th day of May, 2012, at 8:30 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Karl F. Hirsch**, attorney, appeared on behalf of applicant, John C. And Susan L. Mitchell and Steven V. and Connie R. Redgate ("Mitchell/Redgate" and/or "Applicants"); **Michael D. Stack**, attorney, appeared on behalf of Kaiser-Francis Oil Company ("Kaiser-Francis"); **Roger A. Grove**, attorney, appeared on behalf of Cummings Energy, LLC, Brett Cummings, Sea Con Energy, LLC, John March and Lesta Hood ("Cummings"); **David Pepper**, attorney, appeared on behalf of Chaparral Energy, LLC_ ("Chaparral"); 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 2nd day of July, 2012 to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 20th day of August, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

MITCHELL/REDGATE TAKES EXCEPTION to the ALJ's recommendation that the application of Mitchell/Redgate seeking to vacate Order No. 43936 for 640 acre drilling and spacing authority for the Basal Cherokee Sand common source of supply and thereafter establishing 160 acre drilling and spacing units for the production of hydrocarbons for the Basal Cherokee Sand underlying said Section 5 and designating the Keffer #2-5 well as the unit well for the SW/4 of Section 5 for the Red Fork member of the Basal Cherokee Sand be denied.

CD 201106111 is an application seeking to vacate 640 acre Basal Cherokee Sand spacing in Section 5 and to respace that section on a 160 acre basis for the Basal Cherokee Sand common source of supply. This section has had production from the Basal Cherokee Sand through the Keffer #1 and/or the Keffer #2 wells since 1966. Both Mitchell/Redgate and protestants, Kaiser-Francis and Cummings have studied the unit production and agree that Section 5 is depleted in the Basal Cherokee Sand and in fact it is possible that the #2 Keffer well may have produced reserves from offset units. Mitchell/Redgate seeks to respace on a 160 acre basis alleging that the depletion of the Basal Cherokee Sand represents a change of condition, and that in fact the Basal Cherokee Sand did not underlie all of Section 5 and should have never been spaced on that basis, and that to respace on a 160 acre basis and designate the producing well as the unit well in the SW/4 of the 160 acre proposed unit would protect correlative rights of owners in all the section. The Kaiser-Francis and Cummings position is that there is no change of condition; that the wells have developed and depleted the unit as intended when the Commission issued their 1960 spacing Order No. 43936. It is their further position that this is an attempt to cancel Mitchell/Redgate's lease and free up their interest as to the Mississippian and that their action here is to support their District Court case seeking to cancel their lease. Since that District Court action involves private rights the ALJ notes the Commission's concern here is the reservoir itself and the prevention of waste and protection of correlative rights, not private right issues.

MITCHELL/REDGATE TAKES THE POSITION:

1) The ALJ Report is contrary to the law, contrary to the facts and the evidence presented in this case.

2) The ALJ Report fails to achieve the goals of the State of Oklahoma and the Commission for the prevention of waste and the protection of correlative rights.

3) The ALJ bases her recommendation upon a finding that Mitchell/Redgate failed to show a change of condition since the spacing Order issued in 1960. Mitchell/Redgate must show a change of condition or a *change of knowledge of condition.* Mitchell/Redgate showed both a change of condition and a change of knowledge of condition. A number of wells have been drilled since the spacing Order issued, each well providing additional information, showing a change of condition or change of knowledge of condition. Since the spacing Order issued, drilling has revealed that all of Section 5 is not underlain by the common source of supply, another change of condition or change of knowledge of condition. The reservoir has been primarily depleted and will no longer produce hydrocarbons from outside of the *SW/4* of Section *5,* another change of condition. The ALJ's finding that a change of condition has not occurred is contrary to the facts and to the law.

4) The ALJ states that because revenues have been paid for a number of years, the rights of the parties to continue to receive those revenues based upon 640 acre spacing should be maintained. The evidence presented was undisputed that any gas to still be produced from the existing well in the *SW/4* was located in the SW/4 of Section *5.* The well would not produce hydrocarbons from any of the other three quarters of Section *5.* None of the other mineral owners in the section protested the Application. Correlative rights would be protected by allowing the owners in the SW/4 of Section *5* to receive 100% of the proceeds of the gas produced from the SW/4 of Section *5.*

5) Mitchell/Redgate respectfully requests the recommendation of the ALJ be reversed, that Order No. 43936 establishing 640 acre drilling and spacing units for the Basal Cherokee Sand underlying Section *5* be vacated, that 160 acre drilling and spacing units be established for the Basal Cherokee Sand underlying Section *5* and for further relief as the Commission may deem just and proper.

THE ALJ FOUND:

1) After taking into consideration all the facts, circumstances, evidence and testimony presented in this cause, it is the recommendation of the ALJ that the application of Mitchell/Redgate in CD 201106111 seeking the Commission enter an order amending Order No. 43936 by vacating 640 acre drilling and spacing authority for the Basal Cherokee Sand in Section 5, T24N, R13W, Woods County, Oklahoma and thereafter establishing 160 acre drilling and spacing units for the Basal Cherokee Sand underlying said Section 5 and designating the Keffer #2-5 well as the unit well for the Red Fork member of the Basal Cherokee Sand in the SW/4 of Section 5 be denied. Although Mitchell/Redgate and protestants disagree on several issues regarding geology, mapping or development of the Basal Cherokee Sand in this area, both sides

have reached the conclusion that the wells in Section 5 had depleted the reserves underlying this unit in the Basal Cherokee Sand.

2) In support of their request Mitchell/Redgate asserts first that the Basal Cherokee Sand is depleted underlying Section 5; second, they assert that not all of Section 5 is underlain so it should not now or ever have been spaced on a 640 acre basis; and their third position is that the 160 acre spacing would better protect correlative rights of owners in Section 5. Mitchell/Redgate's witness testified that the depletion of Section 5 represented a change of condition. The ALJ does not agree. The Commission spaced this unit years ago for development of the Basal Cherokee Sand and over the years operators have drilled and developed Section 5 reserves pursuant to that order and revenues were paid to all owners in the 640 acre spaced unit. Therefore those owners have relied upon and complied with the order as was intended. That is not a change of condition, it is merely developing Section 5 reserves in reliance on the order. If this represented a change of condition it could be alleged at any time after production commenced and rights vested in any unit. As to the claim that the section is not totally underlain and should have never been spaced 640, it is noted that often spacing is prospective, and since production occurred and revenues were paid on a 640 acre basis for around 40 to 50 years, clearly rights have vested. The ALJ would not recommend disturbing those rights. As to the third reason in support of their request in which Mitchell/Redgate assert that the 160 acre spacing will better protect correlative rights of the owners in Section 5, the ALJ notes again that both sides have indicated that Section 5 reserves have been depleted. Therefore the ALJ is not persuaded that respacing the Basal Cherokee Sand in Section 5 after the unit has been depleted would in any way protect correlative rights of any owners here in the Basal Cherokee Sand. It is the opinion of the ALJ that the 640 acre spaced unit has been fully and properly developed under Order No. 43936 dated November 29, 1960. It is the opinion of the ALJ that Mitchell/Redgate has failed to show a change of condition since the 640 acre spacing order issued, which would in any way support vacating the existing spacing and establishing 160 acre Basal Cherokee Sand spacing. It is therefore the recommendation of the ALJ that the application be denied.

POSITIONS OF THE PARTIES

MITCHELL/REDGATE

1) **Karl F. Hirsch**, attorney, appeared on behalf of the Mitchell/Redgate and cited page 23 of the ALJ's report as stating, "both sides have indicated that Section 5 reserves have been depleted therefore the ALJ is not persuaded that respacing the Basal Cherokee Sand in Section 5 after the unit has been depleted would in any way protect correlative rights of any owners here in the Basal Cherokee Sand." Applicants state this excerpt of the ALJ's report stands

for the proposition that the ALJ believes if an oil or gas well has been produced to depletion then correlative rights are not protected by a change of spacing.

2) Applicants argue that the ALJ's report states in this case there is no protection of correlative rights issue and there is no change of condition. Applicants argue these are "important issues" that must be resolved before the Commission can vacate a spacing order.

3) Applicants cite *Samson Resources v. Corporation Commission*, 702 P.2d 19 (Okl. 1985) for a discussion on the issue of correlative rights. Applicants argue Samson's analysis of correlative rights includes, "...correlative rights are rights that are owned by parties in a common source of supply, and one of their duties...is not to take an undue portion of the oil and gas."

4) Applicants argue if the evidence in the current case showed that parties were taking an undue portion of the oil and gas, there would then be a correlative rights issue.

5) Applicants cite *Phillips Petroleum v. Corporation Commission*, 482 P.2d 607 (Okl. 1971), as stating there are three different kinds of change in condition relative to a common source of supply: internal change of condition (an actual change in physical behavior of the reservoir occasioned by development and depletion), external change of condition (information gained through development or depletion experience demonstrates that the conclusions reached originally were incorrect), and scientific knowledge and technological change of condition.

6) Applicants asserts geological engineer, Jon Stromberg, stated this reservoir is a channel sand, and as such, "has...definite edges to it, it is not feathered out, it doesn't ease out on the sides of the reservoir, it is like a channel so that it has definite sides and the edges will be rather abrupt."

7) Applicants argue the geologist for Kaiser-Francis "feathered out" the reservoir. Applicants further allege the geologist for Kaiser-Francis, in making this depiction of the reservoir, makes the reservoir bigger than it may actually be.

8) Applicants state the competing parties spent a lot of time arguing whether the reservoir in question covered 200, 300, or 400 acres. Applicant argues it does not matter whether the parties did not agree on the acreage covered, because all of the witnesses agreed the reservoir did not cover all of Section 5.

9) Applicants state the Keffer #1 well was drilled in 1966 with the spacing order being issued in 1960. Applicants state this well produced about 1.5 BCFG and was then plugged.

10) Applicants state the Keffer #2 well was drilled in the SW/4 SW/4 Section 5 in 1977. Applicants state the Keffer #2 well has produced about 1.8 BCF. Applicants assert the Keffer #2 is currently producing 49 MCFPD, with both parties agreeing that the reservoir was depleted and the Keffer #2 well will eventually produce slightly less than 2 BCF (between 1.984 and 1.992).

11) Applicants contend that all parties agree that drainage occurs along the channel to the north and south. Applicants further contend, "...the Keffer No. 1 well would have produced in a northwest-southeast fashion along...the edges of the reservoir toward... the northeast, and so it would have produced the hydrocarbons that were located, if any...I repeat, if there are any, were any hydrocarbons in the southeast quarter they have been produced by the Keffer No. 1."

12) Applicants contend the majority of the hydrocarbons produced by the Keffer in the NW/4 of Section 5 would have been produced by Keffer #1.

13) Applicants state their witness testified that any hydrocarbons still left within the reservoir to be produced by the Keffer #2 will be produced out of the W/2 of SW/4. Applicants state Kaiser-Francis' witness did not admit to this, but "they never testified otherwise." Applicants argue Kaiser-Francis' witnesses "never testified that there were any hydrocarbons left in this reservoir any place but the southwest quarter and specifically testified that drainage occurs parallel to the reservoir."

14) Applicants contend there are only approximately 200 MMCFG left to be produced and that it all is coming from the SW/4.

15) Applicants argue that the E/2 of Section 5 received 50% of the revenue, despite not having 50% of the reservoir. Applicants argue that the engineer from Kaiser-Francis testified to basically stating, "[F]rom the Keffer No. 1 well height of the reservoir to the zero line of the reservoir is thirty-five percent of the reservoir."

16) Applicants argue their witness stated that the 640 acre spacing was wrong when it was first issued. Applicants concede that because the wells were drilled after the spacing order, no one knew the 640 acre spacing was initially wrong, but that "we do now."

17) Applicants contend the Protestants position is, "if we have done it for fifty years, why should we change now."

18) Applicants argue the spacing should be changed because what little gas is left to be produced is only coming from the southwest quarter. Applicants argue a change of spacing to 160 acre units protects the correlative rights of the parties going forward.

19) Applicants assert that the people in the E/2 do not have an interest in the common source of supply and therefore have no correlative rights to be protected. Applicants further assert by giving those in the E/2 rights in the reservoir in turn violates the correlative rights of the owners who actually do have an interest in the common source of supply.

20) Applicants argue one of the protections of correlative rights is to be certain that parties do not take an undue portion of the oil and gas. Applicants contend that in this case certain parties have. Applicant asks, "Why should we continue to allow them to take an undue portion now that we know that it is undue? Why should we allow the east half in the northwest quarter (to) share in that last two hundred million cubic feet of gas?"

21) Applicant states that the evidence presented shows a change of condition or a change of knowledge of condition since the original spacing order and subsequent depletion.

22) Applicant states they believe the ALJ's recommendation was wrong and that they have shown a change of condition or knowledge of condition and that the correlative rights of the parties are not being protected by the 640 acre spacing order. Applicants therefore state they seek the 640 acre spacing order be vacated and 160 acre units be created.

23) Applicants further ask the order be effective June 1, 2012 because "the distribution of revenue at the first of the month just makes sense for all parties involved." Applicants contend there was no challenge to this by Protestants.

KAISER-FRANCIS

1) **Michael D. Stack**, attorney, appeared on behalf of Kaiser-Francis states they received a letter from Applicants demanding that a Mississippi well be drilled. Kaiser-Francis argues this case has nothing to do with the Mississippi and that they never received a demand for more Basal Cherokee/Red Fork wells.

2) Kaiser-Francis states a District Court case has been filed asking to cancel leases in this Section. Kaiser-Francis argues, "[T]hat's why we are here. What Mr. Hirsch also forgot to tell you was his client doesn't own in the southwest quarter, his client owns outside the southwest quarter. They own the majority of the northwest, slight few acres in the northeast. My client owns in all quarter sections."

3) Kaiser-Francis argues the crux of the case is if the unit is despaced and made effective June 1, then the Applicants leases will expire. Kaiser-Francis contends, "This is a case of let's see if we can get a new bonus and a new royalty, because the leases are being held by production for over fifty years, or close to fifty years."

4) Kaiser-Francis argues despite never being asked to drill a Red Fork well, they have in fact filed a well location to drill such a well. Kaiser-Francis states if the unit is despaced effective back to June 1, then the lease would expire and Kaiser-Francis would be unable to drill their proposed Red Fork location exception well.

5) Kaiser-Francis contends that everyone agreed that the first and second Keffer wells will drain more hydrocarbons than underlie Section 5.

6) Kaiser-Francis states Applicants' witness, Mr. Stromberg, in his Exhibit 6 showed that not all the hydrocarbons were going to be recoverable. Kaiser-Francis states Mr. Stromberg originally came up with 3.8 BCF in recoverable gas with a 420 net acre reservoir. Kaiser-Francis then contends they were able during cross examination to get Mr. Stromberg to cut the net acreage covering the reservoir to roughly 320 acres. Kaiser-Francis, citing page 82 of the transcript, states Mr. Stromberg then agreed that everyone was going to recover everything they deserved.

7) Kaiser-Francis argues Applicants believed that the W/2 of SW/4 is where this well was going to produce its hydrocarbons in the Keffer #2 well.

8) Kaiser-Francis states their engineer made a study of the entire reservoir and concluded that there is pressure communication. Kaiser-Francis, summarizing the testimony of their engineer Jake Dunkel, states, "he said all of the wells in this trend he had mapped, all of them, and they are all on a perfect line of pressure communication...production is coming from everywhere."

9) The Keffer #1 well in 1966 came in with a BHP of 2500 pounds. The Keffer #1 well went off production in March of 1976. It had dropped down to about 700 to 800 pounds pressure. The Keffer #2 came in just slightly over 1000 pounds pressure. If you weren't in pressure communication, if only one well was producing in the W/2 SW/4 and one was only producing from the E/2 SW/4, the well would come in a lot higher than 1100 pounds. It would be closer to virgin pressure. All of the wells in this trend are on a perfect line of pressure communication. In fact the wells have produced more than what underlies Section 5. Kaiser-Francis argues the theory advanced by the Applicants, that drainage is from the SW/4 is not accurate.

10) Kaiser-Francis states that 95% of the reservoir has been depleted. Kaiser-Francis asserts that if they could go back to the original hearing on spacing for this unit, nothing should change because one well and then a

replacement well have been able to affect the entire 640 acre unit. Kaiser-Francis further asserts if this would have been originally spaced on 160 acre units, there would have had to have been four wells drilled which would constitute waste.

11) Kaiser-Francis states there have been arguments that the reservoir does not underlie the entire unit. Kaiser-Francis argues that the reservoir does underlie 486 acres according to Exhibit 13, and that it underlies all four of the quarter sections to some extent. Kaiser-Francis contends the unit was spaced for what was the best spacing for this particular unit.

12) Kaiser-Francis argues that all of the offsetting units (7) are spaced on 640 acre units, except for two sections which are not spaced.

13) Kaiser-Francis argues the people in the SW/4 of Section 5 have no objection to leaving the spacing at a 640 acre unit. Kaiser-Francis contends the only people that want the change in spacing are those who want their leases released who own in the N/2 of the unit.

14) Kaiser-Francis cites *Winter v. Corp. Comm'n. Of State of Oklahoma*, 660 P.2d 145 (Ok.Civ.App. 1983) for the position that the Commission must consider the prevention of waste before looking at the protection of correlative rights. Kaiser-Francis argues that because the unit can be drained by a single well, spacing on 160 acre units and the subsequent four wells would constitute waste.

15) Kaiser-Francis quotes the ALJ in her report on page 23 as stating, "...the ALJ notes again that both sides have indicated that Section 5 reserves have been depleted therefore the ALJ is not persuaded that respacing the Basal Cherokee Sand in Section 5 after the unit has been depleted would in any way protect correlative rights of any owners here in the Basal Cherokee Sand." Kaiser-Francis contends they believe the ALJ summed up the evidence "very nicely" and that they "couldn't say it much differently..."

16) Kaiser-Francis again quotes the ALJ's report on page 22 and page 23 as stating, "The Commission spaced this unit years ago for the development of the Basal Cherokee Sand, and over the years operators have drilled and developed Section 5 reserves pursuant to that order and revenues were paid to all owners in the 640 acre spaced unit....Therefore those owners have relied upon and complied with the order as was intended. That is not a change of condition it is merely developing Section 5 reserves in reliance on the order. If this represented a change of condition, it could be alleged at any time after production commenced and rights vested in any unit."

CUMMINGS

1) **Roger A. Grove**, attorney, appeared on behalf of Cummings, states they believe most of the points they need to make have been made by Kaiser-Francis.

2) Cummings argues they would add that they find the argument advanced by the Applicants, that the remaining gas in the unit is going to come out of the SW/4, is unpersuasive. Cummings refutes the Applicant's argument, stating, "Anytime a well is depleting, the final production is going to come out of that well before it's plugged is obviously going to come from around that well."

3) Cummings contends the remaining gas actually migrated from other areas and is just now coming to the wellhead in the SW/4. Cummings argues the gas that was originally under the SW/4 has been developed long ago. Cummings contends, in a nearly depleted reservoir, the remaining hydrocarbons are always going to migrate toward the well. Cummings states the Applicants' argument is unpersuasive.

4) Cummings argues Kaiser-Francis presented a detailed isopach map while the Applicants did not present any isopach map. Cummings argues the lack of an isopach map kept the Applicants witness, Mr. Stromberg, from making a very detailed analytical study of the reservoir.

5) Cummings argues the only reason the Applicants are seeking to change spacing is so that their leases will expire in the N/2 of Section 5 so they can go out and sign new oil and gas leases with higher royalty and additional bonus. Cummings contends there are no protection of correlative rights issues and no prevention of waste issues present in this case.

RESPONSE OF MITCHELL/REDGATE

1) Applicants argue the pending District Court lawsuit has nothing to do with the current spacing application.

2) Applicants state there is no testimony from the Protestants witnesses that the remaining gas to be produced out of the Keffer #2 well will not come from the SW/4. The Applicants' witness gave a definitive statement that the remaining gas will come out of the SW/4. Applicants argue this was never

rebutted. Applicants further argue the Referee cannot draw a different conclusion, because the witnesses at hearing did not reach such a conclusion.

3) Applicants argue their witness, Mr. Stromberg, did not present an isopach map because, "unless you have wells very closely drilled together it is difficult in a channel sand to be able to create an isopach..." Applicants argue one well per section in a channel sand is too difficult to map accurately as you don't have enough data.

4) Everyone admits the Red Fork channel sand doesn't cover the entire Section 5, and everybody admits that the Red Fork Sand in Section 5 has been substantially drained by the wells that have produced.

5) Applicants contend while the owners in the SW/4 did not come to the Commission in support of the application, they also did not come in opposition either.

6) Applicants request the ALJ's recommendation be reversed.

CONCLUSIONS

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

1) In Commission hearings, 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 to support its claim). *Director, Office of Workers' Compensation Program, Department of Labor v. Maher Terminals, Inc.*, 512 U.S. 267, 272, 275 (U.S. 1994).

2) The Referee finds the ALJ's determination to recommend denial of the Mitchell/Redgate application to be supported by the weight of the evidence and free of reversible error. In order to modify spacing Order No. 43936 for 640 acre drilling and spacing for the Basal Cherokee Sand common source of supply in Section 5 and to respace Section 5 on a 160 acre basis for the Basal Cherokee Sand common source of supply, it was incumbent upon Mitchell/Redgate to establish a substantial change of conditions or change in knowledge of conditions since the issuance of the prior order on November 29, 1960. *Corporation Commission v. Phillips Petroleum*, 536 P.2d 1284 (Okl. 1975); *Marlin Oil Corporation v. Corporation Commission*, 569 P.2d 961 (Okl. 1977).

3) If Mitchell/Redgate was successful in establishing a substantial change of conditions or change in knowledge of conditions, then Mitchell/Redgate was required to prove that its particular method of modifying the spacing order

would either prevent waste or protect correlative rights. 52 O.S. Section 87.1(d); *Corporation Commission v. Union Oil Company of California*, 591 P.2d 711 (Okl. 1979); *Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981); *Union Texas Petroleum, A Div. Of Allied Chemical Corp. v. Corporation Commission of State of Oklahoma*, 651 P.2d 652 (Okl. 1982).

4) The Court in *Winters v. Corporation Commission of State of Oklahoma*, 660 P.2d 145 (Okl.App. 1983) stated:

> Prior spacing order No. 192841, entered on April 19, 1977, established Section 13 as a 640-acre drilling and spacing unit for the Mississippian (Mississippi solid) common source of supply underlying Section 13 and authorized the drilling of only one well in the unit. Both Withrow, et. al and Winter, et al. sought to modify this spacing order and were required to prove initially that there had been a substantial change of conditions or substantial change in knowledge of conditions in the area since the prior order had been issued. If they were successful in establishing a substantial change of conditions or knowledge then they were required to prove that their particular method of modifying the spacing order would either prevent waste or protect correlative rights. (footnotes omitted)

5) The ALJ in her Report states on page 22:

> ...Although applicants and protestants disagree on several issues regarding geology, mapping or development of the Basal Cherokee Sand in this area, both sides have reached the conclusion that the wells in Section 5 had depleted the reserves underlying this unit in the Basal Cherokee Sand....Applicants' witness testified that the depletion of Section 5 represented a change of condition. The ALJ does not agree. The Commission spaced this unit years ago for development of the Basal Cherokee Sand and over the years operators have drilled and developed Section 5 reserves pursuant to that order and revenues were paid to all owners in the 640 acre spaced unit. Therefore those owners have relied upon and complied with the order as was intended. That is not a change of condition, it is merely developing Section 5 reserves in reliance on the order. If this represented a change

> of condition it could be alleged at any time after production commenced and rights vested in any unit.

6) The Referee agrees with the above stated position of the ALJ that there is no change of condition and that the wells have developed and depleted the unit as intended when the Commission issued the 1960 spacing Order No. 43936.

7) Mitchell/Redgate further asserts that all of Section 5 is not underlain with the Basal Cherokee Sand common source of supply and it should not now or ever have been spaced on a 640 acre basis.

8) The Referee notes that the Commission frequently has to establish uniform size and shaped spacing units that never conform to the actual common source of supply. See *Calvert Drilling Company v. Corporation Commission*, 589 P.2d 1064 (Okl. 1979); *Panhandle Eastern Pipeline Company v. Corporation Commission*, 285 P.2d 847 (Okl. 1955).

9) The evidence presented was that 95% of the Basal Cherokee Sand common source of supply has been depleted and none of the knowledge known today concerning the Basal Cherokee Sand common source of supply would have changed the original spacing because one well and then a replacement well has been able to affect the entire 640 acre unit. If the spacing had been originally 160 acre units, there would have had to have been four wells drilled, which would have constituted waste. See *Denver Producing & Refining Company v. State*, 184 P.2d 961 (Okl. 1947).

10) Mitchell/Redgate lastly asserts in support of its application that the 160 acre spacing will better protect the correlative rights of the owners in Section 5. The ALJ in her Report on page 23 states:

> ...As to the third reason in support of their request in which applicants assert that the 160 acre spacing will better protect correlative rights of the owners in Section 5 the ALJ notes again that both sides have indicated that Section 5 reserves have been depleted therefore the ALJ is not persuaded that respacing the Basal Cherokee Sand in Section 5 after the unit has been depleted would in any way protect correlative rights of any owners here in the Basal Cherokee Sand. It is the opinion of the ALJ that the 640 acre spaced unit has been fully and properly developed under Order No. 43936 dated November 29, 1960.

11) The Referee agrees with the opinion of the ALJ that Mitchell/Redgate has failed to show a change of condition since the 640 acre spacing Order No. 43936 issued; has failed to show that vacating the existing spacing and establishing 160 acre Basal Cherokee Sand spacing would not cause waste as there was substantial evidence which reflected that 95% of the 640 acre Section 5 unit was drained by a single well and a replacement well which prevented waste by not having to drill four wells; and lastly since both sides agree that Section 5 Basal Cherokee Sand reserves have been depleted, then respacing could not in any way protect correlative rights.

12) For the above stated reasons, Mitchell/Redgate failed to meet its burden of proof and its application should therefore be denied.

RESPECTFULLY SUBMITTED THIS 11th day of October, 2012.

Patricia D. MacGuigan

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Susan R. Osburn
Karl F. Hirsch
Michael D. Stack
Roger A. Grove
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