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CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	**CHESAPEAKE OPERATING, INC. AND CHESAPEAKE EXPLORATION, LLC**	)
RELIEF SOUGHT:	**POOLING**	) **CAUSE CD NO. 201202315**
LEGAL DESCRIPTION:	**SECTION 11, TOWNSHIP 28 NORTH, RANGE 16 WEST OF THE IM, WOODS COUNTY, OKLAHOMA**	)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Michael D. Norris**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 25th day of July, 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: **Richard K. Books**, attorney, appeared on behalf of applicant, Chesapeake Operating, Inc. and Chesapeake Exploration, LLC ("Chesapeake"); **Michael Ed Erikson** and **Jimmy Gus Erikson**, Trustees of the F.M. Erikson Revocable Trust (collectively the "Trust"), appeared Pro Se; and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 7th day of August, 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 28th day of September, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

THE TRUST TAKES EXCEPTION to the ALJ's recommendation that the pooling application of Chesapeake be granted with the values stated by Chesapeake of $800 and a 3/16th total royalty and $650 and a 1/5th total royalty be established as the fair market values. This pooling case was protested solely on the fair market values paid in this area. Chesapeake established the fair market values by reviewing the consummated transactions in the nine section area. The Trust disagrees with the values presented by Chesapeake. Chesapeake demonstrated their opinion of fair market value based on the transactions they had researched in the nine section area within the last year. The Trust did not present direct evidence of differing values being paid in this area.

THE TRUST TAKES THE POSITION:

1) The Trust entered a protest of the hearing before the ALJ, on the record at said hearing, on the grounds that the Trust was not being afforded due process under law. Applicable evidence, entered on record by Chesapeake at said hearing, was not provided to the Trust in a timely manner pursuant to Commission regulation. A well completion report, the Chesapeake Double E #3-28-16 1H, which is in the nine section area, was partially provided, verbally via phone, at 3:00 p.m. the day before said hearing. Said completion report was provided, fully, in print, immediately prior to convening said hearing.

2) A well completion report, the Schultz #2H-15, which is in the nine section area, was not provided to the Trust, for said hearing, by Chesapeake, contrary to the Commission en banc ruling and instruction. Said completion report was read into record by a Chesapeake witness and used by Chesapeake to attempt to impeach the argument presented by the Trust, therefore breaching the right of due process of the Trust and Commission en banc ruling, instruction and Commission regulation.

3) The Trust entered evidence of Commission en banc ruling, that production "could be a factor in establishing fair market value in Section 11". The Trust entered the Double E #3-28-16 1H completion report and production data into record, as did Chesapeake. Therefore, evidence enhancing the initial leases of $800 and 3/16th and $650 and 1/5th, made prior to the completion of said Double E #3-28-16 1H well, was available to the ALJ. The initial production of said Double E #3-28-16 1H well was 388 BOPD and 540 MCFGPD. The ALJ did not consider, nor even address or mention, said completion and production data in his recommendations and conclusions. Therefore, since the ALJ did not give any consideration to production evidence,

wells completed after leasing, having enhanced lease values, his determination should be modified.

4) Evidence of a progressive development toward Section 11, T28N, R16W of considerable production, was entered into record by the Trust and noted by the ALJ in his determination. However, the ALJ did not give consideration to said production having enhanced said lease values, even though the well were completed after all leases were made.

5) Chesapeake entered speculative evidence, via witness, into record. The ALJ cited said speculative evidence in his Findings and Summary of Evidence suggesting the ALJ utilized said evidence to make his determination. This would be contrary to Oklahoma Supreme Court ruling in *Home-Stake Royalty Corporation v. Corporation Commission*, 594 P.2d 1207 (Okl. 1979) "The future value of the well and the unit it is placed upon is pure speculation. The issue to be determined...is the present market value...not future value reflected by the prospects of the contemplated well."

THE ALJ FOUND:

1) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause, it was the ALJ's recommendation that the application of Chesapeake filed in CD 201202315 be recommended.

2) The ALJ determined that the values established by Chesapeake of $800 per acre and a 3/16th royalty, and $650 per acre and a 1/5th royalty be established as the fair market value in this application. These values were demonstrated by consummated transactions within one year and within the nine section unit area. Chesapeake even broadened the time frame and size of the unit and established the same values. These values were the only ones in evidence.

3) The Trust did not present pertinent evidence of why the values demonstrated by Chesapeake were not accurate. No evidence was offered of alternative fair market values.

POSITIONS OF THE PARTIES

THE TRUST

1) **Jimmy Gus Erikson** appearing on behalf of the Trust, notes the initial leases were based on undeveloped mineral property. The Trust believes the immediate area surrounding Section 11 is the established production area here.

2) The Trust notes this established production came about after the initial leases and the initial pooling application was filed, all which occurred prior to the ALJ's current ruling on fair market value being appealed.

3) The Trust observed approximately 15 to 20 wells drilled after the pooling in this area, prior to the ALJ's decision in this current application herein. These drilled wells are within the immediate area, i.e., a 3-mile radius of Section 11. The majority of these 20 wells appear to be operated by Chesapeake, with established well production in place. The Trust notes that many of these 20 wells have rigs in place on them, with many already having reached total depth.

4) The Trust notes the well data on these 20 some wells have not been furnished to the Trust by Chesapeake. The Trust further notes that the well data on these 20 some wells are not available on the Internet.

5) The Trust further notes at the time the initial leases were taken these current 15-20 wells here had not yet been drilled. The Trust notes these wells are now all completed and producing in high quantities. The Trust believes the present high production enhances initial lease value. The Trust believes these wells and the well in Section 11 are all producing from the Mississippian, Mississippi or Mississippi Lime formations.

6) The Trust believes it was speculation on the part of the Chesapeake petroleum engineer to assume the wells would produce similar to those nearby. The Trust notes that no person can accurately determine what an undrilled well will produce. The Trust believes in an undeveloped area that fair market value must be based on the lease transaction.

7) The Trust still contends the 15-20 well data requested in past proceedings should have been released to the Trust for the Trust's review. The Trust cited a considerable portion on transcript at page 83, second paragraph of additional applicable discovery evidence which Chesapeake has yet to provide to the Trust.

8) The Trust notes there was an en banc deliberation decision sheet ruling had on July 10, 2012 which required Chesapeake to file a Well Completion Report for the "Double E #3-28-16 1H well located in the NW/4 of Section 3, T28N, R16W, Woods County...as this well is within the eight-section area surrounding the proposed Chesapeake well, could be a factor in establishing fair market value in Section 11."

9) The Trust notes that Chesapeake did provide the data referred to in the above referenced decision sheet of 7-10-12. The Trust notes however that the Double E #3-28-16 1H well data was furnished to the Trust one day prior to the actual merit hearing via telephone by Commission Staff yet the paper copy

of this well data was not provided until just before the start of the merit hearing.

10) The Trust notes a copy of the merit hearing transcript was not provided to the Trust on this present appeal. The Trust recalls that the Chairman at that time had indicated that any other pertinent evidence should be submitted to both the Commission and to the Trust.

11) The Trust notes there is a tank battery capacity on the well in Section 11 of 800 BOPD. The Trust finds there is also an area of established production in the immediate area surrounding Section 11, with production in excess of 400 BOPD, based on tank battery data.

12) The Trusts believes that once initial leasing has occurred and production commences, any present production plays a role in the enhancement of the initial lease values.

13) The Trust notes that the opinions of experts do not always agree. The Trust notes the ALJ gave no weight to present production and thus allowed no enhancement of the initial leases taken.

14) The Trust cites the case of *Home-Stake Royalty Corporation v. Corporation Commission*, 594 P.2d 1207 (Okl. 1979) wherein it states:

> "...Any conclusion reached relative to future production from the contemplated well derived from these tests remains problematical, conjectural, and depends in great part upon the expertise of the persons making the evaluation.
>
> The future value of the well and the unit it is placed upon is thus pure speculation. The issue to be determined in this pooling proceeding is the present market value which, as it noted herein, is amply supported by testimony of market value determined by recent transactions and not future value reflected by the prospects of the contemplated well."

15) The Trust thinks the *Home-Stake* case implies there should be no speculation involved in the setting of fair market value.

16) The Trust believes when the Chesapeake petroleum engineer stated the results of the drilled wells had been what Chesapeake had estimated/expected, that such testimony was based on speculation.

17) The Trust notes the Chesapeake petroleum engineer had no way to know up front/before hand what the wells' production would be after it was drilled.

18) The Trust notes the *Home-Stake* case mentions that "tests" can be performed yet such are problematical, conjectural and depends on the expertise of the person making the evaluation.

19) The Trust notes the *Home-Stake* case had cited that the nine section area there was undeveloped. Hence, the Trust believes should there be ongoing development in an area, as is the situation in the present case, such development would come into play with regard to fair market value determination.

20) The Trust reiterates the *Home-Stake* case implies that fair market value must be based on actual fact, not speculation.

21) The Trust cites, in support, also the case of *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) where it states:

> "...The measure of compensation for forcibly pooled minerals is their "fair market value" – the level at which this interest can be sold, on open-market negotiations, by an owner willing, but not obliged, to sell to a buyer willing, but not obliged to buy. Evidence of comparable terms and prices previously paid for leases in the same area is relevant to, but not always conclusive of, the fair market value. Other factors may command or merit additional consideration. The difference in lease terms, the distance from other leaseholds subject to forced pooling and the nature of formations with different leaseholds – to name but a few variants – may be of great moment."

22) The Trust stresses the nature of the formations within the different leaseholds here suggest that productivity is a factor in determining fair market value.

23) The Trust notes from observations of tank battery data that at least 15 of these 20 wells have probable production in excess of 400 BOPD. The Trust thinks that other wells may show probable production in excess of 1000 BOPD per the combined data from the tank battery and completed well head.

24) The Trust notes the ALJ agreed with the Chesapeake petroleum engineer's belief that the production had already been considered in

establishing the fair market value. The Trust believes however this was speculation.

25) The Trust notes that while the Chesapeake's petroleum engineer may be an expert, as a witness he cannot predict upfront whether a well will be a poor or good producer or a dry hole.

26) The Trust believed, due to the well data on these 15-20 Chesapeake wells not being provided to the Trust, that this resulted in the Trust's due process rights being violated.

27) The Trust contends the ALJ relied on the testimony of the Chesapeake petroleum engineer relating to completion and/or production of the wells in arriving at his decision here in accepting Chesapeake's fair market value options.

28) The Trust thinks the ALJ believed that the established production here had already been considered when fair market value was determined on the initial leases.

29) The Trust believes the ALJ's reliance on the speculative data used by the Chesapeake petroleum engineer to determine fair market value should be modified accordingly.

CHESAPEAKE

1) **Richard Books**, attorney, appearing on behalf of Chesapeake, acknowledges the Trust has the right to argue it has not received all its requested pertinent well data.

2) Chesapeake agrees it did supply the Trust with the Form 1002A on the Double E #3-28-16 1H well within 24 hours of the en banc decision sheet.

3) Chesapeake reminds the Court that all of the Commission discovery orders have been complied with. Chesapeake notes that final Order No. 600190 issued on July 25, 2012 confirming what well data Chesapeake was required to send to the Trust.

4) Chesapeake had taken the position that the Trust's discovery requests on these 15 to 20 wells were not relevant, which was upheld by both the ALJ and the Commission en banc.

5) Chesapeake points out the remainder of the data requests on the 15 to 20 wells was not given to the Trust due to the Commission ruling in Chesapeake's favor that Chesapeake did not have to provide such to the Trust. Chesapeake notes its response to the Trust's belief that Chesapeake failed to comply with the discovery request was covered in the prior discovery proceeding.

6) Chesapeake indicated that Order No. 600190 has been complied with and is not at issue in this appeal on fair market value.

7) Chesapeake notes it has 3 positions: a) Examine consummated transactions between a willing buyer and willing seller; b) That the Commission might want to know whether there is additional data since the above consummated transactions have taken place; and c) That Chesapeake notes the ALJ did not believe the Schultz #2H-15 well was relevant data per fair market value options even though the Trust believed otherwise.

8) First, Chesapeake notes, even if the Trust had all the well data, on these 15 to 20 wells, it would still be irrelevant evidence. Chesapeake asserts the only relevant evidence in the instant case concerns Chesapeake's fair market value evidence, which was unchallenged by the Trust, covering this nine unit area.

9) Chesapeake pointes out in order to establish fair market value one must look at consummated transactions that are both close in time and close in geography. Chesapeake notes its landman had looked over all relevant transactions in the 9-unit area and arrived at values of $800 and 3/16th and $650 and 1/5th fair market value options. Chesapeake's landman bypassed two multi-unit transactions due to one involving 150 acres covering four counties and the other one covering three counties which was 18 months old.

10) Chesapeake believes the *Miller* case and the *Home-Stake* case both support the ALJ's decision regarding his fair market value options. Chesapeake asserts these two supreme court cases cited above affirm that fair market value is determined via consummated transactions, rather than enhanced production value as deemed by the Trust.

11) Chesapeake clearly believes the Commission's past rulings on fair market value are in line with both referenced supreme court cases above.

12) Chesapeake notes that in looking at well production alone, that does not define value. Hypothetically, while one well could cost $1 million and result in 75 BOPD and another well could produce 100 BOPD and cost $4-5 million to drill and complete, Chesapeake asserts the amount of production will not cause an increase in overall value.

13) Chesapeake notes there is no guarantee that any given well will pay out. Chesapeake notes production itself does not establish fair market value.

14) Chesapeake admits in some instants other factors may affect fair market value since the last leases taken in an area. See *Miller* case. Chesapeake notes the *Miller* case, however, does not discuss production as a factor in fair market value.

15) Chesapeake notes a party must look at the prices to determine whether there has been a change in fair market value. Chesapeake notes their expert reservoir engineer's job requires evaluation of oil and gas lands and consideration of factors relating to risks and ultimate negotiated lease price to determine fair market value.

16) While the Chesapeake petroleum engineer did discuss two wells, Chesapeake notes only one well was pertinent to the fair market value issue, i.e. the Double E #3-28-16 1H well. Chesapeake notes the Schultz 2H-15 well was discussed only due to questions raised by the Trust.

17) Chesapeake notes when a main oil and gas player mentions a completed well it is referencing the well after it has already been drilled and/or perforated/fractured.

18) Chesapeake observes the Trust is looking at a broader immediate area than that of Chesapeake's. Chesapeake notes it can take sometimes months before a well is completed to obtain production data after a lease is obtained.

19) Chesapeake believes the Trust may be somewhat confused about the details relating to lease values and getting production achieved. Chesapeake thinks fair market value is established through consummated transactions, rather than production.

20) Chesapeake's petroleum engineer mentioned the Schultz #2H-15 well in response to a question from the Trust, however found that well didn't have an effect on fair market value in Section 11.

21) Chesapeake reiterates that the only evidence regarding relevant fair market value consummated transactions lies with Chesapeake.

22) Chesapeake notes the ALJ did not believe the Schultz #2H-15 well was relevant data per fair market value options even though the Trust believed otherwise. Chesapeake notes its expert petroleum engineer had determined that the fair market value had not changed since the last set of leases had been taken. Chesapeake believes the ALJ might have lowered the fair market value yet he didn't really think the well data on the Schultz #2H-15 well would have had any real effect either way.

23) Chesapeake reiterates the Commission made the proper ruling on the discovery rulings. Chesapeake notes that all of the arguments raised today about the Trust needing more data about all of the 15 to 20 wells it requested in the discovery fight is now moot basically since the merit hearing decision is not at issue on appeal.

24) Chesapeake's expert petroleum engineer looked at consummated transactions in its determination of fair market value for this relevant geographical area. Chesapeake notes that later well completions had no effect on the fair market value here in Section 11.

25) Chesapeake submits even if production information could be used to establish fair market value here, there was no evidence based upon the production information that would change the values.

26) Chesapeake notes due to past Commission rulings on fair market value issues, there is no need for an operator to furnish that type of production data to the Trust here. Chesapeake notes the Commission has already ruled on the discovery issue yet the Trust is still fussing about it.

27) Chesapeake notes if the Trust had been given the well data on these 15 to 20 wells, it is unlikely the Trust would have called an expert witness to testify thereto.

28) Chesapeake notes wrong information presented into the record here still would not have expanded the value issue the Trust is still disputing. Chesapeake notes whether a well produces 5 BOPD or 5000 BOPD, that alone does not determine fair market value.

29) Chesapeake points out the only evidence presented at the merit hearing on fair market value was that of Chesapeake's expert witnesses. Chesapeake's petroleum engineer evaluated the recent completions and determined such would not have any effect upon the current fair market value.

30) Chesapeake believes the *Home-Stake* case stands for the proposition that only consummated transactions should be looked at for fair market value.

31) Chesapeake notes the *Miller* case stands for the same proposition and allows the Commission to consider other factors if necessary to determine fair market value, however, not production.

32) Chesapeake asserts the new completions here in the immediate area had no affect on the current fair market value. Chesapeake notes there are no other factors to consider here for fair market value determination.

33) Chesapeake respectfully requests the ALJ's decision regarding his fair market value options be affirmed.

RESPONSE OF THE TRUST

1) The Trust notes at Transcript, page 42, line 15 the Double E #3-28-16 1H well was producing around 388 BOPD. The Trust notes at Transcript, page 44, line 20 the Chesapeake petroleum engineer claims this 388 BOPD is a good well yet the Trust acknowledges that the well will decline over time.

2) The Trust notes on asking about the production data on the Schultz #2H-15 well, which had mechanical problems, the Chesapeake petroleum engineer could make no comment about the probable productivity, other than it was a disappointment to Chesapeake. The Trust notes when the petroleum engineer was asked about the well's production based on formation only, the petroleum engineer could make no guarantees as to well production here.

3) The Trust notes these leases were based on undeveloped mineral property, before any pooling was filed. The Trust notes once the pooling was obtained, rigs were put in place, which provided for new production figures. The Trust believes these new production figures should enhance any initial lease values here.

4) The Trust wonders if the Commission should determine fair market value based on only the evidence before it when it concerns mineral interest owners being forced to do that which is contrary to their desires/wants/wishes.

5) The Trust notes that a mineral owner appearing Pro Se may not be capable of presenting the necessary evidence to combat pooling application values. The Trust notes in these instants the Oklahoma Mineral owners must rely on the Commission Staff in forced pooling cases to determine fair market value of their interests.

6) The Trusts submits there are at least 15 wells within a 3-mile radius of Section 11 that are not within the nine section area. Of these observed wells, the Trust notes that some of the tank batteries have as many as ten 200-barrel tanks on these sites.

7) The Trust notes all of these 15 to 20 wells have completed well heads, with tanker trucks coming and going.

8) The Trust notes that Chesapeake appears to be talking about the nine section area as the immediate area of concern. The Trust's interpretation of the meaning of immediate area refers to an area of development pertaining to

Section 11 in the instant cause, which implies it can fall outside of the customary nine section area.

9) The Trust believes the present established probable high production greatly enhances initial lease values. The Trust believes the Commission is the only party who can decide that enhanced value. The Trust notes that once leases have been taken and production is gained/achieved, this new data should be used to determine fair market value.

10) The Trust notes these 15 to 20 wells are horizontal wells drilled approximately 200 yards apart. The Trust however believes that whether straight hole wells or horizontal wells, that once a certain degree of established production has been achieved, the established production overrules initial lease agreement in determining fair market value.

11) The Trust thus contends this enhanced production value occurring after an initial lease is evidence which the Commission should make use of in determining fair market value in a pooling application.

12) The Trust further notes all of these wells are the Mississippi related named formations. The Trust contends the present high production enhances the initial lease value.

13) The Trust reiterates the Oklahoma Mineral owners entrust the Commission to look out for their interests. The Trust believes the fair market value should be in the hands of the Commission Staff, based on the evidence/arguments had on appeal.

14) The Trust requests the ALJ's ruling against enhancement of initial lease values be modified accordingly.

CONCLUSIONS

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

1) The Referee finds the ALJ's recommendation to set fair market value at $800 per acre and a 3/16th royalty, and $650 per acre and a 1/5th royalty to be supported by the weight of the evidence, by law and free of reversible error. The ALJ is the initial finder of fact and it is his duty as the finder of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953). These values reflected consummated transactions within one year and within the nine section unit.

2) The Supreme Court in *Miller v. Corporation Commission*, 635 P.2d 1006 (Okl. 1981) stated:

> The measure of compensation for forcibly pooled minerals is their "fair market value"-the level at which this interest can be sold, on open-market negotiations, by an owner willing, but not obliged, to sell to a buyer willing, but not obliged, to buy. Evidence of comparable terms and prices previously paid for leases in the same area is relevant to, but not always conclusive of, the fair market value. Other factors may command or merit additional consideration. The difference in lease terms, the distance from other leaseholds subject to forced pooling and the nature of formations within different leaseholds-to name but a few variants-may be of great moment.
>
> The value to be arrived at is that paid for comparable leases in the unit. It is best extracted from transactions under usual and ordinary circumstances which occurred in a free and open market. The price levels reached under free and open market conditions are deemed to be barren of the distortive elements which are generally present in panic, auction or speculative sales. The latter so often reflect either depressed or inflated prices. An open market transaction contemplates face-to-face negotiations between two or more parties, dealing at arm's length, for the purpose of arriving at an agreed level. (Footnotes omitted)

3) The ALJ determined that the transactions testified to by Chesapeake's landman were between willing buyers and willing sellers under the normal definition of fair market value and, as such, should be included as fair market value options for the unit.

4) The only evidence presented at the merit hearing on fair market values was evidence presented by Chesapeake's expert witnesses. With regard to the weight to be given opinion evidence, the Supreme Court stated in *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951):

> At the hearing herein the testimony adduced was chiefly that of petroleum engineers and geologists who testified on the basis of both personal surveys made

> and of an interpretation of the accumulated data in the hands of the Commission. The testimony of these experts was in direct conflict but that of each was positive upon the issue. Under the circumstances the objection is necessarily addressed to only the weight of the evidence. Under the holding of this Court and that of courts generally, *Chicago, R.I. and P. Ry. Co. v. Pruitt*, 67 Okl. 219, 170 P. 1143; 22 C.J. 728, Section 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, it taking into consideration the intelligence and experience of the witness and the degree of attention he gave to the matter. The rule should have peculiar force herein where by 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 Company v. Dolese Brothers Company*, 121 Okl. 40, 247 P. 74.

The only relevant evidence in the instant case concerns Chesapeake's fair market value evidence, which was unchallenged by the Trust and the Referee believes that the evidence warrants the fair market values established by the ALJ to be reasonable and in accordance with the evidence presented, and finds that the ALJ's decision is supported by the law and substantial evidence. See *Central Oklahoma Freight Lines Inc. v. Corporation Commission*, 484 P.2d 877 (Okl. 1971); and *GMC Oil and Gas Company v Texas Oil and Gas Corporation*, 586 P.2d 731 (Okl. 1978).

5) As noted by Charles Nesbitt in his article "*A Primer on Forced Pooling of Oil and Gas Interests in Oklahoma*", 50 O.B.J. 648 (1978):

> ...the amount and elements in the bonus are intended to equal the current fair market value of an oil and gas lease; that is, the bonus which would be paid for a lease between willing contracting parties, neither under compulsion.

> In practice, this generally becomes an inquiry into the "highest price actually paid" for an oil and gas lease in the vicinity. Scant consideration is paid to transactions outside a nine section area of which the subject section is the center, or to a lease bonus paid during a past period of hot activity which since has cooled.

6) The Trust argues that fair market value should be determined and include enhanced production value. However, the amount of production will not cause an increase in overall value and looking at well production alone does not define value. There is no guarantee that any given well will pay out. The testimony reflected that later well completions had no effect on the fair market value in Section 11. Even if production information could be used to establish fair market value there was no evidence based upon the production information that would change the values. Chesapeake's petroleum engineer evaluated the recent completions and determined that such would not have any effect upon the current fair market value.

7) As stated in *Home-Stake Royalty Corp. v. Corporation Com'n*, 594 P.2d 1207 (Okl. 1979):

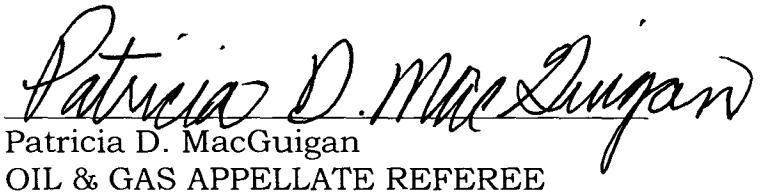
> ...Any conclusion reached relative to future production from the contemplated well derived from these tests remains problematical, conjectural, and depends in great part upon the expertise of the persons making the evaluation .
>
> * * *
>
> The future value of the well and the unit it is placed upon is thus pure speculation. The issue to be determined in this pooling proceeding is the present market value which, as is noted herein, is amply supported by testimony of market value determined by recent transactions and not future value reflected by the prospects of the contemplated well...

Thus, the *Home-Stake* case affirms that fair market values determined via consummated transactions, rather than enhanced or waning production, should determine bonus. Looking at well production alone does not define value. One well could cost $1 million and result in 75 BOPD and another well could produce 100 BOPD and cost $4 to $5 million to drill and complete,

however the amount of production will not cause an increase in overall value. There is no guarantee that any given well will pay out and production does not in itself establish fair market value. The *Home-Stake* case stands for the proposition that only consummated transactions should be looked at for fair market value and not future production.

8) Therefore while the Referee acknowledges the arguments and positions of the Trust, under the law as established within the State of Oklahoma, the Commission is compelled to establish fair market value as recommended by the ALJ based upon the weight of the evidence presented.

RESPECTFULLY SUBMITTED THIS 11th day of December, 2012.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Michael D. Norris
Richard K. Books
Michael Ed Erikson
Jimmy Gus Erikson
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