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BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	**CHRISTOPHER T. BRIZZOLARA, EVELYN D. BRIZZOLARA, INDIVIDUALLY AND AS LIFE TENANT, JEFFREY A. BRIZZOLARA, KATHRYN A. BRIZZOLARA, AND THE DANNY LYNN EGNER AND NEVA SUE EGNER REVOCABLE LIVING TRUST DATED 3/3/2008**	
RELIEF SOUGHT:	**DRILLING AND SPACING UNIT**	**CAUSE CD NO. 201202267**
LEGAL DESCRIPTION:	**SECTION 5, TOWNSHIP 25 NORTH, RANGE 13 WEST, WOODS COUNTY, OKLAHOMA**	

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CORPORATION COMMISSION
OF OKLAHOMA

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Michael Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 11th and 12th days 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: **Gregory Mahaffey,** attorney, appeared for Applicants, Christopher T. Brizzolara, Evelyn D. Brizzolara, individually and as life tenant, Jeffrey A. Brizzolara, Kathryn A. Brizzolara, and the Danny Lynn Egner and Neva Sue Egner Revocable Living Trust dated 3/3/2008 (collectively "Applicants" or "Brizzolara"); **Charles Helm**, attorney, appeared for Crawley Petroleum Corporation ("Crawley"); **Richard Books**, attorney, appeared for Chesapeake Exploration, L.L.C. ("Chesapeake"); **Carlene Slater**, 2019 South Range Road, Stillwater, OK 74074, appeared Pro Se ("Slater"); 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 10th day of October, 2012, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions. A correction Report of the ALJ was filed on October 12, 2012.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 11th day of January, 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

BRIZZOLARA FILED EXCEPTIONS to the Report of the Administrative Law Judge ("ALJ") filed October 10, 2012 and the Corrected Report of the ALJ filed October 12, 2012 which recommended that the Applicants' application to change the spacing of the Cottage Grove from a regular 640 acre spacing unit to 160 acre units in Section 5, T25N, R13W, Woods County, Oklahoma, be denied.

Applicants' request in their application that the Commission enter an order amending the provisions of Order No. 401166, dated April 22, 1996, which order established 640 acre drilling and spacing units for the production of hydrocarbons from the Cottage Grove common source of supply, underlying Section 5, T25N, R13W, Woods County, and to delete therefrom said common source of supply underlying the said Section 5. Applicants allege that there has been a change in conditions or knowledge of conditions in the area which necessitates amending said order by deleting therefrom said common source of supply underlying said area. Applicants allege that the Cottage Grove is a prospective common source of supply which will be productive primarily of gas and gas condensate and that 160 acre units would be an appropriate size drilling and spacing unit and that one well would adequately and effectively drain and recover the producible hydrocarbons underlying such area. Applicants also request in their application that the Crawley Paris #5-A well be designated as the unit well for the SE/4 of Section 5 for the Cottage Grove common source of supply for the 160 acre unit.

APPLICANTS TAKES THE POSITION:

1) The Report of the ALJ is contrary to the evidence, is contrary to the law and fails to protect correlative rights or prevent waste of hydrocarbons.

2) The ALJ erred in denying 160 acre spacing since the overwhelming evidence indicates that the average drainage of a Cottage Grove well is

approximately 150 acres. The ALJ acknowledged that there had been a change of condition or change of knowledge of condition since the Commission established 640 acre spacing in the Cottage Grove in 1996, prior to any Cottage Grove wells being drilled in this nine-section area. It appears that spacing Order No. 401166 prospectively spaced the Cottage Grove, upon the request of Crawley, before there was production history for the Cottage Grove in Section 5, by extending 1984 spacing Order No. 251140. Therein the Commission stated "One well will adequately and efficiently drain the recoverable hydrocarbons in said common sources of supply underlying at least 640 acres;..."

Obviously the Commission's finding in 1984, as perpetuated by the subject spacing Order No. 401166, was incorrect. Mr. Jon Stromberg testified that the average drainage in the Cottage Grove is approximately 150 acres. (ALJ Report, page 5) He noted that Crawley had previously represented to the Commission that the existing wells would only recover about 3.8 BCF out of a possible 6.2 BCF OGIP in the Cottage Grove, thus leaving 2.4 BCF unrecovered. An additional 2 BCF can be economically recovered by a well drilled to a depth of 5,100' even at today's prices. Waste will occur unless one or more wells is drilled to recover this remaining Cottage Grove gas.

Mr. Stromberg also noted that even though the Lower Cottage Grove wells make a substantial amount of water, new completion techniques and a change in conditions since 1996 has given operators the ability to handle large volumes of water economically through a dewatering project. He believed there would be operators that would not find the high water saturation in the Lower Cottage Grove to be detrimental to economic development. Crawley admittedly has no plans to further develop the Cottage Grove. As testified to by their engineer, Mr. James Henry, "He would not recommend spending any money to develop the Lower Cottage Grove. He said that Crawley had no plans to attempt to develop the Cottage Grove. He said he would not in good conscience recommend drilling a well or trying to produce the Lower Cottage Grove. He admitted engineers and geologists sometimes differ in their determination of what would be successful". (ALJ Report, page 11).

On a vertical basis, had the Commission known that the Cottage Grove would not drain more than 160 acres, it would never have approved the initial 640-acre spacing. Where an operator, as here, has no plans to pursue increased density and waste will occur by virtue of unproduced hydrocarbons left in the ground, it is appropriate for this Commission to decrease the size of the spacing units. See *Union Texas Petroleum v. Corporation Commission,* 651 P.2d 652 (Okl. 1981), and *Union Oil Company of California v. Brown,* 641 P.2d 1106 (Okl. 1981).

3) The ALJ erred in denying the requested 160-acre despacing on the basis that "There are no 160-acre spacing units in the sections surrounding Section 5." This Commission has repeatedly held that it is not necessary for a mineral owner to vacate a spacing order as to all lands covered thereby. If the Commission follows the ALJ's rationale, mineral owners such as applicants will be required to incur a burdensome expense and duty of notice to attempt to vacate a spacing covering many square miles. Applicants only own minerals in the subject Section 5. It appears the only active Cottage Grove well is currently in Section 5. There is no requirement that the mineral owners come in and establish 160-acre spacing in all units before they can re-space Section 5 on 160-acre units. Such ruling places a chilling effect on mineral owners ever seeking to re-space their lands where there are no offset units the size they seek to establish. The overwhelming engineering testimony supports 160-acre spacing in the Cottage Grove versus the 640-acre spacing.

4) Applicants respectfully request that the Report of the ALJ be reversed and that this Commission vacate Order No. 401166 insofar as the captioned land and respace the Cottage Grove to 160-acres, designating the Paris #5-A well as the unit well for the SE/4 of Section 5.

THE ALJ FOUND:

(1) After taking into consideration all the facts, circumstances, testimony, and evidence presented in this cause, the ALJ recommends the application in CD 201202267 be denied. While there have been some changes in knowledge and condition, they are not enough to disturb the correlative rights that have been established under the current spacing scheme of the Cottage Grove in Section 5. Crawley has been diligent in developing the Cottage Grove since they began operating the unit. In addition, to allow 160 acre spacing in this one section would not be consistent with the spacing in surrounding eight sections.

2) The Cottage Grove has been produced for almost 16 years in this 640 acre unit. The Cottage Grove was spaced in 1996 on a 640 acre basis. Since that time, Crawley has recompleted and drilled several wells into the Cottage Grove. Development in the unit is ongoing by Crawley. This activity has generated new information about the Cottage Grove that was unknown at the time of the 1996 spacing hearing. Since the spacing order for the Cottage Grove was issued, all mineral owners in the unit have shared in the production from the many wells drilled in the unit, regardless of the location of the wells in the unit. There are no 160 acre spaced units in the sections surrounding Section 5.

3) Some of the new information is that there appears to be two separate sub members of the Cottage Grove. The Upper Cottage Grove appears to be a

generally "dry" formation and the Lower Cottage Grove a generally "wet" formation. While there are two submembers of the Cottage Grove that exist, it does not change the fact it is still the Cottage Grove.

4) Based on the drilling activity since 1996, some new geologic knowledge has been gained. The Paris #5-A, a re-completion is producing from the Upper Cottage Grove in the SE/4 of Section 5. The Ensor #2-5 located in the NE/4 of the unit, is no longer in production. This well was the only Lower Cottage Grove producer in Section 5. It appears it was part of a "nosing" of the Lower Cottage Grove in Section 5. The new knowledge gained from this well was there was Cottage Grove, but the Upper member was not present. The low production from the well indicated the Lower Cottage Grove in the NE/4 section was from a small reservoir. Production has ceased from this sub-member in the NE/4 of Section 5.

5) The Ensor #A-1 was drilled in the NE/4 to the Upper Cottage Grove and was a dry hole. In addition, the Ensor #1-5 was drilled in the NE/4 near the Ensor #A-1 in 1996. It produced from the Upper Cottage Grove from 1996 to 2006 when it was plugged. Production in the Ensor #3-5 was attempted from the Upper Cottage Grove in the NW/4, but the reservoir was depleted. This was explained as being due to nearby wells that produced from the same reservoir. In the SW/4, the Paris #1-5 well was drilled to the Mississippian formation. The well bore passed through the Cottage Grove. It was classified as a dry hole, and no attempt was made to produce the Cottage Grove because it was thought to be "wet". Some of the older and deeper producing wells were re-completed in the Cottage Grove by Crawley. All of this new knowledge would indicate the formation is at or near depletion.

6) Applicants also indicate new information or knowledge is that wet formations are being produced in other areas of the state. Applicants presented no evidence the Cottage Grove was a candidate for a "de-watering" project. Applicants furnished no evidence of a specific party that was interested in investing in a Cottage Grove de-watering project. The evidence showed no Cottage Grove de-watering projects in the surrounding sections, or in the State of Oklahoma.

7) Currently there is one producing well in the Cottage Grove. To change the ownership at this stage would disturb correlative rights. The Applicants had no problem with sharing the proceeds from this well for 16 years with other owners in the 640 acre unit. Now as the well approaches the end of its life, the Applicants wish to discard that interest and disrupt established correlative rights for speculative possibilities in a sub-member of the Cottage Grove.

POSITIONS OF THE PARTIES

BRIZZOLARA

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Applicants, notes that the Brizzolara group owns 100% of the NE/4 of Section 5 in Woods County.

2) Applicants argue there has been a change in condition in the knowledge of the Cottage Grove formation and that there are additional hydrocarbons which can be recovered if Section 5 is despaced from a 640 acre unit to 160 acre units.

3) Applicants contend that Crawley is unwilling to drill another vertical well targeting the Cottage Grove.

4) Applicants rely on the decision in *Union Texas Petroleum v. Corp. Comm'n,* 651 P.2d 652 (Okl. 1981); which holds that when an operator does not develop existing resources, despacing is an appropriate remedy. This allows the mineral owners an opportunity to develop the minerals in place. Applicants also believe *Union Texas* supports the idea that it is more important to foster the extraction of undeveloped minerals through a despacing order than to protect the interests of leaseholders who may be adversely affected by the same.

5) Applicants contend that reservoirs with a high water concentration, like the Lower Cottage Grove, have become potentially productive though newly developed dewatering techniques.

6) Applicants ask the court to take judicial notice of the spacing Order No. 251140, obtained by Crawley in 1996, which included the Cottage Grove formation. The conclusion of the order states that the order is necessary to prevent waste and to protect correlative rights.

7) Applicants note that it is the primary duty of the Commission to prevent waste. This waste can occur through unnecessary drilling but also through non-production, leaving hydrocarbons in the formation which could otherwise be produced.

8) Applicants note that the only productive Cottage Grove wells are located in Section 5.

9) Applicants observe that the original spacing order from 1983 stated that one well will adequately drain the hydrocarbons from a common source of supply on a 640 acre spacing unit. However, this spacing order was

established before any wells were drilled into the Cottage Grove formation. Since that order, wells drilled in the same section have drained, on average, only 150 acres. This leads Applicants to believe that the 640 acre spacing is erroneous.

10) Applicants note that the Cottage Grove formation can be separated into distinct upper and lower lenses, with the lower portion comprising two-thirds of the permeable sand. The Cottage Grove is separated by a zone of decreased porosity which creates two separate lenses. The lower portion of the reservoir has significant water saturation which limits its productivity.

11) Applicants observe that only two wells have produced from the Lower Cottage Grove, the Ricks Glasgow #1-4 and the Ensor #2-5, neither of which are currently producing.

12) Applicants note that the Lower Cottage Grove was only tested once for one day. This test resulted in substantial quantities of water with modest shows of oil and gas but did not lead the operator to believe that the formation would be productive. The Lambert #1-6 well in Section 6 has been shown to produce from the Lower Cottage Grove but with a water saturation of 66%.

13) Applicants argue that, while there is high water saturation in the Lower Cottage Grove, there is also very good porosity. Applicants point to the testimony of their expert witness who concluded that there could be 2 BCFG contained in the formation. This amount of gas could potentially result in $6 million of revenue at $3 per MCF.

14) Applicants contend that a project to dewater the formation would expose a significant amount of extractable hydrocarbons in the Lower Cottage Grove. This would be a feasible project given the increased effectiveness and decreasing cost of dewatering projects. Other companies such as Special Energy, Devon, and Eagle have successfully completed such dewatering projects.

15) Applicants concede that, while Crawley's engineer testified he would not recommend drilling or producing from the Lower Cottage Grove, other engineers might come to a different conclusion. Applicants suggest that the ALJ erred by overly relying on the testimony of Crawley's engineer.

16) Applicants argue that the ALJ engaged in "erroneous circular thinking" when he based part of his denial of the 160 acre spacing application because none of the other surrounding sections are spaced in this way. Under this approach it would be unreasonably difficult to despace a unit.

17) Applicants believe that the case law supports the notion that there is no need to vacate or alter the spacing for an entire common source of supply

when the Commission can simply despace one portion. They note that there is no requirement that the entire nine section area be respaced because of a change in knowledge or condition for only one section in the area.

18) Applicants argue that the Commission should only consider what would be the appropriate spacing for future development, not if Crawley or another operator would lose some of its leasehold interests. These correlative rights should be subservient to the prevention of waste.

19) Applicants argue that when the operator has no plans to develop on an increased density, and when waste will result from that inaction, then the Commission should grant a despacing order.

20) Applicants conclude by speculating that future development could be profitable, even with low natural gas prices, and that the findings of the ALJ should be reversed, granting Applicants' 160 acre spacing application.

CRAWLEY

1) **Charles Helm**, attorney, appearing on behalf of Crawley, notes that 100% of the working interest owners in the unit are opposed to the despacing application as well as some of the royalty owners.

2) Crawley argues that the reason for the application was to cause lease expiration for the working interest owners outside of the SE/4 of Section 5, which has the producing Upper Cottage Grove Paris #5-A well, rather than the prevention of waste and the protection of correlative rights, as Applicants argue.

3) Crawley contends that the intended result of the requested despacing would be to use the regulatory power of the Commission to alter the leases negotiated between working interest owners. This amounts to a private rights issue which is beyond the jurisdiction of the Commission to decide.

4) Crawley notes that units covering a common source of supply should be of a uniform shape and size. The Commission previously established a standard 640 acre drilling and spacing unit for the Cottage Grove formation in Sections 4, 5, 6, 31, and 32. The most recent 640 acre spacing was established by the Commission in 2008, after 13 years of observing production from the formation.

5) Crawley observes that since 1960, 36 wells have penetrated the Cottage Grove, most targeting lower formations such as the Red Fork and the Hunton.

The Lower Cottage Grove was only found by Crawley during a recompletion of the Ensor #1-5 well. After an evaluation of the Lower Cottage Grove formation, Crawley determined that it was saturated with water and would likely be unproductive. The Upper Cottage Grove was found to have tighter porosity but was not saturated with water and consequently was productive. Crawley has since drilled a number of productive wells targeting the Upper Cottage Grove.

6) Crawley argues that the development of a new zone is more likely if there is a consistent unit size. According to Crawley different sized units will create a complicated set of ownership strings.

7) Crawley argues that they have acted as prudent operators by developing the Upper Cottage Grove reservoir. Crawley notes that they relied on the standard 640 acre unit when they received approval to drill on an increased density. This development resulted in the drilling or recompletion of four wells in Section 5 targeting the Upper Cottage Grove.

8) Crawley takes issue with Applicants' claim that the Lower Cottage Grove can be productive despite its water saturation. Crawley notes that the expert witness called by Applicants erroneously claimed all the wells in Section 5 produce from the Lower Cottage Grove, when in fact only one, the Ensor #2-5 well in the NE/4, has produced from this part of the formation. This well only produced .3 BCF, while surrounding wells producing from the Upper Cottage Grove produced approximately 3.5 BCF.

9) Crawley notes that they have spent millions of dollars developing the Upper Cottage Grove formation. This development resulted in approximately $12 million of revenue benefiting the joint interest and royalty owners. Crawley argues that if there were significant hydrocarbon reserves in the Lower Cottage Grove, then Crawley, acting as a reasonably prudent operator, would have certainly taken steps to extract them.

10) Crawley notes that the expert witness for Applicants originally stated that despacing Section 5 to 160 acre units was necessary because the Upper Cottage Grove had not been developed. Crawley argues this was shown to be inaccurate through cross examination.

11) Crawley speculates that this error by Applicants' witness resulted in the proposed dewatering project for the Lower Cottage Grove as an alternative justification for the despacing request.

12) Crawley dismisses the proposed 160 acre dewatering project as "ludicrous." No dewatering projects have taken place in the Cottage Grove and no studies have been done on such a project.

13) Crawley argues that if the Lower Cottage Grove were as productive as Applicants contend then Crawley would have already taken steps to develop it.

14) Crawley summarizes by suggesting that despacing will only cause lease expiration and create new ownership in existing wells. Crawley urges the court to affirm the decision of the ALJ, who found that Crawley acted as a prudent operator for the last sixteen years and that correlative rights would be disrupted if despacing were approved.

RESPONSE OF BRIZZOLARA

1) Applicants argue that the Commission should not focus on the prospect of lease expiration due to a despacing order. Rather, according to the *Union Texas* case, the Commission should focus on the waste that would occur if the Lower Cottage Grove were not developed.

2) Applicants disagree that the Lower Cottage Grove is unproductive because of its high water saturation. They point to the tests of the Ensor #1-5 well which suggested that there was significant pressure and a modest show of oil and gas in the interval where the Lower Cottage Grove is located.

3) Applicants contend that there are two distinct, upper and lower, lenses within the Cottage Grove formation, the upper of which is likely pressure depleted. While, to date only one well has successfully produced from the Lower Cottage Grove, it does not follow that the entire portion of the formation is unproductive.

4) Applicants note that the expert witness testimony, which stated that there was 2 BCFG in the Lower Cottage Grove, was never disputed by Crawley.

5) Applicants note that the original spacing of 640 acres was not disputed because there was no knowledge of the potential drainage and productivity in the Cottage Grove. If the information had been available Applicants speculate that the spacing order would have established smaller units.

6) Applicants conclude by arguing that Crawley does not intend to develop the Lower Cottage Grove and that waste would result if the formation were not developed.

CONCLUSIONS

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

1) The Referee finds that the recommendation of the ALJ to deny the Applicants' application to change the spacing of the Cottage Grove from a regular 640 acre spacing unit to a 160 acre units in Section 5 is supported by the weight of the evidence, by law, and is free of reversible error. The ALJ is the trier of fact. It is the ALJ's duty as the trier of fact to observe the demeanor of the witnesses, assess their credibility, and assign the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).

2) In order to modify the prior spacing of 640 acres, it was incumbent upon Applicants to establish a substantial change of conditions or change in knowledge of conditions since the issuance of the prior Order No. 401166, dated April 22, 1996. *Corporation Commission v. Phillips Petroleum*, 536 P.2d 1284 (Okl. 1975); *Marlin Oil Corporation v. Corporation Commission*, 569 P.2d 961 (Okl. 1977).

3) In *Phillips Petroleum Company v. Corporation Commission*, 482 P.2d 607 (Okl. 1971) the Supreme Court stated:

> The phrase "change in knowledge of conditions" (as would warrant a change by order) does not encompass a mere change of interpretation on the part of the Commission. Rather, it encompasses an acquisition of additional or new data or the discovery of new scientific or technical knowledge since the date of the original order was entered which requires a re-evaluation of the geological opinion concerning the reservoir...

4) The applicants must make the showing that there has been a change in conditions or a change in knowledge of conditions by substantial evidence. *Phillips Petroleum Company v. Corporation Commission*, 461 P.2d 597 (Okl. 1969); *Anderson-Pritchard Oil Corporation v. Corporation Commission*, 241 P.2d 363 (Okl. 1951); Okla. Const. Art. IX, Section 20. Any attempt to vacate or modify a prior, valid order without this showing constitutes a prohibited collateral attack on that earlier order. *Application of Bennett*, 353 P.2d 114 (Okl. 1960).

5) The Commission has always followed the procedure outlined in *Haymaker v. Oklahoma Corporation Commission,* 731 P.2d 1008 (Okl.App. 1986) wherein the court stated:

> Proper appraisal of the expert testimony requires observance of the following benchmark principle approved in *Downs v. Longfellow Corp.*, 351 P.2d 999 (Okla. 1960):
>
> > "The reasons given in support of the opinions [of an expert witness] rather than the abstract opinions are of importance, and the opinion is of no greater value than the reasons given in its support. If no rational basis for the opinion appears, or if the facts from which the opinion was derived do not justify it, the opinion is of no probative force, and it does not constitute evidence sufficient to...sustain a finding or verdict."

6) The ALJ followed the above procedure in determining which expert opinion was worthy of greater weight. The ALJ considered the geologic presentations of each of the parties. The ALJ found the expert witnesses presented by Crawley to be more persuasive than the Applicants' witnesses. The ALJ had the opportunity to observe the demeanor of the various expert witnesses while they were testifying and generally deference is given to the ALJ's opportunity to view the witnesses first hand. See *Williams v. Volkswagenwerk Aktiengesellschaft, et al.*, 180 Cal.App. 3rd 1244, 226 Cal. Rpt. 306 (Cal.App. 2nd Dist. 1986).

7) The evidence presented showed the Cottage Grove is separated by a zone of decreased porosity which creates two separate lenses with the lower portion of the reservoir having significant water saturation which limits its productivity. There are only two wells that have produced from the Lower Cottage Grove, the Ricks Glasgow #1-4 and the Ensor #2-5, neither of which are currently producing. The test concerning the Lower Cottage Grove resulted in substantial quantities of water with modest shows of oil and gas. The Lambert #1-6 well in Section 6 has been shown to produce from the Lower Cottage Grove but with a water saturation of 66%. Since 1960, 36 wells have penetrated the Cottage Grove most targeting lower formations such as the Red Fork and the Hunton. The Lower Cottage Grove was only found by Crawley during a recompletion of the Ensor #1-5 well. There has been drilling and recompletion of four wells in Section 5 targeting the Upper Cottage Grove. It

should be noted that Applicants' expert witness erroneously claimed all the wells in Section 5 produced from the Lower Cottage Grove when in fact only one, the Ensor #2-5 well in the NE/4 has produced from this part of the formation. This well only produced .3 BCF, while surrounding wells producing from the Upper Cottage Grove produced approximately 3.5 BCF.

8) Crawley disagrees with Applicants' claim that the Lower Cottage Grove can be productive despite its water saturation. Crawley further disagrees that a dewatering project for the Lower Cottage Grove, as an alternative justification for the despacing request, is not supported by the evidence. No dewatering project has taken place in the Cottage Grove and no studies have been done on such a project.

9) The Referee believes that the vast amount of evidence presented within this proceeding concerned the nature of the reservoir and facts that have been known about the Cottage Grove reservoir and are merely a reinterpretation of known facts or the consideration of cumulative evidence which does not establish a change of conditions or change in knowledge of conditions. As the Oklahoma Supreme Court stated in *Wood Oil Company v. Corporation Commission*, 239 P.2d 1021 (Okl. 1950): "...The exercise of the authority to modify the previous order necessary involves a changed factual situation from that which obtained at the time of making the order sought to be modified."

10) Crawley argues that despacing will only cause lease expiration and create new ownership in existing wells. Clearly the Commission cannot modify a spacing order in order to conform to royalty and leasehold interest. See *Wood Oil Company*, supra, where the Oklahoma Supreme Court stated at page 1022:

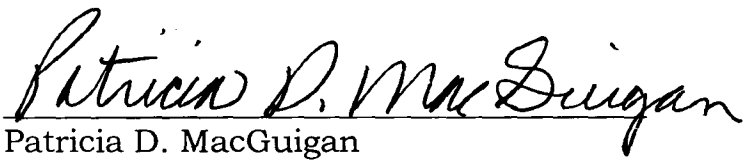
> ...that for the Corporation Commission to undertake to establish drilling and spacing units to conform to royalty and leasehold ownership within the area would lead to confusion and defeat the intention of the law establishing uniform spacing and drilling units.

11) The Commission previously established a standard 640 acre drilling and spacing unit for the Cottage Grove formation in Sections 4, 5, 6, 31 and 32. The most recent 640 acre spacing was established by the Commission in 2008, after 13 years of observing production from the formation.

12) It should be noted also that the evidence was that the drainage calculations reflected that the Ensor #1-5 well drained 221 acres, Paris #5-A well drained 143 acres, the Lambert #1-6 well drained 140 acres and the Ensor #2-5 well drained 101 acres.

13) Therefore, for the above stated reasons, the Referee finds that the Report of the ALJ should be affirmed as there is not substantial evidence showing that there has been a substantial change in knowledge of conditions to warrant the granting of applicant's request to change the 640 acre unit spacing to 160 acre unit spacing.

RESPECTFULLY SUBMITTED THIS 4th day of April, 2013.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Mike Porter
Gregory Mahaffey
Charles Helm
Richard Books
Carlene Slater
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