

SEP 10 2013

**FILED**  
AUG 27 2013

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

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

<u>APPLICANT:</u>	C. WILLIAM RICHTER AND CLIFFORD W. RICHTER	)	
		)	
		)	
<u>RELIEF SOUGHT:</u>	DRILLING AND SPACING UNITS	)	CAUSE CD NO.
		)	201202504
		)	
<u>LEGAL DESCRIPTION:</u>	SECTION 6, TOWNSHIP 25 NORTH, RANGE 10 WEST, ALFALFA COUNTY, OKLAHOMA	)	
		)	
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<u>APPLICANT:</u>	C. WILLIAM RICHTER	)	
		)	
		)	
<u>RELIEF SOUGHT:</u>	DRILLING AND SPACING UNITS	)	CAUSE CD NO.
		)	201202505
		)	
<u>LEGAL DESCRIPTION:</u>	SECTION 7, TOWNSHIP 25 NORTH, RANGE 10 WEST, ALFALFA COUNTY, OKLAHOMA	)	
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		)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE**

These Causes came on for hearing before **Michael Norris**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 26th day of September and 1<sup>st</sup> day of October, 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 L. Mahaffey**, attorney, appeared on behalf of applicants, C. William Richter and Clifford W. Richter (collectively "Richter"); **Richard K. Books**, attorney, appeared on behalf of Chesapeake Operating Inc. and Chesapeake Exploration, LLC (collectively "Chesapeake"); **William H. Huffman**, attorney, appeared on behalf of Mitchell Royalty ("Mitchell") and Kenneth Dorbandt ("Dorbandt")(collectively "Mitchell"); 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 25<sup>th</sup> day of April, 2013, 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 24<sup>th</sup> day of June, 2013. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

### **STATEMENT OF THE CASE**

**RICHTER TAKES EXCEPTION** to the Report of the Administrative Law Judge ("ALJ") recommending that the despadding requested by Richter be denied with the current 640 acre spacing remaining in effect.

Richter requests that the Commission enter an order amending the provisions of Order No. 105169, which order established 640 acre drilling and spacing units for the production of hydrocarbons from the Oswego common source of supply, to delete there from said common source of supply underlying Section 6 in Cause CD 201202504 and Section 7 in Cause CD 201202505, T25N, R10W, Alfalfa County, Oklahoma. Richter requests establishing 160 acres drilling and spacing units or no larger than lay down 320 acre units for Sections 6 and 7 from the Oswego common source of supply.

Richter owns 100% of the mineral interest in the N/2 of Section 6 and the SE/4 of Section 7. Mitchell and Dorbandt, protestants in this matter, have a nonparticipating royalty interest in the SE/4 of Section 7. This royalty interest consists of 80 acres. If Richter obtains respacing to 160 acres, it would result in termination of that nonparticipating royalty interest.

Chesapeake owns 100% of the leasehold interest in Section 6 and Section 7. If despadding is allowed to 160 acres, Chesapeake would lose its working interests in the sections except for the existing wells. This would also result in Richter receiving all of the royalty they have shared the last 30 years in Section 7. Richter would no longer receive a royalty in Section 6 that has been paid for 30 years. Richter would also be free to negotiate for a new bonus and a new royalty.

**RICHTER TAKES THE POSITION:**

- 1) The ALJ's Report is contrary to law, contrary to the evidence and fails to prevent waste of hydrocarbons or protect correlative rights.
- 2) The ruling of the ALJ in denying 160 acre spacing and maintaining 640 acre spacing fails to prevent waste and fails to acknowledge a change of knowledge of condition about the Oswego common source of supply. The ALJ states in paragraph 5 of his conclusions that "The evidence submitted did not show a substantial change in the knowledge of conditions and characteristics of the formation to ascertain that the current 640 acre spacing is inappropriate." Such finding totally ignores the evidence of both parties: there are unrecovered Oswego hydrocarbons in these two sections and the existing wells cannot adequately drain 640 acres. Such finding also ignores the very premise for which Sections 6 and 7 were spaced on 640 acres for the Oswego in 1974, before any Oswego well had been drilled on either section and before any well had been drilled on any offset sections. (See Exhibit 2). The Commission can take judicial notice of spacing Order No. 102799 issued on January 24, 1974, only four months before spacing Order No. 105169, the order sought to be vacated in this proceeding. Order No. 105169 extended into Sections 6 and 7 the purview of Order No. 102799. In Order No. 102799 the Commission states in paragraph 12 of its findings the express reason for establishing 640 acres spacing for the Oswego "...that one well will efficiently and adequately drain the hydrocarbons from each of the common sources of supply covered by these applications underlying 640-acres, and requests the Commission to establish 640 acre drilling and spacing units for the production of gas and gas condensate from the Oswego...separate common sources of supply."
- 3) While they differed in their calculation in the amount of drainage, each of the engineers testifying admitted that one well will not drain 640 acres. Both engineers admitted that there was remaining gas underlying these two sections that could be recovered through the drilling of additional wells. Mr. Jon Stromberg expressly stated, as noted in paragraph 11 of the ALJ's findings, that "...there has been a change of condition or change of knowledge of the condition about the Oswego. It is his opinion that 640 acre spacing is not appropriate for the Oswego based upon the drainage data available today. It is also his opinion that this order [105169] should be vacated as to sections 6 and section 7 and smaller size units established."
- 4) Waste will occur unless this Commission grants the requested, smaller spacing units. This Commission's number one mandate by the Oklahoma Supreme Court is to prevent the waste of hydrocarbons. *Application of Peppers Refining Co.*, 272 P.2d 416 (Okl. 1954). Mr. Stromberg testified that there was 1.932 BCF of original RGIP underlying Section 6. That the existing Means A #1-6 well will only recover .445 BCF and drain 147 acres, thus leaving appropriately 493 acres undrained containing the remaining 1.5 BCFG. Based

upon the average recovery from an Oswego well of 6/10 BCF (per Chesapeake's engineer Mr. Heath in paragraph 39 of the ALJ findings) three additional Oswego wells are likely needed in Section 6 to recover this additional 1.5 BCFG. Even at \$3/MCFG, 6/10 of BCF would yield \$1.8 million in future revenue and make a profit, per Mr. Stromberg.

5) As to Section 7, the Bassett wells have been better wells. In Section 7, Mr. Stromberg testified that there was originally 2.885 BCF of RGIP. The two existing wells will ultimately produce 2.097 BCF, thus leaving about .8 BCF of unrecovered gas. Per the stipulation of the applicants, they are requesting 320 acre lay down spacing underlying Section 7. Mr. Stromberg testified that lay down 320 acre spacing would be appropriate because the natural fractures in the Oswego run east/west.

6) As noted by the ALJ in paragraph 2 of his findings, there are unrecovered hydrocarbons in these two sections. He states in paragraph 3 of his Recommendations and Conclusions, "there are additional hydrocarbons available in these two sections." The ALJ's belief that these sections could be developed on increased density basis is a non-decision that fails to solve the waste issue. Chesapeake's witnesses repeatedly stated that they would not drill additional wells for the Oswego in either one of these sections. Mr. Adam Kruse, a geologist for Chesapeake stated (a) "they did not deal with the Oswego;" (b) "that he has not proposed any Oswego wells in Alfalfa County;" (c) "prior to today he has not had any experience proposing Oswego wells and having been drilled by Chesapeake;" (d) "he is not aware of any current plans by Chesapeake to drill an Oswego well in these sections. He has not proposed any well for these two sections;" (e) "He is not aware of any increased density applications for the Oswego filed by Chesapeake in these two sections;" and (f) "He testified he would not recommend that Chesapeake drill a well in the Oswego."

7) Mr. Bruce Heath, petroleum engineer for Chesapeake also agreed that he would not drill any additional wells for the Oswego: (a) "he would not recommend an increased density well in Section 6 or 7 based on the gas price of \$3 an Mcf (Para. 36, ALJ Report); (b) "He would not recommend any further development in the Oswego in this area" (Para. 39, ALJ Report). Here, Chesapeake and its predecessors have owned these leases for over 30 years without the drilling of any additional wells to test the Oswego. Chesapeake has not filed and will not file an increased density application for the Oswego. All witnesses for Chesapeake admitted that Chesapeake has no plans to drill and does not believe it prudent to drill more wells for the Oswego, even though there are remaining hydrocarbons. Our Oklahoma Supreme Court addressed this very situation in *Union Texas Petroleum v. Corporation Commission*, 651 P.2d 652 (Okla. 1982). There, as here, the passage of time and drilling of actual wells with production history indicated that it was economically feasible to drill a second or third well in the 640 acre spacing unit, that the existing operator

did not want to proceed on an increased density basis, and the "Commission concluded that 160-acre units are reasonably required to drain the reservoir effectively and efficiently, notwithstanding the recognized existence of alternate forms of relief that may be available based upon the substantial evidence submitted." Id. at 662. The court went on to state "[K]nown inability to recover product and protect correlative rights after a demonstrative change and knowledge of conditions has not been remedied in the area by past orders to increase density, and under 52 O.S. Supp. 1978 §87.1(d), the alternative remedy granted here is decreasing the size of the well units." Id. at 663.

8) No one is asking for density in these two sections. Even if the applicants ask for density, they could not force or cause the operator to drill another well, especially since the operator, Chesapeake, has no desire or plans to drill another well for the Oswego. The only way to insure that the State's valuable resources in the Oswego will not go unrecovered is to authorize the creation of smaller units, as was done in *Union Texas Petroleum*, supra, such that the mineral owners, hopefully, can obtain another operator to drill additional wells.

9) This same method of better developing a common source of supply by despacing to smaller units where the drainage is substantially less than 640 acres was also mandated by the Supreme Court in *Union Oil Co. of California v. Brown*, 641 P.2d 1106 (Okl. 1981). There, the Protestants contended, much like Chesapeake, despacing of an existing 640 acre unit would cause them to lose leases and that was a vested right. In denying such contention, the Supreme Court stated as follows:

"Appellant contends the Corporation Commission's order unnecessarily destroyed a vested right embodied in an oil and gas lease. Such a contention is not persuasive of the error alleged. The Commission did not act to change appellant's vested rights in its lease. The Commission granted relief from the continued existence of a 640-acre spacing unit shown to be productive of oil.

\* \* \*

Appellant's claim of unnecessary destruction of his vested rights must then rest in his lease contract. However, the Corporation Commission's deletion of the one section unit and subsequent formation of four separate units thereon does not interfere, or even touch upon, the appellant's lease or the parties' contract rights. In effect, the unit previously created

had suspended the lessor's ability to enforce certain of the provisions of the contract against appellant. \* \* \* The reformation of the larger unit into four units does nothing except remove the lessor's inability to enforce the contract. Consequently, it is determined here that the complained of respacing is statutorily authorized and is not a prohibited interference with the lessee's rights."

10) Therefore, the ruling of the ALJ should be reversed and 160 acre Oswego spacing granted in Section 6 and 320 acre lay down Oswego spacing granted in Section 7.

11) The AL's ruling fails to protect correlative rights and, it violates the correlative rights of the mineral owners by not allowing them to recover the remaining Oswego oil and gas. The ALJ stated that "increased density is the most appropriate method to protect correlative rights and to prevent waste in these units." Richter has already discussed above, why increased density will not prevent waste. Increased density will not protect correlative rights of the mineral owners but works to violate their correlative rights because they have no vehicle to force the drilling of another well to recover the remaining unrecovered hydrocarbons admitted by both engineers to exist in the area of Sections 6 and 7. The ALJ fails to note that there are no mineral owners objecting to the granting of the despacing application, with the exception of a term mineral owner. Despacing Section 6 will work to cut Richter out of further production in the Means A #1-6 well but will allow them the opportunity to obtain additional drilling on the N/2 of Section 6 where they own their minerals. The mineral owners in the SE/4 of Section 6 where the Means A #1-6 well is located are not opposing granting the requested 160 acre spacing.

12) In Section 7, Richter amended their application at the time of hearing to request 320 acre spacing. Although Mr. Huffman's client, Mitchell complained about 160 acre spacing, they admitted that on 320 acre lay down spacing their minerals would not terminate and, that they would, in fact, share even a greater portion of the Bassett A #1-7 royalties than they currently enjoy. Once again the ALJ fails to note that the mineral owners underlying the N/2 of Section 7 and even the reversionary mineral owners in the SW/4 of Section 7 are not objecting to granting of the despacing. Applicants would once again refer the Commission to the mandate of *Union Texas Petroleum v. Corporation Commission*, supra, and *Union Oil Co. of California v. Brown*, supra. As noted by the Supreme Court in *Union Texas Petroleum v. Corporation Commission* at page 661 and 662:

"...The Commission concluded that the protestants desire to have further development on an increased density basis upon application by an owner of a unit when he determines that such action should be taken.

The Commission concluded leaving that decision to the individual unit owners, under the circumstances, amounts to an indirect delegation of its duty to oversee prevention of waste and protection of correlative rights.

\* \* \*

The pressure depletion now experienced will not drain a 640 acre unit, resulting in inefficient utilization of gas energy in the common source which will cause substantial quantities of oil, gas and condensate not to be recovered by a continued 640-acre unit."

Here, as in *Union Texas Petroleum*, supra, stating that these units which should be better developed with increased density is delegating to the current leasehold owner, Chesapeake, the decision, if and when, to drill additional Oswego wells. Chesapeake and its predecessors have drilled no additional Oswego wells in 30 years and, in fact, admit that they do not want to drill any additional Oswego wells. Thus, the only method of protection of correlative rights of the mineral owners is to grant the despadding application, as recommended by Richter.

13) The ALJ erred in his conclusion that Chesapeake would lose its working interest in the sections except for the existing wells. The ALJ states in paragraph 3 of his case summary that Chesapeake would lose its working interest in the sections except for the existing wells. That is not a correct statement. Chesapeake will continue to own 100% of the working interest in the existing wells in Sections 6 and 7 regardless of the size unit created by the Commission. Further, Chesapeake will continue to own their leasehold interest in the leases within the SE/4 of Section 6 should the Commission grant 160 despadding and will continue to own their leasehold interest in the S/2 of Section 7 should the Commission grant lay down 320 acre spacing.

14) The ALJ erred in ruling that the despadding "would also result in Richter receiving all of the royalty they have shared the last 30 years in Section 7." Richter is requesting lay down 320 acre spacing in Section 7. If granted, their royalty would increase from 1/4<sup>th</sup> of the total royalty to one-half of the total royalty since they own the SE/4 minerals. They would not receive all of the royalty from the existing Bassett A #1-7 well. The mineral owners in the N/2 of Section 7, who would be excluded from future royalties from the Bassett A #1-7 well are not objecting to granting the requested despadding.

15) The ALJ recommendation fails to prevent the waste of a substantial amount of hydrocarbons remaining underlying Sections 6 and 7 in the Oswego common source of supply. Further, his ruling fails to protect the correlative rights of the mineral owners. The ALJ's ruling also fails to follow the mandate of the Oklahoma Supreme Court in *Union Texas Petroleum v. Corporation*

*Commission, supra*, and *Union Oil Co. of California v. Brown, supra*. Therefore, the ruling of the ALJ should be reversed, 160 acre Oswego unit should be established for Section 6 with the Chesapeake Means A #1-6 well designated the unit well for the 160 acre comprising of the SE/4 of Section 6 and 320 acre lay down spacing for the Oswego should be established in Section 7 with the Chesapeake Bassett A #1-7 well designated the unit well for the S/2 of Section 7.

**THE ALJ FOUND:**

1) After taking into consideration all the facts, circumstances, evidence and testimony presented in this cause, it is my recommendation that the application of Richter in both cause numbers be denied.

2) The analysis done by both parties indicated there were unrecovered hydrocarbons in these two sections. The testimony revealed that the studies conducted by both engineers produced results that had no significant differences between the remaining reserves or the total acres drained.

3) The evidence presented indicated that no one has filed an increased density application in this area in the past 30 years. If someone desired to attempt to recover the remaining hydrocarbons, it could be accomplished without changing the spacing. The despacing would not offer a distinct advantage to such recovery. It was stated that there are additional hydrocarbons available in these two sections. Apparently no one has found it advisable to attempt further development. As sometimes is the case, there is new development in the area involving a different common source of supply which may have affected such a decision.

3) Despacing would have a significant effect upon the correlative rights in the units. The parties have shared the royalties for 30 years based upon the current spacing. As stated in *Union Oil Co. of California v. Brown*, 641 P.2d 1106 (Okl. 1981), cited by Richter, the Oklahoma Supreme Court stated: "Under this statutory authority the Commission may grant either relief mentioned in the statute best suited to prevention of waste and protection of the correlative rights of the parties." The court was referring to the Commission's authority to decrease the size of a well spacing unit or permit additional wells to be drilled. When waste can be avoided without damaging correlative rights by maintaining the established spacing, the correct result is attained. The 640 acre spacing has been deemed adequate for over 30 years. The advent of horizontal drilling has resulted in 640 acre spacing being the most preferred unit for most of these formations. It certainly appears to be the best result in these causes. Increased density is the most appropriate method to protect correlative rights and prevent waste in these units.

5) The evidence submitted did not show a substantial change in the knowledge of conditions and characteristics of the formation to ascertain that the current 640 acre spacing is inappropriate. For these reasons the recommendation is as stated.

## **POSITIONS OF THE PARTIES**

### **RICHTER**

- 1) **Gregory L. Mahaffey**, attorney, appeared on behalf of Richter, requests the spacing applications be granted.
- 2) Richter has owned the N/2 of Section 6 and the SE/4 of Section 7 for many years. Richter is not in the oil and gas business. Richter's applications are seeking to respace the Oswego because Richter believes there's additional development needed, and the existing operator Chesapeake has not proposed and has admitted they are not going to propose additional development.
- 3) Chesapeake's witnesses also admitted that they have no plans for development in the Oswego. There are also no plans to drill in the Mississippi even though this area is a hot area for the Mississippi.
- 4) The ALJ has left the mineral owners with an admitted waste of hydrocarbons. Chesapeake says they can't economically drill these hydrocarbons, but Mr. Stromberg says you can. However, both parties admit there are additional Oswego hydrocarbons that are going to be left unrecovered under the current plan of development.
- 5) The ALJ's ruling is that the parties ought to develop it under an alternative density. Chesapeake doesn't want to do a density and they haven't filed for a density. This is a case where the operator wants to do nothing, which is similar to *Union Texas Petroleum v. Corporation Commission*, 651 P.2d 652 (Okl. 1982). Therefore, the Commission needs to turn the unit into proper-sized spacing units where someone else has different economics and can drill.
- 6) The original order that made this a 640 acre spacing unit was based on the Commission finding that one well would adequately and efficiently drain 640 acres. That's not the case now. Both engineers have admitted that there was remaining gas under these two sections that could be recovered with additional wells. Mr. Stromberg stated that there has been a change in knowledge of condition. It is his opinion that 640 acre spacing is not

appropriate for the Oswego and that this order ought to be vacated as to Sections 6 and 7, and smaller units should be established.

7) *Application of Peppers Refining Co.*, 272 P.2d 416 (Okl. 1954) is one of the leading cases that controls what this Commission's mandate is and that case says explicitly that the Commission's number one mandate is to prevent waste. Mr. Stromberg has testified there's 1.932 BCF of original RGIP underlying Section 6. The existing Means #A-1 well is only going to recover 445 BCF and drain 147 acres. This still leaves approximately 493 acres undrained and about 1.5 BCFG. Therefore, three additional Oswego wells are likely needed to recover that additional 1.5 BCF .

8) In Section 7, Mr. Stromberg said there was originally 2.885 BCF RGIP existing in two Bassett wells, which produced about 2 BCF, most of that being from the S/2. Mr. Stromberg believes that there should be 320 acre lay down spacing, and the best place to put another well would probably be in the N/2 to try to get that .8 BCFG.

9) The ALJ acknowledges there are additional hydrocarbons, but recommends they be developed on an increased density basis. That is a nondecision because Richter can't force Chesapeake to drill a well. Chesapeake's witnesses said they would not recommend increased density wells in either Section 6 or 7 based on the gas price of \$3 MCF.

10) Under *Spaeth v. Corporation Commission*, 597 P.2d 320 (Okl. 1979), anyone, including a royalty owner, could file an application for density, but Richter can't force the operator to drill a well. If the unit is respaced then you can maybe get some other operator that thinks the economics are better to drill, and that was the exact situation in *Union Texas Petroleum v. Corporation Commission*, supra.. This is the kind of remedy needed when the current operators don't want to do increased density.

11) Richter submit that the ALJ's ruling should be reversed and 160 acre spacing granted as to Section 6, designating the Means A#1-6 well as the existing well for the SE/4 unit, and that the S/2 of Section 7 ought to be designated as 320 acre lay down unit with the Chesapeake Bassett A#1-7 well designated the unit well.

12) The ALJ's ruling does not protect the correlative rights of the mineral owners because it's not allowing them to recover the remaining oil and gas. There are no mineral owners objecting to the granting of the despacing application, with the exception of the term mineral owner. The N/2 owners aren't complaining about being cut out of the Bassett A#1-7 well if you grant a despacing in Section 7.

13) Currently, none of the mineral owners have a vehicle to force the drilling of another well to recover these additional hydrocarbons.

14) The ALJ's ruling here, as in *Union Texas Petroleum Co. v. Corporation Commission*, supra, is that these units should be better developed, but you're asking Chesapeake to basically make the decision, if and when to drill additional wells. If this application is granted, then the mineral owners have an opportunity to try to get someone in to help drill additional wells.

15) The ALJ erred in saying that Chesapeake would lose its working interest in the sections, except for existing wells. If it's despaced, they would still own the land in the S/2. They would own at least all of the southeast quarter, maybe part of the S/2 of Section 6. They certainly would lose some of their leases but they would lose zero interest in the wells and they would maintain the leasehold interest that's within the spacing.

16) This is a classic case where this Commission needs to take some action to prevent waste. Since nobody has proposed to drill density wells, the remedy under the case law is to respace it to return control of further development to the Commission.

### CHESAPEAKE

1) **Richard K. Books**, attorney, appeared on behalf of Chesapeake, requests that the Report of the ALJ be upheld.

2) Chesapeake is not saying they will never drill as Richter suggest. Chesapeake is simply saying they will not drill a well at the current prices. Also, Richter did not come up with one person that would drill today, not one operator. Mr. Stromberg says he would recommend it, but they did not bring anyone into court that would do it.

3) Chesapeake believes this case is an attempt to achieve a lease cancellation by the Commission instead of taking it to the district court to determine whether leases should be cancelled or not. Richter wants those leases back because of the Mississippi. They don't have anybody that can drill the Oswego or has agreed to drill the Oswego.

4) Chesapeake doesn't want to drill the Oswego under these prices, but if prices come up, then that may change. But this case isn't about the Oswego, it's about lease cancellation and development of other zones.

5) If Richter can get the Commission to despace this, they will get a portion of their leases back, they will be able to lease that to somebody else and get a bonus, and, hopefully, get a higher royalty for somebody willing to develop another zone.

6) The Commission has previously determined that the appropriate method of development is increased density. If you look at Exhibit 17, you will notice seven units that have two wells. All of those have been by density. There hasn't been a single instance in this area of despadding. Also, there has not been a single instance in which density has been granted and a well has not been drilled.

7) Richter did not bring a geologist and Chesapeake believes their engineering testimony is fatally flawed. Chesapeake brought a geologist that told the height he found in each well. Mr. Stromberg brought a map that was based on height, but has no indication of height. He admitted that the map's height and the height he used on his drainage calculations were different. So Chesapeake doesn't know what height Mr. Stromberg used in any of his work, and height is critical to drainage. Thus, Chesapeake believes his testimony is fatally flawed. Two wells that produce exactly the same amount, one producing from a thick zone, one producing from a thin zone, if everything else is equal, they are going to have vastly different drainage areas.

8) Also, the 3% porosity they use is wrong as well. Richter didn't bring a geologist, or an isopach map. They brought a map that tries to get where you'd be with an isopach. This is an important problem with their testimony. The 3% porosity cut-off which exaggerates the size of the reservoir, exaggerates any need for a well.

9) In Section 7, Richter allege they want 160 acre spacing for most of the trial until three pages before the close of the record when counsel requests to space at 320 acre spacing. Chesapeake argues that it doesn't matter if you space at 320 or 160 because you've already drained 465 acres, so neither one of those are appropriate.

10) Mr. Heath pointed out Exhibit 7 doesn't need density. However, if it ever does need another well, it can be accomplished with density, not by despadding that's going to release these leases so that parties can re-lease them for the other zones.

11) Chesapeake believes the Richter case was flawed from the beginning. Part of that was Mr. Stromberg's use of virgin pressure throughout. The earliest wells came in close to virgin pressure, then later wells had less pressure and later wells had less pressure than that. The wells are in communication and that doesn't bode well for 160 acre spacing. It also shows clearly that Mr. Stromberg's use of virgin pressure was improper.

12) In the *Union Texas Petroleum v. Corporation Commission* case, supra, the Commission would grant density and nobody would do anything with it. That is not the case here. The Commission has selected the proper method of development in seven sections as density and nobody has failed or refused

density. The *Union Oil Co. v. Brown* case, supra, also has numerous instances of increased density that were not carried out. By contrast, the case of *Winter v. Corporation Commission*, 660 P.2d 145, (Okl.App. 1983) case didn't have an instance where density had been granted and not carried out and the Supreme Court upheld the Commission's finding that despadding was not proper.

13) Chesapeake's position is that if another well is needed and if somebody is out there that will drill the well (which there is no evidence there is), density will accomplish that and the leases will not be re-leased. On the other hand, if another well is needed and nobody else out there will drill the well under today's conditions, nobody can accomplish another well and the leases won't be re-leased. Chesapeake respectfully requests the ALJ be affirmed.

### MITCHELL

1) **William Huffman**, attorney, appeared on behalf of Mitchell, supported the arguments of Chesapeake and request that the Report of the ALJ be upheld.

2) Both Mitchell and Dornbandt own an 80 acre term mineral interest in the SE/4 of Section 7. That term mineral interest is beyond its primary term and is currently perpetuated by continued production from the existing Bassett #1-7 well in the unit. The requested 160 acre spacing would terminate their mineral interest, directly benefitting Richter.

3) Richter amended their request from 160 acre spacing to lay down 320 acre spacing. This would mean Mitchell and Dornbandt would double their royalty for the remaining 91 MMCFG from the Bassett well in the S/2 of Section 7, but yet they get cut out of the 600 MMCFG that Mr. Stromberg says will be produced by an additional well in the N/2 of Section 7. To date, Mitchell and Dornbandt have shared 1.6 BCFG with Richter, but now Richter believes that they should be cut out of any remaining gas that would be produced in the N/2 of Section 7. This is clearly violating the correlative rights of Mitchell and Dornbandt.

4) Mitchell believes that increased density is the proper method to develop additional reserves and they should be developed as the economics are such to warrant the development.

5) Mitchell argues that they should be entitled to share in all the production that comes from Section 7, just as they've shared their reserves and their minerals with all of the people in Section 7. There is no reversible error and they believe the ALJ should be upheld in this case.

## **RESPONSE OF RICHTER**

- 1) This Commission needs to formulate a plan that will prevent waste. Chesapeake doesn't want to drill and there's no requirement that Richter come before the Commission with an operator that is ready to drill. No operator would be willing to invest time in looking at drilling with Chesapeake owning a 100% and knowing they won't farm out. The Commission needs to look at the fact there are hydrocarbons that will not otherwise be recovered if this despadding isn't granted.
- 2) Richter is requesting to see some additional development in their lifetime and Chesapeake is not going to recover the extra gas with the existing wells and they don't want to drill another well.
- 3) Richter didn't hire a geologist in this case because they think this is an engineering question. The recovery map that Mr. Stromberg created gets to the same place as an isopach map that Chesapeake was suggesting was needed.
- 4) Chesapeake alleges that Mr. Stromberg was incorrect in his use of a three-percent cutoff. That doesn't properly interpret what Mr. Stromberg said. Mr. Stromberg spent a considerable time studying the Oswego and he made that calculation because he had to do a correction on the porosity because of some negative porosity.
- 5) Chesapeake was also incorrect in alleging that the lay down 320 acre spacing was requested for the first time on the last day of the hearing. In paragraph 15 of the ALJ's Report, the Richter said as an alternative they would request spacing on nothing larger than 320 acres.
- 6) There is also a question about the pressure Mr. Heath used. If you have produced only 400 MM, going from 2,100 pounds to 1,691 pounds, that isn't more than 1 or 2 BCF , which doesn't support that pressure. Mr. Stromberg says you should always look at the virgin pressure.
- 7) Chesapeake has also acknowledged that there is a two foot stringer in the Oswego that hasn't been perforated yet.
- 8) The issue in this case is how can the Commission prevent waste. Nothing has been developed for 30 something years and the current operator has no plans now or at any time in the foreseeable future to develop. Richter would like to see some additional development in their lifetimes.

## CONCLUSIONS

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

1) Spacing Order No. 105169 which has become final may be modified only upon substantial evidence which shows a change of conditions, or a change in knowledge of conditions, arising since the establishment of said order. *Phillips Petroleum Company v. Corporation Commission*, 461 P.2d 597 (Okl. 1969). The Supreme Court in *Marlin Oil Corporation v. Corporation Commission*, 569 P.2d 961 (Okl. 1977) stated:

The general rule requiring a change of conditions, or a change of knowledge in conditions as a requisite to modification of an unappealed Commission order has been espoused by a long line of cases. This rule has been recently reiterated by a decision of this court in a case similar to the case at bar. *Corporation Commission v. Phillips Petroleum*, 536 P.2d 1284 (Okl. 1975).

2) In *Mustang Production Company v. Corporation Commission*, 771 P.2d 201, 203 (Okl. 1989), the Oklahoma Supreme Court held:

The standard to be applied by the Corporation Commission when hearing an application to modify or vacate a prior, valid order is well known in Oklahoma. A prior, valid order may only be modified or vacated upon a showing by an applicant that there has been a change in conditions or a change in knowledge of conditions. *Phillips Petroleum Company v. Corporation Commission*, Okl. 461 P.2d 597,599 (1969). The applicant must make this showing by substantial evidence. *Phillips*, supra; *Anderson-Prichard Oil Corporation v. Corporation Commission*, 205 Okl. 672, 241 P.2d 363 (1951); Okla. Const. Art. IX § 20. Without this showing, any attempt to vacate or modify a prior, valid order constitutes a prohibited collateral attack on that earlier order. *Application of Bennett*, Okl., 353 P.2d 114, 120 (1960).

3) Richter did not present any geologic testimony. Richter only presented engineering testimony. Chesapeake presented geologic and engineering testimony. Richter's engineer stated he had not examined any geologic maps except big regional maps in general, See Transcript, September 26, 2012, Page 68, line 8-16. Richter's engineer did not present any thickness/height found in the Oswego in any well, which is critical to drainage. If two wells produce exactly the same amount, one producing from a thick zone, and one producing from a thin zone, there are going to be vastly different drainage areas involved. Richter's engineering witness did not bring an isopach map and admitted that nothing on Exhibits 7, 8 or 11 showed the thicknesses that he used. See Transcript, September 26, 2012, Page 76, line 3-7.

4) Chesapeake's geologist brought an isopach map, Exhibit 17 and based it on a 6% porosity cutoff. Chesapeake's witness testified that it is what is commonly used in the Oswego and that a 3% porosity cutoff, which Richter used, would be inaccurate as it exaggerates the size of the reservoir. See Transcript, September 26, 2012, Page 114, line 8-23.

5) Richter's engineering witness introduced Exhibit 6 which was a log obtained from the log library concerning the Bassett A#1-7 and the Means A#1-6 wells and somebody has made the picks on Exhibit 6 using 5% porosity cutoff.

6) Chesapeake's engineer agreed with Richter's engineer that the Bassett A#1-7 is the best well in the two sections. It has cumulative production of 1.6 BCF being online for 30 years. The Bassett A#1-7 and the Bassett A#2-7 have drained 674 acres according to the Chesapeake engineer. According to the Chesapeake engineer the Means A#1-6 well is going to drain 441 acres. The Means A#1-6 well is thinner, the porosity is less and that is why it will drain 441 acres.

7) The evidence reflects that Richter's engineer not only used a too low porosity cutoff but didn't change his thicknesses and porosity from well-to-well and used the wrong pressure. Richter's engineering witness used virgin pressure of 2100 pounds. See Transcript, October 1, 2012, Page 13, line 9-16. Exhibit 24 shows that the initial pressure of the wells came in close to virgin pressure then later wells had less pressure and less pressure. The Niles well, the initial well, had a pressure of 2,214 pounds. Those wells were drilled in 1974 and '75. The wells drilled in 1977 and '78 came in around 1600 pounds and the wells drilled in the 1980's came in between 1300 and 1400 pounds. This evidence reflects that these wells are in communication which shows that Richter's engineer's use of virgin pressure is improper.

8) The Bassett A#1-7 well first produced in June of 1975. The Means A#1-6 well first produced in February of 1978. The Bassett A#2-7 well first produced in November of 1982. Richter's engineer testified that the Bassett

A#1-7 well would drain approximately 380 acres. Richter's engineer Exhibit 11 shows that the approximate drainage area of both the Bassett A#1-7 and the Bassett A#2-7 would be 465 acres. Chesapeake's engineer testimony reflected that the Bassett A#1-7 well would drain 489.1 acres with the Bassett A#2-7 well draining 185.3 acres, and the Means A#1-6 well draining 440.9 acres. The total drainage acreage of the Bassett A#1-7 well and the Bassett A#2-7 well is 674.4 acres. Richter's engineer testified that the Means A#1-6 well would drain only 147 acres.

9) The Commission must follow 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 (Okl. 1960):

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

The Referee believes that the ALJ followed that principle in weighing the expert opinions espoused before him. The ALJ had the opportunity to observe the demeanor of the various expert witnesses while they were testifying. Deference is given to the ALJ's opportunity to view the witnesses firsthand. See *Williams v. Volkswagenwerk Aktiengesellschaft, et al.*, 180 Cal.App. 3<sup>rd</sup> 1244, 226 Cal. Rptr. 306 (Cal.App. 2<sup>nd</sup> District 1986).

10) In 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. & P. Ry. Co. v. Pruitt*, 67 Okl. 219, 170 P. 1143; 22 C.J. 728, sec. 823, 32 C.J.S., Evidence, § 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 Co. v. Dolese Bros. Co.*, 121 Okl. 40, 247 P. 74.

11) The Referee agrees with the ALJ that there is substantial evidence to uphold the ALJ's decision to deny Richter's applications as Richter failed to show that there has been a change in conditions or change in knowledge of conditions to warrant modifying or vacating 640 acre spacing Order No. 105169 for Sections 6 and 7. For the above stated reasons, the Referee finds that the ALJ's decision should be affirmed.

**RESPECTFULLY SUBMITTED THIS 27<sup>th</sup> day Of August, 2013.**

  
 Patricia D. MacGuigan  
 OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas  
Commissioner Anthony  
Commissioner Murphy  
Jim Hamilton  
ALJ Michael Norris  
Gregory L. Mahaffey  
Richard K. Books  
William H. Huffman  
Michael L. Decker, OAP Director  
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