DECISION SHEET OF THE OIL & GAS APPELLATE REFEREE

APPLICANT:	**CHAPARRAL ENERGY, L.L.C.**	
RELIEF REQUESTED	**CLARIFY, CONSTRUE AND/OR PARTIALLY VACATE ORDER NO. 27937**	**CAUSE CD NO. 201204362**
LEGAL DESCRIPTION:	**SW/4 AND SW/4 NW/4 OF SECTION 3, AND E/2 AND E/2 NW/4 OF SECTION 4, AND N/2 OF SECTION 9, AND N/2 SW/4 OF SECTION 10, ALL IN TOWNSHIP 27 NORTH, RANGE 5 EAST, KAY COUNTY, OKLAHOMA**	

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CORPORATION COMMISSION
OF OKLAHOMA

ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE' RULING ON A MOTION TO CONSOLIDATE

This Motion came on for hearing before **Paul Porter**, Administrative Law Judge, for the Oklahoma Corporation Commission, at 9 a.m. on the 22nd day of February, 2013, 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 for the applicant, Chaparral Energy, L.L.C. ("Chaparral"); **Dale E. Cottingham**, attorney, appeared for Steven Clubb ("Clubb"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Oral Arguments on the Oral Appeal were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 11th day of March,. 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) **ALJ Paul E. Porter** reported that Chaparral filed a Motion to Consolidate the above-styled cause with CD 201202483 which seeks to establish the

unitization enhanced recovery unit described as the Conklin Unit for the S/2 of Section 9, T27N, R5E, Kay County, Oklahoma and CD 201203768 which seeks unitized management, operation and further development of the Burbank Kay County enhanced recovery unit, including tertiary recovery operations for the W/2 of Section 3, all of Section 4, all of Section 9, the W/2 of Section 10, the W/2 of Section 15, all of Section 16, the N/2 of the NE/4 of Section 21 and the W/2 of Section 22, all in T27N, R5E, Kay County, Oklahoma. By Order No. 605382, dated December 13, 2012, the Commission consolidated CD 201202483 and CD 201203768.

2) The ALJ reported that Chaparral requests that the Commission in the present case enter an order (a) clarifying and construing Order No. 27937 to determine that same did not establish a secondary (waterflood) recovery unit under 52 O.S. Section 287.1 et. seq; or (b) in the alternative, partially vacate Order No. 27937 except for the injection authority under said order for the Barnum W-02 (API No. 35-071-03130), the Barnum W-06 (API No. 35-071-03137); the Clubb W-02 (API No. 071-03061) and the Clubb W-05 (API No. 071-03064) wells, which wells continue to be active injection wells operated by Chaparral pursuant to Order No. 27937.

3) On 5-31-2012 Hallco Petroleum, Inc. ("Hallco") filed a Motion to Dismiss alleging that the application of Chaparral in CD 201203768 was a collateral attack on Order No. 27937 entered on the 22nd day of December, 1953. This Referee in her Report of November 13, 2012, agreed with the ALJ that Order No. 27937 was a cooperative waterflooding project between people that owned or formed a cooperative waterflood. The Phillips records indicated that whatever distribution of costs had existed under the cooperative waterflood project under Order No. 27937 had been abandoned where the leases had been released and there had been new leases taken. Therefore, the records of Phillips indicated that it truly was a cooperative waterflood project and not an unitization. The Referee further found that Chaparral in order to clarify the record should file a separate application to clarify, and amend if necessary, Order No. 27937 to eliminate any confusion about the impact of the 1953 order on any secondary recovery operations proposed by Chaparral's unitization proposal in CD 201203768.

4) Chaparral then on September 5, 2012, filed this application in CD 201204362 to clarify, construe and/or partially vacate Order No. 27937 concerning portions of the land requested by Chaparral in its unitization in CD 201203768 and an amended application was then filed on November 1, 2012 in Cause CD 201204362. Said amended application requested the Commission enter an order clarifying and construing Order No. 27937 to determine that same did not establish a secondary (waterflood) recovery unit under 52 O.S. Section 287.1 et seq or in the alternative partially vacate Order No. 27937 except for certain injection authority listed above.

5) The ALJ agreed with Clubb's position that the present case presents a single issue, i.e. does this old Order 27937 affect the tract participation; does it affect the way royalties are paid or not; is it an unitization or not. That is the only issue. Unitization cases, CD 201202483 and 201203768 involving whether or not there should be a waterflood or whether there should be a CO_2 flood are far ranging and do not involve this single issue clarifying Order No. 27937. The issues are separate.

6) Clubb is a royalty owner, not like Hallco which is a working interest owner. There is not only a difference in parties but there is a difference in interest. The exhibits and witness lists have already been exchanged and certainly the exhibits and witnesses will be different from the unitization cases. The issues are not interrelated with the unitization cases. The issue that is involved in the present case is as stated above to eliminate any confusion about the impact of the 1953 order on any secondary recovery operation proposed by Chaparral's CD 201203768. The ALJ found that issue was separate and apart from the issues in the consolidated cases concerning the unitizations.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) The Referee finds that the ALJ should be affirmed. The Referee finds that the ALJ's decision to deny the Motion to Consolidate should be affirmed and is not an abuse of discretion constituting reversible error.

2) As stated previously, Hallco's and Chaparral's applications for unitized enhanced recovery units in Cause CD 201202483 and Cause CD 201203768 were consolidated by Order No. 605382. Hallco had filed a Motion to Dismiss in Cause CD 201203768, Chaparral's application seeking unitized management, operation and further development of the Burbank Kay County enhanced recovery unit asserting that Order No. 27937, which was issued by the Commission in 1953, was essentially an unitization order. It was claimed by Hallco that this application by Chaparral was a collateral attack on Order No. 27937 and that the application should be dismissed because it did not deal with Order No. 27937. The ALJ found that the Motion to Dismiss should be denied because if there was going to be a proposal for tertiary recovery to be determined and ultimately instituted in the Burbank Field, then the Oklahoma Corporation Commission had authority over Chaparral's application and Chaparral should be permitted to go forward with this application. The ALJ however found that Chaparral should file a separate application to clarify Order No. 27937, so that it was clear it was not an unitization order but was a cooperative waterflood order and therefore not a collateral attack on Chaparral's proposed application in CD 201203768.

3) The Referee in its Report of the Oil and Gas Appellate Referee on an Oral Appeal of Motion to Consolidate, Motion to Produce, Second Motion to Produce and a Motion to Dismiss in Cause CD 201202483 and CD 201203768, the Hallco and Chaparral unitized management applications, agreed with the ALJ that Order No. 27937 was a cooperative waterflood project between people that owned or formed the cooperative waterflood and agreed that Chaparral in order to clarify the record should file a separate application to clarify and amend if necessary, Order No. 27937 to eliminate any confusion about the impact of the 1953 order on any secondary recovery operation proposed by Chaparral's unitization proposal.

4) On September 5, 2012 Chaparral filed the present application in this cause to clarify, construe and/or partially vacate Order No. 27937 concerning portions of the land requested by Chaparral in its unitization application in CD 201203768. Chaparral then filed the present Motion to Consolidate on February 11, 2013.

5) OCC-OAC 165:5-9-5(d) provides:

> The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

6) 12 O.S. Section 2018 provides in relevant part:

> C. CONSOLIDATION. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.
>
> D. SEPARATE TRIALS. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

7) The Referee believes that common questions of law and fact are not presented in the present case and the two consolidated unitized enhanced

recovery unit cases of Hallco and Chaparral. The present case involves a "stand alone" issue, a single issue. The single issue is whether this old 1953 Order No. 27937 affects the tract participation and/or affects the way the royalties are to be paid with the primary question being whether Order No. 27937 was essentially a unitization order.

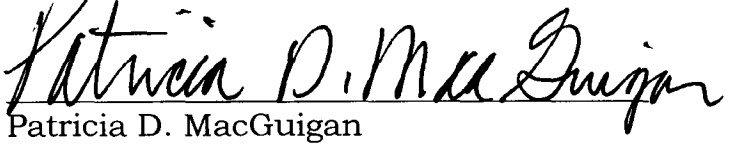
8) The issues in the present cause do not relate to the issues in the CD 201202483 and CD 201203768 unitization enhanced recovery unit issues. The issues in those cases present opposing engineering and geological proposals for secondary recovery operations and possible tertiary recovery operations affecting the Burbank Sand underlying the portions of Kay County, Oklahoma, covered by the applications. An essential issue in an unitization application involves determination of the dimensions of the area of the common source of supply to be covered by the field wide unitization order approved by the Oklahoma Corporation Commission. Conflicting testimony presented in these consolidated unitization cases concerns the issue of whether the 3000 acre unitization would be warranted or whether the 3000 acres should be developed using waterflood plans that are being proposed for the 320 acre area.

9) Thus, the granting of the Motion to Consolidate the unitization cases with the present case would not serve judicial economy as the same evidence would not be heard and would not lead to a more reasoned decision in the three cases. See *Liberty National Bank and Trust Company of Oklahoma City v. Garcia*, 776 P.2d 1265 (Okl. 1989); *Gettler v. City Service Company*, 739 P.2d 515 (Okl. 1987); *Christian v. Gray*, 65 P.3d 591 (Okl. 2003); and *Patel v. OMH Medical Center, Inc.*, 987 P.2d 1185 (Okl. 1999).

10) It should be further noted that Clubb has not entered any appearance in the two consolidated CD 201202483 and CD 201203768 cases. Clubb is a royalty owner, unlike Hallco Petroleum Inc. who is a working interest owner with a cost bearing interest. Thus, the parties as well as the issues and evidence are not the same as will be in the consolidated Hallco and Chaparral cases in CD 201202483 and CD 201203768.

11) For the above stated reasons the Referee finds that the ALJ's recommendation to deny Chaparral's Motion to Consolidate should be affirmed.

RESPECTFULLY SUBMITTED THIS 14th day of March, 2013.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
Gregory L. Mahaffey
Dale E. Cottingham
Michael L. Decker, OAP Director
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