

STATEMENT OF THE CASE

B & W OPERATING, LLC AND B & W EXPLORATION, LLC, (COLLECTIVELY "B&W") TAKE EXCEPTION to the ALJ's recommendation to deny the per barrel costs of SWD and the elections under subsequent operations. The ALJ has recommended that the Devon application be granted as a unit pooling for the Mississippian, Woodford, and Sylvan common sources of supply underlying Section 8, T19N, R3E, Payne County, Oklahoma, with the formations pooled in the aggregate, and that costs, fair market value, timeframes, and deeming provisions as recommended by Devon's witness be incorporated under the order; that the operations as planned by Devon to determine production of reserves and of water from each well drilled from the common pad will result in accurate allocation of cost of water disposal, electrical costs, and of meter production of each well, including the Leigh #1-8; that SWD costs under the order be initially set at \$.55 per barrel with an accounting to determine and adjust for no more than the actual costs; that the order provide for sharing of force pooled acreage and that the notice and election timeframes for such, as recommended by Devon's landman be included in the order; that the subsequent operation provisions be the standard provisions and timeframes as recommended by Devon's landman; that the order not include a provision to opt out of sidetrack operations; and that the order not include a specific provision for Chaparral to elect whether to take over operations upon abandonment by Devon, as this was never negotiated with Devon prior to the hearing on the merits, and at the hearing there was no party authorized to agree to such.

Devon is seeking a unit pooling for the Mississippian, Woodford, and Sylvan common sources of supply. At the time of the hearing the Viola was dismissed. B&W seeks to have elections in and out of each subsequent well if they pay their risk costs in the initial well. B&W believes should the Mississippian target not prove to produce well, that they should be able to opt in or out of Mississippian wells while retaining their Woodford rights. Devon believes this would be a unit pooling and if protestants opt out of any subsequent well they would be out of future development in the named formations. B&W is also concerned about the costs of disposal. Devon has recommended a per barrel charge, although Devon agreed on the record they will not charge anything more than actual costs of disposal.

B&W TAKES THE POSITION:

1) The ALJ erred in failing to adopt a plan of development that would allow elections in subsequent wells to either be on a formation by formation basis or a well-by-well basis. The ALJ has misconstrued the holding of *Crest Resources and Exploration Corp. v. Corporation Commission*, 617 P.2d 215 (Okl. 1980)

which case admittedly specifies that pooling orders are on a unit basis and not a wellbore basis. However, the *Crest* case simply mandates that the Commission have a Plan of Development for the unit. There is nothing in the *Crest* case that prohibits the Commission from allowing parties to elect on a formation by formation basis if the evidence and circumstances mandate same.

2) In *C.F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okla. 1980), the Supreme Court specifically recognizes that a pooling order should be responsive to the application and evidence. Where parties are treating two or more spacing units in the same tract, as different common sources of supply, the Commission should adopt an appropriate Plan of Development. The Supreme Court also reiterated the mandate of the pooling statute that all orders requiring pooling "shall be [made] upon such terms and condition as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas". 52 O.S. 87.1.

3) The evidence is that Devon plans to drill its proposed well through the Mississippian, not through the deeper Woodford and Sylvan. The AFE for such well is \$3,669,000. Chaparral and B&W together own about 30.7% so their exposure and risk to such well cost exceeds \$1,000,000.

4) Mr. Kirk Whitman, manager of B&W and an experienced landman, testified about his concern that Devon could propose multiple subsequent wells at the same time. He was personally familiar with the Woodford play in Canadian County where Devon had obtained an eight well increased density order and had simultaneously proposed drilling eight additional wells. He believed it would be fair and reasonable, much like occurs under a joint operating agreement ("JOA"), that a working interest owner who has taken the risk and expense of the initial well have the option of opting out on a subsequent well but not be completely out of further unit development. Further, Mr. Whitman noted that whether or not the Mississippi fracs down into the Woodford, same will not be as efficiently developed without a separate lateral. He noted that to the extent that the Mississippi might be a poor producer if B&W opts out of a future Mississippi well, B&W will also be out of the separate, Woodford formation. In this area, some Woodford wells are much better than the Mississippi wells.

5) Mr. Tyler Maune, landman for Chaparral, also testified that the well costs are significant and a well-by-well option for subsequent well participation, without losing unit interest, is a fair and reasonable Plan of Development. He testified that Chaparral has a JOA in this unit with B&W for a well-by-well election with a 300% non-consent penalty, provided such parties must participate in the initial well. He believed this would be a fair and reasonable option. Otherwise, under the fair market value options being offered by Devon,

Chaparral would only get \$1 an acre for their interest in subsequent wells should Chaparral elect not to participate.

6) Mr. Maune further testified that Chaparral has agreements in this area with many operators including Slawson, Oklahoma Energy Acquisitions, Chesapeake, Sandridge, Gulf, and Eagle with the same type of subsequent, well-by-well election provisions that he is recommending in this case. Such agreements provide for well-by-well elections such that an owner who participates in the risk and expense in the initial well will not lose their working interest in subsequent wells. Mr. Maune, on behalf of Chaparral, had also received a proposal from Devon for eight additional wells in the Woodford in two separate units and felt like this provision would be fair and not require a party to participate in eight additional wells or lose their interest.

7) Mr. Maune further believed that a formation by formation election was fair and reasonable. To the extent that Chaparral participates in Mississippian wells and should the first two wells be marginal, Chaparral should not be required to continue participating in poor Mississippian wells to preserve their Woodford rights. A well-by-well election on subsequent wells would avoid this inequity.

8) Finally, Mr. Maune sponsored Exhibit 3 wherein Devon had agreed on this requested well-by-well provision in another unit which is a similar prospect for the Mississippi and Woodford.

9) The evidence in this case supports allowing working interest owners to participate on a well-by-well basis, and subsequent wells at a minimum and have the option of participating on a formation by formation basis so not to be precluded from participating in future wells to the Woodford because such owner does no longer wish to participate in the Mississippi development. It was undisputed in this case that separate laterals will be required to develop the Mississippi versus the Woodford.

10) The ALJ erred in not having a sidetrack provision. Mr. Tyler Maune noted that paragraph 6 of Exhibit 3 is a provision that allows an owner to get out of a potential black hole where such owner does not want to participate in a sidetrack operation. Obviously, when an operator has to sidetrack a well, it is generally because of conditions in the hole, a fishing job, or some other mechanical issue. This Commission has entered numerous sidetrack provisions, much like a casing point election, allowing non-operators who have taken the risk to drill a well to not be involved in an expensive, and many times unsuccessful, sidetrack operation. The Commission should include such a provision in this order that permits an owner to relinquish all of their rights in the wellbore should they wish to not participate in a sidetrack operation, without being precluded from subsequent development.

11) B&W requests that the recommendation of the ALJ regarding subsequent operations and sidetrack operations be reversed and a plan of development as recommended by B&W be adopted.

THE ALJ FOUND:

1) It appears the only remaining issues in dispute for this case are the per barrel costs of SWD and the elections under subsequent operations. As all acknowledged on the record, the operator cannot charge more for disposal than actual costs. It is the recommendation of the ALJ that disposal costs be set at \$.55 per barrel until actual costs are determined. This is a charge that has been used by these parties in other areas. The ALJ finds it to be a reasonable charge until actual costs are determined.

2) As to the issue regarding elections under subsequent operations, it is the recommendation of the ALJ that all elections, whether initial elections or subsequent elections, be on a unit basis. As recommended by Devon's landman, any party who elected timely and participated in the initial well will have the opportunity to participate in a subsequently proposed well without the opportunity to elect in and out of specific formations or in and out of different subsequent wells, as protestant has requested here. The Supreme Court, in *Amoco Production Company v. Corporation Commission of State of Oklahoma*, 751 P.2d 203 (Ok.Civ.App. 1986), was clear that pooling orders issued by the Commission are on a unit basis. B&W's request here would turn the order and development into a well-by-well process. Therefore, it is the recommendation of the ALJ that the subsequent election provisions under the order be as recommended by Devon's landman.

3) It is the opinion of the ALJ that the recommendation as proposed by B&W's witness would not promote orderly development of the unit under the pooling authority of the Commission. Such terms as recommended by Protestants' witness are terms which are currently used under private agreements and it is the opinion of the ALJ that they are not appropriate for inclusion under pooling orders.

POSITIONS OF THE PARTIES

B&W

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of B&W, stated that the ALJ erred in failing to issue a pooling order that provides for a plan of development that would allow election in subsequent wells to either be on a formation-by-formation basis or a well-by-well basis.

2) B&W argues that, although *Amoco*, supra, holds that pooling will be done on a unit basis, the *Amoco* case did not anticipate the type of drilling situations that arise today (i.e. drilling multiple wells in the same unit at one time). Furthermore, the *Amoco* case does not preclude the Commission from considering the circumstances of a particular situation and creating a pooling order that plans for the development of subsequent wells. Given this leeway, B&W argues that, here, the Commission should create a pooling order that allows B&W to elect to participate in some subsequent wells without having to participate in *all* subsequent wells, if the Operator chooses to drill more than one at a time.

3) B&W stresses that Devon has engaged in drilling multiple, simultaneous wells. B&W argues that this poses a significant problem for smaller operators or smaller participants who cannot afford to participate in *all* of the proposed wells, but still want to participate in *some* of the proposed wells. As it stands now, if the smaller operator cannot participate in all of the subsequently proposed wells, he will lose his right to participate in *any*. Additionally, since Devon successfully petitioned the Commission for a pooling order that involved multiple formations, if a participant cannot participate in all subsequently proposed wells, he will lose his rights as to all formations in the pooling order.

4) B&W contends that this is an extremely unfair position, given that the smaller operators and participants shared in the risk of drilling the initial well. B&W argues that this factor—that the smaller operators and participants shared in the risk of drilling the initial well—is what distinguishes this matter from the *Amoco* case and its progeny. In those cases, the parties requesting wellbore pooling did not share in this risk, but here, B&W is sharing in the initial risk and the *Amoco* case did not consider what happens to parties that participate in the initial well. B&W's position is that if Devon is allowed to pool the deeper zones (Woodford, Sylvan) just because fracing in the Mississippian might result in the Woodford being affected, then the smaller players are at an unfair disadvantage if/when Devon decides to drill multiple wells simultaneously. Since it is likely that a smaller participant might not have the resources to participate in more than one subsequent well at a time, they will lose their rights as to all the pooled formations. B&W argues that the ALJ's pooling order places smaller operators in a position to have to make a Hobson's choice to preserve their rights in the unit: either (1) find the capital to participate in multiple, simultaneous wells, or (2) participate in a well that you know is not going to be very profitable—neither of which is just or reasonable.

5) B&W also argues that the policy behind pooling statutes was to prevent the drilling of unnecessary wells. B&W points out that, originally, Oklahoma pooling statutes contemplated one well per unit in an effort to achieve this policy goal. However, contemporary drilling practices, of the kind Devon engages in, contemplate pooling a unit and then drilling multiple wells. B&W

believes that the new industry standard is to drill more than one well per unit, and that this situation should be contemplated in the pooling order.

6) B&W argues that the Commission should consider industry standards and customs when making pooling decisions. B&W argues that the terms included in a JOA, such as wellbore by wellbore elections, have become the industry custom and he requests that this pooling order include a similar plan to deal with subsequent wells.

7) Additionally, B&W wants the pooling order to include a sidetrack provision that allows the non-operator to opt out of a sidetrack operation while maintaining his right to participate in subsequent wells. B&W offered the court Order Nos. 471863 and 482057. B&W argues that these orders provide participants who have shared in the risk of drilling with a way in which to elect out of a sidetrack operation on one wellbore without relinquishing their rights to the entire unit. B&W argues that these are just a couple of examples where the Commission has adopted a plan of development that addresses the particular circumstances of this situation.

8) B&W also wants the pooling order to contain a provision that would give it the option to take over the well if Devon decides to plug and abandon it. B&W argues that this is a "common right in a JOA."

9) B&W also points out that the pooling statute requires that pooling orders "be made upon such terms and conditions as are just and reasonable and will afford to the owner...the opportunity to recover...without unnecessary expense his just and fair share of the oil and gas." He argues that a pooling order that serves to lock smaller players out of their rights to subsequent wells, whether in the same formation or a different formation, is not just and reasonable. Particularly, since the party could obtain more favorable terms under a JOA.

10) Ultimately, Mr. Mahaffey's position is that it is unfair for the Commission to allow Devon to pool multiple formations without providing, in the pooling order, a plan for development that would allow election in subsequent wells to either be on a formation-by-formation basis or a well-by-well basis. Mr. Mahaffey seeks to have elections in and out of each subsequent well if they pay their risk costs in the initial well. B&W points out that Devon has contracted for such a plan in other agreements and should not oppose a Commission pooling order that provides for such a plan. Specifically, B&W asked the court to take judicial notice of Devon Order No. 613787. B&W alleges that this order provides for a wellbore election on subsequent wells, giving those who participated in the initial well an option to elect out of a particular wellbore while preserving their rights to participate in subsequent wells. B&W argues that this is precisely what the *Amoco* case contemplated—a party taking the risk in the initial well should be given an option to weigh the

risk of subsequent operations and elect in or out on a wellbore-by-wellbore basis.

DEVON

1) **David Pepper**, attorney, appearing on behalf of Devon, disagrees with B&W regarding what information that the Oklahoma Supreme Court had before it when deciding the *Amoco* case. According to Devon, the Supreme Court had an opportunity to consider cases where multiple subsequent wells were proposed, namely *SKZ, Inc. v. Petty*, 782 P.2d 939 (Okl. 1989), and still the Court stayed true to *Amoco* case holding that a pooling order cannot pool by the wellbore, only by the unit.

2) Next, Devon argues that Order No. 613787 is not a wellbore order as B&W implies. Devon quoted other language in Order No. 613787, which Devon interpreted to mean that if a participant elected out of a subsequent well, then they would lose rights to the separate common sources of supply in that drilling and spacing unit.

3) Devon explains that it is not trying to treat each formation (Mississippian, Woodford, Sylvan) as a separate prospect; rather, it is treating the formations as a single unit, a single wellbore. As such, the order should not allow for separate elections in each common source of supply.

4) While Devon's position is that the law as laid down in Oklahoma thus far will not allow wellbore or formation elections, Devon also argues that the plan of development proposed by B&W is not appropriate for this particular project. Devon's position is that B&W's proposed plans for subsequent well development are driven by Devon's activities in other areas where the geological conditions are markedly different, specifically in Canadian County in the Cana field. Although Devon acknowledges that it did propose eight increased density wells in the Woodford in Canadian county, Devon argues that its expert witness (Mr. Dick) does not anticipate this type of density in the Mississippian, which is the target for this project. Furthermore, this expert has analyzed over 1500 wells in the Mississippi and was not aware of any increased density wells in this formation.

5) Devon argues that B&W did not seek to have the Commission include this type of development plan in other recent pooling orders where B&W was the applicant and operator—it is only now, that B&W is a non-operator, that B&W argues that this is a fair/reasonable plan of development.

6) Devon disagrees with B&W's conclusion that the JOA or the terms offered in a JOA are the industry standard. According to Devon, it has not participated in a JOA "in years." Devon argues that it is unfair for the Commission to impose a private contract on a party where the party does not wish to enter into a private contract. Furthermore, Devon argues that even if Devon granted wellbore by wellbore elections on subsequent wells to a party in a private letter agreement, the Commission cannot impose contractual obligations on Devon, which Devon did not agree to.

7) As to the sidetrack operation election and the takeover option proposed by B&W, Devon argues that these should not be considered in this hearing because they were proposed by Chaparral, not B&W, and Chaparral has withdrawn its appeal and B&W did not present any evidence on these issues.

8) Devon's position is that although horizontal drilling may have changed "the game", it did not change the law.

RESPONSE OF B&W

1) B&W clarifies that he only raised the issue of the sidetrack language to demonstrate that the Commission has recognized a plan of development that is consistent with *Amoco* case but still allows the initial risk takers to opt out of a project without losing their rights in the unit.

2) B&W takes exception to Devon's interpretation of the language in Order No. 613787. B&W's position is that the pertinent language to which he points means that the non-operators do not relinquish their interest in the unit, but only their right, title, and interest in that well when they elect not to participate. B&W argues that the Order further clarifies that, after a participant has opted out, if the operator does not timely commence the well, then the participant who elected out will have his rights restored. If the operator subsequently decides to propose the well again, the participant will again have the option of electing to participate or not (because their original rights were restored).

3) B&W argues that it is willing to include a plan for developing subsequent wells if Devon is willing to do it. B&W has recently included wellbore elections in its agreements with other JOA participants.

4) B&W reiterates that at the time the *Amoco* case was decided, not a single pooling order in the state had a subsequent well provision—subsequent well provisions are a new creation. B&W restates his interpretation of the *Amoco* case to be as long as there is a plan of development on a unit basis

(which there would be here), the Commission can include provisions like the ones recommended by B&W in its pooling order.

5) B&W acknowledges that Devon's increased density operations in Canadian county involve different geological conditions, but argues that it is 99% certain that other wells will be drilled in the Mississippian in this area, if not now, then in the next few years. B&W points to examples involving other companies where the initial well is being held by production, but now, a few years later, the companies are coming back and requesting increased density wells as many as three at a time.

CONCLUSIONS

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

- 1) The Referee finds that the Report of the ALJ is supported by the weight of the evidence and free of reversible error. The ALJ had presented before her a prima facie case for a "standard" pooling with "standard" elections, which she determined should be granted without the special provisions requested by B&W. Upon review, the Referee can find no reason to vary that determination.
- 2) 52 O.S. Section 87.1(e) provides in relevant part:

...When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit.

All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas.

3) The pooling order covers all of the interest owners in the unit, willing or not, and the Commission seeks to protect their correlative rights in relation to one another through adjusting equities of those owners, balancing the interest of the owners and being responsive to the evidence presented before it in the hearing process. "The pooling order should be responsive to the application and evidence." *C. F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okl.1980).

4) The target here by Devon in their proposed well is the Mississippian. The Mississippian, which is about 150 feet thick lies on top of the Woodford which is about 50 feet thick and both are productive in the area. The well would have anywhere from 130,000 to 250,000 barrels of fluid and 2 to 3 million pounds of proppant injected into it. Based on the size of the stimulation pumped, the rate of the pump, the type of rock found in the Mississippian or Woodford, and the micro-seismic data and reserve volumetric data, Devon believed, whether it is the Mississippian or the Woodford being developed, that each zone would get production from the other zone. The fracture is not self contained in each individual formation and the stimulation breaks out of zone and contacts the other formations. Thus, the proposed order should not allow for election as to each common source of supply and the Woodford and Mississippian formations should be treated as one unit.

5) In fashioning the pooling orders, the Commission must always consider the purpose for which forced pooling was provided. The Court in *Ranola Oil Co. v. Corporation Commission of Oklahoma*, 752 P.2d 1116 (Okl. 1988) stated:

The purpose of forced pooling is to equalize the risk of loss by forcing all of the oil and gas interest owners to choose in advance whether they will share in both the benefits and the risks of oil and gas exploration....

6) The concept of forced pooling is further delineated by *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984) where the Court stated:

At the risk of oversimplification, we hold the enactments for the conservation of oil and gas are public in nature and that the spacing order, the pooling order, and the order fixing allowables, to name but a few of its functions, are within the realm of the public rights to be protected. Thus, the spacing order sets the stage for development and guards the public interest in developing an orderly and judicious drilling program. It is aimed at protecting the interest of all, by the prohibitions against waste. The forced-pooling order, among other things, represents the interest of consumers and mineral interests and disallows the "dog in the manger" attitude, which would deny economic development.

* * *

No amount of custom or usage can change the constitutional status and powers of the district courts or the constitutional and statutory powers of the Corporation Commission.

What has approached custom is the practice within the industry (oil and gas) to refine, broaden, and specify duties between pooled interests in a spacing unit to provide specific rights and obligations between the parties. Without attempting to limit or list all such areas covered by operating agreement, and by way of examples, we mention: procedures for payment, methods of accounting, liabilities of parties, regulations of expenditures, procedures for default, etc. Particularly within the realm of costs and payment, the operating agreement may substitute and approve a farm-out agreement as a method of division and may define the interests of such parties, giving one the working interest and the other royalty.

It is likewise common within the industry for the pooling agreement to be in existence and executed between some of the parties interested in the common source of supply and not executed by a "forced party." The forced-party's interest, of course, comes into existence after the forced pooling order is issued, and

invariably at a later date than the voluntary agreement between parties. The forced-pooling order does not usually address such items as percentage of the interests owned by the parties, costs as to title examination or insurance, failure of title, successive operators by resignation, not to mention taxes, waiver or non-waiver of partition rights, etc.

In short, the forced-pooling order generally, and specifically in this case, is "bare bones"; many, many problems commonly encountered in the industry must be and were covered by an operating agreement.

7) Hence, one can see that the Commission and the industry have contemplated that the "standard" pooling order will be bare bones and not cover many of the problems that are satisfied through a joint operating agreement. B&W seeks to have special provisions placed into the pooling order mostly relying on joint operating agreements in the industry.

8) The Referee notes that the Supreme Court has addressed instances where special requests or provisions have been sought, i.e. *Ranola Oil Co. v. Corporation Commission*, 460 P.2d 415 (Okl. 1969) and *Holmes v. Corporation Commission*, 466 P.2d 630 (Okl. 1970). As stated by the Court in *Ranola Oil Co. v. Corporation Commission*:

Plaintiff in error further maintains that the decision of the Commission in denying him the 'third alternative' in a 'three way order' is not supported by the evidence. The three way order is a device whereby the party who has a mineral interest in an area to be pooled has the option within a certain time to elect whether he will be carried by the operator or producer of the well as to his proportionate interest for the costs of drilling the well on a percentage penalty basis, or whether he will participate in the costs of drilling the well, or whether he will accept a bonus as compensation in lieu of participating in the working interest of the well.

The 'third alternative' is merely a creature of the Corporation Commission, and is not given as a matter of right. The mandate of the statute, 52 O.S. § 87.1(d), only requires that the order of the Commission, 'be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in

the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas.'

9) The Referee notes that whether or not special provisions are contained within a pooling order depends on the evidence presented before the Commission at the time of the hearing on the merits. As noted, such special provisions are not a "matter of right."

10) There is no operating agreement in force and effect between Devon and B&W. The "bare bones" of the pooling order control the relationship between the parties therefore. The Referee believes that Devon has simply followed the industry custom and practice in applying *Amoco Production Co. v. Corporation Commission*, 751 P.2d 203 (Okl.Ct.App. 1986) and *SKZ, Inc. v. Petty*, 782 P.2d 939 (Okl. 1989) cases to the subsequent well participation in a standard pooling order. Order No. 613787 is alleged by B&W to be a pooling order allowing elections in subsequent wells to be either on a formation-by-formation basis or a well-by-well basis. Having read page 6 of Order No. 613787, Cause CD 201303320, said pooling order does not provide for such a subsequent well provision. The pertinent language of Order No. 613787 is if a participant opts out of a subsequent well they would have relinquished their interests in the unit when they elect not to participate.

11) The evidence also reflected that Devon does not anticipate excessive increased density activity in this section for the Mississippian. Devon's testimony after analyzing many wells in the Mississippian was that increased density in the Mississippian formation was not common.

12) Charles Nesbitt's law review article, *The Forced Pooling Order: How Long? How Wide? How Deep?*, 52 OBAJ 2799 (1981) provides: .

Absent such voluntary arrangements, however, a forced pooling order must be deemed to utilize working interest in the entire drilling and spacing unit as to the formations affected; and the order fixes the rights and obligations of the parties throughout the entire development process, regardless of the number of wells drilled on the unit to achieve full development. Page 2801.

* * *

Any opportunity to be given nonparticipants to share in the new well or participants to withdraw from

participating therein, should be the subject of private agreement. Page 2804.

Thus, the ALJ properly determined that:

As to the issue regarding elections under subsequent operations, it is the recommendation of the ALJ that all elections, whether initial elections or subsequent elections, be on a unit basis. As recommended by Applicant's landman, any party who elected timely and participated in the initial well will have the opportunity to participate in a subsequently proposed well without the opportunity to elect in and out of specific formations or in and out of different subsequent wells, as protestant has requested here. The Supreme Court, in *Amoco* at 751 P.2d 203 (Okl.App. 1986), was clear that pooling Orders issued by the Commission are on a unit basis. Protestant's request here would turn the Order and development into a well-by-well process. Therefore, it is the recommendation of the ALJ that the subsequent election provisions under the Order be as recommended by Devon's landman.

13) The Referee agrees with the conclusion of the ALJ.

RESPECTFULLY SUBMITTED THIS 11th day of October, 2013.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Susan R. Osburn
David E. Pepper
Gregory L. Mahaffey
Charles Helm

Office of General Counsel
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks – 1
Commission Files