

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: NEWFIELD EXPLORATION)
MID-CONTINENT INC.)
)
RELIEF SOUGHT: POOLING (PART OF A)
MULTIUNIT HORIZONTAL)
WELL))
)
LEGAL DESCRIPTION: SECTION 15, TOWNSHIP 15)
NORTH, RANGE 7 WEST,)
KINGFISHER COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201402236-T

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: NEWFIELD EXPLORATION)
MID-CONTINENT INC.)
)
RELIEF SOUGHT: POOLING (PART OF A)
MULTIUNIT HORIZONTAL)
WELL))
)
LEGAL DESCRIPTION: SECTION 22, TOWNSHIP 15)
NORTH, RANGE 7 WEST,)
KINGFISHER COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201402237-T

APPLICANT: FELIX ENERGY, LLC)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: SECTION 15, TOWNSHIP 15)
NORTH, RANGE 7 WEST,)
KINGFISHER COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201402901-T

STATEMENT OF THE CASE

FELIX TAKES EXCEPTION to the ALJ's recommendation in her Report to grant the applications in CD 201402236-T, CD 201402237-T, CD 201402901-T and CD 201402902-T and designate Newfield as operator.

CD 201402236-T, CD 201402237-T, CD 201402901-T and CD 201402902-T request orders pooling the interests of oil and gas owners on a multiunit basis in the Mississippi Solid and Woodford common sources of supply as they underlie Section 15-15N-7W and Section 22-15N-7W all in Kingfisher County, Oklahoma. Newfield and Felix seek to be named operator of the Mississippi Solid and Woodford common sources of supply as these zones underlie the subject units. Parties agree on all initial and subsequent elections, fair market values and total drilling time periods to be included in any orders issuing from these causes.

FELIX TAKES THE POSITION:

- 1) Felix alleges the Report of the ALJ is both contrary to the law, the evidence, and fails to effect the means of prevention of waste and protection of correlative rights.
- 2) Amazingly enough, the ALJ determined that the "burden of the Commission is to designate the party that would operate the well in the best interest of the parties being pooled". It is the belief of Felix that this is not necessarily an accurate statement of the law.
- 3) The ALJ inexplicably ignored in her findings the mountain of evidence presented by Felix relative to the experience of its personnel. Felix's witnesses went through a detailed analysis of exactly how many horizontal wells had been drilled by its employees. Although a new company, the people that make up this company have a wealth and lifetime of experience which equals or exceeds that of Newfield.
- 4) Felix is paying approximately 57% of the cost of the well. On numerous occasions Newfield's lawyer and witness indicated that Newfield was not willing to let Felix "learn on its nickel". The fact of the matter remains that Felix is paying the lion's share of the cost of this well.
- 5) Newfield continued to press the point that they were up on the "learning curve". In truth and fact as testified to by Newfield's witness, Mr. James Cox, the only design change was determining that the Morrow common source of supply was not over pressured, and that the operators were able to eliminate the intermediate casing and go to 9 5/8 inch surface casing and drill from

1,500' TD at that point without the expense and delay of using intermediate casing. Given that is the only design change, the witness acknowledged that all operators are aware of that and it is not a significant design change.

6) Felix detailed on a number of occasions instances where Newfield failed to timely remit drilling reports, failed to place parties in the status for receiving well information even though they had paid their well costs, failed to pool parties even when so requested, and in short, did not conduct operations in relationships with their partners in an appropriate manner. One can wonder how that type of conduct can be in the "best interest of the parties being pooled".

7) While ignoring the testimony of other Felix witnesses, Felix believes it is inexcusable to ignore the testimony of Felix's witness, William R. Arnold, relative to his experience. The record is more than adequate describing the history of Mr. Arnold, his experience in horizontal drillings, and his preparation for drilling this well. If one reads the Report of the ALJ, his name is mentioned one time, but no testimony is attributed particularly to Mr. Arnold. Based on his testimony, it completely contradicts the statement of the ALJ that "Newfield is the party that would operate the well most efficiently". There is absolutely no evidence to support the fact that they would operate it more efficiently than Felix. Given the large amount of discrepancy in the ownership reports, Felix, as a capable operator, should have been designated the operator of this well.

8) Felix has already secured a transcript and would request that the ALJ carefully review the transcript, because the ALJ omitted several significant points of evidence.

9) Wherefore, after notice and hearing as required by law, Felix requests that the Report of the Administrative Law Judge be reversed and that Felix be designated as the operator.

THE ALJ FOUND:

1) Newfield and Felix agreed on the fair market value, options for participation, various response times under initial and subsequent operations and the amount of time necessary for commencement of a well by the designated operator.

2) The question of well operations revolves around several factors including, but not limited to, unit interest and experience. In the subject cases, Felix has the overall higher interest ownership while Newfield was the first to file its applications and has the most experience drilling this type of well in the multi-unit area. Both parties have a rig under contract to drill the subject well. Felix has settled surface damages while Newfield is in negotiations. Newfield has a

gathering system in place while Felix is in negotiations. Newfield based its AFE on similar wells it has drilled in the area and provided evidence that its well costs have lessened due to the experience and knowledge gained from drilling and completing each well. Felix presented an AFE based on its experience drilling Meramec wells and included higher contingencies but had lower overhead due to the company size of Felix versus that of Newfield.

3) While either party is capable of operating the subject well, the burden of the Commission is to designate the party that would operate the well in the best interests of the parties being pooled. It is the opinion of the ALJ that Newfield is the party that would operate the well most efficiently and in the best interest of all parties affected by these applications. This determination is based on the experience gained by Newfield not only through discovery of the play, but, more importantly, the ongoing development of the play through leasing and drilling, which has resulted in AFE well costs that directly reflect that program of development, the drilling experience and the amount of personnel support in the area. All of these factors will benefit participating owners as the well is drilled, completed and eventually placed on line.

4) Thus, in light of the aforementioned conclusions, it was the recommendation of the ALJ that the applications in CDs 201402236-T, 201402237-T, 201402901-T and 201402902-T be granted and Newfield named as operator, with any orders issuing out of these causes containing the recommendations provided in the ALJ Report.

POSITIONS OF THE PARTIES

FELIX

1) **David Pepper**, attorney, appearing for Felix, contends that they should be the operator of a multi-unit well that includes two pooling cases. The subject lands cover Sections 15 and 22, T15N, R7W, Kingfisher County, Oklahoma.

2) Felix owns at least 57% of the interest in the multi-unit well and potentially up to 60% while Newfield owns 40% interest as a minority interest holder. Therefore, Felix, holding the majority interest should be named the operator.

3) The ALJ's determination that Newfield should be the operator because they "will operate the well most efficiently and in the best interest of all the parties" is contrary to the law and capabilities of Felix. Felix has hired talent

from around the industry who have the same years of experience or more compared to Newfield. The subject play is not unique or requiring different techniques or levels of experience. Felix and Newfield both use Cactus drilling rigs; however, Felix is able to produce a larger frac, potentially producing more hydrocarbons. Newfield does not use as large a frac due to costs and the company's current high overhead costs. Felix has recently drilled two wells near the subject area faster and with less expense than Newfield.

4) As the operator of pervious wells which Felix had interest in, Newfield did not display proper treatment. In the Rother well, Newfield never pooled Felix, never notified them of anything and still are not pooled to this day. In the Connie well, Newfield never pooled Felix and ultimately lead Felix to file a reverse pooling to get into the well. In the Ruby and Whitlock wells Felix paid the well costs, but didn't receive any well information until ALJ McKeown told Newfield to get them the information.

5) Newfield, a publicly traded company, acknowledged through testimony by their Chairman that the purpose of the Kingfisher County play is to hold leases by production. This gives cause for concern because it is not known what Newfield intends to do except drill one well and hold their leases.

6) The fact Felix is a new company and new to Oklahoma compared to well-established Newfield, which has large offices in Tulsa and regularly appears in front of the Commission, should not be a factor in determining whether or not Felix should be the operator of the well.

NEWFIELD

1) **Ron Barnes**, attorney, appearing for Newfield, contends that Newfield should be the well operator based on the company's investment, experience in the formation and ownership interest.

2) Felix claims they drilled two wells fast and cheaply, but there are no invoices, no costs or other records proving this. The only basis for Felix's performance on these two wells is their own estimates.

3) Felix's portrayal of Newfield's treatment towards Felix as a well operator is inaccurate. The crux of the complaint was an issue with an online well tracking system. Felix could pull well information from the convenience of their own office, but due to the technical issue, Felix's access had to be reset so they could access information they already were authorized to access. Further, it is contrary to the law that Newfield had to pool anyone.

4) Majority ownership interest in a well is not the first consideration for determining an operator, according to Charles Nesbitt's, *A Primer on Forced Pooling of Oil and Gas Interests in Oklahoma*, 50 Okl. B.J. 648 (1979). "All other things being equal, the owner of the largest share of the working interest has the best claim to operations." All other things are not equal in this circumstance because in the subject nine section area Newfield operates five wells, and in this Sooner Trend Area Canadian/Kingfisher ("STACK Area") Newfield has 29 wells. Newfield in the nine section area has drilled five wells. In this area Newfield has 3-D seismic at a cost of \$40 million. Newfield has run four cores at a cost of \$10 million. Newfield has a field office in close proximity, while Felix does not have one employee in Oklahoma and does not have a field office. Newfield has been in Oklahoma 15 years with \$300 million invested in drilling Mississippi wells and all operations in Oklahoma over \$3 billion in the last five years. Newfield's leases in this area were taken five years ago and Newfield filed their applications first. Newfield has settled surface damages. The Newfield AFEs used in these causes were derived from actual drilling costs, not estimates and were averages of good costs as well as bad costs. There were not a lot of contingencies.

5) Newfield also has a higher rate of return on investment when it pertains to drilling wells in the subject location. This would reduce waste on investment dollars for all interest holders.

RESPONSE OF FELIX

1) The issue with well information on the website was more than just a password glitch. It was a consistent trend of Newfield failing to have information up and available on the site.

2) After hearing from Mr. Barnes about all the experience, personnel and investment Newfield has, he did not state one specific example of how any of this did them any good in the specific area at issue in this case.

3) Newfield reduced their completion rate due to well completion difficulties in the area because it reduced their costs and allowed them to maintain their level of return on investment. If you frac at a higher level like Felix's AFEs reflect, you are likely to recover more hydrocarbons. Return on investment is important, but you can have much more success if you get more oil and gas out of the ground at the same costs.

CONCLUSIONS

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

1) The Referee finds the ALJ's recommendation to grant the applications in CD 201402236-T, CD 201402237-T, CD 201402901-T and CD 201402902-T and appoint Newfield as operator is supported by the weight of the evidence and free of reversible error. The ALJ's Report was reasoned and balanced the normal factors considered by the Commission in the award of operations under a pooling application.

2) The ALJ is the initial finder of fact. It is the ALJ's duty as the finder 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); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951).

3) The Supreme Court in *Texas Oil and Gas Corporation v. Rein*, 534 P.2d 1277 (Okl. 1974) states:

We have previously held that the Commission has considerable discretion in determining which owner is entitled to drill and operate the unit well. *Superior Oil Company v. Oklahoma Corporation Commission*, 206 Okl. 213, 242 P.2d 454.

4) There are certain factors used to determine who shall be the proper operator of a well within a drilling and spacing unit. Charles Nesbitt in his article, *Nesbitt, A Primer on Forced Pooling of Oil and Gas Interests in Oklahoma*, 50 Okl. B.J. 648 (1979), Mr. Nesbitt states:

DESIGNATION OF OPERATOR

A deceptively important provision of the pooling order is the designation of the operator of the proposed well. In most cases the applicant already owns the majority interest in the spacing unit, and is routinely named operator. However, there are notable exceptions where a spirited battle occurs between lessees over operations. The working interest ownership of non-participating pooled owners inures to the operator, at least in absence of a claim by other participants to share therein. A lessee who is

promoting the proposed well for a carried interest, or similar remuneration, has a significant financial stake in being designated operator.

Several factors are considered in the selection of the operator, the most important being working interest ownership. All of the things being equal, the owner of the largest share of the working interest has the best claim to operations. However, this is not always true, and other factors can outweigh majority ownership.

Second, in importance is actual bona fide exploration activity. This is not a simple race to the courthouse with the earliest applicant getting the nod, but involves such matters as when a well was first proposed and by whom, whether the proposed well is part of a multi-well exploration program, whether a rig has been contracted for, and so on.

Other factors having a bearing on the final selection include the number of wells operated in the vicinity, the extent of developed and undeveloped lease ownership, the availability of operating personnel and facilities, a comparison of proposed costs of drilling and operating the well, and, rarely, the relative experience and competence of the contenders for operating rights.

5) The Referee notes the ALJ addressed the factors usually considered by the Commission under the Nesbitt article. In Section 15 Newfield owns 50% interest and Felix also owns 50% interest. In Section 22 Newfield owns a 30% interest while Felix owns 64% interest. Collectively, between the two units Newfield owns 40% and Felix owns 57%. Felix proposed its well first but Newfield was first to file its pooling applications on March 26, 2014. Newfield estimates the dry hole costs for the well to be \$5,713,500 and completed well costs to be \$10,770,000. Newfield has drilled 600 wells in the mid-continent area and 29 wells in the STACK area. Newfield in the nine section area has drilled five wells. Newfield has obtained 3-D seismic at a cost of \$40 million and has run four cores at a cost of \$10 million. Newfield has a field office in close proximity and has invested \$3 million in drilling Mississippi wells in Oklahoma. Newfield's leases were taken five years ago and Newfield has settled

surface damages. Felix and Newfield both use Cactus drilling rigs. Felix maintains that it is able to produce a larger frac potentially producing more hydrocarbons. Felix has recently drilled two wells near the subject area. Felix's AFE reflected dry hole costs for the subject well to be \$4,780,314 with completed well costs of \$11,641,494. Felix has hired people from around the industry who have the same years of experience or more compared to Newfield and maintains that the subject play is not unique or requiring different techniques or levels of experience.

6) The ALJ states in her Report on page four paragraph two

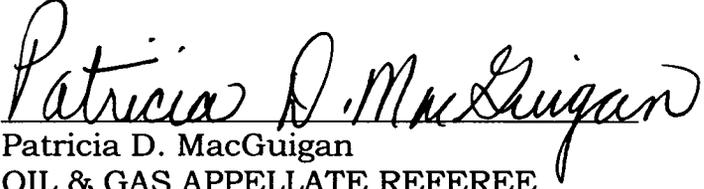
...In the subject cases, Felix is the overall higher interest ownership while Newfield was the first to file its applications and has the most experience drilling this type of well in the multi-unit area. Both parties have a rig under contract to drill the subject well; Felix has settled surface damages while Newfield is in negotiations; Newfield has a gathering system in place while Felix is in negotiations. Newfield based its AFE on similar wells it has drilled in the area and provided evidence that its well costs have lessened due to the experience and knowledge gained from drilling and completing each well; Felix presented an AFE based on its experience drilling Meramec wells and included higher contingencies but had lower overhead due to the company size of Felix versus that of Newfield.

* * *

...It is the opinion of the ALJ that Newfield is the party that would operate the well most efficiently and in the best interest of all parties affected by these applications. This determination is based on the experience gained by Newfield not only through discovery of the play, but, more importantly, the ongoing development of the play through leasing and drilling, which has resulted in AFE well costs that directly reflect that program of development, the drilling experience and the amount of personnel support in the area. All of these factors will benefit participating owners as the well is drilled, completed and, eventually placed on line.

7) The Referee notes that the ALJ chose to consider **all** of the factors as is normal in operator fights. The experienced ALJ's considerations established her basis for her determination. From the evidence before her the ALJ determined that Newfield is the primary mover in the unit and area; and, that Newfield, which has significant Mississippi Solid and Woodward horizontal experience, should be named operator. The ALJ determined that the balance of the factors support Newfield as operator. After reviewing the transcript, the Referee can find no reason to vary that determination.

RESPECTFULLY SUBMITTED THIS 17th day of November, 2014.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Douglas
Commissioner Murphy
James L. Myles
ALJ Kathleen M. McKeown
Ron Barnes
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