

(collectively "the Briscoe Interest"); **Richard Grimes**, attorney, appeared on behalf of Protestants R.C. Taylor Companies ("Taylor"), Stephens Production, Granite Well Service, Inc. and R.C. Taylor Interests (collectively "the Taylor Interest"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 16th day of January, 2015, 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 13th day of March, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

THE BRISCOE INTEREST TAKES EXCEPTION to the recommendation by the ALJ in the Report of the ALJ that the unit operator presented competent, expert evidence showing the operation is viable and improvements are ongoing to increase production, and denying the Briscoe Interest Application.

The Briscoe Interest are mineral owners in the E/2 SE/4 SW/4 of Section 34, T19N, R1W, which is included in the Alpine Vertz Unit. On July 1, 1992, by Order No. 366680, the Commission created the Alpine Vertz Unit as an enhanced recovery unit for the Vertz Sandstone common source of supply underlying the captioned land. Incorporated therein was the Plan of Unitization, attached to the application in Cause CD No. 920164106, which resulted in Order No. 366680.

Since the entry of Unitization Order No. 366680 the Briscoe Interest alleges there has been a change of condition which requires that such Order and Plan of Unitization be terminated and vacated or in the alternative amended and modified. The Briscoe Interest believes that the Alpine Vertz Unit no longer produces hydrocarbons in paying quantities. Further, the Briscoe Interest believes that the captioned land is not being utilized for water flooding or any other permitted form of unitized management and is not necessary for the secondary recovery operation allegedly being conducted in the Alpine Vertz Unit. Therefore, the Briscoe Interest is requesting that Order No. 366680, as well as the Plan of Unitization incorporated therein, be terminated.

THE BRISCOE INTEREST TAKES THE POSITION:

- 1) The ALJ Report is contrary to law, contrary to the facts and the evidence presented in this case.
- 2) The ALJ Report fails to achieve the goals of the State of Oklahoma and the Oklahoma Corporation Commission for the prevention of waste and the protection of correlative rights.
- 3) The ALJ appears to focus on the economics of the Alpine Vertz Unit. The ALJ appears to base his recommendation that the Briscoe Interest application should be denied upon the fact that the Briscoe Interest did not present direct evidence to show that the Alpine Vertz Unit was no longer producing in paying quantities. The Briscoe Interest did present testimony from Mr. Campbell, the Briscoe Interest's expert engineering witness, that his experience tells him that a water flood operation is not economic at 2.5 BOPD, but Mr. Campbell did not have the costs of the operation of the water flood to make a detailed analysis. It should be noted that the Taylor Interest did not present an economic analysis in rebuttal to Mr. Campbell's testimony. In any event, whether the Alpine Vertz Unit was producing in paying quantities is not determinative of the merits of the Briscoe Interest application.
- 4) Alpine, Inc. was the initial operator of the Alpine Vertz Unit when established in 1992. Alpine consistently injected into the injection wells for the Alpine Vertz Unit approximately 125,000 BW/year or approximately 340 BWPD. The additional water to inject into the injection wells came from the Brian #1-3 water supply well. In December 2009, 10,304 BW or 332 BWPD were injected into the injection wells in the Alpine Vertz Unit.
- 5) Taylor became the operator of the Alpine Vertz Unit in December 2009. After injecting 10,304 BW or 332 BWPD in December 2009, Taylor injected only 3,009 BW or approximately 100 BWPD the next month in January of 2010. For all of 2010, Taylor injected only 35,972 BW or approximately 100 BWPD. For all of 2011, Taylor injected 36,500 BW or approximately 100 BWPD. In 2012 and 2013, Taylor injected only approximately 65 BWPD. This is direct evidence that once Taylor took over operations, it immediately abandoned the Alpine Vertz Unit as a secondary recovery operation.
- 6) As stated, Taylor immediately reduced the water injected into the injection wells in the Alpine Vertz Unit after taking over operations. Taylor then plugged the water supply well in November of 2010. Mr. Shields, the geologist testifying on behalf of the Taylor Interest, testified that at acquisition of the Alpine Vertz Unit by Taylor, the water supply well was not being used; however, the evidence states otherwise. The water injected into the injection wells the month Taylor acquired operations of the Alpine Vertz Unit was the

same volume as injected for the last several years, and then Taylor reduced the volume by 70% the very next month.

7) There is further evidence that Taylor operated the Alpine Vertz Unit only to hold the leases and not for the purpose of secondary recovery. The witness for the Taylor Interest testified that at the acquisition of the Alpine Vertz Unit, although horizontal wells were not being drilled in the immediate area, leases were being taken for that purpose. The witness also testified that Taylor could have drilled another water supply well after the existing water supply well was plugged, but did not do so.

8) The Taylor Interest presented evidence that they have now found water to restart the water flood. The facts reveal that the water obtained will not "restart" the water flood and that the Taylor Interest was disposing of this additional water for a fee for the Taylor Interest's economic gain and not to restart the water flood. The Taylor Interest farmed out their deep rights to Stephens Production ("Stephens") and Stephens drilled a Mississippi horizontal well in Section 34. The Taylor Interest laid a line from the Stephens well to the Alpine Vertz Unit injection well at a cost of \$140,000 and are charging Stephens \$2.00 per barrel to dispose of its water until the cost of laying the line is recovered. Thereafter, the Taylor Interest will charge Stephens \$1 per barrel to dispose of the water produced from the horizontal well. At the rate of disposal testified, that line will be paid out in approximately eight months; therefore, the continuing payment by Stephens for the disposal of its water will be profit to the Taylor Interest. The Taylor Interest is using the Alpine Vertz Unit injection well as a commercial disposal well for the water produced by Stephens from its horizontal well in Section 34.

9) The ALJ found that the additional water transported from the Stephens horizontal well by pipeline to the Alpine Vertz Unit was intended to "restart" the water flood project. The evidence showed that an additional 250 to 300 BWPD was obtained by laying this pipeline. Added to the water being recycled in the Alpine Vertz Unit, the water being injected in the remaining injection well in the Alpine Vertz Unit will be no more water than was injected by Alpine prior to the Taylor Interest's acquisition of the Alpine Vertz Unit. The Alpine Vertz Unit was not successful as a water flood when those volumes of water were previously injected and there is no reason to believe that the water flood will now be successful under the same conditions. The ALJ's conclusion that the "unit appears to be an active water flood project that is being reworked to increase production" is not supported by the evidence.

10) The engineer for the Briscoe Interest has extensive worldwide experience in designing and implementing water flood projects. Mr. Campbell presented a graph showing a typical water flood decline curve and presented a graph showing the actual production from the Alpine Vertz Unit. Mr. Campbell testified and the evidence cooperated that production from the Alpine Vertz

Unit began to decline almost immediately after the injection of water began and never reacted properly to the injection of water. Alpine operated the Alpine Vertz Unit for almost 20 years without seeing any increase in production from the water flooding operations. When the Taylor Interest acquired the water flood, they immediately abandoned the operation of the Alpine Vertz Unit as a potential water flood.

11) Unitization for the purpose of secondary recovery is not intended to hold leases outside of the leasehold or drilling and spacing unit upon which a single well is producing unless operations are being conducted to substantially increase the ultimate recovery of oil and gas from the unitized area. That effort was completely abandoned by the Taylor Interest in 2010. To continue to hold leases outside of the lease or drilling and spacing unit upon which the producing well is located is a violation of the correlative rights of the mineral owners who own outside of that lease or drilling and spacing unit. To allow the Taylor Interest to maintain the legal existence of the Alpine Vertz Unit while using the sole injection well as a commercial disposal well does not protect the correlative rights of all owners.

12) The Briscoe Interest respectfully requests that the Oil and Gas Appellate Referee reverse the recommendation of the ALJ and find the Alpine Vertz Unit terminated as of the date of filing of the Application in this cause on June 21, 2013.

THE ALJ FOUND:

1) The engineer for the Briscoe Interest stated he did not know if the unit had been economic and had made no such analysis. However, his experience informed him that economics don't support a successful project at 2.5 BOPD. He did not know if there were mechanical issues involved in the unit and did not know if water was coming from ongoing horizontal well production.

2) The geologist for the Taylor Interest stated the water supply well was junk and the tubing had collapsed and was in need of pump removal. The only alternative was to plug it.

3) A pipeline was built to bring water from horizontal operations into the Alpine Vertz Unit. The additional water is intended to restart the water flood project.

4) The Alpine Vertz Unit had shut-in a production well to build pressure and attempt to recover oil production.

5) The Taylor Interest was investigating a polymer injection process in a similar Alpine Vertz zone in another section. They hoped to use this method to restore oil production to the Alpine Vertz Unit.

6) The geologist for the Taylor Interest admitted that water injection between 2010 and 2014 had not offered a benefit, but believed more water would benefit the project. He stated this is not a commercial disposal well, but a secondary recovery well for the enhanced recovery operation of the Alpine Vertz Unit. The engineer for the Taylor Interest found this was a great water flood candidate with a fast response time and slow degradation. He has designed better sweep efficiencies and planning improvements for the project. This engineer believed present production at 2.5 barrels per day constituted an economic project.

7) This Alpine Vertz unit appears to be an active water flood project that is being reworked to increase production. There is no reason to modify or amend the Commission Alpine Vertz Unit order with any additional requirements. There is also no reason for the Commission to intrude upon the unitization committee and recommend termination of a Commission order underlying the creation of the unitization. The application should be denied.

POSITIONS OF THE PARTIES

BRISCOE INTEREST

1) **Karl Hirsch**, attorney, appearing on behalf of the Briscoe Interest, is requesting that the Alpine Vertz Unit established in 1992, currently operated by the Taylor Interest, be terminated as of 6-21-2013, the date of the initial application, rather than the Amended application filed on 1-21-2014 or the Second Amended application filed on 4-14-2014.

2) The Briscoe Interest believes the ALJ's decision to deny its application was influenced by his focus on incorrect facts. The ALJ focus appeared to be solely on the Alpine Vertz Unit's profitability, which the Briscoe Interest believes has nothing to do with the issues herein. The ALJ mentioned in his Report about lack of evidence being presented as to the Alpine Vertz Unit's profitability. Neither the Briscoe/Taylor Interest presented any evidence about the paying quantities of the Alpine Vertz Unit.

3) The Briscoe Interest wonders: Was this Alpine Vertz Unit actually terminated by the operator's actions? Was it abandoned prior to 2013?

4) The Briscoe Interest believes this Alpine Vertz Unit is no longer performing under the guidelines of the Order which created such Alpine Vertz Unit. The Briscoe Interest notes the purpose of the Alpine Vertz Unit was as a water flood and enhanced recovery unit, i.e. to recover hydrocarbons not found

during the primary production, and also to prevent waste and to protect correlative rights.

5) The Briscoe Interest notes from 1992 to November 2009 there had been about 330 BWPD injected into the well. Taylor became operator in November 2009 and injected approximately 332 BWPD. However, Taylor, in Dec 2010, injects 300+ BWPD then drops to 100 BWPD for two years and then later to 65 BWPD.

6) The Briscoe Interest notes that when Taylor took over operations, the water supply well was working fine for the first month. For reasons unknown, the water supply well soon stopped working. Taylor chose not to drill another fresh water well in 2010. Why did Taylor suddenly stop the water injection upon taking over operations?. The Briscoe Interest believes that without that water well in use, there would have been no way to reach the past 330 BWPD had by the previous operator.

7) The ALJ said that Taylor was going to dispose of additional water to restart the water flood. Yet Taylor farmed out their deep rights to a company that drilled a horizontal Mississippi well. Taylor then cut a deal to get the extra water from this Mississippi horizontal well to use in their remaining injection well.

8) The Briscoe Interest notes that by putting water in and taking water out, i.e. recycling, the Taylor Interest could get 100 BWPD. This 100 BWPD is the same water that the Alpine Vertz Unit is producing, and the same water the Taylor Interest is now disposing back into the zone. This extra 130 BWPD had likely come from the water supply well. The Briscoe Interest observes the current water coming from the horizontal well is even less than the past 18 years of water used.

9) The Briscoe Interest notes that when Taylor acquired this Alpine Vertz Unit, there were Mississippi horizontal well leases being taken in the area. Taylor then farmed it out, and the company drilled a horizontal well on it. Now Taylor Interest is making money from the disposed water from that horizontal well. Taylor laid a pipeline; they get \$2 a barrel for eight months for disposal until the pipeline is paid out; then \$1 a barrel thereafter. This money goes to the pipeline's working interest owners to maintain the Alpine Vertz Unit for the purpose of using the injection well as a disposal well and to make money by disposing of the well water. Earlier, the Briscoe Interest said the Taylor Interest could have drilled a replacement water supply well for the cost of a pipeline from the horizontal well to the disposal well yet this would eliminate the income from the disposal of the well water.

10) Both parties here argue for the same reasons, just opposite sides--the recent horizontal drilling.

11) Exhibit 1 notes the various wells in the area, the Baumert #4, a producer; the Blazier 1-A, an injection well which had been plugged in November 2010; and the rest of the wells shown had been plugged.

12) The Briscoe Interest submits the Alpine Vertz Unit will never make more oil and gas under the current setup in place by Taylor. The Briscoe Interest believes Taylor didn't try to produce additional oil and gas after their takeover of operations.

13) The Briscoe Interest believes the operator, Taylor, by its own actions, has abandoned the operations as an enhanced recovery water flood since about 2000 and requests the Commission to confirm that belief.

14) The Briscoe Interest has several reasons for their abandonment belief of this Alpine Vertz Unit as a secondary recovery water flood. One is water injection. In a water flood, water is injected into a zone. The Briscoe Interest notes that a typical water flood decline curve will have high production followed by lower production. Statutorily, a water flood is supposed to increase production. The Taylor production didn't show up.

15) The Briscoe Interest's witness, who has experience in water floods; said that if it didn't work the first time, you don't come back 20 years later and try it again. The Briscoe Interest believes this water flood is causing waste to occur and is harming the owner's correlative rights.

16) The Briscoe Interest notes that Taylor, being paid \$2/\$1 for water disposal is not protecting the correlative rights of the royalty owners here.

17) The Briscoe Interest filed this application to terminate the Alpine Vertz Unit so that their leases, just outside of the drilling and spacing unit, where the single well is located, will expire. The Briscoe Interest owns a tract that does not have a well on it, that is only included in the Alpine Vertz Unit because the unitization order is still in place. If the Alpine Vertz Unit is terminated, the Briscoe Interest lease will expire, and the top lease that was taken will go into effect. This is why the Briscoe Interest requests the Alpine Vertz Unit be terminated effective 2013.

18) The Briscoe Interest believes the continuous dropping of BWPD over the years shows an abandonment of the water flood Alpine Vertz unit. The Briscoe Interest's engineer implied that 2.5 BOPD was not economic.

19) The Briscoe Interest requests that the Commission find that this Alpine Vertz Unit was terminated as of 6-21-2013, the date of the Briscoe Interest's initial application.

TAYLOR INTEREST

1) **Richard A. Grimes**, attorney, appearing on behalf of the Taylor Interest, disagrees with the Briscoe Interest's request to have the Alpine Vertz Unit terminated as of June 21, 2013.

2) It is noted that Mr. Hirsch took over this application from another attorney, whose initial application failed to list all of the Alpine Vertz Unit owners. The Taylor Interest ultimately reached an agreement with the Briscoe Interest to furnish land information for comparison purposes. It was not until 2014 that the Briscoe Interest named all of the Alpine Vertz Unit owners. Taylor believes the Commission's jurisdiction would not have vested relative to the Alpine Vertz Unit owners until proper notice was given in 2014.

3) The Taylor Interest believes the earliest date this application could be back-dated would be the amended notice date when all of the Alpine Vertz Unit owners were notified which would be 4-14-14. If this 4-14-14 date is allowed, the Taylor Interest notes this would spoil the Briscoe Interest efforts taken to support their District Court litigation.

4) The Taylor Interest notes several points about the Briscoe Interest witness Mr. Robert Campbell. He pontificated about his experience with water floods; offered generalisms about the do and don'ts of water floods and about economics. He did no independent study; had not been provided enough data to do a study on the Alpine Vertz Unit. He read the information that was used in the Alpine Vertz Unit's initial creation. He said there had been an estimate that primary production should have been 170,000 BO yet the actual primary production was only 120,000 barrels, a shortage of about 50,000 BO. Also, he testified that there had been an estimate that an additional 300,000 BO could be recovered through secondary recovery yet the actual secondary recovery has been only 135,000 BO, a shortage of about 165,000 BO. He was not aware of the additional water obtained from the water supply well when he gave his testimony. He was unaware that the Alpine Vertz Unit made a deal with Stephens, who drilled the horizontal well nearby, to take this water for \$140,000 to build a pipeline to bring the water over. The Taylor Interest notes this was not refuted by the Briscoe Interest. In the ALJ Report, page 3, paragraph 4, Mr. Campbell opined that because the water was being recycled and no new water was being added, this Alpine Vertz Unit was no longer a water flood project. He referred to the Alpine Vertz Unit as the blow down phase of the water flood project now turned into a recycling operation. Also, in the ALJ Report at page 4, paragraph 5, Mr. Campbell still believed the current water flood had minimal effect, and that the Alpine Vertz Unit was only a water recycling operation now. As an engineer, he was unaware that both the Plan of Unitization and state statutes contemplate secondary recovery operations taking the form of a number of different engineering practices. Mr.

Campbell was also unaware that the producing well in the Alpine Vertz Unit had been shut in so as to allow all water being put in, which included the water produced from the horizontal well to build up pressure to restart the well, i.e. starting the water flood. He concluded if an operator is not water flooding, then the operator is not following the operation methods of the Plan of Unitization.

5) The Taylor Interest notes the Briscoe Interest's witness, Rick Briscoe, admitted the purpose of its application was to facilitate a District Court lease cancellation case that had been filed. The Briscoe Interest wanted to be able to combine a finding by the Commission that the lease had been terminated with their request in District Court to terminate the lease. Mr. Rick Briscoe stated, "...terminate my leases, so that I can now go enjoy the fruits of bonus and royalties that people in my area are being paid, and that I cannot, because my lease is still in effect." Later, he said, "I really only want to use this to cancel my lease".

6) The Taylor Interest believes the above has nothing to do with the protection of the prevention of waste and the protection of correlative rights.

7) The Briscoe Interest wants to classify this Alpine Vertz Unit as a commercial disposal well. However, this Alpine Vertz Unit is being used for enhanced recovery purposes.

8) In the case of *Downs v. Longfellow Corp.*, 351 P.2d 999 (Okla. 1960), an expert's opinion is only as good as the facts and evidence that supports the conclusions he/she has reached. There is a whole line of cases that such ruling emanated from. The mere fact that someone is book educated and gives an opinion means nothing if there is no basis for that expert opinion. Since the witness neither made a study or took no opportunity to make a study, there is no basis for his expert opinion.

9) The ALJ did focus upon the economics in his decision herein. The Briscoe Interest ignored the ALJ's findings.

10) Taylor notes its witness Mr. John Shields noted several facts. The Taylor Interest is an owner in another area Vertz secondary recovery unit, which is currently undergoing polymer analysis. The Taylor Interest believes the positive effects in this other area Vertz unit would have a favorable economic nature if the Taylor Interest applied it to the current Alpine Vertz Unit herein.

11) Taylor notes its witness Mike Davis opined several facts. This was a great water flood candidate with a fast response time and slow degradation. A secondary recovery operation is effective so long as it is producing remaining reserves.

12) The Taylor Interest notes it still continues to produce the remaining reserves in this Alpine Vertz Unit. Taylor notes it has been requested to, and is designing, better sweep efficiencies and planning improvements for this water flood project. Taylor notes that at 2.5 BWPD, this Alpine Vertz Unit is an economic project.

13) The Briscoe Interest admitted this filed application would be used in connection with the pending litigation to cancel a lease held by the Plan of Unitization. The Briscoe Interest asserted for the Taylor Interest "to continue to hold leases outside of the lease or drilling and spacing unit upon which the producing well is located, is a violation of the correlative rights of the mineral owners who own outside of that lease or drilling and spacing unit."

14) Taylor does not believe there is any case law that states there is a correlative right to have a lease canceled. Correlative rights is "a bundle of sticks", that includes a right to have your fair share of production, a right to have waste prevented in the reservoir, and a right to have the operator correctly operate in certain ways. Correlative rights has nothing to do with the private property concepts that deal between parties who have entered into negotiated oil and gas leases, and then ultimately the cancellation of those leases by a district court case. There is no right to have a lease canceled by an unrelated district court action based on a Commission ruling.

15) The Briscoe Interest believes this Alpine Vertz Unit has been a failure due to its not making certain quota numbers of recovery. The Taylor Interest disagrees. This water flood Alpine Vertz Unit has been a success, maybe not to the degree originally estimated, yet not a failure. This water flood works.

16) The Taylor Interest notes that this Alpine Vertz Unit does have a Plan of Unitization, which provides for an operating method. Article 4.1 states: "In accordance with good engineering and production practices, the unit operator will engage in water flood or other secondary recovery operations in the unitized formation."

17) The Taylor Interest notes the Briscoe Interest believes at a certain point in time this Alpine Vertz Unit fell out of compliance with the Plan of Unitization and hence the water flood basically died.

18) 52 O.S. Section 287.3 states that the Commission is to approve the unitized management, operation, and further development of a common source of supply of oil and gas, or portion thereof, when it is reasonably necessary in order to effectively carry on pressure maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other nonprimary production form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply."

19) Taylor points out, by the very definition, provided in the Oklahoma Statutes, this Alpine Vertz Unit is still undertaking an operation expressly acknowledged therein--the cycling operations. Cycling or Recycling---the re-injection of produced water from a zone back into the zone--is still a form of water flooding. The Oklahoma statutes do contemplate recycling or cycling as a method of secondary recovery. Taylor notes the Plan of Unitization or state statute only requires one or more of those methods.

20) Taylor disagrees with the Briscoe Interest engineer's statement that "it's no longer a water flood, it's recycling operations." Regardless of belief here, this Alpine Vertz Unit is still conducting secondary recovery operations as described by the Commission and Oklahoma statutes.

21) The Plan of Unitization, at Article 23, provides how the term of the Alpine Vertz Unit is to be determined. Article 23.1, says "the Unit and this Plan of Unitization shall continue in effect until such time as the Operating Committee, by vote of at least seventy percent (70%) of the voting interest determines that Unitized Substances can no longer be produced in paying quantities or that Unit Operations are no longer feasible."

22) The Commission entered final Order No. 366680 approving this Alpine Vertz Unit. Article 23.1 states the circumstances under which this Alpine Vertz Unit is to be terminated or abandoned.

23) Taylor wonders why should the parties be here today arguing over the semantics of recycling, water flooding or economics? There has not been any evidence of a vote of 70% (as shown in Article 23.1) to terminate this water flood Alpine Vertz unit.

24) Taylor is aware of rare occasions where the Commission has, by its own order, terminated a secondary recovery unit. The Taylor Interest believes in those limited cases, such Commission orders were predicated upon the fact that all operations were gone, that there was no longer any operator around, and the missing operator/owners made it impossible to conduct an election per Article 23.1 of the Plan of Unitization.

25) In this cause, both the operator, and owners, still exist and are locatable. These owners/operator have chosen not to have any election. Taylor disputes putting the authority to terminate a water flood into the hands of a party who wants a certain lease terminated, rather than leave in the hands of the Commission who has statutory authority to determine this.

26) Taylor did farm out its interest outside the Alpine Vertz Unit to Stephens, who had already drilled a horizontal well. Taylor is not attempting to impede or block oil and gas development here, as Taylor gave up that right to the party who wanted to drill that horizontal well.

27) Taylor notes based on the original recovery estimates, while there are shortages shown, the data still shows the recovery exceeded 170,000 BO. So the Alpine Vertz Unit production did increase over the amount estimated for both primary and secondary recovery.

28) Taylor notes that the Briscoe Interest is already getting some benefit from this water flood. Mr. Briscoe stated "I need to be getting paid the bonus that my neighbors are getting, and I can't do it because my lease is being held." When a property owner leases their interests, their working interest rights are assigned to another party until released. The Commission does not have jurisdiction to delve into cancellation of leases.

29) Taylor is not going to argue here over the lease cancellation issue. Taylor knows for sure that Mr. Briscoe, on his own testimony, distinctly wanted this done in this fashion, and made effective back to 2013, to cancel leases. Taylor asserts this cannot be a reason for the Commission to move forward on the Briscoe Interest application.

30) Taylor continues to produce oil and operate the Alpine Vertz Unit in accordance with state statues and the Plan of Unitization. Taylor has put forth efforts to locate water and inject it into the water flood. Taylor asserts that there is no reason for this Alpine Vertz Unit to be terminated.

RESPONSE OF BRISCOE INTEREST

1) The Briscoe Interest believes the Commission should focus on the question of whether or not this Alpine Vertz Unit was being perpetuated? The facts are clear that it was not. The facts are against the Taylor Interest. The Taylor Interest wishes the Commission to base their ruling on the Briscoe Interest's desire to take their lease out of the Alpine Vertz Unit. The Briscoe Interest's lease has been held for many years unnecessarily because the Alpine Vertz Unit is no longer functioning as a secondary recovery unit.

2) The Commission created this water flood for the purpose of injecting water. The focus needs to be whether or not this Alpine Vertz Unit was operating per Order No. 366680 as it should have been at the time the application was filed. The Briscoe Interest says it was not.

3) The Briscoe Interest was named in the original 2013 application prior to the Mississippi horizontal well being drilled a year ago (in 2014). This current cause was filed a full year before this 2014 Mississippi horizontal drilled well. The Briscoe Interest notes the Motion to Produce was filed in January 2014, prior to the horizontal drilled well. The Briscoe Interest notes in January 2014, this application was Amended, adding the names of most of the

respondents represented by Mr. Grimes. So whether it is effective 2013 or 2014, the results for the Briscoe Interest would be the same.

4) The Plan of Unitization, Article 2, talks about the injection wells, the supply well, etc. The Briscoe Interest notes it does not mention recycling. The state statute only says "cycling" which is different from recycling. Recycling is taking the water you put in, produce it, then put it back in, produce it, etc. You just make the same water go all the way around. Cycling is where water goes from one place to another place.

5) The Commission Order No. 366680 and the Plan of Unitization provide for certain guidelines of operation which the Briscoe Interest believes are not being complied with. The Briscoe Interest disagrees with the Taylor Interest and contends that a water flood can be terminated by the Commission where a Plan of Unitization is in place. The Commission has jurisdiction, in paragraph 6, over this Alpine Vertz Unit, for the purposes of amending, modifying and interpreting the terms and provisions of the Plan of Unitization.

6) The Taylor Interest had mentioned they were considering using polymer here in the Alpine Vertz Unit due to its use in another nearby Vertz unit. A polymer water flood well was now making 30 BOPD, had 3 producers and 2 injectors. The Briscoe Interest notes that the Taylor Interest says it is considering the polymer, or "we're looking at that".

7) The Briscoe Interest notes the Taylor Interest said this Alpine Vertz Unit was a great water flood candidate. It may have made 85,000 barrels more than the estimate primary. The Briscoe Interest contends this is not a successful water flood. The last 18 years haven't been great numbers.

8) The Briscoe Interest notes the Taylor Interest indicated it will be a great water flood candidate with a fast response time. The Briscoe Interest disagrees. The Briscoe Interest believes this Alpine Vertz Unit is basically dead.

9) From the known facts/evidence, the Briscoe Interest believes this water flood was abandoned in 2010. The Briscoe Interest believes the Taylor Interest's arguments are all red herrings.

10) The Commission has jurisdiction to cancel this water flood without having a committee vote as per the Plan of Unitization. The Briscoe Interest believes this water flood Alpine Vertz Unit is a continuing recycling operation. The statute clearly says "cycling", not recycling.

11) The Briscoe Interest believes the past 20 years it was a successful water flood due to the 85,000 BW produced prior to the Taylor Interest taking over operations. The evidence shows this Alpine Vertz Unit has been abandoned by the Taylor Interest.

12) The Briscoe Interest notes the Amended Application filed in January 2014 added several persons. The Briscoe Interest believes the Second Amended Application added a few extra royalty owners.

13) The Briscoe Interest's correlative rights are not being protected because the Briscoe Interest has been receiving their proportionate share of the 2 to 2.5 BOPD the last 4 years. The Briscoe Interest requests this water flood Alpine Vertz Unit be terminated due to alleged facts above.

CONCLUSIONS

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

1) The Referee finds that the ALJ's recommendation to deny the Briscoe Interest application to terminate the Alpine Vertz Unit is supported by the weight of the evidence and free of reversible error. The ALJ determined that the Taylor Interest/operator presented competent, expert evidence showing the operation is viable and improvements are going to increase production.

2) The Briscoe Interest's witness engineer stated that he did not know whether or not the Alpine Vertz Unit had been economic and had made no such analysis. He stated that 2.5 barrels per day production in his view was not economic. The Briscoe Interest engineer also stated that he did not know that additional water supply had been obtained by the Taylor Interest from the Stephens Production Company Briscoe #1-3-34H well in Section 34 which is included in the Alpine Vertz Unit. The Taylor Interest obtained an agreement with Stephens Production Company to take the water from that well and paid \$140,000 to build a line to bring the water to the Blazier #1-A well operated by Taylor. This water is being used for the water flood project. Water is being used for enhanced recovery purposes. The Briscoe Interest was not aware of this fact. The Briscoe Interest engineer thought they were obtaining this water supply was only a water recycling operation. The Briscoe Interest witness also stated that he did not know that the water supply well used by the Taylor Interest was junk as the tubing head collapsed and was in need of pump removal and therefore, the well was plugged. The Briscoe Interest witness also stated that he did not know that the Taylor Interest had shut-in the production well to build pressure in an attempt to recover oil production, i.e. to allow the water that the Taylor Interest is putting in, including the water from the horizontal well, to build pressure in the reservoir for the purpose of obtaining oil production.

3) The Taylor Interest geologist testified that the Taylor Interest was participating in a polymer injection in a similar Vertz unit in another section and they hoped to use this method to restore oil production to this Alpine Vertz Unit. The Taylor Interest geologist also testified that the water injection between 2010 and 2014 in the Alpine Vertz Unit was insufficient but thought more water would benefit the project. The Briscoe Interest asserts that the Alpine Vertz Unit injection well is being used by the Taylor Interest as a commercial disposal well for the water produced by Stephens from its horizontal well in Section 34. The Taylor Interest geologist stated this definitely was not a commercial disposal well but was an injection/secondary recovery well for the enhanced recovery operation of the Alpine Vertz Unit. The Taylor Interest engineer stated that the Alpine Vertz Unit was a great water flood candidate with a fast response time and slow degradation. He stated that a secondary recovery operation is effective so long as it is producing remaining reserves. The Taylor Interest engineer is designing better sweep efficiencies and planning further improvements for this project. The Taylor Interest engineer also stated that the present production of 2.5 barrels per day, in his opinion, was an economic project.

4) The Briscoe Interest landman was Mr. Rick Briscoe and he testified that the Briscoe Interest owns 100% of the mineral interest in the SW/4 and had top leased the SE/4 reversionary interest. On cross examination Mr. Briscoe stated "I have one purpose in having had Mr. Mahaffey originally file this case. Terminate my leases, so that I can now go enjoy the fruits of bonus and royalties that people in my area are being paid, and that I cannot, because my lease is still in effect." The Taylor Interest asserts that as a private owner who leases their interest, you give up your working interest rights and the mere fact that you now want them back isn't what the Commission is designed for. The Commission doesn't delve into cancellation of leases.

5) 52 O.S. Section 287.3 states in pertinent part: "the Corporation Commission shall find (a) that the unitized management, operation and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other nonprimary production form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply;..."

The Briscoe Interest's engineering witness stated that the Alpine Vertz Unit was no longer a water flood project because the water was recycled and there was no new water being added. He stated that the water flood had minimum effect and it was now only a water recycling operation. The Briscoe Interest engineer's decision or conclusion was that if the Alpine Vertz Unit is not water flooding then you are not fulfilling the operating methods of the Plan of Unitization. However, the Taylor Interest argues that both the Plan of

Unitization and the statute listed above contemplates secondary recovery taking the form of a number of different engineering practices including a recycling operation.

6) The Plan of Unitization, at Article 11, Section 11.1 details the creation of an operating committee. Article 23, Section 23.1 states:

Term. The Unit and this Plan of Unitization shall continue in effect until such time as the Operating Committee by vote of at least seventy percent (70%) of the voting interest determines that Unitized Substances can no longer be produced in paying quantities or that Unit Operations are no longer feasible.

However, Order No. 366680 creating the Alpine Vertz Unit, states in paragraph #6 of the order that:

6. The Commission retains continuing jurisdiction over the unit involved herein for the purpose of amending, modifying and interpreting the terms and provisions of this order and the Plan of Unitization of such unit.

7) The Taylor Interest lawyer states that there have been rare occasions when the Commission has terminated by its own order a secondary recovery unit. In those limited cases, however, it was predicated upon the fact that all operations were canceled and there was no longer any operator that could be determined and it would thus be impossible to conduct an election.

8) It is the Referee's opinion that the Commission must follow the procedures set forth in *Haymaker v. Oklahoma Corporation Commission*, 731 P.2d 1008 (Okl.Civ.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."

9) The Supreme Court of Oklahoma in *Application of Choctaw Express Company*, 253 P.2d 822 (Okla. 1953) stated:

Other courts have said the principle which applies in determining whether the evidence will support a jury verdict, applies to findings of the Commission. We think that every order of the Commission must be sustained by competent and material evidence, and that an order is not justified without a basis in evidence having rational probative force. This case, therefore, calls for an answer to the question, whether there is substantial evidence to support the order of the Commission....In these cases we defined "substantial evidence" as something more than a "scintilla of evidence" and said it means evidence that possesses something of substance and of relevant consequence and such that carries with it fitness to induce conviction.

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 (Okla. 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. and P. Ry. Co. v. Pruitt*, 67 Okl. 219, 170 P. 1143; 22 C.J. 728, Section 823, 32 C.J.S., Evidence, Section 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 Company v. Dolese Brothers Company*, 121 Okl. 40, 247 P. 74.

10) There is substantial evidence to uphold the ALJ's decision regarding this matter. Clearly, the ALJ placed significantly more weight upon the opinion espoused by the Taylor Interest geologist and engineer. The Referee agrees with the ALJ's decision after reviewing the testimony of the Briscoe Interest engineer and the Taylor Interest engineer and geologist as set forth above.

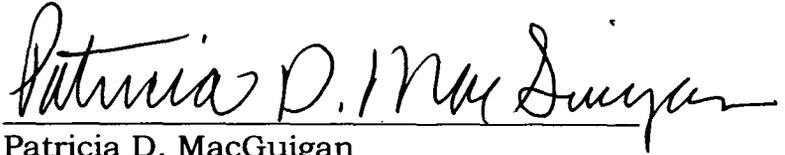
11) The Supreme Court of Oklahoma in *Central Oklahoma Freight Lines, Inc. v. Corporation Commission*, 484 P.2d 877 (Okl. 1971), states:

The term "substantial evidence" means something more than a scintilla of evidence and means evidence that possesses something of substance and of relative consequence such as carries with it fitness to induce conviction, and is such evidence that reasonable men may fairly differ as to whether it establishes a case. The determination of whether there is substantial evidence in support of the Commission's order does not require that the evidence be weighed, but only that the evidence in support of the order be examined to see whether it meets the above test. *Yellow Transit Company v. State*, 198 Okl. 229, 178 P.2d 83; *Application of Choctaw Exp. Co.*, 208 Okl. 107, 253 P.2d 822.

The Referee believes that the ALJ's decision is justified as the Briscoe Interest engineering witness's opinions were "without a basis in evidence having rational probative force". See *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953) at 823.

12) The Referee for the above stated reasons believes the ALJ has reached the proper decision and should be affirmed.

RESPECTFULLY SUBMITTED THIS 17th day of April, 2015.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
ALJ Paul E. Porter
Karl Hirsch
Richard Grimes
Michael L. Decker, OAP Director
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