

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

FILED

JUL 21 2015

APPLICANT: SHORT JUNCTION OPERATING,)
LLC; SHIELDS OPERATING,)
INC.; R.C. TAYLOR)
COMPANIES, INC.; AND JOHN)
P. SHIELDS, INC.)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

RELIEF SOUGHT SHUT-IN WELLS)

CAUSE CD NO.
201409276

LAND COVERED: NE/4 OF SECTION 20 AND)
NE/4 OF SECTION 21,)
TOWNSHIP 10 NORTH, RANGE)
3 WEST; AND, SE/4 OF)
SECTION 5, NW/4 AND SE/4)
OF SECTION 9, SE/4 OF)
SECTION 10, SE/4 AND SW/4)
OF SECTION 13, SW/4 AND)
NW/4 OF SECTION 14, NW/4)
OF SECTION 15, SE/4 OF)
SECTION 16, NE/4 AND SW/4)
OF SECTION 24, AND NE/4)
AND NW/4 OF SECTION 26,)
ALL IN TOWNSHIP 10 NORTH,)
RANGE 4 WEST, CLEVELAND)
COUNTY, OKLAHOMA)

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S
RULING ON A MOTION FOR PRODUCTION OF DOCUMENTS AND
A MOTION TO DISMISS**

These Motions came on for hearing before **David Leavitt**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 6th day of May, 2015, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of

the Commission for purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Richard A. Grimes**, attorney, appeared for applicant, Short Junction Operating, LLC, Shields Operating, Inc., R.C. Taylor Companies Inc., and John P. Shields ("Applicant" and/or "Short"); **John C. Moricoli, Jr.**, attorney, appeared for Trey Resources Inc. and Trey Resources I LLC ("Trey"); **Susan Conrad**, Deputy General Counsel, appeared for the Oil and Gas Conservation Division; and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Report of the Administrative Law Judge on the above Motions to which Oral Exceptions were timely lodged 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 22nd day of June, 2015. After considering the arguments of counsel and the record contained within these Motions, the Referee finds as follows:

STATEMENT OF THE CASE

On January 9, 2015, Short requested the Commission to order Trey to produce data concerning the wells requested to be shut in and that were listed in Short's application. Trey protested Short's Motion for Production of Documents and filed its own Motion to Dismiss this cause on January 20, 2015.

Trey requests an order dismissing this cause due to Short's lack of standing to bring this action; proper notice of the pendency of this cause was not given; and the Commission lacks jurisdiction of the subject matter.

Short requests an order requiring Trey to produce certain data from the requested wells to be shut-in under the terms of the filed application, as such information is directly relevant to the issues concerning the request to have the Commission shut-in each well. The data sought is:

- 1) All information used by Trey personnel to determine that the wells listed in the application on file are illegally completed and/or produced.

2) All reports for such wells including, but not limited to, workover, recompletion, operations reports, etc., showing dates and responsible parties.

3) All cased hole logs for such wells including, but not limited to, collar locators, cement bond logs, gamma ray logs, neutron logs, etc.

4) Wellbore diagrams for such wells showing top of cement, perforations, bridge plugs, cement plugs, packers, casing leaks, casing patches, etc.

5) All reports prepared after April 20, 2001, same being the date that Trey was appointed as contract operator of the Central Short Junction Unit and the West Short Junction Unit by the receiver, pertaining to any work performed by Trey, in their capacity as contract operator, on any of the wells referenced in the filed application.

6) A copy of all production tests performed by Trey on any of the wells listed in the filed application, specifying formation(s), volumes of oil, gas, and water; and any chemical analysis of recovered fluid.

7) Any other written documentation, including electronically stored emails or correspondence, which would support the allegations made by Trey in litigation pending in Case No. CJ-14-1537 TS, filed in the District Court of Cleveland County, Oklahoma, to the effect that the wells described in the filed application have been completed in non-unitized intervals, re-completed in non-unitized formations and/or had production from unitized intervals and non-unitized formations commingled, all without proper authority from the Commission.

Trey operates both the West Short Junction Unit ("WSJU") and the Central Short Junction Unit ("CSJU") covering lands in Cleveland County, Oklahoma. The WSJU is a secondary recovery unit created by Commission Order No. 46956. The WSJU covers the Hunton Lime-Bartlesville Sand common source of supply as defined by Order No. 44650. On December 1, 1961, the Commission approved the Plan of Unitization for the WSJU. The CSJU is also a secondary recovery unit created by Order No. 59626. The CSJU covers the

Red Fork-Hunton Lime-Bartlesville common source of supply as defined in Order No. 59626. On July 30, 1965, the Commission approved the Plan of Unitization for the CSJU.

Trey, among other parties, filed a Petition in the District Court of Cleveland County, Oklahoma, in Case No. CJ-14-1537 TS, naming Short, among other parties, as defendants, alleging that a number of producing wells in both the WSJU and CSJU have been completed in non-unitized formations and are commingled with non-unitized formations, without authorization to do so from the Commission. The wells described in the Petition are as follows:

- (1) WSJU NO. 3 - SE/4 SECTION 5-10N-4W
- (2) WSJU NO. 89 - SW/4 SECTION 13-10N-4W
- (3) WSJU NO. 107 - SE/4 SECTION 16-10N-4W
- (4) WSJU NO. 120 - SE/4 SECTION 13-10N-4W
- (5) WSJU NO. 138 - NE/4 SECTION 24-10N-4W
- (6) WSJU NO. 228 - NW/4 SECTION 26-10N-4W
- (7) WSJU NO. 53 - NW/4 SECTION 15-10N-4W
- (8) WSJU NO. 220 - NE/4 SECTION 26-10N-4W
- (9) WSJU NO. 22 - NW/4 SECTION 9-10N-4W
- (10) WSJU NO. 27 - SE/4 SECTION 9-10N-4W
- (11) WSJU NO. 44 - SE/4 SECTION 10-10N-4W
- (12) WSJU NO. 70 - NW/4 SECTION 14-10N-4W
- (13) WSJU NO. 206 - SW/4 SECTION 24-10N-4W
- (14) WSJU NO. 113 - SW/4 SECTION 14-10N-4W
- (15) WSJU NO. 130 - NE/4 SECTION 20-10N-3W
- (16) WSJU NO. 22 - NE/4 SECTION 21-10N-3W

Short Junction's application notes that under the provisions of 52 OS. Section 287.1 et seq, all of the unitized production under a secondary recovery unit is owned by the parties subject to such unit in the proportions defined by the tract participation formulas approved by the Commission in the Plans of

Unitization covering such units. However, under Oklahoma law all production from the non-unitized formations or common sources of supply is owned by the oil and gas owners within the drilling and spacing units covering those common sources of supply.

The WSJU covers approximately 10,000 acres while the CSJU covers approximately 2000 acres. Although the Petition in question does not describe the non-unitized formations alleged to be illegally producing from wells in the WSJU and CSJU, Short believes that such formations are subject to drilling and spacing units which are no larger than 160 acres in size. That fact creates a circumstance in which the owners of the non-unitized formations are not receiving their fair share of production therefrom. Assuming the allegations made in the Petition are true, the production and/or commingling of non-unitized formations in wells unitized as the WSJU and CSJU is not only illegal, but is resulting in the violation of the rights of the oil and gas owners in the drilling and spacing units covering the non-unitized formations.

Short herein owns oil and gas interests in what are believed to be one, or more, of the non-unitized formations or common sources of supply alluded to in the Petition. In the opinion of Short, the wells described should be shut-in pending investigation of the allegations made by the Unit Operator of both the WSJU and CSJU. If those allegations are true, continued production of those wells will deprive all owners within the non-unitized formations or common sources of supply of the right to properly share in the production of oil and gas therefrom. Secondly, without knowledge of the actual amount of production coming from the non-unitized formations, there is no effective way to know if waste is occurring relative to such formations.

The Operators of the WSJU and CSJU should not be allowed to continue production of wells not in compliance with the reporting requirements of the Commission. The Commission should enter an order shutting in the wells described above until and unless the illegal production and/or commingling of unitized and non-unitized production in those wells are terminated.

Short filed an application on December 19, 2014, before the Commission in this cause CD 201409276 requesting that the Commission shut in the wells referred above until such time as the Commission determines that there is no further unauthorized production from non-unitized formations in such wells or that there is no unauthorized commingling of unitized production with non-unitized production in such wells.

On May 27, 2015, the Report of the ALJ was filed where the ALJ made his decisions on these Motions.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) **ALJ David Leavitt** found the general oil and gas statutes under 52 O.S. Section 86.1 et seq grant the Commission jurisdiction over all oil and gas activities, including hearings and orders related to the shutting in of wells. Specifically, 52 O.S. Section 287.7 authorizes the Commission to prohibit the unlawful operation of wells within a unitized field. Thus, the Commission clearly has jurisdiction to prohibit unlawful operation of the WSJU and CSJU, including the shutting in of wells within the units. Short has standing before the Commission under 52 O.S. Section 112 in this cause as a party affected by the outcome of the action.

2) OCC-OAC 165:5-7-20 requires an applicant to give notice of a hearing for an order to create a unit to all who share in production, but this requirement only applies to a hearing creating a unit. After a unit is created, notice of pending Commission actions that relate to the operation of a unit but do not seize property or take away property rights, are to be given to the operator of the unit.

3) Here, Short is only required to give notice to the operators of the WSJU and CSJU that wells within the unit are to be shut in. The Commission holds the operator responsible for the proper and lawful operation of wells and unitized fields and give notice to the operator in the event that wells are to be shut in for compliance actions or to prevent pollution because it is the operator who has the duty to comply with the Commission orders and directives. Notice to the operator of such actions is sufficient because an order shutting in a well is not a taking of property. Shut-in orders are typically temporary in scope and time and are lifted when the underlying reasons for the action is resolved. No petroleum is taken from any of the owners and the wells are not plugged.

4) The operator of the WSJU and CSJU, however, appears to have a fiduciary duty to inform the working interest, royalty interest and overriding interest owners of a pending shut-in proceeding. Unit operators must watch out for the interests of all of the owners in the unit and have a fiduciary duty to the owners. See *Hebble v. Shell Western E&P, Inc.*, 238 P.3d 939 (Ok.Civ.App. 2010). This duty is created by the unitization order. See *Leck v. Continental Oil Co.*, 800 P.2d 224 (Okl. 1989). The operator stands in a position similar to that of a trustee for all who are interested in the oil production either as lessees or royalty owners. See *Young v. West Edmond Hunton Lime Unit*, 275 P2d 304

(Okl. 1954). Providing notice of a pending shut-in procedure to all 1,500 or so owners in this cause thus appears to lie with Trey, not Short.

5) With respect to the Motion for the Production of Documents, Short argues that the requested information is directly relevant to the issues concerning the request to the Commission to shut in the wells and the ALJ finds the argument persuasive. The information requested by Short is deemed necessary by the ALJ for resolution of the issues by the Commission.

6) Thus, the ALJ's recommendation is that Trey's Motion to Dismiss be denied and that Short's Motion for Production of Documents be granted.

POSITIONS OF THE PARTIES

TREY

1) **John C. Moricoli, Jr.**, attorney on behalf of Trey, attacks the jurisdiction of the Commission to hear and issue this particular type of relief. Two cases are relevant, *Osborn v. Texas Oil & Gas Corp.*, 661 P.2d 71 (Ok.Civ.App. 1982), and *Vastar Resources v. Oklahoma Corp. Com'n*, 917 P.2d 480, (Ok.Civ.App. 1996). In *Osborn*, Texas Oil and Gas drilled a well off-setting a field-wide unit and was producing from the gas cap of this secondary recovery unit. The application to shut-in the well was approved by the Commission because of waste and affirmed on appeal. In *Vastar*, an application was brought to determine the producing formation. The Commission-issued order was reversed on appeal on jurisdictional grounds and dismissed for lack of evidence of waste or a correlative rights violation because it was only asked to determine the producing formation. The Commission also found that 52 O.S. Section 112 did not apply because the applicant did not seek to repeal, amend, modify or supplement a Commission order. Trey's position is the same in this case.

2) The Commission only has jurisdiction expressly granted to it or by direct implication and only regarding issues of public rights. Private rights are adjudicated in general jurisdiction (District Court) in this State. A state court or the Commission must have all three types of jurisdiction to decide a case: over the person- in personam, over the subject matter- in rem, and over the jurisdiction to render the judgment sought.

3) In this case, the Commission lacks jurisdiction over the person because proper notice has not been given. Other than specific enumerated actions, there is no rule on who should get notice besides publication notice. It should be asked who would have cause to complain about what the

Commission is being asked to do. Those people should get notice. In this case, everyone who has an economic interest in the unit will be impacted because revenues will be interrupted and production will be lost. The ALJ said only notice to the operator was required because it is not seeking to appropriate anyone's property and the operator is in control of shutting in the well. To comply with due process, one should give notice to everyone whose rights will be affected. Since that was not done, the application is deficient. Notice should be given or the case should be dismissed. The ALJ said the operator has a fiduciary duty and responsibility to notify all owners, which does not make sense. If notice is required, it should be Short's responsibility because they must make a prima facie case insofar as the threshold issues of jurisdiction. If notice is not required, then the operator does not have to notify anyone.

4) There is no subject matter jurisdiction because this is a private rights issue. Short is asking the Commission to determine the producing formation in these wells and that the wells be shut-in, which is the same type of relief that was in the *Vastar* case. The issues raised in the Cleveland County District Court action CJ-14-1537-TS (paragraphs 65 and 66 on pages 12 and 13 of the Petition, and Defendants' Answer on page 8, Summary of Wrongful Actions on page 23, Prayer For Relief on page 29) pertain to the recovery on behalf of Plaintiffs and Defendants regarding alleged actions relating to what was the producing formation of the wells. Short is asking for the same determination as in the District Court action, which is a private rights issue. There is no waste occurring and no correlative rights violations because there are no competing correlative rights in the same common source of supply, as in *Vastar*, there are different sources of supply.

5) Short lacks standing to bring this case. There is no question that the State can bring cases to enforce its orders. The arguments are about wells producing illegally in violation of the Commission's orders. The State has authority to bring enforcement actions or other actions if there are violations of the Commission's orders, not private citizens seeking to exercise the authority of the State. The Shields Group (private citizens) should have come to the Commission, laid out the facts, and the State should have taken control of the situation.

6) The ALJ suggests that 52 O.S. Section 112 is basis for jurisdiction. Here, as in *Vastar*, that statute does not apply because Short is not seeking to repeal, amend, modify or supplement a Commission order. The ALJ also cites 52 O.S. Section 287.7, but misconstrues it as authorizing the Commission to prohibit the unlawful operation of wells within a unitized field. The statute says it prohibits unlawful conduct and does not authorize the Commission to prohibit unlawful conduct. If it did, the State would be the one to enforce it and not private citizens. The ALJ was incorrect in his

recommendation. Short lacks standing and the Commission lacks jurisdiction, over subject matter, over parties and jurisdiction to enter one type of relief requested, i.e. public rights versus private rights. The *Vastar* decision should be controlling in this case.

SHORT

1) **Richard A. Grimes**, attorney appearing on behalf of Short, stated that when this application was filed, Short, among other parties, had been sued in Cleveland County District Court. The wells in the present application are the same as in the Cleveland County District Court Petition. After the case was protested, Short filed a Motion For Production of Documents. At the conclusion of the argument, Trey interposed a Motion to Dismiss. The ALJ asked that a formal motion be filed and Trey said it would with reasons for dismissal, but Trey's filed Motion to Dismiss only said it was to be dismissed based on standing and jurisdiction. The Motion to Produce was deferred until after the dismissal hearing. During the dismissal hearing, Trey called a landman witness, Joseph Davis. On cross-examination, it was inquired why standing had not been argued. Standing was not argued even though it was mentioned in the motion. The ALJ was not asked to rule on standing, but only on subject matter and personal matter jurisdiction. Therefore, it is not appropriate for standing to be discussed today because it was dropped from the case.

2) The major issue is regarding Short's substantial interest in nine unitized formations. The District Court Petition describes allegations (page13, paragraph 66) that there have been illegal acts resulting in potential for commingling of unitized and nonunitized formations. Short's main concern is that if there is commingling between different intervals, then there is potential of harming the nonunitized formations, which is waste. The first goal in filing a motion to produce is to figure out what they have in their files to determine if commingling is happening. If it is true, then there are problems with waste and if it is not true, then why were the allegations made in the first place. These allegations are so specific and alarming that the argument was put in the merits in front of the Commission.

3) Short disputes that waste is not occurring because it has not been determined yet. Short disputes that the Commission cannot litigate this case because it is a private rights matter. The Commission is the exclusive body to determine if there is waste. They have limited jurisdiction but that does not limit their broad authority to aid in the prevention of waste. The *Vastar* case does not have anything to do with this case; they did not have a waste issue.

In *Vastar*, two parties claimed two different formations were producing. The current case is here because of their own allegations. It is unknown if commingling happened in the past or is still happening. Depending on what is found, the merits of the case will progress with actual facts because the ALJ said Trey must produce documents.

4) If someone files a request in the district court to shut-in an oil and gas well in Oklahoma, the court will deny the request because they do not have authority to shut-in a well. Only the Commission has that authority. It is impossible for this case to be adjudicated in the district court. That is why Short started at the Commission because it is the proper place.

5) The *Osborn* case involved two private parties, the operator of a unit and TXO. The Operator produced only oil from the reservoir and used gas pressure to maximize oil recovery. TXO drilled a well off-setting the unit. The unit operator contended that TXO's well reduced reservoir pressure and diminished the quantity of oil that might be recovered from the reservoir. The operator asked the Commission to shut-in the TXO well. An older case held that the Commission did not have authority to shut-in a well that was otherwise producing legally. TXO had drilled their well legally and did not exceed their allowable, but the unit operator contended that waste could happen because TXO took advantage of pressure and movement of hydrocarbons in their well, which was not subject to the terms of the unit. The Court of Appeals found the Commission has jurisdiction to shut-in that well. That action was brought by two parties, not the Commission. There is no doubt that private parties, that make the proper allegations and facts, can ask the Commission to shut-in a well.

6) Short has the right to claim their rights in the non-unitized formations affected by the alleged commingling of production. Short has that right to make that assertion and the Commission has the right to hear it, so there is standing. The only argument that was made at the Motion to Dismiss hearing was based on Mr. Davis' testimony, that the unit operators were notified but the revenue possessing interest owners within those units had not been notified. When the Commission itself has sought to shut-in wells, they gave notice to the operators. The Commission and Short are doing this with good reason. Short is not seeking to have the well abandoned or to modify the rights of parties to share in production. Short asks to temporarily shut-in these wells so information can be gathered about potential waste.

7) There is no specific rule that states who to notify for an application to shut in a well. Trey mentions that the fall back rule is publication notice. But Short did more than just publication notice. Short notified the operators who are in charge of these wells and who made the allegations that led to the filing of this application. Trey said there is evidence of loss of production by shutting

in a well. This has zero support and has never been discussed in this case. There was no geologist, engineer or someone from Trey that testified that there would be loss of production if they are shut-in. Only a landman testified.

8) Rights of interested parties to appeal or oppose an action should not be confused with the Commission's notice requirements. For a spacing, one must notify all owners in a unit to be spaced but it is not required to notify off-set owners. However, any owner in the common source of supply, including the off-set, can protest or appeal. Just because off-set owners are not notified does not mean the Commission lacks jurisdiction over the spacing. In a location exception, the Commission requires notification of the offset operator or, if operating the well, notification of the working interest owners in that well. It is not required to notify the royalty owners nor the working interest owners, if not operating, but they still have standing. The Commission's notice requirements are deemed correct until they are deemed unconstitutional. Short has done what the Commission itself does and has gone beyond the publication notice.

9) Competing rights (correlative rights) is not an issue here. This is an issue of waste. These are two separate concepts the Commission considers. The ALJ correctly identified the facts and the need to go forward to provide the opportunity for parties and the Commission to understand what is being dealt with. If the allegations were baseless, the Commission will find that. If the allegations have basis, there is only one body with power and authority to deal with these allegations regarding waste and that would be the Commission. The Commission has jurisdictional authority to hear this case.

RESPONSE OF TREY

1) The standing question is a question of law and can be brought up at any time. It is being brought up now. Trey does not believe that the district court would never issue an order to shut-in a well. Under the right set of facts, the district court would have jurisdiction and the remedy would be a mandatory injunction.

2) There are two distinctions between the *Vastar* case, the *Osborn* case, and this case. First, in *Osborn*, waste was occurring. The TXO well produced and reduced the reservoir pressure which resulted in oil being left behind in the pore space that would otherwise be recovered under the secondary recovery concept. That is not the case here. Short talked about the possibility of cross flow between formations and that was the only mention about waste. This is pure supposition and there is no factual basis for it.

3) The Commission only giving notice to operators when they are seeking to shut in a well is probably true but that does not make it right. It used to be that one did not have to notify anyone but just publish in the paper. In the *Harry R. Carlile v. Cotton Petroleum Corp.*, 732 P.2d 438 (Okl. 1986) it was held that fundamental due process requires that actual notice be given to anyone whose rights will be affected. It is the right decision. Just because something is done incorrectly for years, does not make it right. In this case, one cannot say that shutting in the wells does not affect the vested interest of everyone entitled to share in the production in the units. They are entitled to notice, opportunity to be heard, and to advance whatever position they want. It is constitutionally required.

4) It is Trey's request that if a discovery order is issued, it contain the limitations Trey is entitled to under the rule, i.e. that those documents be made available at the offices of Trey in Midland, at a convenient time, and that Trey only be required to give documents that are not privileged or do not constitute proprietary data, proprietary interpretations, or other confidential information.

RESPONSE OF SHORT

1) The issue about the discovery motion was not argued when the motion to produce was argued. Actual privileges would not apply here. Confidentiality is not a privilege to exclude evidence. Short does not object to protective orders for confidential information. This has not been discussed before. Short will agree to any confidentiality order that is normal and relative to this circumstance.

CONCLUSIONS

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

1) Trey, the unit operator of both the WSJU and the CSJU, has filed a Petition in the District Court of Cleveland County naming Short, among other parties, as defendants. Among the allegations of Trey's District Court Petition is that a number of producing wells in both the WSJU and CSJU have been completed in nonunitized formations and have been commingled with nonunitized formations. Thus, the allegations assert that certain unit wells are being illegally produced, commingled and perforated in violation of the WSJU and CSJU plans of unitization. Short in the present application is requesting

certain wells be shutin because if there is commingling between different intervals then there is potential of harming the nonunitized formations which would be waste. Short's Motion to Produce is to ascertain information in Trey's documents and files to determine if commingling is happening. If the commingling is in fact occurring then waste is occurring.

2) The Referee agrees with the ALJ that 52 O.S. Section 86.1 et seq grants the Commission jurisdiction over all oil and gas activities including hearings and orders relating to the shutting in of wells. 52 O.S. Section 287.7 states:

From and after the effective date of an order of the Commission creating a unit and prescribing the plan of unitization applicable thereto, the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization shall be unlawful and is hereby prohibited.

The Referee agrees with the ALJ's determination that due to this particular statute, the Commission has jurisdiction to shutin and prohibit unlawful operation of wells within the WSJU and CSJU, where there is evidence of commingling between different intervals, with the potential of harming the nonunitized formations, which would constitute waste.

3) 52 O.S. Section 112 provides in pertinent part:

Any person affected by any legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this act....

Thus, Short has standing to bring this action before the Commission in this cause as was the situation in the case of *Osborn v. Texas Oil and Gas Corporation*, supra, where TXO and the operator were private parties and where the operator asked the Commission to shutin the TXO well.

4) OCC-OAC 165:5-7-20(a) states:

(a) Notice of hearing for an order creating a unit pursuant to 52 O.S. Section 287.1, et seq., shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.

However, after the unit is created, the Referee would agree with the ALJ that notice of pending Commission actions which relate to the operation of a unit and which do not affect property rights or seize property are to be given to the unit operator. Such is the present case which concerns a shutin well, where Short is not seeking to have the well abandoned or to modify the rights of parties to share in production. Short is only asking these wells be shutin temporarily so information can be gathered about potential waste. No production will be denied to these parties who share in the wells' production. There is no contemplation that any of these wells will be denying petroleum production to their owners or that the wells will be plugged.

5) The *Vastar* case, supra, is not applicable in this particular situation. Vastar Resources Inc. appealed from an order of the Corporation Commission which determined that the Zedlav #1-9 well was producing from the Osborn formation, the common source of supply to which the Commission had authorized the well to be completed. Vastar's predecessor in interest (Arco Oil and Gas Co.) filed an application with the Commission alleging that, from an examination of records of a nearby well and information from the Zedlav #1-9 well, there was some confusion about the formation in which the well had been completed, and suggested that the well might have been completed in the Hart formation. The Commission ultimately found that the well was in fact completed in the Osborn formation and the well had never produced from the Hart formation. The *Vastar* case only discussed a jurisdictional objection raised by Appellees Lance Ruffel Oil and Gas Corporation and Exxon Corporation. The Oklahoma Court of Civil Appeals held that the Commission lacked jurisdiction to consider the application and reversed the order of the Commission. The Oklahoma Court of Civil Appeals found:

We find that § 112 does not apply in this case because Arco's application for determination of producing formation sought neither repeal, amendment, modification, nor supplementation of any Commission order. The ALJ's reference to a "public rights interest" is not convincing....This case does not involve any question of correlative rights, because it does not involve competing interests in a single common source of supply, nor a question of waste. The only effect of an order in this proceeding determining the source of

projection is to establish whether the producing party had a right to produce those hydrocarbons or whether they did not; whether they produced hydrocarbons rightfully, or whether such production was conversion resulting from a subsurface trespass. Both these determinations are correctly made in district court just as surely as the damage claim which would evolve from a determination that the production was wrongful.

Thus, *Vastar* did not have a waste issue. The question in the present case is whether there is commingling between different intervals which could potentially harm the nonunitized formations which would result in waste. Thus, the *Vastar* case does not apply in this situation and the Commission has the authority to shutin these wells if the evidence so warrants, due to waste.

6) The Referee believes the *Osborn* case is relevant in the present case. There were two private parties involved in the *Osborn* case, the operator of a unit and TXO. The operator produced only oil from the reservoir and used gas pressure to maximize oil recovery. TXO drilled a well offsetting the unit and the unit operator contended that TXO's well reduced reservoir pressure and diminished the quantity of oil that might be recovered from the reservoir. The operator asked the Commission to shutin the TXO well. The unit operator contended that waste could happen because TXO took advantage of pressure and movement of hydrocarbons in their well, which well was not subject to the terms of the unit. The Court of Appeals found that the Commission has jurisdiction to shutin that well. The Court of Appeals stated:

The state has the constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landowners. *Champlin Refining Company v. Corporation Commission*, 286 U.S. 210, 52 S.Ct. 599, 76 L.Ed. 1062 (1932)...The term "waste" as defined by statute in connection with the production of oil includes, in addition to its ordinary meaning, economic waste, underground waste, water encroachment in an oil and gas bearing strata, the use of reservoir energy for oil-producing purposes that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil, etc. And further, the production of oil in this state "in such manner and under such conditions, as to constitute waste...is hereby prohibited, and the Commission shall have the authority, and is charged with the duty, to

make...orders for the prevention of such waste..." 52 O.S. 1981 § 86.2. Another section deals with the subject of gas waste defining it as being, among other things, the inefficient utilization of gas from gas or oil wells in the operation of oil wells producing from a common source of supply and the production of gas in such quantities will unreasonably diminish the quantity of recoverable oil or gas. Such waste is "prohibited" and the Commission has authority to enforce the prohibition by order. 52 O.S. 1981 §§ 86.3, 236-38.

The Corporation Commission, therefore, once it finds that a well is causing waste and finds that a well would continue to do so as long as it is produced, has authority to either shut the well in or permanently limit its production to a nonwasteful level. Thus, the *Osborn* case is applicable in the present situation.

7) With respect to the Motion for the Production of Documents, the Referee would also affirm the ALJ's ruling. Short's requested information is directly relevant to the issues concerning the request to the Commission to shutin the wells. The information requested by Short is necessary for the resolution of the issues of this case before the Commission. The Referee would also recommend protective orders for any information deemed confidential.

8) For the above stated reasons the Referee recommends that the Report of the ALJ denying Trey's Motion to Dismiss and granting Short's Motion for Production of Documents should be affirmed.

RESPECTFULLY SUBMITTED THIS 21st day of July, 2015.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
Richard Grimes
John C. Moricoli, Jr.
Susan Conrad
ALJ David Leavitt

Michael L. Decker, OAP Director
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