

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
APR 29 2015

APPLICANT: WAGON WHEEL OPERATING,)
LLC)
)
RELIEF SOUGHT: POOLING) CAUSE CD NO.
) 201501647-T
LEGAL DESCRIPTION: SECTION 10, TOWNSHIP 12)
NORTH, RANGE 12 EAST,)
OKMULGEE COUNTY,)
OKLAHOMA)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF A MOTION FOR PRODUCTION OF DOCUMENTS**

This Motion came on for hearing before **Curtis Johnson**, Deputy Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 7th day of April, 2015, in the Commission's Courtroom, Robert S. Kerr Office Building, Tulsa, 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: **Michael D. Stack**, attorney, appeared for applicant, Wagon Wheel Operating, LLC ("Wagon Wheel"); **Ron M. Barnes** and **Grayson Barnes**, attorneys, appeared for Waterloo Exploration, LLC ("Waterloo"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Motion 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 20th day of April, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

Wagon Wheel requests that the Corporation Commission of Oklahoma enter an order, pursuant to OCC-OAC 165:5-11-1(b) requiring Waterloo to produce the following items pertaining to the Klimek #10-2H well: a. An Authority for Expenditure ("AFE") for the drilling, testing and completion of the Klimek #10-2H well. Wagon Wheel requests the AFE to be submitted within 72-hours of the order granting the Motion for Production of Documents.

On receipt of the AFE and Wagon Wheel's payment of proportionate total well cost, Wagon Wheel requests and shall receive the following timely documentation:

- a) If run, all pressure data, including, but not limited to, all pressure build-up and drawdown data (shut-in duration, pressure at time intervals, flow rate prior to shut-in), all static bottomhole pressure measurements, all flowing bottomhole pressure measurements (including gradient surveys), and all shut-in and flowing tubing pressure measurements and gradient surveys.
- b) If run, all porosity and permeability studies and reports.
- c) If run, mud logs, wireline logs, LWD logs, MWD logs, show reports, cased-hole logs, open-hole logs and geological reports with headings from surface through total depth and all repeat formation tests.
- d) If run, all cuttings and core data and routine or special core analyses studies or reports, including but not limited to, porosity, relative permeability, capillary pressure, and pore volume compressibility measurements.
- e) If run, all fluid and gas analyses, studies, or reports, including measured and data required to calculate fluid properties for oil, gas and water.
- f) If run, all completion data and records, including but not limited to, the displacement and orientation of each existing well casing data, perforation records, drill stem tests, wellbore diagrams, daily drilling and completion reports, directional surveys, stimulation or fracture treatment reports, or other well histories.
- g) All flowback reports and records of oil, gas, and water production from the initial completion of the Klimek #10-2H well.
- h) Daily Drilling Reports and Daily Completion and Testing Reports.
- i) If run, any documents that refer or relate to fractures or fracture systems, including, but not limited to, fracture length, fracture orientation.

- j) All data and documents that refer or relate to gravity tests, daily "shakeouts", API gravity reports, lease transfer tests, and Basic Sediment Water (BSW) tests.
- k) All additional test run but not defined above on the Klimek #10-2H well.
- l) All information requested by this Motion is to be received by Wagon Wheel on the same timely basis as received by Waterloo and in the same format as received by Waterloo (digital native format).

Wagon Wheel moves that Waterloo be required to furnish or make available the above described information to Wagon Wheel at such time as the Commission deems proper.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

- 1) **ALJ Curtis Johnson** stated he understands the plight of both sides. Waterloo wishes to keep the drilling report information private until a final pooling order is created whereby a party may then make an election and thus become a well participant. However, the ALJ believes this to be a peak and pool type situation, whereby Wagon Wheel wants to obtain the pressure data, the production, the permeability, well logs, wireline tests, the cuttings, any core samples, runs, all fluids, gas analysis, i.e. the daily drilling report. Wagon Wheel wants to get this information so they can know how to proceed with other purchases of property and drilling activity within this area.
- 2) The ALJ notes this cause is a request for a pooling order to be created for all parties to thereafter make their elections. The pooling order requested herein has yet to be granted.
- 3) The ALJ notes this is an unfair situation, to those parties to a pooling order who have made elections to receive such drilling report information, for Wagon Wheel to be allowed to see all the cards on the table prior to making a determination as to whether it wishes to make an election in this pending final pooling order. Waterloo rightfully wants to keep well information private until a party makes an election and becomes a participant in the well.
- 4) The ALJ notes the discovery rules require fair and open access for this hearing yet this is an application for a pooling, not for making an election under a final pooling order.
- 5) The ALJ notes pooling issues regard the interests of a party relating to the unit in question, and knowing the well costs upfront, so the party may determine whether it wishes to elect, based on the well cost estimate.

- 6) The ALJ notes that the AFE costs are only an estimate of well costs. Should a well be drilled, and run into unexpected hazards, any party would still be on line for the actual well costs even if not included in the AFE.
- 7) The ALJ notes in the present cause this well is being drilled and most of the well costs are already known, which is not the norm in most pooling applications.
- 8) The ALJ notes the pooling involves a party's amount of interest, who is going to be the operator and the fair market values.
- 9) The ALJ does not believe the productive capability information of a well that has already been drilled is proper evidence to be introduced in a pooling hearing.
- 10) The ALJ would deny the request of items a. through i. in Wagon Wheel's Motion for Production of Documents, as such is not pertinent to the granting of a pooling application. The ALJ believes such requests pertains to a party making an election under a pooling order, and we do not have a pooling order in place yet for Wagon Wheel to make an election.
- 11) The ALJ would recommend that requests for information concerning an AFE or the actual costs of drilling this well, be provided to Wagon Wheel.

POSITIONS OF THE PARTIES

WAGON WHEEL

1) **Michael D. Stack**, attorney, appearing for Wagon Wheel, notes to the Court the following background leading up to this filed Motion for Production of Documents. Wagon Wheel acquired 46 acres on March 5, 2015, after Waterloo had filed its spacing application on February 18, 2015. Wagon Wheel then sent notice on March 6, 2015 to Bearcat Land, requesting a similar letter agreement had in a nearby township which involved the same parties herein. Wagon Wheel sent another request on March 11th to Bearcat Land indicating their desire to participate in the Klimek #10-2H well, without any response. Wagon Wheel attempted numerous emails and phone calls to Bearcat Land in March, again with no response, requesting an AFE and well information. Waterloo filed an emergency application to commence the Klimek #10-2H well, which Wagon Wheel protested. The emergency application was granted. The ALJ stated that Wagon Wheel had other avenues available to them, one being a reverse pooling. Wagon Wheel then filed this pooling application on March 30, 2015. On April 1, 2015 Wagon Wheel then filed this Motion to Produce Documents.

- 2) Wagon Wheel notes there are 3 issues involved here: 1) There is no order in place for the Wagon Wheel to make an election; 2) It is not a fair situation to the operator Waterloo and to the other parties that are already a well participant to disclose this well information just so Wagon Wheel can see all the cards on the table; and 3) The items requested really don't pertain to the issue of pooling.
- 3) Wagon Wheel notes per Issue 1, this application is a reverse pooling, not a normal pooling.
- 4) Wagon Wheel notes the case of *Ward v. Corporation Commission*, 501 P.2d 503 (Okl. 1972).
- 5) Wagon Wheel asserts it has been refused the right to participate by Waterloo. Wagon Wheel notes that under section (f) of its pooling application it states "...this pooling has been filed in order to allow Wagon Wheel the right to participate in the...captioned unit."
- 6) Wagon Wheel does not dispute there are many issues in a pooling. Wagon Wheel disagrees with the ALJ's belief that Wagon Wheel is attempting to ride the well down in order to acquire the well information in advance of making a pooling election from a final order. Wagon Wheel is willing to participate in the Klimek #10-2H well and to pay its fair share of the well cost.
- 7) Wagon Wheel notes the Spacing application came before the pooling application. The question here is whether a well participant has to wait until a pooling order has issued prior to actual participation in a well. Wagon Wheel believes a pooling order does not have to issue where parties have agreed that the party has the right to participate. Wagon Wheel points out that Waterloo admitted in the record that Wagon Wheel was a well participant.
- 8) Wagon Wheel notes that Waterloo filed the Spacing application, which spaced Wagon Wheel into the Spacing unit. Wagon Wheel agrees that it was Waterloo's right to drill this well. Wagon Wheel notes that Waterloo has agreed to carry Wagon Wheel's interest. Wagon Wheel notes that even if Waterloo does carry Wagon Wheel's interest, Wagon Wheel will still be considered a well participant.
- 9) Wagon Wheel notes the Spacing Order states "The non-drilling oil and gas lessee and other owners in a spacing unit has the right to participate in the unit production as of the time the unit was established by the Commission upon their paying their share of the investment and operating expenses of the unit, and not as of the time of the order pooling the rights and equities."
- 10) Wagon Wheel merely wishes to participate in the Klimek #10-2H well by paying its fair share of the well costs. Wagon Wheel wishes to place

language in the proposed pooling order to stipulate that Wagon Wheel is a participant in the Klimek #10-2H unit well and that Wagon Wheel will pay its share of the well cost in order to obtain the well information. Wagon Wheel submits with this language in the pooling order this would do away with the need to have a pooling order created prior to being a well participant. Wagon Wheel asserts there does not need to be an actual pooling order in place to participate in a well where all parties have stipulated to this fact.

11) Wagon Wheel disagrees on Issue #2 with the ALJ and Waterloo that Wagon Wheel wants to pay its share of the well costs in advance for a peek and pool maneuver. Wagon Wheel just wants to pay its share of the well costs so it can obtain the well information. Wagon Wheel notes the operator, Waterloo, and the other parties are already well participants. Wagon Wheel is a well participant also, per being included by Waterloo in the Spacing unit.

12) Wagon Wheel notes in this filed Motion for Production of Documents that Wagon Wheel, upon receipt of the AFE, will pay its fair share of the well costs to Waterloo so Waterloo will send Wagon Wheel the well information. Wagon Wheel is aware that it will not receive this well information unless it pays its fair share of the well costs. Wagon Wheel, however, cannot pay the well costs until Waterloo sends Wagon Wheel an AFE.

13) Wagon Wheel put on a geologist who testified about the standard items a well participant normally requests from an operator.

14) Wagon Wheel notes in a prior cause, Waterloo's attorney had stated there was no reason for Wagon Wheel to be harmed here. Wagon Wheel disagrees. Wagon Wheel does not have the well information it needs in order to purchase offsetting leases in the area to take full advantage of the well information they do not have currently.

15) Wagon Wheel notes Wagon Wheel's witness believed the well information was important as it is needed to evaluate a reservoir to determine if such will be of benefit to Wagon Wheel. The Wagon Wheel witness went over time limits and various factors involved in a pooling.

16) Wagon Wheel disagrees with Waterloo's belief that Wagon Wheel is trying to gain an advantage over the other well participants. Wagon Wheel asserts it is only asking to be placed on the same playing field as the other well participants.

17) Wagon Wheel agrees on Issue #3 that in the majority of poolings, the well information isn't required as the well is not yet drilled. Wagon Wheel notes there are two differences in the current pooling application versus a normal pooling application. One, this well is already drilled. Two, Wagon Wheel is the applicant of this pooling application, not Waterloo.

18) Wagon Wheel agrees with the ALJ that the actual costs of the well need to be obtained. Wagon Wheel needs this well information to show as evidence at the merit hearing as to the cost of the well. Before Wagon Wheel can move forward on their pooling application, Wagon Wheel needs this requested well information.

19) Wagon Wheel notes the case of *W.L. Kirkman, Inc. v. Oklahoma Corp. Comm'n*, 676 P.2d 283 (Okl.Civ.App. 1983). The ALJ indicated only actual well costs are required. Wagon Wheel disagrees, as two other factors are needed besides well cost--it must be required and be reasonable.

20) Kirkman, supra, states at 285 "...First, the Commission must determine whether an actual expenditure was required to be made. Secondly, the Commission must examine that expenditure to determine whether it is in excess of what is reasonable."

21) Wagon Wheel asserts the well information is required and reasonable of the services done.

22) Wagon Wheel believes as an applicant, Wagon Wheel must present the well information/data at the time of the merit hearing. Wagon Wheel asserts Wagon Wheel is not asking for any free ride to look at this well information.

23) Wagon Wheel notes Waterloo may wonder if these materials are relevant. Wagon Wheel believes this well data as requested herein is relevant for a reversed pooling application.

24) Wagon Wheel notes that the word relevant means evidence having any tendency to make the existence of any fact that is of consequence to the determination action more probable or less probable than it would be without the evidence.

25) Wagon Wheel notes that the case of *Boswell v. Schultz*, 175 P.3d 390 (Okl. 2007) states: "The purpose of modern discovery practice and procedure is to promote the discovery of the true facts and circumstances of the controversy, rather than to aid in their concealment."

26) Wagon Wheel notes that Waterloo failed to put on evidence to support its claim that the well data is privileged. Wagon Wheel believes Waterloo is hiding this well data from Wagon Wheel. This is the reason why Wagon Wheel filed this Motion for Production of Documents so as to bring out everything in advance.

27) Wagon Wheel notes the case of *State ex rel. Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484 (Okl.Civ.App. 2007), the Court of

Appeals determined: "Civil trials no longer are to be conducted in the dark. Discovery, consistent with recognized privileges, provides for the parties to obtain the fullest possible knowledge of the issues and facts before trial."

28) Wagon Wheel, due to wanting this well data today, filed this Motion in order to avoid being ambushed at the future merit hearing.

29) Wagon Wheel notes the case of *Unit Rig and Equipment Company v. East*, 514 P.2d 396 (Okl. 1973) states: "Our discovery procedures are broad and, with certain limitations (see *Giles v. Doggett*, Okl., 500 P.2d 574, 516, and cases there cited), it is not necessary that questions be limited to those which would be admissible in court."

30) Wagon Wheel believes this well information could lead to admissible evidence.

31) Wagon Wheel notes OCC-OAC 165:5-11-1(b)(3) provides: "An order pursuant to this subsection may require production of any document not privileged." Wagon Wheel believes that Waterloo failed to put on evidence to show why such well information was privileged.

32) Wagon Wheel notes that 12 O.S. Section 3226, B, 1. a. provides: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

33) Wagon Wheel notes the case of *Scott v. Peterson*, 126 P.3d 1232 (Okl. 2005) which found that a party or witness who withholds information from discovery on the basis of a claim of privilege or protection of trial preparation materials, must make the claim expressly and describe the materials sufficiently to enable the other party to contest the claim.

34) Wagon Wheel notes there is no evidence in the record of any privilege that Wagon Wheel has requested herein.

35) Wagon Wheel believes the operator, Waterloo, has a fiduciary responsibility. Wagon Wheel notes that Waterloo filed the spacing and started the well yet Waterloo does not wish to provide Wagon Wheel with any well data that Wagon Wheel could use for their own benefit against Waterloo at the merit hearing.

36) Wagon Wheel states that a fiduciary duty is a legal duty to act solely in another party's interests. Parties owning this duty are called fiduciaries.

The individuals to whom they owe a duty are called the principals. Fiduciaries may not profit from their relationship with their principals unless they have the principals' express informed consent.

37) Fiduciaries also have a duty to avoid any conflicts of interest between themselves and their principals. A fiduciary duty is the strictest duty of care recognized by the US legal system.

38) Wagon Wheel notes the case of *Hebble v. Shell Western E&P, Inc.*, 238 P.3d 939 (Okla.Civ.App. 2010) states: "The fiduciary duty of the unit operator arises not only from the creation of field-wide units for secondary recovery under 52 O.S. 2001 §§ 287.1- 287.15, but also from the creation of drilling and spacing units under 52 O.S. Supp. 2007 § 87.1. E.g., *Leck*, 800 P.2d at 229. The critical factor is the resort to the police powers of the state on the part of a lessee in unitization proceedings which modify and amend existing legal rights...As to the Brittain Deese unit, this duty clearly arose from the Commission order creating the unit...Had Owners been parties to the JOA, we would not find a fiduciary duty..."

39) Wagon Wheel notes that Waterloo created the Spacing unit and thus acquired fiduciary duty as the operator, to Wagon Wheel the lessee. Wagon Wheel is not subject to a JOA here.

40) Wagon Wheel notes *Hebble*, supra, at 941, states: "...the Oklahoma Supreme Court has "recognized the existence of a fiduciary duty owed by a unit to the royalty owners and lessees who are parties to the unitization agreement or subject to the order creating the unit"...The unit organization with its operator stands in a position similar to that of a trustee for all who are interested in the oil production"...The fiduciary duty of the unit operator arises not only from the creation of field-wide units for secondary recovery...The critical factor is the resort to the police powers of the state on the part of a lessee in unitization proceedings which modify and amend existing legal rights."

41) Wagon Wheel notes the case of *Young v. West Edmond Hunton Lime Unit*, 275 P.2d 304 (Okla. 1954) states: "The unit organization with 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....In *Magruder v. Drury*, 235 U.S. 106, 120, 35 S.Ct. 77, 82, 59 L.Ed. 151, 156, it was said: "...It is a well-settled rule that a trustee can make no profit out of his trust. The rule in such cases springs from his duty to protect the interests of the estate, and not to permit his personal interest to in any wise conflict with his duty in that respect. The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity....In *Braun v. Hanson*, 9 Cir., 103

F.2d 685, 698, it was said: "...Among various duties of trustees, there is a general one described in 65 C.J. 652 § 520, as follows: "In administering the trust, the trustee must act for the beneficiaries, and not for himself in antagonism to the interests of the beneficiaries; he is prohibited from using the advantage of his position to gain any benefit for himself at the expense of the cestui que trustent..."

42) Wagon Wheel submits the situation is the same herein. Wagon Wheel submits that Waterloo cannot do things that are detrimental to its ward, Wagon Wheel.

43) Wagon Wheel submits it is a participant in the Klimek #10-2H well. Wagon Wheel only wants to pay its share of the well costs in order to obtain the well information it needs to avoid damage to Wagon Wheel.

44) Wagon Wheel notes that while Waterloo, the operator, may opt to carry Wagon Wheel's interest, Wagon Wheel still requests that Wagon Wheel be allowed to pay its share of the well costs for the right to obtain the well information.

45) Wagon Wheel requests the ALJ's ruling to be modified to allow Wagon Wheel to pay its share of the well costs, with Waterloo being required to furnish Wagon Wheel with the normal well information upon being a paid well participant.

WATERLOO

1) **Ron M. Barnes**, attorney, appearing for Waterloo, stated that Waterloo's position is that Wagon Wheel filed this reverse pooling to obtain the well information. Now Wagon Wheel is attempting to get this well information in advance through the filing of this Motion for Production of Documents to bypass the merit hearing.

2) Waterloo notes the ALJ appeared to sympathize with Wagon Wheel's being kicked out of the spacing application. Waterloo believes there is no case law to support providing this well information premature to an order that could be appealed down the road.

3) Waterloo notes the Commission has no jurisdiction over fiduciary duty. Waterloo notes the cases raised by Wagon Wheel are district court cases. Waterloo notes the case law supports the fact that fiduciary duty issue is a matter for district court, not a Corporation Commission hearing.

4) Waterloo notes the case of *Centurion Oil, Inc. V. Stephens Production Co.*, 857 P.2d 821 (Okl.Civ.App. 1993) involves a contempt case where an operator refused to provide well information after the order issued. This is not the case here. *Centurion* states: "...The pooling order does provide respondents who have elected to participate in the drilling of the well are entitled to participate in the development of the unit upon payment of their proportionate costs of the completed well."

5) Waterloo believes this case is about unit development. Waterloo notes that well information is normally requested to evaluate a certain unit for development purposes. Waterloo notes that Wagon Wheel's purpose for obtaining this well information is to evaluate Wagon Wheel's purchasing leases in the offsets and things of that nature, rather than to evaluate this unit for Wagon Wheel's development purposes.

6) Waterloo notes no other party is proposing additional development here in this unit.

7) Waterloo notes the crux of the Wagon Wheel's filed reverse pooling application is determining which documents must be given to Wagon Wheel for the merit hearing.

8) Waterloo believes if Wagon Wheel obtains all the well information it has requested, there would then be no need to have a merit hearing. Further, Waterloo thinks there would be no opportunity for either party to appeal, unless there is a final appealable Commission order.

9) Waterloo notes it will be carrying Wagon Wheel's interest in this unit, thereby placing Wagon Wheel in a pay status. Waterloo notes when this well becomes productive in paying quantities, Wagon Wheel will be paid by Waterloo, as though Wagon Wheel was a working interest owner without Wagon Wheel having to pay anything for it.

10) Waterloo notes it does have 99% of the unit compared to Wagon Wheel's approximately .5 acres. Waterloo points out that as the operator, Waterloo has the absolute right to drill here and to carry any party's interest. Waterloo further notes to drill a well one does not need to have all of the parties. Waterloo asserts it has the right to explore on its own.

11) Waterloo notes that Wagon Wheel wishes to pay their money for well information without dealing with a final order of the Commission that is not appealed determining what information Waterloo is required to give Wagon Wheel.

12) Waterloo notes that Wagon Wheel claims it needs this well information in order to determine what nearby leases to obtain to benefit

Wagon Wheel. Waterloo notes the purpose of a forced pooling unit is for the development of the unit, not for knowledge about what a party is going to do with nearby leases.

13) Waterloo notes that Wagon Wheel is requesting Waterloo to furnish Wagon Wheel information to prove up Wagon Wheel's application. Waterloo observes that the well information requested is not to assist Wagon Wheel in preparation for the merit hearing, rather to help obtain offsetting leases. Waterloo believes that if Wagon Wheel should get their desired well information via this Motion for Production of Documents, then Wagon Wheel's pooling application will no longer be needed.

14) Waterloo submits that Wagon Wheel is not being harmed here. Waterloo did not pool Wagon Wheel. Waterloo notes that Wagon Wheel is attempting to reverse pool themselves into the unit. Waterloo notes that even though Wagon Wheel had no problem with Waterloo's spacing application, Wagon Wheel still protested the spacing application.

15) Waterloo asserts that Waterloo has proprietary data which Waterloo has obtained through the drilling of multiple wells to gain its development strategy in the unit. Waterloo does not wish to provide Wagon Wheel with this proprietary data.

16) Waterloo notes there is no pooling order from which Wagon Wheel has the right to make elections from. Waterloo has chosen to carry Wagon Wheel's interest and to pay Wagon Wheel for their interest. Waterloo notes that Wagon Wheel will get paid, as if Wagon Wheel had paid its own money to Waterloo, until a final unappealed order determines otherwise.

17) Waterloo wants a final Commission order that can be appealed by either side, rather than proceed through a Motion which has no appeal.

18) Waterloo asserts a motion proceeding is the improper place to decide what Waterloo must produce for the hearing on the merits. Waterloo believes this Motion for Production of Documents is premature and such requests should be decided during the future merit hearing, which would create a final order that can be appealed to the Supreme Court.

19) Waterloo notes the AFE will provide Wagon Wheel the necessary information on well costs to determine if they wish to participate in the Klimek #10-2H well. Waterloo further notes at the time Wagon Wheel does make an election under the pooling order to be created from the merit hearing, that the parties, at that time, can argue about what will be included in the well information.

20) Waterloo believes the Commission's role is for the development of this particular spacing unit, not to assist a party who seeks the well information merely to help acquire nearby acreage in the surrounding unit in question.

21) Waterloo finds it unconscionable for Wagon Wheel, who owns about .5 acres of the unit to demand from Waterloo that Waterloo give Wagon Wheel all of the well information without a final Commission order that is appealable to the Supreme Court.

22) Waterloo requests the ALJ's decision to deny the well information, with the exception of the AFE, be affirmed.

RESPONSE OF WAGON WHEEL

1) Wagon Wheel notes that Waterloo is willing to furnish this privileged data at the future merit hearing. Wagon Wheel points out that Waterloo did not present any evidence to back up its supposed claim that any well information requests were proprietary.

2) Wagon Wheel notes the case of *Scott*, supra, found that a party or witness who withholds information from discovery on the basis of a claim of privilege or protection of trial preparation materials, must make the claim expressly and describe the materials sufficiently to enable the other party to contest the claim.

3) Wagon Wheel notes the Discovery Code, 12 O.S. Section 3226, B.1.a., states: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense.." and at 12 O.S. Section 3226, B, 5, a: "When a party withholds information otherwise discoverable...by claiming it is a privileged...the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced..."

4) Wagon Wheel owns the right to drill as a well participant. Wagon Wheel has an absolute right to participate herein.

5) Wagon Wheel disagrees with Waterloo that Wagon Wheel is not being harmed by the denial of the ALJ's request for this well information.

6) Wagon Wheel's witness put on uncontroverted evidence which Waterloo did not counter.

CONCLUSIONS

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

1) The Referee finds that the ALJ's recommendation to deny the documentation requested by Wagon Wheel in the Motion for Production of Documents a. through l., and the ALJ's recommendation to grant the Motion for Production of Documents with respect to the Authority For Expenditure for the drilling, testing and completion of the Klimek #10-2H well are in accordance with the weight of the evidence, prior interpretation of the Commission discovery rules and free of reversible error.

2) OCC-OAC 165:5-11-1(b) provides in relevant part:

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

3) The ALJ's ruling generally comports with the Commission's interpretation of said discovery rule. The Commission has always been reluctant and sought to protect an operator/Waterloo from divulging proprietary information, i.e. well logs, etc. concerning the Klimek #10-2H well, that Waterloo obtained as a result of taking the risk of drilling and completing a well and paying the associated costs therefore. The oil and gas business is unique and competitive with an operator's actions clouded in secrecy in order to gain a competitive advantage and development of a field.

4) In addition the Referee believes the data requested under the present motion for discovery is irrelevant at the present time before the merit hearing in the present cause/reverse pooling. Waterloo points out if they give them all of the information they requested now there's no reason to have a hearing and the information requested by Wagon Wheel is premature. There is no additional development in this unit that has been proposed by anyone and Wagon Wheel is not seeking the information because of wanting additional/further development in the unit. Wagon Wheel is claiming they want this information because they don't have the well information to evaluate buying leases in offsets. That is not what the purpose of a forced pooling is. It's for the

development of the unit, not for knowledge about what they are going to do with other leases in other places. It should also be pointed out Wagon Wheel's interest is being carried and when this well becomes productive and starts producing in paying quantities, Wagon Wheel will be paid as a working interest owner without having to pay any money upfront.

5) In the case of *Centurion Oil, Inc. v. Stephens Production Co.*, 857 P.2d 821 (Okl.Civ.App. 1993) the Court of Appeals stated:

...The pooling order does provide respondents who have elected to participate in the drilling of the well are entitled to participate in the development of the unit upon payment of their proportionate costs of the completed well.

* * *

...The Corporation Commission found Stephens' "participation" in the development of the unit had been denied because such information had been withheld from it. The Commission noted the inequity in construing the pooling order so that only Centurion could benefit from the well logs and other well information which has been paid for in part by Stephens. The contempt order directed Centurion to immediately turn over the requested information, and the Commission retained jurisdiction to order further relief if Centurion refused. Centurion refused and was subsequently removed as operator. The pooling order, as clarified by the subsequent dismissal order and contempt order, clearly required Centurion to furnish Stephens the requested information. These orders, when construed together, sufficiently apprise Centurion of the actions which the Commission directed it to take. Our review of the evidence indicates the contempt and removal orders are sustained by the law and supported by substantial evidence.

Development of a unit is the issue in a pooling case. Again, Wagon Wheel made the statement in its testimony that they needed this information to evaluate buying leases in offsets. As the *Centurion* case states, the parties who put up their money and participate in the unit are getting well information to evaluate the unit for development purposes, not acquiring leases in offset units.

6) As the ALJ stated, the requested documents relating to production are not necessary for a pooling application as none of these well data requests relate to ownership or fair market value or any issues that will be decided at the pooling merit hearing. There is no pooling order in place and the well data request may, after an order is in place, relate to making an election, but at this time there is nothing to elect in. The merit hearing is to determine the fair market value, who will be the operator and other issues therein. Once there is an order issued then well information is appropriate to provide to a party who wants to become a participant and make an election.

7) An AFE, which is the Authority for Expenditure, which is the estimate of the well cost or as it concerns the actual cost of drilling the well, the Referee agrees should be provided to Wagon Wheel. The Referee however agrees with the ALJ that as for the information regarding the pressure data, the production, the permeability, well logs, wireline tests, the cuttings, core samples, runs, all fluids, gas analysis, daily drilling reports, all this additional information requested basically pertains to a party making an election under a pooling order. There is no pooling order in place yet for the party to make an election.

RESPECTFULLY SUBMITTED THIS 29th day of April, 2015.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
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