

DECISION SHEET OF THE OIL AND GAS APPELLATE REFEREE

FILED
MAR 13 2015

<u>APPLICANT:</u>	CONCORDE RESOURCES CORPORATION)	COURT CLERK'S OFFICE - OKC
)	CORPORATION COMMISSION
)	OF OKLAHOMA
<u>RELIEF SOUGHT:</u>	VACATE ORDER NO. 548316)	CAUSE CD NO.
)	201500280-T
)	
<u>LEGAL DESCRIPTION:</u>	SECTION 12, TOWNSHIP 9)	
	NORTH, RANGE 15 EAST,)	
	MCINTOSH COUNTY,)	
	OKLAHOMA)	

ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S RULING ON 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 2nd day of February, 2015, in the Commission's Courtroom, Kerr 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** and **John B. Chandler**, attorneys, appeared for Redbud E&P Inc. ("Redbud"); **William H. Huffman**, attorney, appeared for movant, Concorde Resources Corporation ("Concorde"); 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 for Production of Documents 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 6th 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

Concorde requests an order requiring Mahalo Energy (USA), Inc. and its successor, Redbud, to produce for inspection and copying, at a pre-determined time and place, the documents listed below:

- (1) All operating agreements concerning the operations of the Conner #2H-12 well.
- (2) All daily drilling reports for the Conner #2H-12 well.
- (3) All title opinions on the Conner #2H-12 well, including any title take-offs or notes.
- (4) All drilling contracts for the Conner #2H-12 well.
- (5) All letter agreements, memorandums of understanding or other agreements with regard to the drilling and development of the Conner #2H-12 well.
- (6) All production data for the Conner #2H-12 well.
- (7) All revenue data for the Conner #2H-12 well, including all production sales of oil and gas.
- (8) All expenditures for the drilling and operation of the Conner #2H-12 well, including all invoices, receipts, purchase order or other evidencing the actual expenditures.
- (9) Records of all shut-in payments, including cancelled checks evidencing the same and list of parties paid.
- (10) All joint interest billings for the Conner #2H-12 well.
- (11) All correspondence, including but not limited to all letters, e-mails, facsimiles, electronic, digital or written correspondence, to working interest owners or other owners concerning the operations, recompletions, workover or other proposals for the Conner #2H-12 well.

(12) All exhibits you intend to present at the hearing on the merits.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) **ALJ Curtis Johnson** recommended granting Concorde's Motion for Production of Documents in part and denying said Motion in part.

2) While production in paying quantities is a requirement under a lease in District Court, the Commission rules, to the best of the ALJ's knowledge, have always found that production is all that is required. That determination limits some of the requests that were made by Concorde.

3) As far as the operating agreements, the ALJ agreed that those could be used to determine when operations were actually commenced, so the ALJ is going to grant Request #1.

4) As to the drilling reports, the ALJ did not really see how they pertain to the commencement of operations, because one would have to have the operations commenced far in advance of any drilling reports. It would not go to really show that there is production. The ALJ denied Request #2.

5) The ALJ also denied Request #3, because it is a title opinion, and that goes to ownership only. The ALJ did not believe that was an issue here.

6) As to all drilling contracts, the ALJ believed that obtaining a drilling rig and making contracts could assist in the determination as to the commencement of operations, so the ALJ granted Request #4.

7) As to Request #5, all letter agreements, memorandums of understanding or other agreements with regard to drilling and development of the Conner #2H-12 well, the ALJ thought that was overly broad. The ALJ is going to limit that request to commencement of the Conner #2-H12 well. Therefore, letter agreements, memorandums of understanding or other agreements regarding the commencement of the Conner #2-H12 well should be provided.

8) As to Request #6, all production data from the Conner #2H-12 well, the ALJ granted that request.

9) As to Request #7, all revenue data for the Conner #2H-12 well, "including all production sales of oil and gas", the ALJ denied that request. If Redbud is already providing Concorde with the production data, then the ALJ does not see how revenue data pertains to whether the well is producing or not. Production in paying quantities does not need to be established.

10) As to Request #8, all expenditures for the drilling and operation of the Conner #2H-12 well, including all invoices, receipts, purchases orders, or other

evidence of actual expenditures pertains to the production in paying quantities, and the ALJ denied that.

11) As to Request #9, records of all shut-in payments, including canceled checks evidencing the same and list of parties paid, Redbud mentioned that the well has not been shut-in. Redbud alleges that the Conner #2H-12 well has been producing the entire time. The ALJ thinks that would relate to the production of the well and the ALJ allowed that, if there are any records.

12) As to Request #10, all joint interest billings for the Conner #2H-12, the ALJ found that this request reflects expenses, and the ALJ denied that.

13) As to Request #11, all correspondence, including but not limited to all letters, e-mails, facsimiles, electronic, digital, or written correspondence, to working interest owners or other owners concerning the operations, re-completions, work-over, or other proposals for the Conner #2H-12 well, again, the ALJ thinks this is overly broad. The ALJ is going to limit it just to the commencement of operations, any correspondence regarding the commencement of the operations of the Conner #2H-12 well.

14) As to Request #12, all exhibits intended to be presented at the hearing on the merits, the ALJ agrees with Redbud, exhibits are usually provided for in the Pre-hearing Conference Agreement ("PHCA"), which usually sets out the days when those documents are to be transferred back and forth. Probably some of them haven't even been prepared at this time. The trial date is April 1, 2 and 3rd of 2015. The PHCA provides for exchange of documents nine days before the trial date. Since that is already provided for in the PHCA, the ALJ denied that at this time.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) The Referee would affirm the recommendations of the ALJ concerning the requested documents in Items #1 , #3, #4, #5, #6, #8, #9 , #10, #11, #12, on Exhibit "A" of the Motion for Production of Documents as being in accordance with the weight of the evidence, prior interpretations of the Commission's discovery rules and free of reversible error. The Referee would however reverse the recommendation of the ALJ concerning the requested documents in Items #2 and #7 on Exhibit "A" of the Motion for Production of Documents.

2) The Supreme Court in *Boswell v. Schultz*, 175 P.3d 390 (Okla. 2007), stated:

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 aide in their concealment.

3) The Oklahoma Court of Appeals determined in *State ex rel, Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484 (Okl.Civ.App. 2007):

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. *Rozier v. Ford Motor Company*, 573 F.2d 1332, 1346 (5th Cir. 1978). "The aim of these liberal discovery rules is to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent....

4) The Oklahoma Supreme Court has also stated in *Unit Rig and Equipment Company v. East*, 514 P.2d 396 (Okl. 1973):

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. *State ex. rel Westerheide, et al. v. Shilling, Judge*, 190 Okl. 305, 123 P.2d 674. Evidence which might lead to the disclosure of admissible evidence is discoverable. *Carman v. Fishel*, Okl., 418 P.2d 963.

5) OCC-OAC 165:5-11-1(b)(3) 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.

Generally, when the Commission's rules are not specific, the Commission's procedures for discovery matters follow the Oklahoma code of Civil Procedure 12 O.S. Section 3226. The general provisions covering discovery, provide in relevant part:

A.1 DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land

or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Except as provided in this section or unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL.

a. 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 parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. 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

In the case of *Boswell v. Schultz*, 175 P.3d 390 (Okl. 2007), the Supreme Court determined:

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.

In *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. *Rozier v. Ford Motor Company*, 573 F.2d 1332, 1346 (5th Cir. 1978). "The aim of these liberal discovery rules is to 'make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent..."

6) The Referee believes ALJ Johnson's ruling concerning Concorde's Motion for Production of Documents in the Concorde CD 201500280-T case is in conformance with the Commission's discovery rules and law listed above concerning Items #1, #3, #4, #5, #6, #8, #9, #10, #11 and #12. Therefore, the Referee would affirm the findings and recommendations concerning those items.

7) However, the Referee disagrees with the findings and recommendations of ALJ Johnson concerning Items #2 and #7. ALJ Johnson denied Concorde's request #2 for all daily drilling reports for the Conner #2H-12 well. ALJ Johnson states in his Oral Ruling:

The drilling reports, I don't really see how that pertains to the commencement of operations because you could have-you'll have the operations commenced far in advance of any drilling reports, and it won't go to really show that there's production. So I'm going to deny request number 2". (Transcript of proceedings February 2, 2015, page 4, lines 3-8)

8) One of the issues Concorde has in this proceeding is the commencement of the Conner #2H-12 well. The 1002A reflects that the well was commenced some several weeks after the pooling order expired. The Referee agrees with Concorde that the daily drilling report is essentially a history of the Conner #2H-12 well and is prepared and sent to all the parties that own an interest in the well. It reflects what activities are taking place with regard to the drilling and development of the well and also the costs that have been incurred in that particular well. The question of when they commenced operations, the building of location, etc. would be information included in the daily drilling report. The Referee believes therefore that the drilling reports would "constitute or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence." OCC-OAC 165:5-11-1(b)(3). See also *Boswell v. Schultz*, 175 P.3d 390 (Okl. 2007), supra, and *State ex rel, Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484 (Okl.Civ.App. 2007), supra.

9) The Referee would also recommend that Concorde's Item #7 request concerning revenue data for the Conner #2H-12 well, including all production sales of oil and gas, should be granted as being relevant to the subject matter of this cause because the revenues and expenditures are necessary for a well in this particular area because they can have all kinds of issues with regard to expenses. They can be high water producers which run the expenses up enormously, and therefore the well may look like it is producing well, but when you compare that to the expenditures, the well may be a very deficient well.

10) For the above stated reasons the Referee would recommend reversing ALJ Johnson's denial of Concorde's listed Item #7 concerning all revenue data for the Conner #2H-12 well, including all production sales of oil and gas. The

Referee believes that it is reasonable for Concorde to request to receive information about actual costs, production and revenue for the Conner #2H-12 well. Request #7 is in conformance with the Commission's discovery rules listed above also.

RESPECTFULLY SUBMITTED THIS 13th day of March, 2015.



PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
ALJ Curtis Johnson
William H. Huffman
Michael D. Stack
John B. Chandler
Michael L. Decker, OAP Director
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