

**FILED**

OCT 13 2015

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

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

<u>APPLICANT:</u>	MM RESOURCES, INC.	)	
		)	
<u>RELIEF SOUGHT:</u>	AMEND OR MODIFY POOLING ORDER NO. 387460	)	CAUSE CD NO. 201502976
		)	
<u>LEGAL DESCRIPTION:</u>	NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 3 WEST, GARFIELD COUNTY, OKLAHOMA	)	
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		)	
		)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE**

This Cause came on for hearing before **Andrew T. Dunn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 27<sup>th</sup> day of July, 2015, at 8:30 a.m. 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 the purpose of taking testimony and reporting to the Commission.

**APPEARANCES:** **Michael D. Stack**, attorney, appeared on behalf of applicant, MM Resources, Inc. ("MMR"); 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 29<sup>th</sup> day of July, 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 11<sup>th</sup> day of September, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

**STATEMENT OF THE CASE**

**MMR TAKES EXCEPTION** to the recommendation of the ALJ to deny Cause CD No. 201502976.

MMR seeks to amend and/or modify pooling Order No. 387460 to add these additional formations not originally pooled: Ft. Riley, Hoy, Hotson, Red Eagle, Campbell, Crews, Garber, Burlingame, Covington, Hoover, Elgin, and Lovell common sources of supply. MMR requests that the parties included in pooling Order No. 387460, and their heirs/assigns, be deemed to have accepted, in this cause, the royalty amount elected/received in pooling Order No. 387460.

MMR seeks to amend and/or modify pooling Order No. 387460, which became effective October 1994, pooling the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox, and Arbuckle formations (the deep zones). Under this order, the Gregg #1-30 well was drilled and completed in those common sources of supply.

MMR seeks to comingle all these zones in the Gregg #1-30 well in these newly pooled formations.

The Cause CD 201502975 was heard and recommended on July 27, 2015, which cause established 160-acre dewatering drilling and spacing units for the Fort Riley, Hoy, Hotson, Red Eagle, Campbell, Crews, Garber, Burlingame, Covington, Hoover, Elgin, and Lovell formations in the lands subject to this cause.

Order No. 377841 established conventional drilling and spacing units for the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox, and Arbuckle formations.

**MMR TAKES THE POSITION:**

1) The Report of the ALJ is contrary to law, contrary to the evidence, is arbitrary, unreasonable and discriminatory and fails to effect the ends of the prevention of waste and the protection of correlative rights of minerals owners in the NW/4 of Section 30, T22N, R3W, Garfield County, Oklahoma.

2) Pursuant to Cause CD No. 940003656, resulting in the issuance of pooling Order No. 387460, dated October 27, 1994, the Commission granted K Stewart Petroleum Corporation and MMR the right to drill a well to the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox and Arbuckle common sources of supply underlying the NW/4 of Section 30, T22N, R3W, Garfield County, Oklahoma. MMR, the designated operator, timely commenced operations for the drilling of the Gregg #1-30 well. The well is a vertical well in the Wilcox interval. Since no respondents elected to participate, MMR acquired their interest in the above common sources of supply. MMR now wants to move uphole in the existing well and commingle the production from the existing well

with the Burlingame, Campbell, Covington, Crews, Elgin, Ft Riley, Garber, Hoover, Hotson, Hoy, Lovell and Red Eagle common sources of supply, which were recommended on 160 acre drilling and spacing units in Cause CD No. 201502975. The MMR witness testified the uphole formations are secondary intervals, but if produced, would require commingling with the deeper formations pooled in Order No. 387460. Therefore, the wells production must be commingled or the uphole zones will not be produced, causing waste and not protecting the correlative rights of owners. To allow for the commingling of the production from the well, MMR requested pooling Order No. 387460 be amended by including the uphole common sources of supply and the respondents or their assigns in pooling Order No. 387460 retain their same royalty interest in the well.

No respondent appeared at the hearing on the merits and objected to the relief requested. In fact, the expert land witness testified no respondent had voiced any objection to the relief requested in the MMR application filed in this cause or the proposal letter [see Exhibit 1]. The granting of this application would be the only viable option to producing uphole common sources of supply. To deny the application, denies the respondents from receiving a bonus consideration and royalty production from the existing well and any additional wells to be drilled pursuant to the amended pooling order.

4) The ALJ erred in not finding that the "present day" fair market value of an owner's interest in the NW/4 of Section 30 would be a total of \$150 per acre with a 3/16<sup>th</sup> royalty or no cash and 1/4<sup>th</sup> royalty. The witness, qualified as an expert Landman with over 30-years of experience, testified that there was no activity in this particular area and that the last leases he could find were for \$150 an acre with a 3/16<sup>th</sup> royalty. The original bonus provided in Order No. 387460 was \$75 an acre with a 3/16<sup>th</sup> royalty or no cash and 1/4<sup>th</sup> royalty for the deeper zones. The witness testified that he recommended \$75 an acre with a 3/16<sup>th</sup> royalty or no cash and 1/4<sup>th</sup> royalty be offered in this modification for the uphole zones. This combined with the bonus provided in the original order would result in a total bonus consideration of \$150 per acre with 3/16<sup>th</sup> royalty and no cash and 1/4<sup>th</sup> royalty for all zones. This would result in a bonus consideration which would be reflective of the "present day" fair market value. Again, no respondent objected to the fair market value recommended by MMR.

5) The ALJ failed to understand the requirements of the commingling of production from one well. The witness testified the existing well and any additional wells can not be dual completed but the formations would require commingling. In order to commingle production, the royalty ownership in the common sources of supply must be uniform. If the royalty ownership was not uniform, then the production from the well cannot be commingled, causing waste and not protecting the mineral owners in the drilling and spacing unit.

The witness testified that a letter was sent to all the pooled parties which provided as follows:

"For those parties who were pooled in Order #387460, your election under the original pooling shall remain the same. For those that elected the 3/16th royalty and bonus consideration of \$75.00 per acre, you shall receive an additional bonus of \$75.00 per acre, for the addition of the up-hole zones. This bonus consideration when combined with the original bonus of \$75.00 give you an adjusted bonus of \$150.00 per acre which is compatible with bonus currently being paid in the area. For those parties who elected the 1/4th royalty, no bonus will be paid however, your royalty shall remain the same."

The witness stated that he had not received any protest or objection to the amount being offered in this modification of pooling Order No. 387460.

6) The Commission is charged with the prevention of waste and the protection of the correlative rights of minerals owners. The Report of the ALJ fails in the above two areas.

First, by denying the modification of pooling Order No. 387460, the ALJ has failed to prevent waste. The witness testified that MM Energy (operator of MMR) proposes to add the uphole zones and commingle the production with the deeper zones. In order to be able to commingle the zones the ownership of the working interests and the royalty ownership must be uniform. The witness testified that MM Energy would not drill a well just for the uphole zones. It would not be economically feasible. Therefore, the action of the ALJ in denying the modification of pooling Order No. 387460, has in effect constituted a "taking of the property of the mineral owners and working interest owners"--the very thing the ALJ seems most concerned about. The ALJ's action results in the probability that the uphole zones will not be developed, which will result in waste not only to the mineral owners, working interest owners, the overriding royalty owners but also to the State of Oklahoma because of the loss in the revenues from the production of the well. Contrary to the Report of the ALJ, MMR has proposed to pay respondents a fair and reasonable compensation for the right to recompleate the existing well in the uphole zones. If production is obtained by the recompleation, the respondents will be paid their share in the production from the well without paying any part of the costs of the recompleation.

Second, the action of the ALJ in denying the modification of pooling Order No. 387460 results in the failure of the ALJ and the Commission to protect the

correlative rights of the mineral owners, working interest owners and the State of Oklahoma.

The Court in *Layton v. Pan American Petroleum Corporation* 383 P.2d 624 (Okla. 1963) states:

"The distribution of unit production among the owners of oil and gas leasehold estates and other owners in the unit, established under § 87.1, et seq, is doing what we sanctioned in *Patterson v. Stanolind Oil & Gas Co.*, 182 Okl. 155, 77 P.2d 83, Appeal Dismissed 305 U.S. 376, 59 S.Ct. 259, L.Ed. 231, when we said:

"Thus, in our opinion, it is well established that the police power of the state extends to protecting the correlative rights of owners in a common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells into said common source of supply and distributing the production thereof among the owners of mineral rights in land overlying said common source of supply."

None of the cases cited by the ALJ requires that respondents be given the right to participate in the drilling of a well. The cases state that the pooling application must be based on facts that would be just and reasonable in each case and that the parties will share in the production from the well. In fact, no respondent objected to limiting their rights to accepting the same royalty provisions in pooling Order No. 387460. The respondents understood the need for uniform ownership, even though the ALJ obviously did not understand the concept of commingling and uniform ownership.

Thus the Commission has jurisdiction to grant the request of MMR in this cause. MMR in this cause proposes to recomplete an existing well in some uphole zones. In order to be able to recomplete the uphole zones, the zones must be commingled and in order to commingle production, the ownership must be uniform. By denying the application the ALJ has failed to protect the mineral owners, working interest owners in this drilling and spacing unit.

**THE ALJ FOUND:**

1) The ALJ concludes the following concerning MMR's application seeking to Amend and/or Modify Pooling Order 387460.

2) In this case, MMR requests that the Commission approve amending and/or modifying pooling Order 387460 to include the Fort Riley, Hoy, Hotson, Red Eagle, Campbell, Crews, Garber, Burlingame, Covington, Hoover, Elgin, and Lovell formations (up-hole zones) where the original order only pooled the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox, and Arbuckle formations (deep zones).

3) In this case, MMR requests that the options for this amendment be the following for owners in these common sources of supply sought to be added to the original pooling. For the up-hole zones, MMR requested the following options should be: \$75 and 3/16<sup>th</sup>; zero and 1/4<sup>th</sup>; no option to participate; and MMR requested that the amendment deem parties to the same elections made under the original pooling Order No. 387460 in October 1994.

4) The ALJ determined the following;

i) The cash bonus and royalty options were testified to at hearing as being based on the original pooling order from October 1994. It was testified to at hearing that the original bonus-royalty paid in 1994 (\$75 and 3/16<sup>th</sup>) when added to the bonus royalty offered in this cause (\$75 and 3/16<sup>th</sup>) equals fair market value for all the formations based on a study of lease transactions in the area. Based on the demeanor and testimony of the witness, the ALJ determined an assessment of lease values in the area had not been thoroughly conducted by the witness by the time of hearing. Therefore, the ALJ determines that the cash and bonus offered were based more so on the terms of the original order from October 1994 than on any current assessment of fair market value deriving from the highest-and-best bonus-royalty lease transactions in the area. It is the determination of the ALJ that options sought under a pooling order must provide the owner with just compensation and that values taken from a pooling order 20 years prior do not provide a current assessment of fair market value for the common sources of supply at issue in this cause.

ii. Cause CD No. 201502975 (to issue) establishes 160 acre dewatering drilling and spacing units for the up-hole zones. Cause CD No. 201502976 seeks to Amend and/or Modify pooling Order No. 387460 to add these up-hole zones. MMR requested that no option to participate be offered under this amendment because production from all of the zones will be commingled. MMR also requested that the amendment deem parties to the same elections made under the original pooling in October 1994 (i.e., parties are deemed to have selected the option with the same royalty amount as they elected in 1994 when the original pooling was completed). MMR contended that difficulties in accounting for production formed the basis for this request

and that, in order to make development economical, this form of relief is necessary.

iii. It is the determination of the ALJ that just and reasonable terms must be offered in a forced pooling or in an amendment or modification to a prior pooling order where additional formations are to be incorporated as it is a taking of property. MMR seeks to add up-hole zones to pooling Order No. 387460, of which up-hole zones Cause CD No. 201502975 (to issue) will space. To permit such an addition of these formations without providing proper election options or procedure, including just and reasonable terms along with procedure for electing either to participate or for bonus-royalty options, would effect a taking.

iv. Deeming parties to select the same bonus-royalty amount as compensation for the requested addition of their up-hole zones as they were paid for their deep zone rights in a pooling 20 years prior while refusing to offer the option to participate in the well is not fair or reasonable to form the basis of just compensation. Owners must be afforded just and reasonable terms and conditions. Owners must be provided an opportunity to participate in a well or in the royalty produced therefrom that is unitized under an established drilling and spacing unit. This is because under the modern spacing statute only one well may be drilled and produced from a common source of supply per drilling and spacing unit unless the Commission determines another well (increased density well) is reasonably necessary to effectively and efficiently drain the formation in the unit. 52 O.S. Section 87.1(c) and *Layton v. Pan American Petroleum Corporation*, 383 P.2d 624 (Okl. 1963). All of the owners in a unit must be given a chance to participate in the drilling of the 'single' well or in the royalty produced therefrom and, if that opportunity is not provided, the spacing order will constitute a taking of property without due process. *Ward v. Corporation Comm'n*, 501 P.2d 503, 507 (Okl. 1972). A government mandate to relinquish specific, identifiable property as 'condition' on permission to engage in commerce is a per se taking. *Home v. Dep't of Agriculture* 576 U.S. \_\_\_\_ (2015). Therefore, proper election options must be offered, including the option to elect to participate or to elect from bonus-royalty options based on lease transactions in the area, for owners in the up-hole zones sought to be pooled in this Amending and/or Modifying cause for relief.

v. It is the determination of the ALJ that this "amendment" to pooling Order No. 387460 effectively constitutes a taking of property without just and reasonable compensation and it is the ALJs recommendation that Cause CD No. 201502976 be denied.

### **POSITIONS OF THE PARTIES**

**MMR**

- 1) **Michael D. Stack**, attorney, appearing on behalf of MMR, notes this case is unprotested and unopposed by the respondents. In 1992 the Gregg #1-30 well was drilled to the pooled deep zones (the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox and Arbuckle formations), with the shallow/uphole zones (the Fort Riley, Hoy, Hotson, Red Eagle, Campbell, Crews, Garber, Burlingame, Covington, Hoover, Elgin and Lovell formations) still unperspective at that time. See Order No. 387460. This Greg #1-30 well is still producing. MMR notes the primary deep zone was the Wilcox. None of the parties elected to participate. Currently, MMR owns all of the deep zone rights.
- 2) MMR believes that commingling is the key issue in this cause. MMR wishes to produce these shallow zones along with the deep zones. MMR notes there is no way mechanically to tell which zones the production would come from. MMR realizes there are different ownerships in the shallow/deep zones. MMR also desires to drill additional wells here.
- 3) MMR notes Exhibit 1 is the proposal letter sent out to respondents, requesting to amend the pooling Order No. 387460 to add the shallow zones with a \$75 bonus, thus making these zones subject to the same terms and conditions and compatible with the current area bonuses being paid. MMR wants production from all of the shallow zones for its respondents. MMR will not drill a well for only the shallow zones. MMR notes no one wishes to leave these zones behind pipe, as such would be considered waste and not protect the correlative rights of the respondents. Thus, MMR believes that commingling is the only proper way to produce the shallow zones.
- 4) MMR believes the respondents need to keep the same royalty. MMR asserts the bonus amount is not the same as royalty. MMR notes no interest was shown initially in the secondary shallow zones due to their unknown natures.
- 5) The ALJ believed the Commission lacked jurisdiction to not allow the parties here the right to participate. Further, the ALJ asserted the bonus amount of \$75 was insufficient. MMR submits for this project to be economically feasible that one needs to use the same producing facilities and the same royalty.
- 6) MMR wonders if one can commingle zones involving different royalty ownership. MMR believes without commingling here, one would need to drill separate wells to the shallow zones and drill another well to the deeper zones under the shallow zones, which MMR interprets to be waste.

7) MMR notes in this nine section there has been no transactions due to it all being held by production. MMR believes that \$150 is the average now being paid in the general area. MMR notes the original pooling Order No. 387460 had a \$75 bonus amount. Here, MMR seeks to add \$75 more for the incorporation of the shallow zones to this pooling order.

8) MMR believes the bonus amount is immaterial here. MMR asked if \$150 total would be a reasonable amount for both shallow/deep zones. MMR notes no higher values have been paid in the area.

9) The ALJ stressed there was no study that indicated that \$75 was fair market value. MMR however concurs that a study requires data to be available, which is lacking here. MMR believes the ALJ went outside the nine section area in his review of the fair market value. MMR believes the royalty is the main concern here, not the bonus amount. MMR disagrees with the ALJ's finding that the Commission lacks jurisdiction.

10) The ALJ referenced the case of *Ward v. Corporation Commission*, 501 P.2d 503 (Okla. 1972).

11) MMR believes the Commission has the jurisdiction to make a ruling on MMR's application to amend pooling Order No. 387460 to include the shallow zones. MMR believes when a pooling order is being requested to be amended for additional zones, whether such parties must always have the right to participate, should be based upon the facts of that particular cause.

12) MMR is attempting to be fair and equitable should these shallow zones be productive.

13) The ALJ Report found on page 6 "All of the owners in a unit must be given a chance to participate in the drilling of the 'single' well or in the royalty produced therefrom and, if that opportunity is not provided, the spacing order will constitute a taking of property without due process...Therefore, proper election options must be offered, including the option to elect to participate or to elect from bonus-royalty options based on lease transactions in the area, for owners in the up-hole zones sought to be pooled in this Amending and/or Modifying cause for relief." MMR disagrees with the ALJ's finding here.

14) MMR believes leaving the shallow zone hydrocarbons in the ground will not protect the correlative rights.

15) 17 O.S. Section 52, (A)(1)(c), provides that "the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to...the exploration, drilling, development, producing or processing for oil and gas on the lease site."

16) 52 O.S. Section 112 provides: "Any person affected by...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..."

17) MMR notes a change of conditions was never an issue here. MMR points out MMR's request is to amend a prior pooling order, rather than create a new pooling order. MMR seeks only to add in the shallow zones.

18) MMR notes the case of *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okl. 1985) indicates in the case of *Cabot Carbon Co. v. Phillips Petroleum Co.*, 287 P.2d 675 (Okl. 1955) that "we specifically recognized the power of the Commission to clarify its previous orders under the authority of 52 O.S. 1951 § 112. In making this ruling we distinguish between the power granted to clarify, or "supplement", previous orders, the exercise of which does not effect a change in the prior order or in the rights accrued under that order, and the powers granted to repeal, amend or modify a previous order. The power to effect a change in a previous order, we have held, requires a showing before the Commission of a change in conditions or knowledge of conditions necessitating the repeal, amendment or modification...." MMR believes it has met such requirements.

19) MMR notes the case of *Amoco Production Co. v. Corporation Com'n of State of Okl.*, 751 P.2d 203 (Ok.Civ.App. 1986)(approved for publication by the Supreme Court) provides "The Corporation Commission's authority is derived from the police power of the state. "[T]he police power of the state extends to protecting of the correlative rights of owners in a common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells...and distributing the production thereof among the owners...." MMR states it is not logical to deny an application where all of the respondents are in agreement to protecting correlative rights.

20) *Amoco*, supra, at 207, also states "...Substantive Due Process of Law...is the general requirement that all government actions have a fair and reasonable impact on the life, liberty or property of the person affected. Government actions which attempt to work an arbitrary forfeiture of property rights are unconstitutional as violations of due process." MMR submits, if such was done here, it was the ALJ's denial that took such away, i.e. MMR's rights to attempt to complete in these zones.

21) MMR notes the meaning of arbitrary, a judicial decision founded on prejudice or preference rather than on reason or fact. MMR notes the definition of due process, a fundamental constitutional guarantee that all legal proceedings will be fair, and that one will be given notice of the proceedings, and an opportunity to be heard before the government acts to take away one's

life, liberty or property. MMR believes due process was had here yet the ALJ's decision did not give MMR due process.

22) MMR notes the case of *C.F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okl. 1980) provides the appellee was authorized to include in his pooling application all 13...in effect, treated the entire 13 separate common sources of supply or 13 spacing units as a single unit. MMR believes in the instant cause this is a great example of one zone here, since one cannot develop the shallow and deep zones separately.

23) *C.R. Braun*, supra, at 1271, provides further that "Our statutes do not limit the number of separate spacing units that can be included in a pooling application or proceeding. However, whether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit as argued by appellant depends upon the facts and circumstances in each pooling proceeding." MMR believes one must look at the facts of each case before one decides.

24) MMR notes the Commission has jurisdiction here to make a decision, contrary to what the ALJ found.

25) *C.R. Braun*, supra, at 1271, also says "The singular is used in our statutes when they speak to a pooling order, but this may not be construed to mean that in a pooling proceeding involving multiple common sources of supply or spacing units underlying the same tract that an owner is necessarily entitled to an election as to each separate unit. The pooling order should be responsive to the application and evidence." MMR believes the above is directly on point.

26) MMR notes the case of *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83 (Okl. 1938) provides "Thus, in our opinion, it is well established that the police power of the state extends to protecting the correlative rights of owners in the common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells into said common source of supply and distributing the production thereof among the owners of mineral rights in land overlying said common source of supply..."

27) MMR points out recent Commission orders involving identical issues have been processed this year. One is an application of Devon for an order amending Order No. 627766 in CD 201501384, resulting in creation of Order No. 643015, heard before ALJ Leavitt on June 3, 2015. During the drilling a portion of the wellbore encountered the top four feet of the Misener's 600 feet. The Applicant had requested to amend the pooling order by incorporating the Misener into the relief, with all other terms and provisions to remain in full force and effect. Under the "order" portion the respondents listed on Exhibit

"A" shall be deemed to have elected the same royalty as they elected or were deemed to have elected in the initial well without getting the right to participate.

28) MMR notes this type case has been before at least three previous ALJS with the Commissioners signing off on the proposed order.

29) Devon had to commingle the Misener with the other zones without giving the parties the right to participate.

30) MMR notes in all the previous causes there was never an issue or question regarding jurisdiction of the requested relief.

31) MMR notes another similar order, the Strat Land order, in CD 201503127, resulting in creation of Order No. 644339, which involved a new pooling whereby a Chester well was pooled, with the lease expiring as to all but the Chester zone. After producing for approximately eight years, it was desired to commingle the shallow Morrow zone, as without such step, the operator would not be able to complete the Morrow, resulting in loss of revenues to all parties, including the State of Oklahoma.

32) MMR believes these other causes are similar to the instant cause, in that in order to commingle the formations, all the interest needs to be uniform. MMR notes that it did not bring up these other cases due to having no idea the ALJ was going to deny MMR's request to amend the original pooling Order No. 387460.

33) MMR believes one cannot do this without use of the same royalty. None of MMR's respondents objected to their proposal letter. MMR's respondents understood that in order to have any production from the shallow zones, the same royalty must be had.

34) MMR believes the ALJ's decision results in waste and lack of protection of correlative rights. MMR asserts it is uneconomic to drill to the shallow zones only.

35) MMR notes regardless of any production had in the shallow zones, this relief gives every party the right to produce something. MMR would respectively request that the ALJ's Report be reversed and MMR's application granted as it has requested.

### **CONCLUSIONS**

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

1) This case is unprotested and unopposed by the respondents. The Gregg #1-30 well was drilled to the pooled deep zones (the Endicott, Tonkawa, True Layton, Big Lime, Oswego, Skinner, Red Fork, Bartlesville, Viola, First Wilcox, Second Wilcox, and Arbuckle formations), with the shallow/uphole zones (the Fort Riley, Hoy, Hotson, Red Eagle, Campbell, Crews, Garber, Burlingame, Covington, Hoover, Elgin, and Lovell formations) still unperspective at that time. Order No. 387460 was issued and the Gregg #1-30 well is still producing in the primary deep Wilcox zone. None of the respondents elected to participate and currently MMR owns all of the deep zone rights. MMR wants to produce these shallow zones along with the deep zones and notes that there is no way mechanically to tell which zones the production would come from. MMR realizes there are different ownerships in the shallow/deep zones, but to allow for the commingling of the production from the well, MMR submits that in order for this project to be economically feasible the same producing facilities concerning the Gregg #1-30 well must be utilized and the same royalty interest in the well.

2) No respondent appeared at the hearing on the merits and objected to the relief requested. Exhibit 1, which is the proposal letter sent out to all respondents requesting to amend the pooling Order No. 387460 to add the shallow zones with an additional \$75 bonus, was not objected to by any respondent. The granting of this application would be the only viable option to producing uphole common sources of supply. MMR's proposed fair market value for an owner's interest in the NW/4 of Section 30 would be a total of \$150 per acre with a 3/16<sup>th</sup> royalty or no cash and a 1/4<sup>th</sup> royalty. The Referee has read the transcript of the proceedings held before the ALJ on July 27, 2015. There was no activity in this particular area and the last leases the MMR witness could find were for \$150 an acre with a 3/16<sup>th</sup> royalty. The original bonus provided in Order No. 387460 was \$75 an acre with a 3/16<sup>th</sup> royalty or no cash and 1/4<sup>th</sup> royalty for the deeper zones. The testimony reflected that \$75 an acre with a 3/16<sup>th</sup> royalty or no cash and a 1/4<sup>th</sup> royalty was offered in this modification for the uphole zones and combined with the bonus provided in the original order would result in total bonus consideration of \$150 per acre with 3/16<sup>th</sup> royalty and no cash and 1/4<sup>th</sup> royalty for all zones. Testimony reflected that MMR had not received any protest or objection to the amount being offered in this modification of pooling Order No. 387460. The testimony also reflected that MMR could not commingle all of these zones if they had different royalty ownership.

3) The testimony of the landman witness Charles Porta for MMR reflects on page 12 of the Transcript of proceedings on July 27, 2015, line 5 through line 25 and on page 13, line 1 through line 12:

THE COURT: Have you looked at any leases in the area for these values?

WITNESS PORTA: Yes.

THE COURT: In the last year?

WITNESS PORTA: Yes.

THE COURT: What have you learned?

WITNESS PORTA: They're paying about the same, \$150 to -- some of them are a little bit more. But MM operates wells surrounding this section, and so really nothing has been done in a nine-section area.

Q (By Mr. Stack) But 150 would be a reasonable for all zones?

A Yes.

Q And you've already paid 75 for part of it. Adding 75, so you're going to be paying the total --

A Yes.

Q -- of \$150?

A. Yes.

THE COURT: Are these the highest and best values? Have you seen any higher values offered?

WITNESS PORTA: No.

WITNESS PORTA: We really haven't seen any values offered.

MR. STACK: It's just kind of a -- Your Honor, I'm thinking back on the spacing. It's a pretty old area, back in the '20s, and then the well drilled in 1994 and other wells drilled a number of years back.

THE COURT: All right.

Q. (By Mr. Stack) When you sent the letter, you told people what you were going to pay. Did anyone have any objection to that amount?

A. No, sir.

The Referee believes that the landman's determination of fair market value based upon the evidence presented is supported by the weight of the evidence and free of reversible error.

4) 17 O.S. Section 52 A-1. States:

A.1. Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to:

a. the conservation of oil and gas,

\* \* \*

c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,

5) 52 O.S. Section 112 provides:

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.

6) In *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okl. 1985) the Court states:

In the case of *Cabot Carbon Co. v. Phillips Petroleum Co.*, we specifically recognized the power of the Commission to clarify its previous orders under the authority of 52 O.S. 1951 § 112. In making this ruling we distinguished between the power granted to clarify, or "supplement," previous orders, the exercise of which does not effect a change in the prior order or in the rights accrued under that order, and the powers granted to repeal, amend or modify a previous order. The power to effect a change in a previous order, we

have held, requires a showing before the Commission of a change in conditions or knowledge of conditions necessitating the repeal, amendment or modification. Failure to make such a showing renders an attempt to modify a prior order subject to the prohibition on collateral attacks set forth by the Legislature in 52 O.S. 1981 § 111. (footnotes omitted)

MMR has definitely shown a change of condition. They have drilled the well and determined there were uphole zones that could be commingled and produced and they have now spaced the uphole zones on a 160 acre drilling and spacing unit in Cause CD 201502975.

7) The Oklahoma Court of Civil Appeals stated in *Amoco Production Co. v. Corporation Com'n of State of Okl.*, 751 P.2d 203 (Okl.Civ.App. 1986)(Approved for publication by the Supreme Court):

The Corporation Commission's authority is derived from the police power of the state. "[T]he police power of the state extends to protecting of the correlative rights of owners in a common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells...and distributing the production thereof among the owners...." "All property is held subject to the valid exercise of the police power." But, Due Process of Law is a limitation upon the exercise of the police power. "...Substantive Due Process of Law...is the general requirement that all government actions have a fair and reasonable impact on the life, liberty or property of the person affected." Government actions which attempt to work an arbitrary forfeiture of property rights are unconstitutional as violations of due process. (footnotes omitted)

MMR advised all respondents through Exhibit 1 of their application and none of the respondents objected to these proceedings.

8) In the case of *C.F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okl. 1980), the Supreme Court states:

Our statutes do not limit the number of separate spacing units that can be included in a pooling application or proceeding. However, whether a pooled

owner is entitled to an election as to each common source of supply or each separate spacing unit as argued by appellant depends upon the facts and circumstances in each pooling proceeding.

The singular is used in our statutes when they speak to a pooling order, but this may not be construed to mean that in a pooling proceeding involving multiple common sources of supply or spacing units underlying the same tract that an owner is necessarily entitled to an election as to each separate unit. The pooling order should be responsive to the application and evidence.

In the present case all of the zones, the lower and the upper zones, must be considered as an aggregate, as one zone. They must be considered as one zone as they must be commingled and cannot be developed separately. In order to be able to commingle the zones, the ownership of the working interest and the royalty ownership must be uniform. The Referee agrees with MMR that the ALJ's Report results in the probability that the uphole zones will not be developed which will result in waste to the mineral owners, working interest owners, the overriding royalty owners and also the State of Oklahoma because of the loss in the revenues from the production of the well.

9) The Supreme Court in *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83 (Okl. 1938) stated:

Thus, in our opinion, it is well established that the police power of the state extends to protecting the correlative rights of owners in a common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells into said common source of supply and distributing the production thereof among the owners of mineral rights in land overlying said common source of supply.

By denying the modification of the pooling Order No. 387460 correlative rights of the mineral owners, working interest owners and the State of Oklahoma are not protected. The above listed cases do not state that respondents must be given the right to participate in the drilling of a well but state that the pooling application must be based on the facts that would be just and reasonable in each case and that the parties will share in the production from the well.

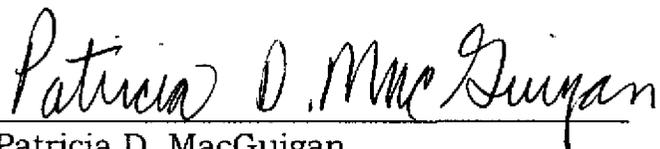
10) Lastly, the Referee was provided two orders where clearly the Corporation Commission has allowed the same modification of pooling orders

where the facts are similar to the facts in the present case. In Cause CD 201501384, Devon Energy Production Company, L.P., sought to amend and/or modify pooling Order No. 627766 in Section 25, T19N, R1W, Payne County, Oklahoma. An order was issued, Order No. 643015, where Devon sought to commingle the Misener with the other zones in pooling Order No. 627766 and they did not give any respondents the right to participate. The order states: "To properly develop and produce the hydrocarbons from the Misener common source of supply the respondents listed on Exhibit "A" shall be deemed to elect the same royalty as they elected or were deemed to have elected in the initial well drilled pursuant to pooling Order No. 627766."

11) In a second proceeding, Cause CD 201503127, the applicant was Strat Land Exploration Company and the relief sought was pooling in Section 26, T29N, R23W, Harper County, which resulted in Order No. 644339 wherein Strat Land Exploration Company had drilled and completed the Red Cliff Farms #1-26 well which produced from the Chester common source of supply and they wanted to produce the Morrow sand interval and would have to commingle it with the Chester formation. The order states that: "In order to commingle the Morrow Sand with the Chester formation in the Red Cliff Farms #1-26 wellbore the interest must be uniform." The order also states that: "The oil and gas leases includes a 3/16<sup>th</sup> royalty provision. The witness testified that he advised the respondents of their request to pool the Morrow Sand formation so the existing well can be commingled, and the Applicant would request the respondents be deemed to accept a 3/16 royalty with a bonus consideration of \$50.00 per acre. The acceptance by the respondents of a 3/16 royalty would allow uniform royalty in the Red Cliff Farms #1-26 wellbore and thereby allow the well to be commingled." Again, this order was not objected to by any of the respondents and is very similar to the present request by MMR.

12) The Referee would therefore recommend that the Report of the ALJ in the present case be reversed as it is the determination of the Referee that granting the application of MMR would prevent waste and protect correlative rights.

**RESPECTFULLY SUBMITTED THIS 13<sup>th</sup> day of October, 2015.**



Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
ALJ Andrew T. Dunn  
Michael D. Stack  
Michael L. Decker, OAP Director  
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