

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: CONTINENTAL)
RESOURCES, INC.)

RELIEF SOUGHT: POOLING)

LEGAL DESCRIPTION: SECTION 34, TOWNSHIP 2)
SOUTH, RANGE 4 WEST,)
STEPHENS COUNTY,)
OKLAHOMA)

) CAUSE CD NO.
) 201406590
)

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CONTINENTAL)
RESOURCES, INC.)

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REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Paul E. Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 15th day of October, 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: **David E. Pepper**, attorney, appeared on behalf of applicants, Continental Resources, Inc. ("Continental"); **Richard A. Grimes**, attorney, appeared on behalf of Fairfield Minerals Co., LLC. ("Fairfield"); **Eric R. King**, attorney, appeared on behalf of American Energy Partners NonOp, LLC. ("AENO"); **J. Fred Gist**, attorney, appeared on behalf of Tarpon Jumper

("Tarpon"); 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 8th day of February, 2016, 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 22nd day of April, 2016. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

FAIRFIELD TAKES EXCEPTION to the recommendation of the ALJ to grant the pooling applications of Continental.

Continental desires to include some unpenetrated and some penetrated intended prospective zones in its plan of development. Fairfield desires to have these zones dismissed or pooled separately.

Continental asks the Commission to pool the Springer, Mississippian, Woodford and Hunton common sources of supply in two 640-acre drilling and spacing units covering Section 3, T3S, R4W and Section 34, T2S, R4W, Stephens County, Oklahoma. Continental has drilled the Ritter #1-3-34XH well (the "Ritter" well) as a multiunit horizontal well. Continental owns 470 net mineral acres in Section 3, and 517 net mineral acres in Section 34. Fairfield owns 2 net mineral acres in Section 3 and .833333 net mineral acres in Section 34. The vertical, or heel section, of the wellbore of the Ritter well is located in Section 3, and the horizontal, or toe portion of the Ritter well, extends north into Section 34. The Ritter well has been completed in the Woodford common source of supply, and is a producing well. In Section 3, where the vertical portion of the Ritter well is located, it is undisputed that the wellbore penetrates the Springer and Mississippian common sources of supply prior to reaching the Woodford where the horizontal portion of the well is drilled north into Section 34. The Hunton common source of supply lies immediately below the Woodford in the area where the Ritter Well is located.

Continental initiated its plan of development assessing the Springer, Mississippian and Woodford common sources of supply in this area by drilling a pilot well (the "Plan of Development"). Continental analyzed the mud logs, open-hole logs and sidewall cores of the pilot well in the Springer, Mississippian and Woodford common sources of supply, and shot a proprietary

3-D survey for the purpose of developing its Plan of Development for drilling and producing the Springer, Mississippian and Woodford common sources of supply. As part of Continental's Plan of Development, Continental then drilled 15 horizontal confirmation wells to assess the available resources and to define the boundaries and extents of the Springer, Mississippian and Woodford common sources of supply in this area. Under its Plan of Development, Continental drills and completes an initial well in the Woodford common source of supply, because this allows it to run logs over the Springer and Mississippian to assess the potential of each common source of supply for further development. The information obtained is then used to map the horizons of the Springer, Mississippian, Woodford, and Hunton common sources of supply in this area.

Continental asks the Commission to pool the Springer, Mississippian, Woodford and Hunton common sources of supply in Section 3 and Section 34 pursuant to its Plan of Development, resulting from its extensive drilling and analysis of these common sources of supply in this area. Continental's Plan of Development is specifically focused on the Springer, Mississippian and Woodford common sources of supply. The Plan of Development includes drilling horizontal wells to assess these resources and to define the boundaries and extent of the Springer, Mississippian and Woodford common sources of supply. Continental did not have specific data in this area prior to drilling the Ritter well. As part of its Plan of Development, Continental has analyzed and evaluated the Springer and Mississippian common sources of supply in Sections 3 and 34 from the well logs it obtained from the Ritter well. The analysis of the Springer and Mississippian common sources of supply from these well logs helped Continental to define the boundaries of the Springer and Mississippian in the area of Section 3 and Section 34 as part of its Plan of Development. The information Continental obtained from its analysis of the Ritter Well confirmed that the Springer and Mississippian common sources of supply are present in Section 3 and Section 34 and are prospects for further development. Continental intends to drill at least three horizontal wells targeting the Springer, Mississippian and Woodford common sources of supply in Sections 3 and 34. Obviously, the Springer and Mississippian wells will be drilled subsequent to the Ritter well. It is undisputed that Continental plans to develop the Springer and Mississippian common sources of supply in Sections 3 and 34 in addition to the Ritter well. In fact, Continental plans on drilling horizontal Mississippian and Springer wells in all sections in this area. Continental therefore considers all the common sources of supply it is attempting to pool in this matter to be a significant part of its Plan of Development with respect to Sections 3 and 34. Continental's intent to drill additional wells in Section 3 and Section 34 to produce from the Springer and Mississippian common sources of supply is further confirmed by the fact that it has already proposed to drill a multi-unit Mississippian well in the immediate east offset to the Ritter well.

It is undisputed that, based on the information obtained from the drilling and completion of the Ritter well, the Springer, Mississippian, Woodford, and Hunton common sources of supply are viable resource plays in this area. Further, the Plan of Development will result in an orderly development and production of the Springer, Mississippian, Woodford, and Hunton common sources of supply in Sections 3 and Section 34.

FAIRFIELD TAKES THE POSITION:

- 1) The ALJ Report is contrary to the law and contrary to the evidence.
- 2) These protested pooling applications presented to the ALJ a controversy concerning the absolute obligation of the Commission to receive and evaluate evidence relevant to the aggregation of multiple separate drilling and spacing units into one "pooled" unit. The ALJ was provided detailed and comprehensive briefs by both Continental and Fairfield concerning that controversy. Fairfield requested a thoughtful analysis of the enormous impact that a pooling order has upon the valuable property rights of the owners forcibly made subject thereto. This request was especially important given the fact that the initial well drilled in the two sections involved was a horizontal well, the purpose of which was admittedly limited to exploration and development of only one common source of supply. In response to that request, the ALJ apparently refused to either read the submitted briefs; or, somehow concluded that the drilling of a multiunit horizontal lateral supplants the need to follow the law of Oklahoma as defined by the Conservation Statute and the Oklahoma Supreme Court.
- 3) Inasmuch as the ALJ chose to provide absolutely no detail of the testimony elicited during the hearing of this case, the Referee would adopt the Fairfield Brief filed on November 13, 2015, pages 1 through the middle of Page 3, which gives Fairfield's version of the omitted testimony. The ALJ obviously chose to ignore these facts, as the ALJ did also ignore all of the law cited in the filed Brief. Instead, the ALJ somehow concluded that with the implementation of the 2011 Shale Reservoir Development Act ("Shale Act") the Commission no longer needs to adhere to the requirements of the law existing previous to that Act. It is an enormous understatement to say that the ALJ misunderstands such legislation.
- 4) The Shale Act had one purpose. The Legislature recognized that the regulatory scheme existing before the Shale Act's passage would not allow the drilling and completion of a single horizontal lateral in a shale formation, the completion interval of which overlaps and includes portions of two different drilling and spacing units. To accomplish the goal of completing such a lateral the Shale Act allows the Commission to authorize such operation and provides to it the authority to allocate well costs and production between the two units.

The Legislation expressly limits the Commission's power insofar as multiunit authority to "shale" formations. However, if a multiunit well inadvertently encounters a common source of supply immediately above or below the shale formations by drifting out of or exiting such shale, those "associated common sources of supply" can be included in the final order authorizing the operation.

5) The ALJ cites Section 1 of the Shale Act as the entire basis for granting the Continental applications. That section of the Shale Act concludes by stating "the Legislature finds it necessary to modify the oil and gas regulatory scheme in Oklahoma as set forth in this Act." The ALJ concludes that such language means the Commission no longer needs to follow the unequivocal requirements imposed by the Oklahoma Supreme Court if the Commission is to issue a pooling order which aggregates multiple common sources of supply into a single pooled unit. The ALJ is dead wrong.

6) The multiunit authority noted above does not change the language of 52 O.S. Section 87.1(e). That pooling statute requires that an initial well be proposed, or drilled, with the effect of developing "the spacing unit" as a unit. See subsequent discussion of *C.F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okl. 1980) in Proposition II. While an applicant seeking a pooling order has the right to describe multiple common sources of supply or spacing units in its request, the Commission historically will limit the common sources of supply or spacing units covered by a pooling order to those that are intended to be developed by the initial unit well. If an Applicant presents an authority for expenditure ("AFE") for a proposed initial vertical well which does not illustrate an intention by that party to penetrate and develop all requested common sources of supply, the Commission requires dismissal of same. The reason for that practice is the statutory language noted above. The jurisdictional prerequisite for pooling orders is the applicant's intention of development and production of a common source of supply. Obviously, a well which was never intended to penetrate a common source of supply cannot produce and develop that common source of supply.

7) With the recent advent of horizontal laterals for development of common sources of supply the Commission has allowed a pooling applicant to retain within pooling orders certain common sources of supply which are not considered the primary "target" of the initial horizontal well. Typically, those common sources of supply other than the "target" common source of supply are located immediately above or below the "target" common source of supply which might be impacted in the initial horizontal well by virtue of unintended drift; or, by communication caused by hydraulic fracture stimulation. Those circumstances do not exist in the pooling applications at issue. In this case, Continental has already drilled the Ritter well as a multiunit horizontal well. That well was commenced in advance of a pooling order based on Continental's desire to perpetuate certain oil and gas leases. The geologist and landman testifying for Continental admitted that the completion interval in such well did

not drift out of the Woodford. The well was completed only in the Woodford. There is no claim that the Mississippian and Hunton common sources of supply (those being the common sources of supply immediately above and below the Woodford) were impacted by the fracture stimulation of the Woodford common source of supply. The geologist for Continental admitted that the Ritter well will never be used to produce and develop the Springer, Mississippian and/or Hunton common sources of supply. Any development and/or production of those common sources of supply will occur only by the drilling of separate horizontal wells for each.

8) Continental is not claiming that they have drilled, or are proposing to drill, a well to develop the Springer, Mississippian and/or Hunton common sources of supply in either of Sections 3 or 34. The sole target of development in the initial well under the requested pooling orders is the Woodford common source of supply. Accordingly, Continental has not met the jurisdictional requirements of Section 87.1(e) as regards the common sources of supply other than the Woodford. Each of those common sources of supply should be dismissed from the pooling applications.

9) The ALJ erred in concluding that the "2011 Shale Reservoir Development Act" changes the requirements imposed by the pooling statute. Are we to believe that the pooling statute is only so changed when a multiunit horizontal well is involved? Of course not! But that question highlights the original absurdity of the conclusions of the ALJ.

10) The Commission has an alternative to dismissal of common sources of supply. If Continental had presented evidence of the need to retain other than the Woodford common source of supply, the Commission may aggregate all such common sources of supply into one pooled unit; or, treat each as a separate unit for pooling purposes. However, the ALJ failed to note (despite being fully briefed on this issue) that Oklahoma law dictates a thorough analysis by the Commission of competing rights in choosing the correct alternative.

11) In *C. F. Braun & Co. V. Corporation Commission*, 609 P.2d 1268 (Okla. 1980), the Oklahoma Supreme Court was considering an appeal from a Commission order relating to a 640-acre section in which 13 separate common sources of supply had been spaced by prior Commission orders. The Court found that "the thirteen (13) common sources of supply underlying the 640-acre tract in the case at bar constitute thirteen (13) separate and distinct spacing and drilling units where one wellbore can be used to test and develop one or all of the thirteen (13) units". See *Braun*, supra at 1271.

12) Under *Braun* the spacing of the Springer, Mississippian, Woodford and Hunton common sources of supply within both Sections 3 and 34 results in four (4) separate and distinct drilling and spacing units for those separate

common sources of supply. The immediate significance of that fact is made clear by an appellate decision issued after *Braun*.

13) In *Amoco Production Co. v. Corporation Com'n of State of Okl.*, 751 P2d 203, (adopted by the Supreme Court of Oklahoma on February 9, 1988), the Court of Appeals of the State of Oklahoma issued an opinion, the terms of which addressed the power possessed by the Commission regarding pooling of oil and gas interests. In that case the Court of Appeals ruled that the Commission does not have the power to pool by the wellbore. The Court's opinion stated that once rights are relinquished in the "pooled unit" by virtue of a decision not to participate in the risk of drilling the initial "unit" well, those rights vest in the operator and could not be modified by subsequent collateral attack.

14) The pooling order appealed from in *Amoco* described multiple separate drilling and spacing units. Such fact was not uncommon in the 1980's, a time frame in which only vertical wells were being drilled in Oklahoma. That pooling order described the effect of that order as pooling the separate common source of supply and units as one pooled unit. Such facts make it abundantly clear that there are distinct differences between pooling orders which aggregate multiple separate drilling and spacing units into one "pooled unit"; and, those which continue to treat the multiple drilling and spacing units as separate units for purposes of pooling. Those differences have not, for the most part, been argued to the Commission. The single reason for that fact is that in vertical wells there is almost always the potential for the initial unit wellbore to produce and develop the multiple common sources of supply described as one pooled unit. Ironically *Braun* involved a pooling order in which the Commission created two separate pooled units defined by depth. The order allocated well costs and bonus among the two units. With the advent of horizontal drilling those circumstances simply do not exist any longer. In light of that fact the principles of *Braun* are enormously significant.

15) The holding of *Braun* indicated in a case involving multiple common sources of supply "whether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit. depends upon the facts and circumstances in each pooling proceeding." Further, *Braun* indicated a pooling order should be responsive to the application and evidence. "If the parties treat two or more spacing units underlying the same tract as a single unit the pooling order may treat them as a single unit. If the parties treat the different common sources of supply or spacing units as separate and distinct spacing units, and the evidence discloses an intent or desire on the owners part that they be considered separately, an owner may not be required to have his rights under one spacing unit be dependent or contingent upon his rights or his election in another spacing unit....The rights of all owners, including the owner seeking the pooling order, must be considered, because all orders

requiring pooling shall be [made] upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. §87.1(e), supra."

16) Neither Continental nor Fairfield have treated the four common sources of supply or spacing units as a single unit. Fairfield has made it clear in its objection to Continental's pooling applications that it desires a separate election among the four separate common sources of supply or spacing units if they are not dismissed. The Pre-Hearing Conference Agreement on file in the Continental pooling applications describes that fact. Continental did not propose an initial well to develop all such common sources of supply. It proposed and drilled a multiunit horizontal well which targeted only the Woodford common source of supply. As admitted by the Continental geologist neither the location exception order under which the Ritter well was drilled; nor, the multiunit horizontal well order authorizing such well described the Springer common source of supply. Moreover, the only reason the interim orders granting such relief named the Mississippian and Hunton was the need to cover the contingency of the wellbore drifting out of the Woodford. That same geologist admitted that the Ritter well never drifted out of the Woodford into either the Mississippian or Hunton common sources of supply. Clearly Continental never considered or treated the initial well to target other than the Woodford. That geologist admitted that the Ritter well will never be used to produce the Springer, Mississippian or Hunton common sources of supply. The geologist stated that the development of those common sources of supply would occur, if ever, through the drilling of separate horizontal wells for each such separate common source or supply or spacing unit.

17) The candid answers from the Continental geologist are perfect illustrations of the difference between oil and gas development using vertical wells and the development of individual common sources of supply through use of horizontal wells. There is a reason that the Supreme Court in *Braun* makes direct reference to use of "one initial bore hole" to test and develop "one or all" of the multiple spacing units. A vertical well which penetrates each of the separate common sources of supply can itself be used in the production of all such common sources of supply. Despite the ignorant and silly assertion by Continental's land witness to the contrary, the Commission has always required the dismissal of common sources of supply named in a pooling application which are not intended to be penetrated and developed by the initial well.

18) The evidence presented in the Continental pooling applications discloses the obvious intention on the part of Continental to consider each common source of supply separately. The Continental geologist repeatedly described any potential development of those common sources of supply as separate projects using separate horizontal wells. Under *Braun* such admissions means

"an owner may not be required to have his rights under one spacing unit be dependent or contingent upon his rights or his election in another spacing unit." This Commission has no discretion to ignore that law as promulgated by the Oklahoma Supreme Court.

19) The risk that Continental undertook in proposing, drilling and completing a multiunit horizontal Woodford well were known by Continental to be based on that singular project. As described above the Continental geologist testified that the Woodford development undertaken by drilling the Ritter well is considered a totally separate project from a well drilled for the Springer, Mississippian and/or Hunton common sources of supply. If Fairfield does not choose to participate in the Ritter well, the rights that it will lose should vest in Continental only those fairly earned by virtue of its risk. It is inherently unfair to take from Fairfield rights in common sources of supply never intended for development in the Ritter well. The facts of this case present the unique scenario of a well already drilled and completed. Those facts illustrate that only the Woodford common source of supply was penetrated and completed in the Ritter well. A horizontal well proposed, but not yet drilled, would still be subject to the principles of *Braun*, but at least there could be some debate as to the formations to be penetrated in the vertical portion of that well. No such debate is needed in this case. The ALJ erred in refusing to even discuss the requirements of *Braun*.

20) Fairfield respectfully requests that the ALJ's Recommendations be overruled; and, that either the Springer, Mississippian and/or Hunton common sources of supply be dismissed from these Continental applications, or, that each be given separate and distinct unit status as dictated by *Braun*.

THE ALJ FOUND:

1) This cause is about producing oil and gas with the recent horizontal drilling techniques. The legislature addresses this by stating their purpose as, Oklahoma Session Laws 2011, Section 54, HB 1909, Section 1, provides: "The Legislature finds that advances in horizontal drilling techniques for wells drilled and completed in shale formations in Oklahoma have advanced beyond the historical statutory spacing scheme found in Section 87.1 and Sections 287.1 through 287.15 of Title 52 of the Oklahoma Statutes, in particular with the use of extended length laterals. The Corporation Commission, as the agency charged with protection of the correlative rights of those owning oil and gas interests in this state, the prevention of waste and the promotion of development of these Oklahoma resources, is constrained in its ability to adequately accomplish these goals by the limitations placed upon it by the existing statutory scheme. In order to prevent waste, better protect the correlative rights of the owners of oil and gas mineral interests and harmonize the historical regulatory scheme of our state with the expanding technology of drilling and completing horizontal wells in shale reservoirs in this state, the

Legislature finds it necessary to modify the oil and gas regulatory scheme in Oklahoma as set forth in this act."

2) The entire tenor of the legislative intent is for the increased production of oil and gas with the advances in multi-unit production by horizontal drilling and completion techniques.

3) To justify the great costs of these multi-unit horizontal projects it is clearly necessary to have a development plan best suited to developing all of the relevant productive reservoirs in a spaced unit in the most economic and efficient way possible. Drilling pilot wells, gathering 3D seismic, well log information, and additional data to evaluate the targeted common source of supply in addition to other prospective formations is the most efficient way to recover the maximum amount of oil and gas.

4) To develop each formation, or a few formations, at a time would involve duplication of costs, effort, and waste of resources, time and technology. It is clearly within the statutory intent to develop prospective zones as a unit. Continental has asked for four zones identified as of interest to its plan of development. In the heel portion, Section 3, the Woodford has been completed, the Springer was penetrated, the Mississippian was penetrated, and the Hunton was not penetrated. In the toe section, Section 34, the Woodford is completed. The Springer, the Mississippian, and the Hunton common sources of supply were not penetrated. Continental requests all these zones be included in its plan of development as prospective economic production zones. More zones than these were spaced in each 640-acre unit but Continental has determined that those zones are not promising for development by their plans.

5) The Woodford common source of supply, in both sections, was drilled and completed with no intrusion into any other common source of supply. Although this completion does not impact the Springer, Mississippian, or Hunton common sources of supply, Continental's allegation that they fall within their plan of development conforms to Legislative intent and Commission practice. Continental has spent considerable resources developing this plan of development and it is what the legislature considered desirable as shown by its statutory language.

6) Since the only disputed portion of these applications is whether some or all zones should be included, all other terms testified above are recommended. Common Commission practice is to consider a plan of development in its entirety. This makes best use of expensive exploration, drilling, and completion technologies, exactly achieving the Legislature's desired result to prevent waste and protect correlative rights. The ALJ recommends all requested zones in both sections be pooled per Continental's request and thus for the above reasons, recommended the relief requested by Continental.

POSITIONS OF THE PARTIES

FAIRFIELD

- 1) **Richard A. Grimes**, appearing on behalf of Fairfield, points out that he has no issue with how the case proceeded, and recognizes that both his client and Continental were forthright in their positions and made strenuous efforts to apprise the ALJ of relevant facts and law.
- 2) The ALJ mentioned in the report the Horizontal Shale Development Act, an act that has a limited purpose and is inapplicable to this case.
- 3) Fairfield recognizes that Oklahoma's pooling statute grants unparalleled power to the Corporation Commission. This powerful tool allows an applicant to force a relinquishment of vested property rights by virtue of the police power of the state. There is no defense to a forced pooling. However, the legislature made clear that this power carries with it the burden to ensure the following: "All orders requiring such pooling shall be made after notice and hearing and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense the owner's just and fair share of oil and gas." 52 O.S. 87.1(e)
- 4) Fairfield argues that the Oklahoma Supreme Court has held that when the Commission exercises its power to require owners to pool and develop their lands in the spacing unit as a unit, each separate common source of supply is a separate drilling and spacing unit. *C.F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okl. 1980) is the law of Oklahoma, despite the opposing party's incorrect argument that *Amoco Production Co. v. Corporation Commission*, 751 P.2d 203 (Okl.Civ.App. 1986) changed *Braun*.
- 5) Fairfield submits that the Supreme Court noted that the state's statutes do not limit the number of separate spacing units that can be included in a pooling application or proceeding. Critically, the Supreme Court also added that whether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit is determined on a case-by-case basis. The Supreme Court says the Commission has the absolute responsibility to look at the evidence presented to them and decide in a particular case whether or not you are going to create one pooled unit out of four common sources of supply as in the present case or deem each source of supply as a separate pooled unit.

6) The present Continental poolings present a unique fact: the multi-unit Ritter well subject to this proceeding was drilled and producing before this case went to trial.

7) The Continental geologist was frank. The Ritter well was designed to penetrate the Woodford in the horizontal portion of the well. It did not leave the Woodford in the horizontal leg and it did not frac out of the Woodford. The Springer and the Mississippian, which are the remaining up-hole intervals in dispute, were only penetrated in the vertical leg of the well.

8) Any development of the Springer, Mississippian, or Hunton in either section will occur by separate horizontal laterals for each separate common source of supply. Continental will undertake, although it offers no time frame, the potential development of these common sources of supply as separate projects. Continental agrees that the risk of drilling and developing the Springer, Mississippian, and Hunton is borne on the geological realities of each.

9) The ALJ improperly included the Hunton in the pooling order. Absent from Continental's plan of development is any mention of the Hunton. When Continental's geologist was pressed on this issue, the best he could offer was that it will be looked at in the future and that they do not have any current plans for it. The ALJ also declined to provide this evidence in his report.

10) Fairfield alleges that the final orders for Continental's multi-unit authority contain a legal misrepresentation. Rather than retaining only the interval that was penetrated, as the statute calls for, the final orders retained all three intervals. The order suggests that Continental either had penetrated or will penetrate these other intervals from the same wellbore, despite Continental's knowledge—on the day of the hearing—to the contrary.

11) Fairfield wishes to express that although his client maintains a small interest in this case, his client's interest in the outcome is anything but small when taking into account the regulatory impact on his rights across Oklahoma.

CONTINENTAL

1) **David E. Pepper**, appearing on behalf of Continental, does not agree with opposing counsel's interpretation of *Braun*. Continental does, however, share the view that the Commission in light of *Braun* should be responsive to the evidence. Continental also wishes to make clear that while there are not many factual disputes in this case, *Braun* needs to be distinguished.

- 2) *Braun* presented a different factual situation from the present case. In that case the parties agreed, prospectively, that two separate units existed down the wellbore; it was not about whether they *should* be considered separately, as those units were in existence when the case came to that point.
- 3) Fairfield did not put on any witnesses or evidence.
- 4) *Braun* makes clear that the rights of all owners, including the owners seeking the pooling order, must be considered. Fairfield argued before the ALJ that in Section 34 there is no justification in law for the inclusion of any formations except the penetrated Woodford. Those opposed to the order ought to have the right to make separate elections on those formations. Continental argues that the development of the other formations through the same wellbore, as it is suggested they must do to include those formations in the same pooling order, would be contrary to Continental's right to pursue a plan of development according to its own judgment of what is good business.
- 5) Continental argues that Continental's plan of development was purposefully created to comply with *Braun*. Despite argument to the contrary, a plan of development is a real term with a recognized meaning in Oklahoma case law. See *Chesapeake v. Burlington*, 60 P.3d 1052, 1055 (Okl.Civ.App. 2002) (Noting that a JOA conflict which was solely of a private-rights nature is beyond the purview of the Commission) (dicta).
- 6) Continental adds that in Sections 3 and 34 the Permian, Cisco, Hoxbar, Deese, and other shallow formations were dismissed because they did not have a plan of development for them. Conversely, the Springer, Mississippian, Woodford, and Hunton were properly included in the pooling order because Continental had an articulated plan of development for those formations.
- 7) Continental concedes to Fairfield that there was little discussion regarding the Hunton common source of supply in the plan of development. However, the geologist testified that they took targeted core samples of those four formations to determine what these objectives contained, and that it was still early on in the assessment of the Hunton. As for the Mississippian and Springer formations, the Ritter well has produced considerable information indicating productive yields and boundary lines for the latter. Evidence was presented to that effect as a map of the basin.
- 8) *B&W Operating, L.L.C. v. Corporation Commission of Oklahoma*, 362 P.3d 227 (Okl.Civ.App. 2015), provides guidance here. It stands for the proposition that in horizontal drilling, there is neither wellbore pooling nor multiple/separate elections in wellbores. In that case, Devon pooled the Woodford and the Mississippian even though the heel of that well did not pass down into the Woodford. Devon's business plan was to drill multiple Woodford

and Mississippian wells in this area. B&W's objection was similar to Fairfield's in the present case, to either get well-by-well elections or a dismissal of unpenetrated formations from the pooling. The Court of Appeals applied *Amoco's* reading of the purpose of pooling statute to horizontal wells, declaring that the actual hole or holes in the ground used to extract oil and gas cannot be given effect as individual units. In other words, to give effect to well-by-well elections would defeat the purpose of the pooling statute in this context.

9) Continental contends that there has been a constant holding from 1985 that there is no wellbore pooling, only unit pooling.

10) Continental requests that the referee affirms the report of ALJ Porter in its entirety and that the pooling contain the Springer, Mississippian, Woodford, and Hunton formations.

RESPONSE OF FAIRFIELD

1) Fairfield submits that *B&W* is distinguishable in that the initial well in that case had the potential to affect a second well that sat in close proximity to the first. Fairfield does not agree that the Court of Appeals had within its mindset *Braun* when issuing its decision.

2) Fairfield does not support the proposition that you can never amalgamate more than one unit into a pooled unit.

3) Fairfield returns to the critical fact that these projects are treated as separate projects by the parties involved. *Amoco* stood for the assertion that if a company risks its dollars in the investment of a project, it should not be divested by a wellbore determination of pooling of the right to continue following up on that investment. Risk-capital analysis shows that Continental did not risk its dollars in the Springer, Hunton, or Mississippian formations. The well was only intended to carry and take risks in the Woodford.

4) Fairfield asks that the Referee look to the transcript for any testimony by Continental showing unification of plans of development. If evidence cannot be found, *Braun* demands that separate treatment be provided for in the pooling.

CONCLUSIONS

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

I.

**DISMISSAL OF THE SPRINGER, MISSISSIPPIAN AND HUNTON
COMMON SOURCES OF SUPPLY FROM THE POOLING
APPLICATIONS.**

1) The Commission's authority to pool the working interest of oil and gas owners with whom a pooling applicant seeking such relief has no agreement is provided by 52 O.S. Section 87.1(e). The pertinent portion of that statute states:

"When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on the unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit."

2) One legitimate objective of the forced pooling statute is to negate the dog-in-the-manger type attitude that would allow one owner within the unit to frustrate the economic development of the unit. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984). Another major purpose of the forced pooling statute is to equalize the risk of loss between non-consenting cotenants by forcing them to determine in advance whether they will share in the benefits and the risk of exploration. Charles Nesbitt, *A Primer On Forced Pooling of Oil and Gas Interests in Oklahoma*, 50 Okl.B.J. 648 (1979).

3) The Supreme Court in *Tenneco Oil Company v. El Paso Natural Gas Company*, supra, at 1052 states:

At the risk of over simplification, we hold the enactments for the conservation of oil and gas are public in nature and that the spacing order, the

pooling order, and the order fixing allowables, to name but a few of its functions, are within the realm of the public rights to be protected. Thus, the spacing order sets the stage for development and guards the public interest in developing an orderly and judicious drilling program. It is aimed at protecting the interest of all by the prohibitions against waste. The forced-pooling order, among other things, represents the interests of consumers and mineral interests and disallows the "dog in the manger" attitude, which would deny economic development.

4) A forced pooling order pools the working interest, while a spacing order pools the royalty interests. *Whitaker v. Texaco*, 283 F.2d 169 (C.A. 1960). A pooling order unitizes the working interest in the entire unit as to the named formations. Just as a spacing order unitizes the royalty interest in the entire unit as to the named formations and remains valid against the separate tracts even though the owners may change, so does the pooling order unitize the working interest in the entire unit as to the named formations and remains valid against the separate tracts even though the owners may change.

5) Fairfield does not object to Continental's pooling applications as they concern the Woodford common source of supply in Sections 3 and 34. Fairfield asserts that the Commission should not pool the Springer, Mississippian and Hunton common sources of supply because horizontal wells in addition to the Ritter well will be needed to produce from these common sources of supply.

6) The evidence reflects that Continental did not have specific data in this area prior to drilling the Ritter well. The Ritter well was drilled and completed by Continental in the Woodford as part of its plan of development to permit Continental to evaluate and analyze the Springer and Mississippian common sources of supply in Sections 3 and 34. The Ritter well was also drilled by Continental to obtain production from the Woodford common source of supply. The vertical section of the Ritter well confirmed the viability of further horizontal wells to obtain production from the Springer and Mississippian common sources of supply in Sections 3 and 34. The evidence presented by Continental was that it intended to drill at least three horizontal wells targeting the Springer, Mississippian and Woodford common sources of supply in Sections 3 and 34. The Commission's pooling orders commonly provide for the pooling of multiple formations penetrated by the vertical portion of the horizontal wellbore and where the horizontal portion of the wellbore is targeted at only one of multiple formations pooled. See Order No. 647268 in Cause CD 201504541, entered on November 30, 2015; and Order No. 646972 in Cause CD 201504543, entered on November 18, 2015 wherein Fairfield's counsel represented Charter Oak Production Company, LLC and sought and obtained pooling orders from the Commission pooling multiple common sources of

supply in Love County, Oklahoma, where the initial well proposed was a horizontal well with the horizontal portion of said well targeting only the Woodford common source of supply and the vertical portion encountering other common sources of supply. See also *B&W Operating, L.L.C. v. Corporation Commission of Oklahoma*, 362 P.3d 227 (Okl.Civ.App. 2015). B&W asserted in said case that the *Amoco v. Corporation Commission* case, 751 P.2d 203 (Okl.Civ.App. 1986):

"contemplated circumstances where a single wellbore was drilled to a depth to test all force pooled common sources of supply and such well could arguably be completed in any productive or common source of supply the well encountered. Thus, it is unfair to let nonparticipants in the initial vertical test participate in subsequent wells. B&W contends the drilling of multiple horizontal wells in the same unit is a completely different scenario because multiple horizontal laterals will be needed for effective drainage, each horizontal lateral generally tests only one common source of supply, and the results of one horizontal lateral does not predict the results of any later lateral on the same pooled unit."

B&W asserts that the *Amoco* case did not anticipate the changing times and the contemporary oil and gas business or the nuances of horizontal drilling and spacing units for horizontal wells. The Oklahoma Court of Civil Appeals disagreed citing *SKZ Inc. v. Petty*, 782 P.2d 939 (Okl. 1989), wherein the Supreme Court stated "The purpose of our pooling statutes is to pool the interest owners' rights to the oil and gas in the named common sources of supply underlying the unit. The actual hole or holes in the ground used to extract the oil and gas cannot be given effect as individual units..."

7) As provided by the Court of Appeals in the *B&W* case and by pooling orders typically entered into by the Commission, it is fair and reasonable to pool multiple common sources of supply in a unit and to require that working interest owners elect to participate in multiple horizontal wells necessary to fully develop the unit or to relinquish their working interest and receive bonus fair market value compensation. The evidence reflected that unitizing the working interest in Sections 3 and 34 as to the pooled common sources of supply will equal the risk in developing these common sources of supply and will also prevent duplication of costs and waste of time.

8) Continental's pooling applications pooling the Springer, Mississippi, Woodford and Hunton common source of supply comply with the jurisdiction and authority granted to the Commission pursuant to 12 O.S. Section 87.1(e) and also complies with Commission practice in similar circumstances. The

pooling applications have provided for multiple common sources of supply where the initial unit well is a horizontal well targeting a particular common source of supply and the vertical section of the wellbore penetrates the common sources of supply to be pooled. Therefore, the Referee would recommend that the ALJ's Report be affirmed and the Referee believes Continental's plan of development will result in an orderly development and production of the Springer, Mississippi, Woodford and Hunton common source of supply in Sections 3 and 34.

II.

FAIRFIELD'S ALTERNATIVE REQUEST FOR SEPARATE WELLBORE ELECTIONS AMONG THE SPRINGER, MISSISSIPPIAN, WOODFORD AND HUNTON COMMON SOURCES OF SUPPLY.

- 1) Fairfield argues that with the advent of horizontal drilling, a working interest owner in a pooled unit should be permitted to retain its working interest in any common sources of supply that are pooled but not targeted by the initial unit horizontal well. The owner therefore would be able to make well by well elections in subsequent horizontal wells targeting other common sources of supply in the unit.
- 2) Fairfield requests that it and other working interest owners be allowed separate wellbore elections for each horizontal well drilled into a different formation on a formation by formation basis.
- 3) In *SKZ, Inc. v. Petty*, supra at 942, 943 the Supreme Court found:

The addition of the word "unit" in front of "well" in the instant case does not warrant distinction. The purpose of our pooling statutes is to pool the interest owners' rights to the oil and gas in the named common sources of supply underlying the unit. The actual hole or holes in the ground used to extract the oil and gas cannot be given effect as individual units, therefore, we interpret the word "well", as used in Order Nos. 224432 and 231312, to mean the oil and gas underlying the pooled unit, regardless of the number of wells needed to extract the minerals. We hold the use of the words "unit well" does not distinguish Order Nos. 224432 and 231312 from the orders in dispute in

both Inexco and Ranola, and therefore, the orders pooled the entire drilling and spacing unit, not just the Stevens No. 13-1 well.

Order Nos. 224432 and 231312 required appellees, or their predecessors in interest, to participate in the costs of drilling and completing the Stevens No. 13-1 or to accept a bonus. Once the election period passed, the property rights vested.

Once the property rights vested, the Commission had no power to modify them. By accepting the bonus, appellees assigned their exploratory rights to SKZ, and can assert no right to participate in the subsequent increased density wells. Once appellees received payment of the bonus, SKZ's property rights vested.

The main issue presented in the *SKZ* case was whether the Commission had statutory authority to force pool by the wellbore instead of force pooling by the drilling and spacing unit.

4) In the *B&W* case, supra, B&W Operating, L.L.C. and B&W Exploration Inc. (collectively "B&W") appealed Order No. 619555 approving Devon Energy Production Company ("Devon"), LP application seeking an order pooling a 640 acre spacing unit covering Section 8-19N-3E in Payne County, Oklahoma. Devon filed an application with the Commission seeking to pool the Mississippi and Woodford formations underlying Section 8-19N-3E, Payne County, Oklahoma. B&W requested a plan of development that permitted election in subsequent wells, after participation in the initial well, either by on a formation basis or a well by well basis and not by the unit. The ALJ filed a Report rejecting B&W's request and recommending the Commission grant Devon's application. The Supreme Court stated in the *B&W* case, supra, at 228:

As to the issue regarding elections under subsequent operations, it is the recommendation of the ALJ that all elections, whether initial elections or subsequent elections, be on a unit basis. As recommended by [Devon's] landman, any party who elected timely and participated in the initial well will have the opportunity to participate in a subsequently proposed well without the opportunity to elect in and out of specific formation or in and out of different subsequent wells, as [B&W] has requested here. The Supreme Court, in *Amoco* at 751 P.2d 203 (Okl.App. 1986), was clear that pooling Orders issued by the Commission are on a unit basis. [B&W's] request here would turn the Order

and development into a well-by-well process. Therefore, it is the recommendation of the ALJ that the subsequent election provisions under the Order be as recommended by Devon's landman.

* * *

One result of a pooling order is the unitization of the working interest in the entire tract as to the named formations. *Amoco*, 1986 OK CIV APP 16, at ¶ 12, 751 P.2d at 206. As a result, risk of loss is equalized by forcing all interest owners to choose, in advance, whether to participate. *Ranola Oil Co. v. Corporation Comm'n of Oklahoma*, 1988 OK 28, ¶ 15, 752 P.2d 1116, 119. An election not to participate transfers to the designated operator, by operation of law, the right to drill. *Grace Pet. Corp. v. Corporation Comm'n of Oklahoma*, 1992 OK CIV APP 143, ¶ 6, 841 P.2d 1172, 1174; *Amoco*, 1986 OK CIV APP 16, at ¶ 16, 751 P.2d at 206. When the compensation fixed by the pooling order is paid to the party electing not to participate, the rights of the parties are vested. *SKZ*, 1989 OK 150, at ¶ 10, 782 P.2d at 943; *Ranola*, 1988 OK 28, at ¶ 15, 752 P.2d at 1119.

B&W's request would turn the development into a wellbore process, contrary to § 87.1(e). As previously discussed, § 87.1(e) requires pooling the spacing unit as a unit and not by the wellbore. Accordingly, the Court rejects B&W's assertion that a just and reasonable plan of unit development is wellbore elections. Finally, as pointed out in *Helmerich*, B&W's "relief and authority for their theory lies with legislative enactment, not with the Court." *Amoco*, 1986 OK CIV APP 16, at ¶ 18, 751 P.2d at 206 (citing *Helmerich* 1975 OK 23, at ¶ 13, 532 P.2d at 423).

- 5) The Oklahoma Court of Civil Appeals in *Amoco Production Company v. Corporation Commission of Oklahoma*, supra at 206 (approved for publication by the Oklahoma Supreme Court) held that 52 O.S. Section 87.1(e):

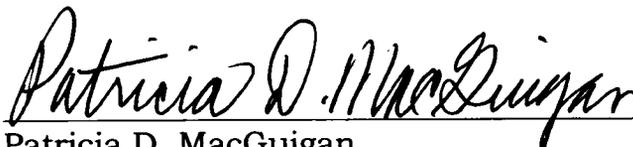
..mandates developing the spacing unit as a unit. Operator Amoco is developing the spacing unit as a unit. A 640 acre drilling and spacing order was issued on all 13 common sources of supply. After the spacing order was entered, the unit could be force pooled.

Gulfstream Petroleum Corp. v. Layden, 632 P.2d 376 (Okl. 1981). *Helmerich v. Corporation Commission*, 532 P.2d 419 (Okl. 1975). This pooling was for unit development. A force pooling order unitizes the working interest in the entire unit as to the named formations.

Appellees argue 52 O.S. 1981 § 87.1 does authorize pooling by the wellbore. They contend the legislature had wellbore pooling in mind since the Statute refers to "a well" or "the well". But to the contrary, a complete reading of the Statute clearly requires pooling the "spacing unit as a unit."

6) Continental owns over 75% of the net mineral acres in Section 3 and over 80% of the net mineral acres in Section 34 and wants to develop the Springer, Mississippi, Woodford and Hunton common sources of supply pursuant to its plan of development as a single unit. Multiple horizontal wells in addition to the Ritter well will need to be drilled to accomplish Continental's plan of development for the Springer, Mississippi, Woodford and Hunton common sources of supply. The treatment of these common sources of supply as a single unit the Referee believes is responsive to the evidence presented at the hearing on Continental's pooling applications. Pursuant to *B&W Operating, L.L.C. v. Corporation Commission of Oklahoma*, supra; *Amoco Production Co. v. Corporation Com'n of State of Okl.*, supra, and *SKZ, Inc. v. Petty*, supra, the Referee would therefore recommend the Report of the ALJ be affirmed.

RESPECTFULLY SUBMITTED THIS 2nd day of June, 2016.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
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ALJ Paul E. Porter
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