

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
MAY 12 2016

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CHESAPEAKE OPERATING,)
L.L.C. AND CHESAPEAKE)
EXPLORATION, L.L.C.)
)
RELIEF SOUGHT: HORIZONTAL SPACING) CAUSE CD NO.
) 201503126
)
LEGAL DESCRIPTION: SECTION 31,)
TOWNSHIP 17 NORTH)
RANGE 5 WEST OF THE IM)
KINGFISHER COUNTY,)
OKLAHOMA)

APPLICANT: CHESAPEAKE OPERATING,)
L.L.C. AND CHESAPEAKE)
EXPLORATION, L.L.C.)
)
RELIEF SOUGHT: WAIVER OF CONSENT) CAUSE CD NO.
REQUIREMENTS OF OCC) 201503744
RULE 165:5-7-6)
)
LEGAL DESCRIPTION: SECTION 31,)
TOWNSHIP 17 NORTH)
RANGE 5 WEST OF THE IM)
KINGFISHER COUNTY,)
OKLAHOMA)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

These causes came on for hearing before **Andrew T. Dunn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 16th day of December, 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: **Richard K. Books**, attorney, appeared on behalf of applicants, Chesapeake Operating, L.L.C. and Chesapeake Exploration, L.L.C. ("Chesapeake"); **Russell James Walker**, attorney, appeared on behalf of Spess Oil Company ("Spess"); **Michael D. Stack** and **Elizabeth Anne George**, attorneys, appeared on behalf of Tessera Energy L.L.C. ("Tessera"); **Gregory L. Mahaffey**, attorney, appeared on behalf of Wake Energy L.L.C. (Wake"); 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 12th 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 15th 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

SPESS TAKES EXCEPTION to the recommendation of the ALJ to grant the applications of Chesapeake.

Cause CD 201503126 is the application of Chesapeake for horizontal spacing covering Section 31, T17N, R5W, Kingfisher County, Oklahoma. Cause CD 201503744 is the application of Chesapeake for waiver of consent requirements of OCC-OAC 165:5-7-6 covering Section 31, T17N, R5W, Kingfisher County, Oklahoma.

Chesapeake requests the Commission enter an order, to be effective as of the date of the execution thereof or as of a date prior thereto, as follows:

- (i) Establishing the initial boundaries of the Big Lime and Oswego separate common sources of supply of gas so as to cover and include Section 31, T17N, R5W, Kingfisher County, Oklahoma, which should be formed as 640-acre horizontal drilling and spacing units for such formations underlying such section, with the permitted well for the unit to be located not less than 660 feet from the unit boundary; and
- (ii) Granting such other and further relief as may be proper based upon the evidence presented at the hearing herein. Chesapeake also requests the Commission waive the requirements for written consent of the requested

horizontal spacing unit, which requirement is set forth in OCC-OAC 165: 5-7-6.

Tessera Energy L.L.L. ("Tessera") operates wells in Section 31 and in surrounding sections. It does not waive any right to file suit in district court in the event its wells are damaged by Chesapeake's horizontal well. Tessera also requests that the order contain a paragraph stating Chesapeake will provide frac notice under Commission rules. Spess protests these applications.

SPESS TAKES THE POSITION:

1) The ALJ Report is contrary to the evidence, contrary to law and, if adopted, will result in injustice.

2) Chesapeake did not satisfy the requirements of OCC-OAC 165:5-7-6(i). There were significant people who did not waive consent. In particular, Tessera made a verbal argument against it. Nobody wants this well here where there are 12 wells already present that have been producing for a long time.

3) The Chesapeake witness could not verify that the waivers of consent were sought correctly. Spess believes these consent waivers have to be sought by restricted mail, which means mail only delivered to the addressee. The Chesapeake witness could not testify that this was the case. The witness said he thought things were sent by certified mail. Certified mail, without any restrictions, can be delivered to anybody who will sign for it at that address. The ALJ had to ask some questions to basically place into the record the appropriate testimony. An applicant ought to prove its own case rather than rely on a Judge's testimony to do it. The ALJ inappropriately asked all questions and received all answers relevant to satisfaction of said requirements. The ALJ's questioning was inappropriate. The requests in the Chesapeake application should be denied.

THE ALJ FOUND:

1) In Cause CD No. 201503126, filed July 1, 2015, Chesapeake requests that the Commission form 640-acre horizontal drilling and spacing units in Section 31. Chesapeake states that one or more wells produce from the Big Lime and/or Oswego underlying said Section 31. All wells are treated as if they are producing from the Oswego common source of supply for purposes of obtaining proper notice from owners in the unit and existing wells. Pursuant to OCC-OAC 165:5-7-6, Chesapeake has attempted to obtain the written consent of the necessary owners described in said rule. However, it is Chesapeake's belief that such written consent is withheld by a sufficient number of owners so as to prevent meeting the requirements set forth in the rule. Chesapeake requests that the Commission, pursuant to said rule, waive the written consent requirements.

2) At time of hearing, Tessera dropped its protest of Chesapeake's applications. Tessera operates wells in Section 31 as well as in surrounding sections. Tessera is not waiving any right to file suit in district court in the event its wells suffer damage potentially caused by horizontal development in Section 31. Tessera also requests that the order contain a paragraph stating Chesapeake will provide notice under Commission rules for commencing fracing operations.

3) Spess protests Chesapeake's applications. The issue Spess raises is whether Chesapeake has proved its case to establish horizontal spacing and obtain a waiver of consent requirements in Section 31. Spess also raises the specific question of whether the letters requesting consent were mailed in accordance with rule OCC-OAC 165:5-7-6.

4) OCC-OAC 165:5-7-6 sets the requirements that an applicant meet in order to establish horizontal spacing. OCC-OAC 165:5-7-6(h) provides the requirement that an applicant must either obtain consents from owners in the unit and in the wellbores, or obtain a waiver of the consent requirements. OCC-OAC 165: 5-7-6(i)(1-4) provides that, if an applicant seeks to obtain a waiver of the consent requirement for horizontal spacing as vertical wells are producing in the already conventionally spaced common source of supply in the lands subject to its application, it must demonstrate that it meets certain set requirements.

5) Spess raised the issue of whether the letters requesting consent for the formation of the horizontal spacing unit were mailed in accordance with rule OCC-OAC 165:5-7-6.

6) Subpart (h) of the rule requires that "[r]equests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit." "Restricted mail" is defined in OCC-OAC 165:5-1-3 and it provides that "'[r]estricted mail" means mailing by certified mail, return receipt requested, within the United States..."

7) Mr. Lovelace testified that he did not understand the Commission's definition of restricted mail as provided under OCC-OAC 165:5-1-3 nor its requirement regarding requests for consent under OCC-OAC 165:5-7-6(h). Mr. Lovelace also testified that he mailed the requests for consent to parties via certified mail.

8) Thus, despite Mr. Lovelace's nescience, the Court has determined that Chesapeake has met the Commission's requirements for requesting consent to horizontal well units through the certified mailings he performed as certified mail meets the definition of restricted mail under Commission rules.

9) OCC-OAC 165: 5-7-6(i)(1-4) lists the requirements to be met by an applicant seeking a waiver of the consent requirement, which is necessary to establish horizontal spacing where vertical wells producing in the conventionally spaced common source of supply already exist.

10) Attached to the Report of the Oil and Gas Appellate Referee is Table 3 - 50% Consents for Section 31 referenced on page 14 of the ALJ's Report, which addresses the waiver of consent requirements provided under OCC-OAC 165: 5-7-6(i)(1-2) and summarizes information taken from testimony and exhibits regarding the due diligence and bona fide effort Chesapeake undertook to locate owners sharing in the Oswego common source of supply. There are four wells for which unit and/or wellbore consents were not obtained and, for which, the waiver of consent application applies. Two of these four wells are the Bessie Shackelford #2 and the P.M Churchfield #1. Chesapeake has obtained consents in excess of 50% from the owners in these wells. Chesapeake has not obtained consents in excess of 50% from owners in the unit. It should be noted that Tessera is the operator of these wells and has since dropped its protest. The other two wells missing the unit and/or wellbore consents are the Clyde Bollenbach #1 and Clyde Bollenbach #2. Spess owns 76.28 acres in the unit and in the wellbores and is the protestant to Chesapeake's causes.

11) The Court has determined that Chesapeake has met the requirements of OCC-OAC 165:5-7-6(i)(1-2), which are required to obtain a waiver of consent application. Chesapeake performed due diligence to locate all of the well and unit owners currently producing from the Oswego in Section 31. Chesapeake made a bona fide effort to obtain consents from the well and unit via its restricted mail requests and its proper notice for the hearing. Overall, due diligence to locate owners and a bona fide effort to obtain consents was performed.

12) OCC-OAC 165:5-7-6(i)(1-4) lists the requirements to be met by an applicant seeking a waiver of the consent requirement, which is necessary to establish horizontal spacing where vertical wells producing in the conventionally spaced common source of supply already exist.

13) The testimony of Mr. Kennedy addresses requirements provided under OCC-OAC 165:5-7-6(i)(3) and the testimony of Mrs. Romenesko addresses the requirements provided under OCC-OAC 165:5-7-6(i)(4).

14) Mr. Kennedy's testimony (summarized below) provides support that Chesapeake has met the requirement of OCC-OAC 165:5-7-6(i)(3), which states that "alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created." As he testified at hearing:

a) The Oswego is omnipresent in the area and located at an approximate depth of 6240 feet.

b) The Oswego is tight limestone and a fractured reservoir, making it a potential success for horizontal development.

c) Chesapeake has drilled horizontal wells ten miles to the north in the Oswego, but it has not drilled in the immediate vicinity depicted on Exhibit 1. These wells to the north were successful producers.

d) It is his opinion that horizontal development is appropriate and will obtain an economic amount of oil and gas.

e) Mr. Kennedy testified that horizontal development allows for capturing hydrocarbons that would otherwise be left in the ground as part of an unaffected portion of the reservoir. Therefore, it is his opinion that Section 31 needs 640-acre horizontal spacing to encourage development that has not taken place in 33 years and would not otherwise occur.

f) Mr. Kennedy testified that horizontal wells are more economic than vertical wells. In a tight hydrocarbon reservoir, he testified, improved economics are achieved by drilling the formation horizontally because the horizontal wellbore is exposed to more surface area.

15) In summary, Mr. Kennedy's testimony supports the position that "alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created." This is because, without horizontal well development, wells are not likely to be drilled in Section 31. For the past 33 years, no vertical drilling has been undertaken by owners in the section. Rather, a majority of the hydrocarbons have gone to waste by being left in the ground. This is due to Spess' (and other owner's) stagnant drilling programs and the result of existing vertical wells' marginal production. At present, Chesapeake intends to develop Section 31 using horizontal wells. Such horizontal development will provide the opportunity to capture hydrocarbons that will otherwise be left in the ground (and has been left in the ground to date). Therefore, Mr. Kennedy's testimony supports Chesapeake's request for a waiver of the consent requirements under OCC-OAC 165:5-7-6(i)(3).

16) Mrs. Romenesko's testimony, summarized below, provides support that Chesapeake has met the requirement of OCC-OAC 165:5-7-6(i)(4), which requires that, in the event that the consent requirement is waived and the proposed horizontal well unit is created, the correlative and vested rights of owners in existing wells will be protected. As she testified at hearing:

a) There will be no likely impact on the vertical wells in the section because her studies of horizontal well impacts on vertical wells within the Oswego did not demonstrate any negative response to the vertical wells by the horizontal development.

b) A horizontal Oswego well 10 miles away produces 200,000 to 600,000 BO with gas and gas liquids annually. This contrasts generally to vertical Oswego wells which produce as little as 10,000 BO per well to as much as 50,000 BO per well annually. It is her opinion that such vertical wells average 40,000 to 50,000 BO.

c) The Bollenbach wells produce 0.7 BO per day per well, according to 2015 production history.

d) The Oswego will be an oil reservoir and it needs a horizontal well in order to produce hydrocarbons within a feasible timeframe to achieve economic success.

e) Vertical wells would have been drilled in the section in the past 33 years if they had the potential to be economic.

17) Mrs. Romenesko's testimony supports the position that the correlative and vested rights of owners in existing wells will be protected if the consent requirement is waived and the proposed horizontal well unit is created. This is because the existing vertical wells in Section 31 will not be impacted by Chesapeake's horizontal development, according to her studies of horizontal well impacts on vertical wells in similar Oswego formations. Therefore, Mrs. Romenesko's testimony supports Chesapeake's request for a waiver of the consent requirements under OAC-OCC 165:5-7-6(i)(4).

18) In closing, the Court has determined that Chesapeake has met the requirements of OCC-OAC 165:5-7-6(i)(1-4) and its application requesting a waiver of the consent requirements is recommended.

19) OCC-OAC 165:5-7-6 provides the requirements an applicant must prove to establish horizontal spacing. Part of those standards include the request for a waiver of the consent requirements, which are discussed in the preceding section. The remaining requirements are those that an applicant must prove through its application and through its case presented to the Court. The Referee would adopt pages 17 through 19, Table 4, which repeats OCC-OAC 165:5-7-6. This Table 4, in addition to restating the rule, provides the requirements that Chesapeake has met through its expert testimony and exhibits.

20) The Court finds that the remaining requisite requirements necessary for establishing 640-acre horizontal spacing for the Oswego common source of

supply in Section 31 have been met by Chesapeake. The Court finds that Spess' cross-examination of Chesapeake's expert witnesses did not successfully disprove any element of Chesapeake's case. Spess also did not present any expert evidence supporting its opposing position that 640-acre horizontal spacing is improper compared to creating another size unit (outside of its cross examination of Chesapeake's witnesses). The Court finds that horizontal wells are the best economic method to develop the Oswego reservoir in this section at the present time and that, without the requested relief, development in the area would not otherwise occur. The Court finds that 640 acre horizontal spacing is needed in order to prevent waste as any alternative form of development in the section has not taken place in 33 years. The Court finds that correlative rights are protected as Mrs. Romenesko's expert testimony supports the position that Oswego wells in the section will not be harmed by horizontal development in the Oswego common source of supply.

21) It is the Court's determination that Chesapeake has met its burden and proved its case through the exhibits and testimony presented at hearing to establish 640-acre horizontal drilling and spacing units for the Oswego common source of supply in Section 31. In closing, Chesapeake's request for 640-acre horizontal spacing is recommended as Chesapeake has proved its case under OCC-OAC 165:5-7-6.

22) It is the ALJ's recommendation that the Chesapeake's applications seeking Horizontal Spacing and Waiver of Consent Requirements under OCC-OAC 165:5-7-6 in Section 31 are hereby recommended.

POSITIONS OF THE PARTIES

SPESS

1) **Russell J. Walker**, attorney, appearing on behalf of Spess, stated due to the huge Oswego production in Section 31, Chesapeake was unable to obtain the proper waiver of consent numbers from the interest owners. Spess notes there were 12 Oswego vertical wells in Section 31.

2) Spess notes OCC-OAC 165:5-7-6(i) lists the criteria for the granting of a waiver of consent.

3) Spess references the transcript testimony of the Chesapeake landman witness. Spess believes the consent waivers were incorrectly delivered to the interest owners. Spess said the Chesapeake witness could not state whether these waivers were sent by restricted mail. He thought certified mail was used.

4) Spess notes the ALJ asked some clarifying questions of the landman about the delivery used. Spess believes the Chesapeake evidence was deficient because it does not prove the delivery criteria of OCC-OAC 165:5-7-6(i). Spess is uncertain, from researching, but believes an applicant should prove his own case without having to rely on the judge to ask questions.

CHESAPEAKE

1) **Richard Books**, attorney, appearing on behalf of Chesapeake, notes that 12 O.S. Section 2614 indicates that a Judge can ask questions, and where there is no objection, such is waived. Chesapeake believes the record reflects that Chesapeake did prove their case, prior to the ALJ asking clarifying questions.

2) Chesapeake stated there are 4 elements to OCC-OAC 165:5-7-6(i).

3) Element one is using Due diligence to locate parties, which was undisputed by Spess.

4) Element two is using a bona-fide effort to obtain the waiver consent. Chesapeake disagrees with Spess' statement that certified mail does not meet the rule's requirement. Chesapeake believes this rule is about substance over form. Chesapeake notes it obtained seven separate consents on Exhibit 4 and Exhibit 6.

5) Element three is to prove there are no alternative development which was undisputed. Chesapeake notes the parties refusing to consent here have owned their interests since 1992. Chesapeake notes there has not been a vertical well drilled here in almost 30 years or since 1982. Chesapeake believes vertical wells do not efficiently drain the hydrocarbons, thus, are not good alternatives for development here. Chesapeake believes that horizontal development is the only option to fully develop the unit.

6) Element four is to protect the correlative rights of the owners. Chesapeake notes in the absence of this requested spacing, there would be unrecovered hydrocarbons left in the ground. Chesapeake notes approximately 200 to 400 MMBO would be recovered from this horizontal well. Chesapeake notes Spess' two wells here, the Bollenbach wells would be protected here, as Chesapeake has drilled 300 and 500 feet from vertical Oswego wells with no adverse affect, and note that together, these two wells produce approximately .7 barrels per day. Chesapeake believes Spess' correlative rights would be protected.

7) Chesapeake notes this proposed horizontal well would not likely harm the existing two Spess wells here in Section 31. Chesapeake submits the best way to balance correlative rights would be to affirm the ALJ's ruling.

8) Chesapeake believes it used the proper mailing procedure in line with OCC-OAC 165:5-7-6-(i). Chesapeake notes that Spess had plenty of notice in which to protest this hearing.

9) Chesapeake notes if this is the appropriate delivery method, Chesapeake would request the Commission rule on this for future filed applications. Chesapeake requests, even if the delivery method used by Chesapeake does not qualify per the Commission rules, that the ALJ still be affirmed.

RESPONSE OF SPESS

1) Spess notes that from a review of the exhibits, there were nine owners who did not want this horizontal well and 7 consents for the horizontal well.

2) Spess notes since 1962 there have been 12 vertical Oswego wells in this Section 31, with production records going back to 1979. Spess notes these Oswego wells produce large quantities of oil.

3) Spess points out the Chesapeake witness only discussed the production data since 2000. Spess notes the Chesapeake witness, insofar as horizontal drilling was concerned, was unaware about anything from the surrounding sections, rather only wells ten miles away.

4) Spess notes there were two horizontal wells already drilled in the nine section area--a Mississippian well in Section 29 and a Hunton well in Section 6. Spess notes that many owners did not waive consent here. Spess notes the interest owners here have 12 good producing wells here and do not wish to have another horizontal well drilled.

5) Spess notes per Exhibit 4 and Exhibit 6 there are seven consents and per Exhibit 5 there are four Entry of Appearances and Waiver of Consents. Spess requests the Report of the ALJ be reversed.

CONCLUSIONS

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

1) The Referee finds the ALJ's determination to grant the Chesapeake application for 640 acre horizontal spacing for the Big Lime/Oswego common sources of supply for Section 31, T17N, R5W, Kingfisher County, Oklahoma, prevents waste and is supported by the weight of the evidence, and by the law. The Referee also finds that the ALJ's recommendation to waive the requirements for written consent of the requested horizontal spacing unit, which requirement is set forth in Oklahoma Corporation Commission rule OCC-OAC 165:5-7-6, should be granted.

2) Chesapeake has two burdens: the burden of persuasion (that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose); and the burden of production (a party's obligation to come forth with evidence to support its claim). *Director, Office of Workers Compensation Program, Department of Labor v. Maher Terminals, Inc.*, 512 U.S. 267, 272, 275 (U.S. 1994).

3) Chesapeake presented evidence that its proposed 640 acre horizontal spacing and waiver of consent requirements under OCC-OAC 165:5-7-6(i) in Section 31 will allow orderly development of this area and prevent waste and protect correlative rights. 52 O.S. Section 87.1; *Corporation Commission v. Union Oil Company of California*, 591 P.2d 711 (Okl. 1979); *Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981); *Union Texas Petroleum, A Division of Allied Chemical Corporation v. Corporation Commission of State of Oklahoma*, 651 P.2d 652 (Okl. 1981).

4) Title 52 O.S. Section 87.1 states:

(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any wastes, or to protect or assist in protecting the correlative rights of interested parties, the Corporation Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in the notice, shall have the power to establish well spacing and drilling units as specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma; provided, that the Commission may authorize the drilling of an additional well or wells on any spacing and drilling unit or units or any portion of portions thereof or may establish, reestablish, or reform well spacing and drilling units of different sizes and shapes when the Commission determines that a common source of supply contains predominately oil

underlying an area or areas and contains predominately gas underlying a different area or areas;

* * *

(f) Notwithstanding any provision of this section to the contrary, the Corporation Commission shall have jurisdiction upon the filing of a proper application therefore, and upon notice given as provided in subsection (a) of this section, to establish spacing rules for horizontally drilled oil wells whereby horizontally drilled oil wells may have well spacing units established of up to six hundred forty (640) acres plus tolerances and variances as allowed for gas wells pursuant to subsection (c) of this section.

Thus the law does provide the Commission authority to create units up to 640 acres for oil in order to provide for the proper development of oil producing common sources of supply utilizing horizontal drilling technology. The Commission rules also recognize that there could be the necessity for multiple wells even at the time the horizontal well is being established.

OCC-OAC rule 165:10-3-28(e)(3) provides:

(3) The Commission may create a non-standard horizontal well unit covering contiguous lands in any configuration or shape deemed by the Commission to be necessary for the development of a conventional reservoir or an unconventional reservoir by the drilling of one or more horizontal wells. A non-standard horizontal well unit may not exceed 640 acres plus the tolerances and variances allowed pursuant to 52 O.S. Section 87.1.

5) The Supreme Court in *Denver Producing & Refining Company v. State*, 184 P.2d 961 (Okl. 1947) found:

In most instances it is impossible to use a formula which will apply equally to all persons producing from

a common source. In striking a balance between conservation of natural resources and protection of correlative rights, the latter is secondary and must yield to a reasonable exercise of the former.

6) As stated in *Winter v. Corporation Commission of State of Oklahoma*, 660 P.2d 145 (Okl.Civ.App. 1983):

Having been given a choice of remedies, it is incumbent upon the Commission to use the remedy which will best prevent waste and protect correlative rights.

7) The Commission has found that when multiple horizontal wells are needed to develop a 640 acre unit the larger unit is necessary to provide the necessary flexibility to properly locate the horizontal wells to develop the common sources of supply. The 640 acre horizontal spacing requested by Chesapeake for oil best affords the necessary flexibility in drilling the horizontal wells in this unit.

8) Protestant Spess raises the issue whether Chesapeake has proved its case to establish horizontal spacing and obtain a waiver of consent requirements in Section 31. Spess questions whether the letters sent by Chesapeake requesting consent were mailed in accordance with rule OCC-OAC 165:5-7-6. OCC-OAC 165:5-7-6(h) provides that "[r]equests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit." Spess asserted that Chesapeake sent their request for waivers by certified mail which is inadequate and not restricted, as certified mail can be delivered to anybody who will sign for it at the address listed. However, OCC-OAC 165:5-1-3 "Definitions" states:

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside of the United States and its territories.

Thus, the Referee believes that the ALJ was correct in his determination that "certified mail" was the equivalent of "restricted mail" and was properly used by Chesapeake.

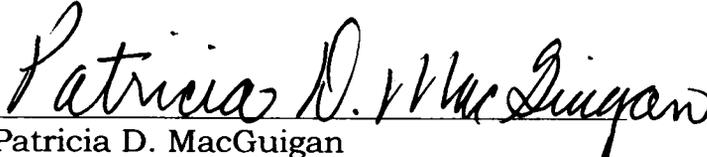
9) Spess also asserts that an ALJ asking questions of witnesses was not appropriate and that the applicant ought to prove his own case. The Referee agrees with Chesapeake, however, that 12 O.S. Section 2614 applies not only to district court but to ALJs and makes clear that Judges can ask questions. There was no objection to such questions being asked by the ALJ during the protested hearing.

10) The four requirements under OCC-OAC 165:5-7-6(i) the Referee believes were met by Chesapeake. Requirement #1 is that due diligence must be used to locate parties and as stated above, the certified mail used by Chesapeake complies with the rules. The second requirement under the rule is that a bona fide effort has to be made to obtain the required percentage of consent. Chesapeake obtained seven separate consents. Table 3 shows there are four wells for which unit and/or wellbore consents were not obtained and for which the waiver of consent application applies. Two of these four wells are the Bessie Shackelford #2 and the P.M. Churchfield #1 where Tessera is the operator of these wells and has withdrawn its protest of Chesapeake's applications. The other two wells where the unit and/or wellbore consents are absent is the Clyde Bollenbach #1 well and the Clyde Bollenbach #2 well which are operated by Spess who is the protestant to these Chesapeake causes. The third element of this rule is that there is no alternative developments which are adequate to prevent waste and to protect correlative rights. The evidence reflected that the parties refusing to consent have owned their interest since 1992 and no one has drilled a vertical well for almost 30 years since 1982. Vertical wells do not efficiently drain and therefore are not good alternatives to a horizontal well. Because the Oswego is a tight limestone and a fractured reservoir a horizontal development will be more successful and will obtain an economic amount of oil and gas. In a tight hydrocarbon reservoir improved economics are achieved by drilling the formation horizontally because a horizontal wellbore is exposed to more surface area.

11) The fourth criteria is that correlative rights will be adequately protected. A horizontal Oswego well ten miles away produces 200,000 to 600,000 BO with gas and gas liquids annually. The testimony reflected that a vertical Oswego well would only produce 10,000 to 50,000 BO per well annually. The testimony reflected that the Bollenbach wells in Section 31 only produce 0.7 BO per day per well according to a 2015 production history. It was further evidenced that this horizontal well will not harm the existing Spess vertical wells. There was evidence presented that in one example a horizontal well was drilled within 100 feet of an existing well and there was no adverse impact to the existing well.

12) For the above stated reasons and the above stated law, the Referee would recommend that the Report of the ALJ be affirmed.

RESPECTFULLY SUBMITTED THIS 12th day of May, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
ALJ Andrew T. Dunn
Richard K. Books
Russell James Walker
Michael D. Stack
Elizabeth Anne George
Gregory L. Mahaffey
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks
Commission Files

Att: Table 3

87.

**TABLE 3:
50% CONSENTS – SECTION 31**

Well Names	Location	Formation(s) / Spacing Unit	Company	Wellbore (50% Consent)	Unit (50% Consent)	Operator	Efforts to Obtain Consents	Bona Fide Effort to Obtain Consents? 165:5-7-6(i)(2)	
Bessie Shackelford 1	NE/4	Oswego/ 80 Acres	Oklahoma Energy Acquisition	0	58.5%	Tessera	Unit and Wellbore 50% Consents obtained	YES	
			F Five Investments	52.5%	0				
Bessie Shackelford 2	NE/4	Oswego/ 80 Acres	F-Five Investments	52.5%	0	Tessera	Missing Unit 50% Consent, Wellbore 50% Consent obtained <i>Party(ies) Properly Notified via restricted mail Waiver of Consent Requirement Necessary</i>		
			NA	NA	NA				
Bessie Shackelford 3	NE/4	Oswego/ 80 Acres	Tessera	NA	NA		Plugged	No consent or waiver needs to be obtained	
Bessie Shackelford 4	NE/4	Oswego/ 80 Acres	F-Five Investments	52.5%	0	Tessera	Unit and Wellbore 50% Consents Obtained	YES	
			Oklahoma Energy Acquisition	0	58.5%				
P.M Churchfield 1	NW/4	Oswego/ 80 Acres	F-Five Investments	52%	0	Tessera	Missing Unit 50% Consent, Wellbore 50% Consent obtained <i>Party(ies) Properly Notified via restricted mail Waiver of Consent Requirement Necessary</i>		
			NA	NA	NA				
P.M. Churchfield 2	NW/4	Owego/ 80 Acres	Briscoe	NA	NA		Plugged	No consent or waiver needs to be obtained	
Clyde Bollenbach 1	NW/4	Owego/ 80 Acres	Spess	76.28 acres the unit and in the 2 wellbores		Spess	Missing Unit and Wellbore 50% Consents- <i>Party(ies) Properly Notified via restricted mail Spess Protesting Applications</i>		
Clyde Bollenbach 2	NW/4	Owego/ 80 Acres	Spess			Spess			Missing Unit and Wellbore 50% Consents- <i>Party(ies) Properly Notified via restricted mail Spess Protesting Applications</i>
Foster 1	SW/4	Owego/ 80 Acres	Marion	NA	NA		Plugged	No consent or waiver needs to be obtained	
Foster 1	SW/4	Owego/ 80 Acres	Gungoll Gungoll	NA	NA		Plugged	No consent or waiver needs to be obtained	
Marie Norton Unit 1	SE/4	Owego/ 80 Acres	Ed McQueen	NA	NA		Plugged	No consent or waiver needs to be obtained	
Due Diligence Performed to locate owners? 165:5-7-6(i)(1)	Due diligence to locate well and unit owners properly was performed.						<p>-Chesapeake performed due diligence to locate all of the well and unit owners currently producing from the Oswego in Section 31.</p> <p>-Chesapeake made a bona fide effort to obtain consents from all of the well and unit owners via its restricted mail requests and its proper notice for the hearing.</p> <p>-Overall, due diligence to locate owners and a bona fide effort to obtain consents was performed.</p>		