

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	LE NORMAN OPERATING LLC)	
)	
<u>RELIEF SOUGHT:</u>	AMENDMENT OF POOLING ORDER NO. 569386)	CAUSE CD NO. 201503771
)	
<u>LEGAL DESCRIPTION:</u>	SECTION 9, TOWNSHIP 17 NORTH, RANGE 22 WEST, ELLIS COUNTY, OKLAHOMA)	
)	
)	
<u>APPLICANT:</u>	LE NORMAN OPERATING LLC; LE NORMAN FUND I LLC; AND TEMPLAR ENERGY LLC)	
)	
<u>RELIEF SOUGHT:</u>	AMENDMENT OF POOLING ORDER NO. 569386)	CAUSE CD NO. 201505340
)	
<u>LEGAL DESCRIPTION:</u>	SECTION 9, TOWNSHIP 17 NORTH, RANGE 22 WEST, ELLIS COUNTY, OKLAHOMA)	
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REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Michael Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 28th 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 and taken under advisement on December 9, 2015.

APPEARANCES: **Richard Books**, attorney, appeared on behalf of applicant, Le Norman Operating LLC, Le Norman Fund I LLC, and Templar Energy LLC (collectively "Le Norman"); **Michael Stack**, attorney, appeared on behalf of Midstates Petroleum Company LLC ("Midstates"); 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 20th day of January, 2016 only in Cause CD 201503771.

The captioned causes came on for hearing before the ALJ on the 24th of November, 2015, for the purpose of hearing the Motion to Consolidate and to Incorporate Testimony filed by Le Norman, resulting in Order No. 647894 issued on December 22, 2015.

The Exceptions to the Report were filed on January 26, 2016, in both Causes CD 201503771 and CD 201505340, due to the granted above Motion to Consolidate.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 1st 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

LE NORMAN TAKES EXCEPTION to the recommendation of the ALJ to deny the applications of Le Norman in CD 201503771 and CD 201505340.

Only the named operator in Order No. 569386 may propose and drill subsequent wells. Le Norman filed the application in CD 201503771 requesting Commission Order No. 569386 be amended to designate Le Norman as operator of all future wells completed in the Tonkawa/Douglas common source of supply. Le Norman feels that any participating party should be able to propose a subsequent well.

Cause CD 201503771 is the application of Le Norman seeking amendment of pooling Order No. 569386 covering Section 9, T17N, R22W, Ellis County, Oklahoma.

Cause CD 201505340 is the application of Le Norman, Le Norman Fund I LLC and Templar Energy LLC seeking amendment of pooling Order No. 569386 covering Section 9, T17N, R22W, Ellis County, Oklahoma.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 20th day of January, 2016 only in Cause CD 201503771, which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The captioned causes came on for hearing before the ALJ on the 24th of November, 2015, for the purpose of hearing the Motion to Consolidate and to Incorporate Testimony filed by Le Norman, resulting in Order No. 647894 issued on December 22, 2015.

The Exceptions to the Report were filed on January 26, 2016, in both Causes CD 201503771 and CD 201505340, due to the granted above Motion to Consolidate.

LE NORMAN TAKES THE POSITION:

1) The ALJ Report is contrary to the law, not supported by substantial evidence, arbitrary and capricious and not upon terms which are fair, just, and reasonable to all parties.

2) The ALJ refused to modify the pooling order to allow any participating party to propose a subsequent well. The ALJ did so based upon his statement that a well is not currently economical. This ruling is in error for the following reasons, among others:

a) The conclusion that a well is currently uneconomical is not supported by the evidence. The evidence showed that a well currently meets Le Norman's economics.

b) By refusing to allow non-operators to propose a well, the ALJ has made the interests of all non-operators subject to whatever arbitrary or capricious decisions (economic or otherwise) Midstates cares to make.

c) The ALJ erred in not allowing those who have taken the risk of developing the unit any avenue for further development of their interests in the unit.

3) The evidence clearly showed that Midstates has never been willing to drill a subsequent well until forced to do so by a non-operator gaining relief through this Commission. The evidence in this case shows that Midstates takes the same position in this instance. It was error for the ALJ to leave the non-operators with no relief whatsoever, and no avenue for development of their interests in the unit.

4) The ALJ erroneously concluded that the application was an impermissible collateral attack. This conclusion is particularly egregious in view of the fact that this Commission has previously modified this same pooling order in a fashion almost identical to the relief requested in this case.

5) The evidence showed that Midstates has refused to drill a subsequent well under the pooling order until forced to do so by the non-operators' actions

at this Commission. The evidence further showed that Midstates again has no intention of drilling a subsequent well without relief from this Commission. It was therefore error for the ALJ not to grant a "window" of operations during which other parties can cause development of the unit.

6) This Commission has previously determined that, in the absence of increased density, waste will occur. Despite this final order, the ALJ makes the determination that waste will not occur. The ALJ's conclusion is an impermissible collateral attack upon the increased density order.

7) It was error for the Judge not to name Le Norman as operator under the Order.

8) Le Norman respectfully requests that the ALJ Report be reversed.

THE ALJ FOUND:

1) There was a motion to dismiss this cause at the conclusion of Le Norman's case in chief. The reason provided was lack of jurisdiction. Midstates argued that without the right to drill in the unit by Le Norman the Commission has no jurisdiction to hear the matter. The Court overruled the motion. Le Norman's land witness testified he was authorized to adopt the application on behalf of Templar Energy, which is a wholly owned subsidiary of Le Norman.

2) After taking into consideration all the facts, circumstances, testimony and evidence presented in this cause, it is the recommendation of the ALJ that the application in CD 201503771 be denied.

3) The evidence shows that Midstates is the majority owner in the unit. The evidence also shows that Templar and its subsidiary own 31.7656% of the unit. This is less than half of the interest of Midstates, which is approximately 68%. There was no allegation of ineptness by Midstates in their operation in the unit. There was evidence that Midstates is not forthcoming with information regarding its operations in the unit; however, there was no evidence or implication that Midstates was a poor operator.

4) Le Norman requested in its application that certain language in Commission Order 569386 be modified to add language or amend that order. The requested change would authorize the proposal of subsequent wells by any party that participated in the risk of drilling the initial well. The ALJ specifically recommends this request be denied.

5) First, it appears to be a collateral attack on a final order. The ALJ is aware the Commission did allow a modification of operatorship on a limited basis in Commission Order 619934 issued in January of 2014.

6) Secondly, the ALJ notes CD 200900550, (which generated Commission Order 569386), was protested by several parties, none of which appear to be Le Norman. In the Pre-Hearing Conference Agreement, in Paragraph III, titled ISSUES, there is no specific mention of subsequent operations language. No evidence was presented to show why the order allows only Le Norman in that cause to be the sole party authorized to propose subsequent wells. The ALJ does not recommend disturbing the prior judgment of the Commission when it issued Order 569386 in July of 2009.

7) Le Norman argues and the evidence supports its position that the Commission recognizes an increased density well is needed to recover the hydrocarbons in this unit. The ALJ agrees with Le Norman regarding this point. However, the ALJ does not believe that another well is economically needed at this time. There was no evidence shown that there was a danger of drainage from another unit. A delay in drilling for the hydrocarbons in this unit does not appear to harm the long-term interests at this time. The increased density order gives a party one year from its date of issuance to commence the drilling of an additional well or wells, thus if conditions change, a well could be drilled by Midstates.

8) The evidence did show that Le Norman was successful on another occasion of wresting operatorship from Midstates in this unit. However, some of the circumstances in that cause are considerably different from this cause. Notably, the price of oil was higher than the prices noted in this cause. Economics and avoiding waste of capital do carry considerable weight as to what actions a prudent operator should take. The evidence is clear that drilling a subsequent well is not prudent at this time, or in the foreseeable future. Thus, there is no reason to change the operator to Le Norman to give them a window to drill a well that is unneeded at this time for the reasons stated above.

POSITIONS OF THE PARTIES

LE NORMAN

1) **Richard Books**, attorney, appeared on behalf of Le Norman, stated the issue here concerns whether it is proper to prevent the 31% owner from proceeding to develop this unit.

2) Le Norman owns approximately 31% of the unit here with Midstates owning the remaining 69%. Le Norman wishes to be given a window for operations with the ability to propose a well. Le Norman believes without a

window at the end of the operations period, Le Norman will have no ability to develop this unit.

3) Le Norman notes that Midstates acknowledges it is unwilling to drill another well here. Le Norman realizes that under this appeal that change of operator will not be an issue. Le Norman thus focuses on the alternate relief of requesting a window of operations so that Le Norman can drill a Tonkawa/Douglas well due to Midstates refusal to do so.

4) Le Norman notes after pooling Order No. 569386 in Cause CD 200900550 issued on 7-30-2009, the Kaiser #2-9H well was drilled. Le Norman later asked Midstates to drill another well to the Tonkawa/Douglas formation, which Midstates declined.

5) Le Norman filed an application to modify the original pooling Order No. 569386, resulting in the creating of Order No. 619934 dated January 6, 2014, which gave Midstates until 2-10-2014 to drill a Tonkawa/Douglas well; otherwise, Le Norman would be named operator of the well. Le Norman notes Midstates did drill this Tonkawa/Douglas well, but only after repeated requests by Le Norman.

6) Le Norman notes Midstates protested Le Norman's attempts to obtain a window to drill, until Order No. 619934 was entered, which forced Midstates to drill a well.

7) Le Norman filed an increased density for the Tonkawa/Douglas formation which Midstates protested up to the day of the hearing and then Midstates withdrew its protest of the density and allowed it to proceed.

8) Le Norman believes the evidence points out there is incredible Tonkawa/Douglas wells here. Le Norman notes the Section 8 well there is expected to make 840 MMBO. Le Norman notes the Section 9 Midstates well began as a very good well yet two months prior to the hearing this well experienced unknown problems.

9) Le Norman notes it filed the current cause and the ALJ denied Le Norman's requested relief. Le Norman notes drilling a well here, as a 31% interest owner, would meet Le Norman's economics.

10) Le Norman notes despite the Section 9 well having problems, Midstates was requiring Le Norman to make an election in a nearby section without being advised of the reasons the Section 9 well was having problems.

11) Le Norman presented the only engineering testimony. Le Norman acknowledges Midstates stated it only drills a well when the oil prices are high. Le Norman notes at the time of this hearing, oil prices were \$38 a barrel compared to the \$90 plus a year earlier. Le Norman believes Midstates thinks

the low oil price would be basically leaving money on the table; thus, a well should not be drilled now.

12) Le Norman notes Le Norman's filing in the past occurred when oil price was over \$90 plus a barrel yet Midstates still protested Le Norman's filing until Midstates complied with the Order No. 619934 that gave Le Norman a window to drill another well.

13) Le Norman's economics compared to Midstates' economics are very different. Le Norman is willing to drill at \$38 oil whereas Midstates is opposed to drilling.

14) Le Norman notes due to loss of operations and to comply with Order No. 619934, only then did Midstates finally drilled the well to the Tonkawa/Douglas formation.

15) Le Norman notes neither Midstates or Le Norman have presented any evidence concerning economics for drilling another well now. Le Norman did not dispute Midstates' economics due to Le Norman would be drilling the well, not Midstates.

16) Le Norman notes Midstates believes their economic figures should control any drilling here since Midstates is the majority owner. Le Norman disagrees with this, as such does not allow other interest owners to drill a well to develop the unit.

17) Le Norman notes Midstates was asked specifically "Why is it that you believe Midstates' economics should be the ruling factor her?" with Midstates response of "Because they are the majority interest owner in the Section and therefore regardless of whether the number on the AFE is...we would be paying the majority of the costs of that well."

18) Le Norman also asked Midstates "...is it your opinion that the majority owner's economics should always govern the situation?" with the response "I won't say always. I would say this particular situation, yes."

19) Le Norman further asked Midstates "Could it be that your opinion would vary whether or not your company is the majority owner or not? Could it be that your opinion is that the majority owner could prevail when you're the largest interest and maybe not prevail in some instance where you don't have the largest interest?" with the reply of "It's possible."

20) Le Norman submits its correlative rights are unprotected if Le Norman is prohibited from developing this section. Le Norman disagrees with the ideas that Le Norman must wait until Midstates has enough money to drill a well or until Midstates is in the mood to drill another well.

- 21) Le Norman owns approximately 33% interest in the unit, which is just as important as Midstates' interest.
- 22) Le Norman notes the ALJ's ruling states this is a collateral attack on a final pooling order. Le Norman disagrees, as this original pooling Order No. 569386 was modified by pooling Order No. 619934. Le Norman submits if this current cause is a collateral attack, then it follows that Order No. 619934 would also be a collateral attack, and hence error on the Commission's part.
- 23) Le Norman believes there has been a change of condition since pooling Order No. 569386 was created/entered. Le Norman notes the wells in the adjacent sections will produce approximately 840 MMBO. Le Norman notes a collateral attack occurs when there has not been a change in condition or change in knowledge of conditions since the last final order. Le Norman notes a change of condition occurred when Midstates took over operations from Panther Energy Company, LLC ("Panther"). Le Norman further points out the original pooling Order No. 569386 has been modified once. Le Norman disagrees there has been any collateral attack here.
- 24) Le Norman notes under pooling Order No. 569386 or 619934 two wells have been drilled. Le Norman notes in offsetting Section 8 there are wells producing approximately 840 MMBO.
- 25) Le Norman notes Cause CD 09-550 resulted in Order No. 569386, which was protested by several parties. Le Norman was not a party to that order.
- 26) Le Norman disagrees with the ALJ's comments about Le Norman not protesting when Le Norman had no interest at the time of the original pooling Order No. 569386.
- 27) Le Norman notes there was no evidence presented about either fact--about subsequent well provisions or about Le Norman not owning interest at the time of the original pooling Order No. 569386.
- 28) Le Norman believes it was irrelevant to put evidence in this cause that had been presented in a prior cause before a final order was issued in this cause.
- 29) Le Norman notes, in looking at the ALJ Report, that in the original pooling Order No. 569386 there was no evidence presented to show why Order No. 569386 only named Panther as the operator and excluded other owners from being allowed to propose subsequent wells. Le Norman points out it is unknown when pooling Order No. 569386 was created what evidence the Commission relied on to make that decision.

30) Looking at the ALJ Report further, Le Norman notes the ALJ does not believe another well here is economically needed at this time. Le Norman disagrees that there is no basis for the ALJ's statement.

31) Le Norman's engineer stated the well request here met Le Norman's economic numbers. Le Norman points out there was no economic evidence/study in the record, rather just verbal statements from both parties. Le Norman notes the ALJ did not explain how he reached his conclusion regarding the economic statements.

32) Le Norman notes this ALJ issued/approved Order No. 647104 which requested increased density filed by Le Norman. Midstates withdrew their protest the day of the trial in Cause CD 201503772 and then 10 minutes later this current cause/hearing was started before the same ALJ.

33) Le Norman wonders why an ALJ would approve/issue a density order to approve another well to be drilled and then several minutes later decide it was not economically needed.

34) Still referring to the ALJ Report, Le Norman notes the increased density Order No. 647104 gives a party one year from issue date to commence the drilling of an additional well or wells, so Midstates could drill a well here now.

35) Le Norman notes in 2009 the operator still declined to drill a well. Le Norman notes it took Le Norman from 2008 to 2014 in order to get the first Tonkawa/Douglas well drilled here. Le Norman could drill today.

36) Le Norman notes the undisputed evidence shows that Midstates only drilled the first time to avoid losing operations and to prevent Le Norman from being operator. Le Norman submits as a 31% interest owner, Le Norman has the right to develop this unit when Midstates declines to do so.

37) Le Norman believes the evidence does not support the ALJ's ruling.

38) Le Norman requests the ALJ's decision be reversed and Le Norman be authorized to propose a subsequent well to the Tonkawa/Douglas formation with Midstates having the opportunity to drill the well in the first 120 day period in the 180 day period from the issuance of the order authorizing a subsequent well proposal by Le Norman. Should Midstates fail to commence the drilling of such subsequent horizontal Tonkawa/Douglas well, Le Norman for the remaining 60 day period shall become the operator for the purpose of drilling such horizontal Tonkawa/Douglas well.

MIDSTATES

- 1) **Michael Stack**, attorney, appeared on behalf of Midstates, stated Le Norman claims the ALJ refused to modify the pooling Order No. 569386 due to the ALJ's belief that the well is not currently economic.
- 2) Midstates agrees with the fact that this well currently meets Le Norman's economics. Midstates, however, is the designated operator, owning 68% to Le Norman's 32% interest.
- 3) Midstates notes the ALJ stated he "does not believe that another well is economically needed at this time", not that the well would not be economic. The ALJ never said it was currently uneconomic.
- 4) Midstates said the ALJ stated "the evidence is clear that drilling subsequent wells is not prudent at this time or in the foreseeable future." The ALJ further said "a delay in drilling for the hydrocarbons in this unit does not appear to harm the long term interest at this time."
- 5) Midstates notes the transcript indicates the Le Norman's engineer stated it would cost approximately \$4.6 million to drill and complete this well at \$40 oil price. Midstates notes years ago oil price was much higher than the \$40 oil price now. Midstates notes if \$90 oil price today versus current \$40 oil now there would be over \$33 million plus profit to the working interest owners, royalty owners and to the State of Oklahoma.
- 6) Midstates agrees with the ALJ's finding that it would be imprudent to drill a well now. Midstates notes there are two current producing wells in this unit. Midstates points out it is not prudent to drill horizontal wells at the current oil price, hence, Midstates is holding the leases. Midstates notes there is no drainage being affected by the ALJ's decision here. Both Midstates and Le Norman believe the oil here today will be here tomorrow.
- 7) Midstates notes an operator has a fiduciary responsibility to properly develop the unit; must be reasonable and prudent; and prevent waste and protect correlative rights. Midstates notes it is looking out for all of the parties' interests. Midstates believes itself to be a good operator.
- 8) Midstates agrees the increased density Order No. 647104 states one has to drill another well here yet \$33 million is a lot of money. Midstates agrees another well is needed here, yet being the operator, Midstates must make the decision as to when to prudently drill this well.

9) Midstates notes Le Norman believes by the ALJ refusing to allow a non-operator to propose a well the ALJ has made the interests of all non-operators subject to what is arbitrary or capricious decision by operator Midstates.

10) Midstates notes the word arbitrary depends on individual discretion, i.e. Midstates' discretion here, based on what the operator believes to be proper. Midstates believes the price of oil is very relevant, as the higher the oil price, the more profit there is to split among the interest owners.

11) Midstates defines the word capricious means a person characterized by or guided by unpredictable or impulsive behavior. Midstates is not being capricious here in delaying drilling this well, rather Midstates is basing its opinion to drill to fulfill its fiduciary responsibility. Midstates is choosing not to drill this well based on facts, not from impulsive behavior or guided unpredictability. Midstates notes the ALJ accepted Midstates' statements on the above.

12) Midstates, like many state operators, are currently not drilling horizontal wells because of sound economic decisions. Midstates, however, does drill wells in order to hold the unit, despite the oil prices, but only because Midstates has to do this. Midstates submits in this unit the circumstances are the same.

13) Midstates notes Le Norman agrees there are two good producing wells in the unit.

14) Midstates notes reasonable care is a test of liability for negligence, which would be the degree of care that a prudent, competent person engaged in the same line of business and would exercise under similar conditions. Midstates believes shutting back wells and not drilling wells as other state operators are doing shows reasonable care.

15) Midstates notes the word prudent implies circumspect or judicial in one's dealings. Midstates believes it is acting as a reasonably prudent operator standard, i.e. what a competent operator in the oil and gas industry would do under the circumstances and acting in good faith.

16) Midstates, as the operator, is acting in good faith, taking into account the lessor's interest and the operator's interest and the economics.

17) Midstates notes the case of *Haken v. Harper Oil Co.*, 600 P.2d 1227, (OK.CIV.APP. 1979), says "The scope of lessees' implied obligation... is narrowed to the exercise of reasonable care and diligence to prevent substantial drainage from the leased lands by drilling offsets. Reasonable care and diligence was later defined...as being that which would be used by a reasonably prudent operator under all the circumstances of a particular situation."

18) Midstates notes the case of *Texas Consolidated Oils v. Vann*, 258 P.2d 679 (Okla. 1953) states: "In *Wilcox v. Ryndak*, 74 Okla. 24, 49 P.2d 733, we said: "There is no implied obligation on the part of an oil and gas lessee to drill an offset well to a well on adjoining premises, or to drill an additional well on the leased premises after oil and gas has been discovered thereon, save and except where the drilling of such well would probably, taking all of the existing facts and circumstances into consideration, produce sufficient oil to repay the cost of drilling, equipping and operating such well, and also to produce a reasonable profit on the entire outlay, and neither the lessee nor the lessor is the arbiter of whether an offset well should be drilled or the leased premises further developed, but both are bound by what a reasonably prudent operator would do under similar circumstances, and under no circumstances will a lessee be required to drill an offset or an additional well when the same would probably not result profitably to him."

19) Midstates also believes one must look at the equipment and amount of oil production needed that would repay the costs of the drilling the well.

20) Midstates notes the ALJ said "There was no allegation of ineptness by Midstates' in their operation in the unit" or "evidence or implication that Midstates was a poor operator."

21) Midstates notes Le Norman's 5C exceptions paragraph believes the ALJ erred in not allowing Le Norman, who had taken no risk in developing the unit, any avenue for further unit development. Midstates notes the ALJ also said "There was no evidence shown that there was a danger of drainage from another unit. A delay in drilling for the hydrocarbons in this unit does not appear to harm the long-term interests at this time...Economics and avoiding waste of capital do carry considerable weight as to what actions a prudent operator should take."

22) Midstates notes the ALJ further said "The evidence is clear that drilling a subsequent well is not prudent at this time, or in the foreseeable future."

23) Midstates believes this is the incorrect time to be drilling a well here due to the economics as Midstates would not be making money on it. Midstates notes neither the ALJ or Midstates is saying this well should not be drilled. Midstates notes the ALJ said that for the foreseeable future, i.e. the avenue is open to drill a well yet it is not prudent to do so now. Midstates notes the Commission retains jurisdiction should a change of conditions occur here.

24) Midstates notes it was the original operator, Panther, who refused to drill between 2009 and 2014. Midstates notes when it acquired operations in

2014, Midstates agreed to drill within 120 days. Midstates notes Le Norman's statement that Midstates was never willing to drill a well here is just wrong.

25) Midstates would prefer not to drill this well, mainly due to the current drop in oil prices. Midstates notes there are two good producing wells here, which hold the leases. Midstates notes its mineral owners are not wishing this well drilled. Midstates thinks it is very prudent to delay the drilling of this well to make more than \$33 million profit.

26) Midstates notes Le Norman claims the ALJ erroneously concluded their applications were an impermissible collateral attack, which Midstates disagrees with. Midstates notes in the past, the original pooling Order No. 569386 was modified by Order No. 619934 in a fashion almost identical to the relief request herein. Midstates notes the ALJ observed the different economic circumstances between 2014 and today.

27) Midstates submits that the ALJ only said it "appeared" to be a collateral attack on a final order yet then commented about a past modification of ownership.

28) Midstates notes the ALJ stated "The evidence did show that Le Norman was successful on another occasion of wrestling operations from Midstates" yet Le Norman never did because Midstates drilled that well.

29) Midstates notes the ALJ's opinion was to not recommend disturbing the prior judgment of the Commission in Order No. 569386.

30) Midstates believes that economics and avoiding waste of capital do carry considerable weight as to what action a prudent operator should take.

31) Midstates notes there has been no change of conditions since original pooling Order No. 569386.

32) Per the window request by Le Norman, Midstates believes the evidence is clear that drilling subsequent wells is not prudent at this time or in the foreseeable future. Midstates sees no reason to change the unit operator to Le Norman so as to allow Le Norman a window to drill an unneeded well for Le Norman's given reasons.

33) Midstates disagrees with Le Norman's statement that the Commission has previously determined waste will occur in absence of increased density and that the ALJ's Conclusions were an impermissible collateral attack upon increased density Order No. 647104.

34) Midstates does not deny the drilling of an increased density well is necessary to effectively and efficiently drain a portion of the drilling and spacing unit. Midstates' concern is how would a prudent unit operator, who

owes a fiduciary responsibility to the interest owners, determine the right time to drill another well. Midstates notes an operator can always apply to the Commission for an extension of an increased density order for valid reasons.

35) Midstates notes if there were drainage occurring here, Midstates would drill to protect the section yet there is no drainage. Midstates believes the oil is not going anywhere soon. Midstates asserts there is no evidence of implication that Midstates is a poor operator.

36) Midstates notes the ALJ stated there was no evidence showing that there was danger of drainage; that economic and avoiding waste do carry considerable weight as to the action of a prudent operator; and that a delay in drilling for the unit hydrocarbons does not appear to harm the long term interest.

37) Midstates notes the increased density Order No. 647104 for this proposed well, says original recoverable oil-in-place is estimated to be between 499 MMBO in excess of 813 MMBO whereas Le Norman claims this well could produce 800 MMBO.

38) Midstates is surprised by the statement that ultimate recovery from this well is estimated between 75 MMBO to 199 MMBO. Midstates notes if one has 75 MMBO at \$40 oil price, it comes to approximately \$3 million profit at a well cost of \$4.6 million. If the recovery was at 199 MMBO, it would be \$7.9 million profit. Midstates notes an operator prefers a 2:1 return normally.

39) Midstates believes the Order No. 569386 or 619934 speaks for itself.

40) Midstates cites the case of *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940) which notes the ALJ is the trier of fact. It is the ALJ's duty as the trier of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions.

41) Midstates does not see any area where the ALJ misinterpreted what a prudent and reasonable operator would do here under the circumstances.

42) Midstates cites the case of *BNSF Railway Co. v. Board of County Commissioners of Tulsa County*, 250 P.3d 906 (OK.CIV.APP. 2011) where the appellate court's review "shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence....When reviewing the sufficiency of the evidence, this Court's review is: restricted to determining whether the Commission's findings and conclusions are sustained by the law and substantial evidence. Such a review does not include weighing the evidence on appeal, but only determining whether the supporting evidence possesses substance and relevance...."

- 43) Midstates believes the ALJ's decision should be affirmed/upheld.

RESPONSE OF LE NORMAN

1) Le Norman meant to say that Midstates protested the past cause and only drilled the well due to Order No. 619934 issuing, giving Le Norman a window to drill. Le Norman was aware that Midstates took over operations in 2014.

2) Le Norman disagrees that Le Norman is retrying the facts of this case upon appeal, rather, Le Norman is bringing up facts that were outside of this case.

3) Le Norman advised the court it had never seen the increased density Order No. 647104 that Midstates had earlier discussed, and considered this to be facts outside of the current record.

4) Le Norman believe the face of the ALJ Report indicates the ALJ went outside the record. Le Norman believes that Midstates could have taken judicial notice of the increased density Order No. 647104 in order to bring this into the record.

5) Le Norman notes Midstates implied it wasn't prudent to drill a well now, despite it meeting Le Norman's economic numbers and Le Norman is left without any remedy.

6) Le Norman does not recall any case where the Commission determined when a well should be drilled. Le Norman submits the Commission has no authority to determine when a well must be drilled.

7) Le Norman notes the circumstances here has pooling Order No. 569386 or 619934 which provides the procedure to occur when one party wishes not to participate in a proposed well. Le Norman notes the pooling order does not state if a party deems a proposed well imprudent that the Commission can change the provisions because that one party does not desire to participate.

8) Le Norman notes Midstates discussed the standard of review for Commission orders. Le Norman believes the standard of review is review from Commission orders, which is a different standard of review from review from within/inside the Commission. Le Norman believes the substantial evidence test attaches to a final Commission order.

9) Le Norman notes the cases Midstates cited deal mostly with private contracts, lessors and lessees, not the police power of the State. Le Norman does not find "profitability" to be in 52 O.S. Section 87.1.

10) Le Norman notes Midstates said other operators are also drilling fewer wells. Le Norman notes Midstates also said it does drill wells in order to perpetuate leases. Le Norman believes these type facts are outside of the record here. Le Norman knows that Midstates does not wish to drill the well Le Norman currently seeks to in order to fully develop the unit.

11) Le Norman submits its' request herein is not a collateral attack.

12) Le Norman notes Midstates says economically needed does not mean the same thing as a well being considered economic. Le Norman submits the argument about an economically needed well or being prudent to drill a well--are moot where Le Norman's engineer states it meets Le Norman's economics.

13) Le Norman believes a review of the transcript will show that it is unfair to leave a non-operator who has a 33% interest without any remedy to develop the unit due to the unit operator refusing to drill a well.

14) Le Norman requests the ALJ's decision be reversed and that Le Norman be given a window of operations to drill this well.

CONCLUSIONS

The Referee finds that the Report of the Administrative Law Judge should be reversed and modified in part.

1) The Referee finds the ALJ's recommendation to deny Le Norman's application request to amend pooling Order No. 569386 to designate Le Norman as the operator of all future wells completed in the Douglas common source of supply should be reversed in part and modified in part. The ALJ's recommendation to deny Le Norman's request to amend Order No. 569386 to expressly authorize the proposal of subsequent wells by any owner, or the successor in interest to such owner, who has participated in the risk of drilling the initial unit well should be reversed in part and modified.

2) In *Mustang Production Co. v. Corporation Commission*, 771 P.2d 201, 203 (Okl. 1989) the Oklahoma Supreme Court held:

The standard to be applied by the Corporation Commission when hearing an application to modify or

vacate a prior, valid order is well known in Oklahoma. A prior, valid order may only be modified or vacated upon a showing by an applicant that there has been a change in conditions or a change in knowledge of conditions. *Phillips Petroleum Co. v. Corporation Commission*, Okl., 461 P.2d 597, 599 (1969). The applicant must make this showing by substantial evidence. *Phillips*, supra; *Anderson-Prichard Oil Corp. v. Corporation Commission*, 205 Okl. 672, 241 P.2d 363 (1951); Okla. Const. Art. IX §20. Without this showing, any attempt to vacate or modify a prior, valid order constitutes a prohibited collateral attack on that earlier order. *Application of Bennett*, Okl., 353 P.2d 114, 120 (1960).

One author, commenting on the requirements of change of conditions or change in knowledge of conditions, writes:

What constitutes a change of condition sufficient to satisfy the requirement? As a logical proposition, three kinds of change of condition are theoretically possible. The first may be designated as an internal change of condition. It is characterized by an actual change in the physical behavior of the reservoir occasioned by development and depletion. Such a change may or may not be predictable in the early states of development....The second kind may be called an external change of condition. In this instance, the physical behavior of the reservoir remains constant, but the information gained through development or depletion experience demonstrates that the conclusions reached originally were incorrect....The third possible kind of change of condition defies tagging with an appropriate label. It can only be described. In this case no actual change in the physical behavior of the reservoir is experienced, and subsequent development and depletion of the reservoir confirm the original predictions so that no external mistake exists. Nevertheless, new scientific knowledge and technology may add new dimensions to the basic legal concepts of waste and correlative rights, or the statutes may be superseded by others which re-define these terms.

Harris, *Modification of Corporation Commission Orders Pertaining to a Common Source of Supply*, 11 OKLA. L. Rev. 125 (1958).

3) In *Phillips Petroleum Company v. Corporation Commission*, 482 P.2d 607 (Okla. 1971), the Court stated:

The phrase "change in knowledge of conditions" (as would warrant a change by order) does not encompass a mere change of interpretation on the part of the Commission. Rather, it encompasses an acquisition of additional or new data or the discovery of new scientific or technical knowledge since the date of the original order was entered which requires a re-evaluation of the geological opinion concerning the reservoir....

4) The Supreme Court in *Marlin Oil Corporation v. Corporation Commission*, 569 P.2d 961 (Okla. 1977) further addressed the required showing and stated:

The general rule requiring a change of conditions, or a change in knowledge of conditions as a requisite to modification of an unappealed Commission order has been espoused by a long line of cases. This rule has recently been reiterated by a decision of this court in a case similar to the case at bar, *Corporation Commission v. Phillips Petroleum*, 536 P.2d 1284 (Okla. 1975). In that case Terra Resources applied to Commission to delete the Upper Morrow underlying several sections from the purview of a prior order. It alleged new knowledge of existing conditions, not available at time of prior order, determined the Morrow consisted of two common sources of supply. Commission refused to delete the Upper Morrow from its determination of one common source of supply. Terra appealed and this court affirmed. There was little conflict as to the geological facts, only a conflict as to their interpretation by experts. This court held the same geological facts, although established by different evidence, were known and recognized at the time the entire Morrow was spaced as a single source of supply, despite the fact geologically separate unconnected accumulations of hydrocarbons existed in the area. Evidence presented by Terra merely confirmed the opinion of the Commission established in the earlier order and did not establish the requisite "change of conditions."

5) On appeal Le Norman focused on the alternative relief of requesting a window of operations to drill a subsequent Tonkawa well. Midstates want to propose and drill a subsequent well under Order No. 569386. Midstates is therefore requesting amendment of said Order No. 569386 to allow them to drill the subsequent well. Under the terms of Order No. 569386 the unit operator Midstates is given 180 days from the date of a proposed subsequent well to commence the proposed well. Le Norman is requesting that they be permitted to propose the subsequent well and that Midstates would have the first 120 days to commence actual drilling operations for the proposed horizontal well into the Tonkawa/Douglas common sources of supply in said Section 9. If that well is timely commenced by Midstates the terms of Order No. 569386 shall remain unchanged by this order. However, should Midstates fail to commence the drilling of such horizontal Tonkawa/Douglas well in Section 9 within the timeframe described above, Le Norman shall for the remainder of the 180 day term become the unit operator for the purpose of drilling such horizontal Tonkawa/Douglas well.

6) There has clearly been a change in conditions or change in knowledge of conditions and amendment of pooling Order No. 569386 has already been granted once before by Order No. 619934 wherein Le Norman was granted the same request to commence a subsequent well within a certain time period if Midstates failed to do so. Midstates operates the Kaiser #2H-9 horizontal well in the Cottage Grove common source of supply. Order No. 619934 modified Order No. 569386 regarding operations within the Tonkawa/Douglas common sources of supply. Midstates operates the Kaiser #9-3HT horizontal well which produces from the Tonkawa/Douglas common sources of supply. There has been Tonkawa/Douglas development in this portion of Ellis County through the drilling of horizontal wells in Section 8 by Le Norman and in Section 5 by Le Norman in the Tonkawa/Douglas. There was evidence presented that the Le Norman well in Section 8 producing from the Tonkawa/Douglas will produce 840 MMBO. The Midstates Tonkawa/Douglas well in Section 9 began as a very good producing well but there was evidence that the well started experiencing problems. There was no evidence presented by Midstates concerning what the problems were however.

7) The evidence presented by Le Norman reflects that the Le Norman engineer testified that drilling a Tonkawa/Douglas subsequent well in Section 9 meets Le Norman's economics and the evidence presented by the Midstates witness was that it did not meet Midstates' economics. It also should be noted that an increased well density was granted to Le Norman by Order No. 647104 on November 20, 2015.

8) The evidence further reflected that previously a well could have been drilled by Panther in 2009 when they refused to drill the first Tonkawa/Douglas well in Section 9. When Midstates acquired operations in 2014 the first Tonkawa/Douglas well was drilled after Order No. 619934

required them to do so. The Commission must utilize the prudent operator standard as a measure of whether or not the operator's actions satisfied the terms of the forced pooling order in the development of the unit. An operator must with reasonable diligence and dispatch develop the unit either on a vertical basis or a horizontal basis. The standard of diligent development requires the operator to diligently develop the unit by performing as would be expected of a reasonable prudent operator, having rightful regard for the interests of both the participants under the pooling order and the owners spaced within the unit. *Doss Oil Royalty Company v. Texas Company*, 137 P.2d 934 (Okl. 1943).

9) As Mr. Nesbitt, in his article, Nesbitt, *The Forced Pooling Order: How Long? How Wide? How Deep?* 52 OBAJ 2799 (1981) states:

...Once drilling operations are commenced within the time prescribed by the pooling order, the standard of "reasonable diligence and dispatch" is the conduct of drilling and producing operations must satisfy the obligation to develop imposed on the operator by the forced pooling order. This means diligence in the development of the unit, rather than any individual formation underlying it, or any particular borehole drilled for the purpose.

* * *

Whether the standard has been met is an issue of fact, and will depend upon the facts and circumstances of the individual case...

* * *

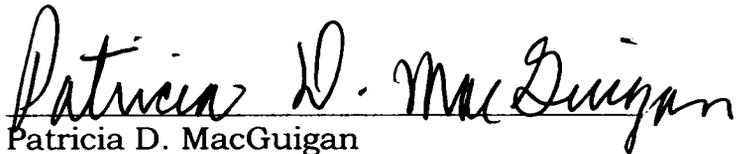
The covenant of diligent development is measured by a "prudent operator" rule, which requires the operator to diligently develop the unit by "doing whatever in the circumstances would be reasonably expected of a prudent operator, having rightful regard for the interest of both the lessor and the lessee.

It is clear to the Referee that the same rationale applies to the facts at hand.

10) The Referee would agree that Midstates drilled the first Tonkawa/Douglas horizontal well to avoid losing operations and to prevent Le Norman from being operator and drilling the well. The Referee believes as a prudent operator Midstates must be given the opportunity to drill a subsequent well for the Tonkawa/Douglas and if it refuses to do so then Le Norman should be given the 60 day window to drill the proposed well.

11) Therefore, pooling Order No. 569386 should be amended to allow Le Norman to propose a subsequent well for the Tonkawa/Douglas formation. Midstates shall have 120 days to commence the actual drilling operations for the proposed subsequent horizontal well to the Tonkawa/Douglas common sources of supply in Section 9. If that well is timely commenced the terms of Order No. 569386 shall remain unchanged by this order. However, should Midstates fail to commence the drilling of such horizontal Tonkawa/Douglas well in Section 9 within the timeframe of 120 days, Le Norman shall for the remainder of the 180 day term become the unit operator for the purpose of drilling such horizontal Tonkawa/Douglas well. However, if Le Norman does drill the well in question, Midstates shall remain as the unit operator for all wells drilled subsequently thereto under the terms of Order No. 569386.

RESPECTFULLY SUBMITTED THIS 29th day of April, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
ALJ Michael Porter
Richard Books
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