

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

**FILED**  
OCT 12 2016

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

<u>APPLICANT:</u>	RIMROCK RESOURCE ) OPERATING, LLC )	
<u>RELIEF SOUGHT:</u>	HORIZONTAL DRILLING AND ) SPACING UNIT )	CAUSE CD NO.
<u>LEGAL DESCRIPTION:</u>	SECTION 35, TOWNSHIP 2 ) NORTH, RANGE 2 WEST, ) GARVIN COUNTY, OKLAHOMA )	201505423- T/O
<u>APPLICANT:</u>	RIMROCK RESOURCE ) OPERATING, LLC )	
<u>RELIEF SOUGHT:</u>	HORIZONTAL DRILLING AND ) SPACING UNIT )	CAUSE CD NO.
<u>LEGAL DESCRIPTION:</u>	SECTION 2, TOWNSHIP 1 ) NORTH, RANGE 2 WEST, ) GARVIN COUNTY, OKLAHOMA )	201505467- T/O

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

These Causes came on for hearing before **Keith T. Thomas**, Administrative Law Judge ("ALJ") for the Corporation Commission of the State of Oklahoma, on the 3<sup>rd</sup> and 4<sup>th</sup> day of March, 2016, 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:** **Ron M. Barnes**, and **Grayson M. Barnes**, attorneys, appeared on behalf of applicant, Rimrock Resource Operating, LLC ("Rimrock"); **Gregory L. Mahaffey**, attorney, appeared on behalf of protestant, Irene Hackett ("Protestant"); **Charles B. Davis**, attorney, appeared on behalf of R. L. Clampitt & Associates ("Clampitt"), supporting the applications or Rimrock; and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The ALJ filed his Report of the Administrative Law Judge on the 16<sup>th</sup> day of June, 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 12<sup>th</sup> day of August, 2016. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

### **STATEMENT OF THE CASE**

**RIMROCK AND CLAMPITT TAKE EXCEPTIONS** to the recommendation of the ALJ to deny Rimrock's horizontal drilling and spacing unit applications and grant Protestant's request for affirmative relief.

Causes CD 201505423-T/O (35-2N-2W, Garvin County) and CD 201505467-T/O (2-1N-2W, Garvin County) seek the establishment of 640 acre horizontal drilling and spacing units for the drilling of a multiunit well. The common sources of supply to be spaced are the Sycamore, Woodford and Hunton. The Protestant owns mineral interest in both Sections 35 and 2.

Rimrock is aware there is a fault in Section 2, but does not believe that the presence of said fault should curtail exploration within a 640 acre horizontal spacing unit. Rimrock opposes the Protestant's suggestion that the Commission create irregular 480 acre horizontal units instead of 640 acre horizontal units.

The Protestant states that the fault in Section 2 separates the N/2 of that section from the S/2. The Protestant suggests that it would be appropriate to create two 480 acre horizontal spacing units comprised of the E/2 of Section 35 and the NE/4 of Section 2; and to create a 480 acre horizontal spacing unit comprised of the W/2 of Section 35 and the NW/4 of Section 2. Additionally, the Protestant believes that if a 640 acre horizontal unit is created, the Protestant will be sharing the proceeds from production with mineral owners in the S/2 of Section 2, who will not be contributing due to the sealing fault.

Clampitt is an operator with interests in close proximity to the proposed spacing units. Clampitt supports the applications for 640 acre horizontal spacing units believing this is the best way to prevent waste.

### **RIMROCK TAKES THE POSITION:**

1) Rimrock filed Exceptions to the Report of the Administrative Law Judge on June 24, 2016. However, prior to August 12, 2016, Rimrock withdrew their appeal/exceptions and are willing to abide by the ALJ's Report.

**CLAMPITT TAKES THE POSITION:**

1) The ALJ Report is contrary to the law, contrary to the evidence, is arbitrary, unreasonable and discriminatory, and fails to effect the ends of the prevention of waste and the protection of correlative rights as is required by applicable laws of the State of Oklahoma.

2) The ALJ's recommendation does not accomplish the prevention of waste and protection of correlative rights of working interest and mineral owners in Section 35-2N-2W and Section 2-1N-2W, as required by relevant Oklahoma statutes.

3) The ALJ erred in denying the application for 640 acre spacing and granting the request for 480 acre irregular units requested by the Protestant for the Sycamore, Woodford, and Hunton formations in the lands which are the subject of the two spacing applications.

4) The ALJ erred by attempting to create spacing based on speculative location of faults which may be encountered in Section 2-1N-2W. The ALJ's Report is based on incomplete information regarding the existence and location of any faulting in Section 2 and is an attempt to space around the speculative locations of any faults which may or may not appear where depicted on exhibits presented at the hearing.

5) The ALJ erred in attempting to space around faulting in the area and the error will result in physical and economic waste by creating stranded portions of the reservoir for the formations listed.

6) Clampitt respectfully requests that the ALJ's recommendations to grant an irregular 480 acre horizontal drilling and spacing unit for the named common sources of supply be reversed and that the requested 640 acre drilling and spacing units requested by Rimrock be granted.

**THE ALJ FOUND:**

1) After taking into consideration all of the testimony, facts, circumstances, and evidence presented in these causes, it is the recommendation of the ALJ that the Rimrock applications in Causes CD 201505423-T/O and CD 201505467-T/O seeking to establish 640 acre horizontal drilling and spacing

units in Section 35-2N-2W and in Section 2-1N-2W, Garvin County, Oklahoma, be denied; and that Protestant's request for affirmative relief be granted.

2) There is a primary issue and a related secondary issue that had to be addressed before a decision could be rendered in the instant causes. The primary issue is which proposed size for the spacing unit is the most likely to prevent waste and protect correlative rights. Secondly, the relevance of the fault to the creation of a spacing unit that is preventative of waste and protective of correlative rights had to be determined. This Court believes that addressing the second issue revealed the answer to the primary issue.

3) To find the answer as to the relevance of the fault required scrutiny of the testimony of the witnesses and the exhibits submitted by the parties. First and foremost it had to be determined whether the Woodford underlies the entire area. There was no dispute amongst the parties as to the fact that the Woodford underlies Sections 35 and 2.

4) Then it had to be established whether the acknowledged existence of a sealing fault prevented the communication between the Woodford in the N/2 and the S/2 of Section 2. The parties agreed as to the presence of the fault that bisected Section 2. There was even relative agreement as to the throw of said fault. Additionally, this Court noted that Rimrock made a point of stressing that the Woodford in the N/2 of Section 2 was not completely segregated from the Woodford in the S/2 of Section 2. The two halves of Section 2 shared common footage of Woodford. Both sides agreed that it would not be prudent to drill through the fault. In the testimony of Rimrock's engineering witness it was made clear that Rimrock would not be drilling close to the fault and that the perforations in the well would not be able to produce hydrocarbons from the other side of the fault. It was, therefore, uncontested that there would be no contribution of hydrocarbons from the S/2 of Section 2 to a lateral drilled from the N/2 of Section 2 into Section 35. Rimrock correctly stated that the Commission does not space based upon ownership, but rather spacing is based upon ultimate recovery. However, any well drilled north of the fault in Section 2 will not recover any hydrocarbons from the S/2 of Section 2. The fact that there would be no contribution from the S/2 of Section 2 eviscerates Rimrock's argument that the approval of a 480 acre spacing unit instead of 640 acre units would cause waste.

5) After recognizing that the S/2 of Section 2 would not contribute to the unit, the only surviving argument supporting Rimrock's contention that a 480 acre unit would cause waste is the assertion that said unit would not allow for the drilling of a multi-unit well down the center of Sections 2 and 35. Evidence presented showed that the closest spacing units with multi-unit wells had six wells. The spacing units referenced had three wells in each half of the section. This Court sees Rimrock stating that it needs to drill a well down the center of

the two sections is presumptive speculation. In *Denver Producing & Refining Company vs. State*, 184 P.2d 961 (Okl. 1947), the Oklahoma Supreme Court held that the prevention of waste must take precedence over the protection of correlative rights. However, the *Denver* Court also stated that in exercising the police power of the state the Commission is charged with prevention of waste, but also notes that private rights are not to be ignored. The granting of the 480-acre spacing unit requested by the Protestant would not violate 52 O.S. Section 86.1 et seq., because there would be no waste. Therefore, since the threat of waste is no longer an issue, this Court turned its focus to the protection of correlative rights. In summation, it is the position of this Court that since the risk of waste is not more likely to occur if a 480 acre spacing unit is established, instead of Rimrock's requested 640 acre unit, the Commission's attention must be focused upon the protection of correlative rights.

6) In regard to the protection of correlative rights Rimrock pointed out that if Protestant's 480 acre unit is approved, the Protestant would not have a share of the production from any wells drilled in the S/2 of Section 2. Additionally, if said 480 acre unit is approved, the other mineral owners with holdings exclusive to the N/2 of Section 2 would also be excluded from sharing in the production from any well in the S/2 of the section. Conversely, the correlative rights of the mineral owners in the S/2 of Section 2 would have those rights protected by the establishment of 480 acre units. Although, the fault in Section 2 does not completely separate the Woodford in Sections 2 and 35, it has ostensibly done so by virtue of creating a barrier that prevents drilling from the N/2 into the S/2 of the section. Therefore, the establishment of 480 acre units would protect the correlative rights of the mineral owners in both the N/2 of Section 2 and the S/2 of Section 2.

7) In *Caudillo v. Corporation Commission*, 551 P.2d 1110 (Okl. 1976), the Oklahoma Supreme Court cites *Panhandle Eastern Pipe Line Co. v. Corporation Commission*, 285 P.2d 847 (Okl. 1955), to say that the Commission does not have the authority to include acreage, that is known to be non-productive, in a drilling and spacing unit. In citing *Application of Peppers Refining Company*, 272 P.2d 416 (Okl. 1954), the *Panhandle* Court states that it is more important to protect correlative rights than to secure the maximum profits of some owners. Evidence presented by the Protestant showed that the Commission has previously granted irregular spacing units under very similar circumstances. In the referenced spacing application the presence of a major fault was deemed to warrant the granting of irregular spacing units to prevent waste and protect correlative rights. Said spacing order granted irregular units to "prevent undrilled orphan acreage".

8) Further, the Oklahoma Supreme Court again relied upon its decision in *Panhandle in Hester v. Sinclair Oil and Gas Company*, 351 P.2d 751 (Okl.

1960). In *Hester*, the Court reversed a Commission spacing order because the Commission did not rely on "substantial" evidence to alter an existing spacing unit. The *Hester* Court stated that the Commission wrongfully granted the new spacing unit because the applicant had failed to provide substantial evidence of the drainage pattern expected from the well. In an effort to define "substantial evidence" the Oklahoma Supreme Court in *Union Texas Petroleum v. Corporation Commission*, 651 P.2d 652 (Okl. 1981), states that substantial evidence possesses substance and is of relevant consequence. In the instant causes, both parties agreed that there was substantial evidence that due to the existence of a fault, there would be no contribution from the S/2 of Section 2. Further, this Court noted that Rimrock's witness stated that with the recent availability of the multi-unit well option, the drilling of longer laterals would prevent waste. Such a statement might be true in most cases; however, in the instant causes the presence of the fault in the center of Section 2 dictates the length of the lateral. Rimrock acknowledged that no portion of the wellbore would be in the S/2 of Section 2, therefore the length of the lateral in the proposed well does not determine whether waste will occur.

9) Rimrock's counsel stated that the authority cited by the Protestant pre-dates horizontal spacing. Rimrock's chronology may be correct; however, this Court believes there is substantial relevance coming out of these cases and that they are relevant to today's vertical and horizontal spacing. Additionally, the case law coming out of the cited cases is relevant to the cases-at-bar in that it addresses the issue of an isolated common source of supply. This Court believes the instant causes present a scenario similar to that illustrated by the Commission order offered as evidence by the Protestant. The *Peppers Refining* court's statement that it is more important to protect correlative rights than to secure the maximum profits of some owners is on point in the two cases-at-bar. It is clearly apparent that the granting of 480 acre irregular spacing units instead of the 640 acre units sought by Rimrock will be preventative of waste and will definitely be more protective of correlative rights.

10) After hearing each party plead their case it is the recommendation of the ALJ that the Rimrock applications in Causes CD 201505423-T/O and CD 201505467-T/O seeking to establish 640 acre horizontal drilling and spacing units in Section 35-2N-2W and Section 2-1N-2W, in Garvin County, Oklahoma, be denied; and that Protestant's request for affirmative relief seeking the establishment of 480 acre drilling and spacing units instead of 640 acre spacing units be granted.

## **POSITIONS OF THE PARTIES**

## **RIMROCK**

1) Rimrock withdrew their appeal and is willing to abide by the ALJ's Report.

## **CLAMPITT**

1) **Charles B. Davis**, attorney, appearing on behalf of Clampitt, believes the ALJ erred in attempting to create spacing based on the speculative location of faults in Section 2, T1N, R2W.

2) It is uncontested by both parties that there have been no horizontal wells drilled in the Woodford.

3) It is premature to develop Section 2. However, should it be developed, it needs to be developed in an orderly fashion. Protestant and the ALJ rely on references to seismic data, but the seismic data itself was not made part of the record. The exact location of the fault and conditions of the land surrounding it should be found before development. There is no hard evidence that indicates where the fault itself is, nor how long it is.

4) The only concrete reason Protestant is petitioning for 480 acre spacing is because it would double her royalty interest. While this spacing could also double Clampitt's royalty interest, the importance of orderly development in an unknown area would leave to greater overall profit.

5) The ALJ was incorrect in interpreting the testimony of the experts when he concluded that there would be no contribution of hydrocarbons from the S/2 of Section 2 to the N/2. The testimony simply indicates that there is a fault in Section 2, and that the throw of the fault is less than the thickness of the formation. There is an interruption in the formation by the fault, but the interruption is not as thick as the total thickness of the formation. No one really knows where the fault is in Section 2 and no one knows how long it is.

6) Not only will 480 acre spacing upset the 640 acre spacing of the township it will also create more drilling expenses, as operators have no information on the formation. The only information the engineers have are from other wells in other places.

7) Overall, granting any type of irregular spacing before drilling a well would be the equivalent of "shooting in the dark." It would be easier to drill a well in the traditional 640 acre spacing, and come back to change the spacing after obtaining hard evidence of how the reservoir is going to perform.

## **PROTESTANT**

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Protestant, notes that the ALJ Report was one of the most well-reasoned reports he has seen, and that the ALJ followed the evidence and case law in making his decision.

2) Rimrock, the operator and the one who is paying the money, has agreed to the 480 acre spacing. Moreover, Clampitt has not drilled any wells in the area, does not have plans to and their acreage is in dispute.

3) The only actual geologist to testify about the location of the fault was brought by Protestant, as Clampitt called up a landman. Protestant's geologist clearly indicated that the location of the fault zone is in the center of Section 2, and is designated east/west as a sealing fault.

4) Had Clampitt filed a Motion to Produce and paid their experts to look at the data in Tulsa, they could have had access to the seismic data.

5) As the ALJ noted, the trend of drilling in that area is to drill three wells per half section. No one had drilled down the middle of the 640 acre tracts, meaning that regardless of spacing, there would be no waste. Following case law, it is not unprecedented for the Commission to grant irregular spacing units such as these. Moreover, the well Rimrock wants to drill already falls within the purview of the proposed 480 acre spacing unit.

6) The ALJ was correct in saying that it is undisputed that no hydrocarbons will cross the fault, as it is a sealing fault.

7) While it is true that the 480 acre spacing unit will not only double, but triple Protestant's royalty interests, the 480 acre spacing is fair to all owners in the N/2. There is no confirmation from Rimrock that there will ever be a well drilled in the S/2, nor that there are even reserves in the S/2. As such, sharing royalty interests with those in the S/2 will not lead to a fair result for those in the N/2.

8) Finally, the spacing will be limited to Section 2, and will not extend to the rest of the township.

### **RESPONSE OF CLAMPITT**

1) The data collected does not affirmatively conclude that the fault completely covers Section 2. The probability that there will be contribution from the S/2 into the N/2 should be confirmed before approving the irregular spacing. All of the evidence is merely speculation, and there is not enough information present to make a decision.

2) Clampitt requests the Referee to reverse the holding of the ALJ and establish the 640 acre spacing request.

### **CONCLUSIONS**

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

1) The Referee finds the ALJ's recommendation to deny the applications of Rimrock in Causes CD 201505423-T/O and 201505467-T/O seeking to establish 640 acre horizontal drilling and spacing units in Section 35, T2N, R2W, Garvin County, Oklahoma and in Section 2, T1N, R2W, Garvin County, Oklahoma, and to grant Protestant's request for affirmative relief seeking the establishment of 480 acre drilling and spacing unit instead of 640 acre spacing units, is supported by the weight of the evidence, by law and free of reversible error. The ALJ has written a well-reasoned report setting forth his recommendations based on the evidence which was presented before him. 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. *Grison Oil Corporation v. Corporation Comm'n*, 99 P.2d 134 (Okl. 1940); *Palmer Oil Corp. v. Phillips Petroleum Co.*, 231 P.2d 997 (Okl. 1951).

2) In *Texas Cty. Irrigation & Water Res. v. Dunnett*, 527 P.2d 578 (Okl. 1974) the Supreme Court states:

Under Art IX, § 20, of the Oklahoma Constitution, this Court's review shall not extend further than to determine whether the Commission's "findings and conclusions...are sustained

by...substantial evidence." In *City of Edmond v. Corporation Commission of Oklahoma*, Okl., 501 P.2d 211, we followed *Cameron v. Corporation Commission*, Okl., 414 P.2d 266, and quoted the following language therefrom:

"2. The Corporation Commission has a wide discretion in the performance of its statutory duties and this court may not substitute its judgment on disputed questions of fact for that of the Commission, unless the findings of the Commission are not supported by the law and substantial evidence.

"3. The determination whether there is 'substantial evidence' to support an order made by the Corporation Commission does not require that the evidence be weighed, but only that the evidence tending to support the order be considered to determine whether it implies a quality of proof which induces the conviction that the order was proper or furnishes a substantial basis of facts from which the issue tendered could be reasonably resolved."

The applicant in Commission hearings seeking relief 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) Rimrock must present evidence that its proposed 640 acre spacing will allow orderly development of this area and prevent waste and protect correlative rights. 52 O.S. Section 87.1; *Corporation Com'n v. Union Oil Co. of California*, 591 P.2d 711 (Okl. 1979); *Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981); *Union Texas Petroleum, A Div. of Allied Chemical Corp. v. Corporation Com'n of State of Okl.*, 651 P.2d 652 (Okl. 1981).

4) The Supreme Court in *Denver Producing & Ref. Co. 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.

5) As stated in *Winter v. Corporation Com'n of State of Oklahoma*, 660 P.2d 145 (Ok.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.

6) The testimony reflected that there are no horizontal Woodford wells in the 12 sections centered on Section 35 and Section 2. It is the intent of Rimrock to drill horizontal wells in the area to produce from the Woodford, with the Sycamore and Hunton as associated common sources of supply. Rimrock possesses 3D seismic data on the area which was shared with Protestant. The seismic data provided information on faulting in the area. Rimrock intends that the proposed well would be drilled from the N/2 of Section 2 into Section 35. Rimrock does not intend to drill its horizontal well through the significant fault running east/west through the center of Section 2 which is approximately 200 feet and which was identified from the seismic data. The testimony reflected that it was not anticipated by Rimrock that the initial well would be able to affect the reservoir in the entire 640 acre spacing unit. The tight nature of the Woodford common source of supply and the presence of the fault in Section 2 will limit the recovery from the initial well to be drilled in Section 35 and Section 2. The evidence further reflected that the placement of the fault in Section 2 differed only slightly from the Protestant's evidence and Rimrock's evidence. The evidence further reflected that it was most likely that the S/2 of Section 2 would be developed with Section 11. To develop the minerals in the S/2 of Section 2 would require another well and most probably would require the S/2 of Section 2 pairing with Section 11 to the south in a multiunit well. The evidence further reflected that it would be possible for an operator to create a 400 acre unit in the SE/4 of Section 2 and the E/2 of Section 11 that would mirror the Protestant's proposed 480 acre unit in the NE/4 of Section 2 and the E/2 of Section 35.

7) The Protestant provided evidence which showed that the Commission in Garvin County had previously granted an irregular spacing unit under very similar circumstances as are in the present case. The presence of a major fault was deemed to warrant the granting of an irregular spacing units to prevent waste and protect correlative rights.

- 8) The Supreme Court of Oklahoma in *Central Okl. Freight Lines, Inc. v. Corp. Com'n*, 484 P.2d 877 (Okl. 1971) provides:

The term "substantial evidence" means something more than a scintilla of evidence and means evidence that possesses something of substance and of relevant consequence such as carries with it fitness to induce conviction, and is such evidence that reasonable men may fairly differ as to whether it establishes a case. The determination of whether there is substantial evidence in support of the Commission's order does not require that the evidence be weighed, but only that the evidence in support of the order be examined to see whether it meets the above test. *Yellow Transit Co. v. State*, 198 Okl. 229, 178 P.2d 83; *Application of Choctaw Exp. Co.*, 208 Okl. 107, 253 P.2d 822.

- 9) The ALJ in his Report on page 19 and 20 states:

...Further, this Court noted that Applicant's witness stated that with the recent availability of the multi-unit well option, the drilling of longer laterals would prevent waste. Such a statement might be true in most cases; however, in the instant causes the presence of a fault in the center of Section 2 dictates the length of the lateral. Applicant acknowledged that no portion of the wellbore would be in the S/2 of Section 2, therefore the length of the lateral in the proposed well does not determine whether waste will occur.

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This Court believes the instant causes present a scenario similar to that illustrated by the Commission order offered as evidence by the Protestant. The Peppers Refining Court's statement that it is more important to protect correlative rights than to secure the maximum profits of some owners is on point in the two cases at bar. It is clearly apparent that the granting of 480-acre irregular spacing units instead of the 640-acre units sought by the Applicant will be preventative of waste and will definitely be more protective of correlative rights.

10) The Referee agrees with the Conclusions of the ALJ that the 480-acre irregular spacing unit is better suited to a full recovery of the hydrocarbons, is a better protection against waste and is more protective of correlative rights. Therefore, the Referee finds the Report of the ALJ to be reasonable based on the evidence presented before him and should be affirmed.

**RESPECTFULLY SUBMITTED THIS 12<sup>th</sup> day of October, 2016.**



Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
ALJ Keith T. Thomas  
Ron M. Barnes  
Grayson M. Barnes  
Gregory L. Mahaffey  
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