

**DECISION SHEET  
OF THE OIL & GAS APPELLATE REFEREE**

**FILED**  
SEP 23 2016

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CORPORATION COMMISSION  
OF OKLAHOMA

<b><u>APPLICANT:</u></b>	<b>CONTINENTAL RESOURCES INC.</b>	)	
		)	
<b><u>RELIEF SOUGHT:</u></b>	<b>POOLING</b>	)	<b>CAUSE CD NO.</b>
		)	<b>201601330</b>
<b><u>LEGAL DESCRIPTION:</u></b>	<b>SECTION 30, TOWNSHIP 14</b>	)	
	<b>NORTH, RANGE 13 WEST,</b>	)	
	<b>BLAINE COUNTY, OKLAHOMA</b>	)	

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S  
RULING ON A MOTION TO SET ASIDE OR VACATE ORDER  
652729**

The Motion to Set Aside or Vacate Order No. 652729 came on for hearing before **David Leavitt**, Administrative Law Judge ("ALJ"), for the Oklahoma Corporation Commission, on the 28<sup>th</sup> day of July, 2016, at 9:00 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

**APPEARANCES:** **David E. Pepper**, attorney, appeared for Continental Resources, Inc. ("Continental"); **Charles L. Helm**, attorney, appeared on behalf of PDI, Inc. ("PDI"); **Richard K. Books**, attorney, appeared on behalf of Excalibur Resources, LLC ("Excalibur"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The ALJ filed his Oral Report of the Administrative Law Judge on the 28<sup>th</sup> day of July, 2016, to which exceptions were timely filed and proper notice given of the setting of the exceptions.

The Oral Arguments concerning the exceptions were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 9<sup>th</sup> day of September, 2016. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

**STATEMENT OF THE CASE**

1) PDI requests that Order No. 652729 issued in the above cause be set aside or vacated for the following reasons:

(1) On April 5, 2016, Continental filed a pooling in the captioned cause.

(2) PDI is a respondent to the pooling application and owns interest in the common sources of supply sought to be pooled.

(3) Upon information and belief, Continental has drilled and is completing the Andersons Half #1-30-19XH well in Sections 19 and 30-14N-13W, Blaine County, Oklahoma. The Anderson Half #1-30-19XH well was the well proposed to PDI on March 2, 2016, in advance of filing the captioned pooling.

(4) Upon receipt of the Continental well proposal, PDI inquired as to the lateral length, costs and actual allocations that would be recommended for the Andersons Half #1-30-19XH well. When Continental failed to provide the requested information, PDI filed a protest of the captioned pooling application.

(5) PDI requests the Corporation Commission pool the unit and common sources of supply on terms that are fair and reasonable including the right to participate.

(6) Without notice to any of the respondents, Continental submitted a dismissal order which was signed on May 17, 2016, resulting in Order No. 652729.

2) PDI requests that dismissal Order No. 652729 be set aside or vacated to allow Continental the opportunity to pool the unit and to allow the interest of PDI to be protected by having the unit pooled.

3) PDI respectfully therefore requests that the Commission set aside or vacate Order No. 652729 in the above captioned cause CD 201601330.

**ORAL REPORT OF THE ADMINISTRATIVE LAW JUDGE**

- 1) **ALJ David Leavitt** recommended denying PDI's Motion to Set Aside or Vacate dismissal Order No. 652729.

**DECISION OF THE OIL & GAS APPELLATE REFEREE**

The Referee finds the ALJ's decision should be affirmed. ALJ Leavitt recommended denying PDI's Motion to Set Aside or Vacate Order No. 652729.

- 1) PDI owns 67 acres in Section 30. In December of 2013 Continental filed for multi-unit spacing and for location exception authority. Continental was seeking a multi-unit lateral to extend and include not only Section 30 but the contiguous Section 19. The multi-unit spacing was granted and in March of 2016 PDI received a well proposal from Continental for the Anderson Half #1-30-19XH well in Sections 19 and 30-14N-13W, Blaine County, Oklahoma. The well proposal date was March 2, 2016. On April 5, 2016, Continental filed the present cause. PDI continued to negotiate with Continental to try to get information with regard to the well, hopefully to determine the actual costs of the well and the lateral length. The cause was continued from May 2, 2016 after PDI entered an appearance and protest on April 29, 2016. The cause was continued from May 2, 2016 to May 9, 2016 and the cause was continued again until May 16, 2016. Continental, prior to the commencement of the final hearing on May 16, 2016, and prior to any other party seeking affirmative relief, requested dismissal of the pooling application in the present cause pursuant to OCC-OAC 165:5-9-2(e).

- 2) Dismissal Order No. 652729 was entered without any notice given to PDI. PDI is requesting that the dismissal order be set aside or vacated based upon 52 O.S. Section 87.1(e). 52 O.S. Section 87.1(e) states in part: "...When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor in a hearing thereon, require such owners to pool and develop their lands in a spacing unit as a unit." Continental's pooling application was a proper application in the

present cause, was proceeded by a proper well proposal and there was an attempt in negotiations for voluntary agreements. PDI is requesting the Commission to uphold what they perceive as a statutory mandate to issue a pooling order on the Continental pooling application. The above quoted statute, however, the Referee believes, does not require a particular owner to file a pooling application but states that the "Commission...shall...require such owners to pool and develop their lands in the spacing unit as a unit." It does not require Continental who drilled the well to file a pooling. The evidence reflected that Excalibur, represented by Richard K. Books, has filed a pooling in Section 30 which will be heard on October 5 and 6, 2016. Continental has signed a Prehearing Conference Agreement and is prepared to go forward with Excalibur's pooling proceeding.

3) Continental asserts that OCC-OAC 165:5-9-2(e) is the controlling rule authorizing Continental's dismissal. OCC-OAC 165:5-9-2(e) provides:

(e) **DISMISSAL.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

4) Continental asserts that PDI's announcing a protest in the present cause is not requesting affirmative relief. At the time of the May 16, 2016 hearing PDI's counsel appeared and had no notice of Continental's Order No. 652729 Dismissing Cause. PDI, at that time, was trying to ascertain facts concerning the lateral length and the actual costs of the Andersons Half #1-30-19XH well and the proposed allocation between Section 30 and Section 19. The evidence reflects and PDI's counsel stated that PDI was not protesting the merits of the pooling. Conversations between Continental and PDI concerning the Andersons Half #1-30-19XH well in Sections 19 and 30 concerning the lateral length, the actual costs, and the proposed allocation between the two sections are clearly just conversations between Continental and PDI and do not constitute a request for affirmative relief by PDI.

5) Owners in a particular spaced unit may be voluntarily pooled pursuant to a voluntary joint operating agreement between the parties. See *Marathon Oil*

*Company v. Corporation Commission*, 651 P.2d 1051 (Okl. 1982). The *Marathon* case provides that a pooling statute does not contemplate that all owners of the right to drill must be joined in a pooling action. The authority requiring pooling follows immediately upon statements recognizing the validity of voluntary pooling agreements. Thus, the Commission's authority cannot be taken as a requirement that all owners must be pooled by order.

6) PDI's counsel stated that his office had forwarded to PDI the Order Dismissing Cause sometime on or before the 19<sup>th</sup> or 20<sup>th</sup> of May, 2016. Therefore, PDI obviously received notice of the Order Dismissing Cause and filed its Motion to Set Aside or Vacate Order No. 652729 on May 24, 2016.

7) Clearly, under the plain meaning of OCC-OAC 165:5-9-2(e) an applicant may dismiss their application with or without prejudice at any time prior to the record being opened in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Continental's Order Dismissing Cause was signed by the Corporation Commission of Oklahoma on May 17, 2016. No request for affirmative relief had been filed by PDI. Therefore, one must come to the conclusion that Order Dismissing Cause Order No. 652729, effective May 17, 2016, is a "valid, reasonable and just" order in accordance with the presumption that requires such a finding. See 52 O.S. Section 111; *Mustang Production Company v. Corporation Commission of Oklahoma*, 771 P.2d 201 (Okl. 1989). As stated by the Court in *Oklahoma Gas & Electric Company v. State*, 225 P. 710 (Okl. 1924):

Under Section 22, Art. 9, of the Constitution, all orders made by the Corporation Commission are presumed to be reasonable until the contrary is made to appear; this presumption, in favor of the reasonableness of orders made by the Corporation Commission, was created by the constitution of the state for a definite purpose, and cannot be disregarded by this court unless the contrary is made to appear...

8) Continental proceeded under the separate and more specific rule OCC-OAC 165:5-9-2(e) styled "Dismissal". Subsection (b) of OCC-OAC 165:5-9-2 styled "Motions," pertains to "All other objections to or requests for action or relief". Thus, said rule is a general rule concerning motions. While it does discuss certain requirements when a motion to dismiss has not been filed, there was no such motion filed in the present cause. Instead, Continental proceeded under separate and more specific rule OCC-OAC 165:5-9-2(e) styled "Dismissal". Clearly, the more specific rule on dismissal supersedes the general one concerning motions when both are applicable. As noted, the dismissal provision is last in order of position and one must follow the rule of construction: "if there is a conflict between different sections or provisions of

the same act, the last in order of position or arrangement prevails." *Gentry v. Blinn*, 84 P.2d 27 (Okl. 1938).

9) Continental would also have the right to carry PDI's interest if they could not get a voluntary mutually agreeable operating agreement.

10) The working interest owner can establish a spacing unit and drill a well and then carry the other interests in the spacing unit. See *Ward v. Corporation Commission*, 501 P.2d 503 (Okl. 1972) where the Supreme Court stated:

Appeal from an Order of the Corporation Commission issued under 52 O.S. 1961 § 87.1(Supp. 1963) declaring that the non-drilling oil and gas lessees and others owning interest in a spacing (drilling) unit, had the right under 87.1 to participate in the unit production as of the time the unit was established by the Commission upon their paying of their share of the investment and operating expense of the unit well, and not as of the time of the order pooling the rights and equities of the owners of the spacing (drilling) unit.

The Commission issues two types of orders under 52 O.S. Section 87.1. One type of order establishes spacing units of a certain size over where appears to be a common source of supply and fixes the well location within the unit. 52 O.S. Section 87.1 also provides that various owners may pool their interest by agreeing upon each owner's share of income, investment and expense, but if they cannot agree the Commission upon application will make that decision for them. All owners of course do not have to be pooled by order. All voluntary pooling agreements may be agreed upon by various owners or as in the present case Continental the party who drilled the well after the spacing order was issued can carry PDI's ownership interest of 67 acres in Section 30 and absorb PDI's share of the investment and operating expense of the unit well.

11) Another case that is noteworthy in the present situation is *Barton v. Cleary Petroleum Corporation*, 566 P.2d 462 (Okl.Civ.App. 1977). Magnus Petroleum Company on January 18, 1972 drilled and subsequently completed the Henan #31-1 well in the Morrow Sand in the NW/4 SE/4 of Section 31, T20N, R23W in Ellis County, Oklahoma. The well was not on the Barton/Plaintiffs' land. The Bartons owned 98.40 acres in Section 31 but did not own an interest in the SE/4 where the well was located. At the time of the drilling and completing of the well there was no spacing order in effect for the Morrow Sand in Section 31. On March 7, 1974, the Corporation Commission created a 640 acre drilling and spacing unit for the Morrow Sand by Order No. 103742. This order established the Henan #31-1 well as the permitted well for the unit. Magnus Petroleum Company being the lessee of the SE/4 of Section

31 had the right to drill, receive and market the production from the Henna #31-1 well. *Wood Oil Company v. Corporation Commission*, 239 P.2d 1023 (Okl. 1950). The Oklahoma Court of Civil Appeals states in *Barton*:

After March 7, 1974, the date of the order establishing a drilling and spacing unit, the plaintiffs were entitled to a 1/8<sup>th</sup> pro rata share in the production of the unit well. 52 O.S. 1971 § 87.1; *Ward v. Corporation Commission*, 501 P.2d 503 (Okl. 1972); *Wood Oil Company v. Corporation Commission*, supra. The Corporation Commission has jurisdiction to enter an order establishing a drilling and spacing unit whether or not all of the lands are leased or unleased. *Sunray DX Oil Company v. Cole*, 461 P.2d 305 (Okl. 1967). See also Donald E. Pray, "The Oklahoma Well Spacing Act in its Interpretations," 36 O.B.A.J. 487, 488 (1965).

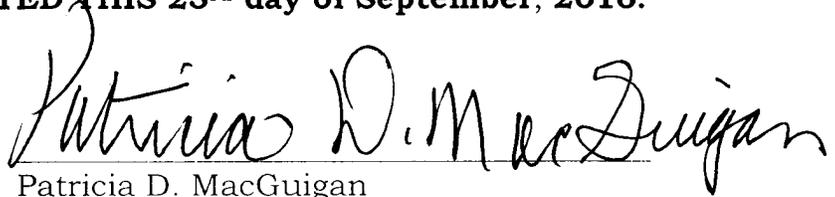
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Prior to enactment of the statute a nonparticipating or noncontributing cotenant received no income from production until the developing cotenant recovered the cost of development, operation and marketing. *Earp v. Midcontinent Petroleum Corporation*, 27 P.2d 855 (Okl. 1933). The owners of undivided portions of oil and gas rights in and under real estate are tenants in common. Each of such cotenants may enter upon the premise for the purpose of exploring for oil and gas. However, under conservation drilling and spacing statutes a cotenant is excluded from exploring for oil and gas upon the creation of a drilling and spacing unit and the payment to him of his pro rate share of his 1/8<sup>th</sup> mineral interest as unleased lessor. Applying the reasoning of tenants in common to the plaintiffs' position, plaintiffs could have sought proper relief from the Corporation Commission, or voluntarily paid their proportionate cost and received their proportionate part of the 7/8<sup>th</sup> working interest as unleased lessee.

12) Therefore, for the above stated reasons and law, the Referee concludes that the Order Dismissing Cause Order No. 652729 effective May 17, 2016, is a valid, reasonable and just order and in accordance with the presumption requires such a finding. The evidence provided in this record supports the presumption that the order dismissing cause Order No. 652729 is valid and

overcomes any challenge and requires the denial of PDI's Motion to Set Aside or Vacate Order No. 652729.

**RESPECTFULLY SUBMITTED THIS 23<sup>rd</sup> day of September, 2016.**

A handwritten signature in black ink, reading "Patricia D. MacGuigan". The signature is written in a cursive style with a large initial "P".

Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
David E. Pepper  
Charles L. Helm  
Richard K. Books  
ALJ David Leavitt  
Michael L. Decker, OAP Director  
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