

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF CHISHOLM ENERGY OPERATING, LLC FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

Case No. 16115

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CLOSING ARGUMENT
AND
MEMORANDUM OF AUTHORITIES REGARDING JOA/COMPULSORY
POOLING

Closing Argument:

The central issue in this case is orientation of the wells proposed by Chisholm Energy ("Chisholm"). Chisholm proposes north/south orientation. Premier proposes east/west orientation. Here, are the reasons for east/west orientation:

1. Topography. A bird's eye view of topographical maps shows that the E/2 of Section 32 and the E/2 of Section 5 are relatively flat. The maps show significant rise in the topographical conditions in the W/2 of sections 31 and 6. Common sense dictates that adverse surface conditions should be considered in development of Sections 31 and 6. Why tear up country when it is not necessary to do so?

2. Environmental concerns. Oil and gas operations require environmental responsibility to the extent possible. Not to be misunderstood, Premier's objective is to maximize oil and gas recovery from its interests. However, every day the oil and gas

industry is criticized and attacked by environmental advocates for impairing or destroying the habitats of birds, animals and native species of plant life. In this case, Premier advanced the notion that oil and gas drilling in Sections 32 and 5 could be done with minimal disturbance invasion of undisturbed areas by drilling east/west.

3. City of Carlsbad Water Wells and Systems. Premier's principal concern with the proximity of the City of Carlsbad's water supply and system is one of foreseeability of risk. Simply said, stay away from a potential source of liability. Casing issues have already been an issue in the Ocotillo area as demonstrated by the Daisy Duke well drilled in Section 6 by Devon. Damage to the City of Carlsbad's water supply is not such a remote possibility. Chisholm's assertion that it has cleared its development plans with the City of Carlsbad is not a release of any future liability for damage to its present water supply and system. Furthermore, Chisholm whose employees have already worked and sold assets in the Barnett and Marcellus in the past 15 years clearly demonstrates that they are not a long-term operator. Who will be responsible for the wells once they are sold?

4. Existing Infrastructure. The bird's eye view of the area east of Section 32 and 5 on the topographical maps shows existing roads and oil and gas facilities developed for Delaware wells in a relatively flat area. Doesn't it make sense to utilize these existing facilities and roads to minimize surface disturbance? And to stay away from the Carlsbad water well system? Use of existing facilities is supported by drilling east to west as asserted by Premier.

5. Drilling Trends in the Area and Ultimate Recovery of Matador and other East/Well Oriented Wells. Chisholm who has drilled and completed 6 total wells in Eddy

County as of April 2018 (all in 26S-26E and all less than a year old) presented a geological case for drilling N/S in an area that is underdetermined by the data. Similar misunderstandings of the geological landscape were the reasons that Devon drilled approximately 20 wells N/S in the Burton Flat area (21S-26E) from 2012-14 and after further study by Devon, it was clear the data determined drilling E-W. In May 2015 following a long internal review, Devon presented reasons and a summary as to why Premier and Devon should jointly work together to drill E/W wells in Sec 6-21S-27E, a section that both companies had standup units. Mewbourne has subsequently drilled a good well, the Roscoe 6 F B3AD Federal # 1H – in a east/west orientation. Drilling trends and patterns in Eddy County, New Mexico have gone east/west for Bone Spring and Wolfcamp wells especially west of the Pecos River. Other areas have gone north/south. It is understandable why Chisholm objected so strenuously to Premier's Exhibit 4, a business asset summary of stress orientation for the area prepared by Devon Energy for Bone Spring development in the area. Devon concluded:

- Horizontal wells should be drilled E-W when possible to take advantage of this stress orientation.
- Hydraulic fractures will propagate further into the formation creating a larger drainage area.
- E-W wells follow the depositional structure better than N-S wells.
- E-W wells are less likely to intersect stratigraphic changes (associated with overlapping fan/channel systems) within the target formation than N-S wells in sec. 6.

- Given the relatively low pressure and high water saturation values within the BSPG section on the slope, a toe up (gravity flow) well orientation is preferable.
- The surface locations would exist on Ken's (Premier's president) lease and would be drilled west, up dip of the structure."

Chisholm was quick to pick on the Devon Energy E/W drilled Daisy Duke well drilled in Section 31 as a discouragement to East/West development but neglected to tell the Examiner that the well had had casing problems and had to be shut-in for a considerable amount of time, and that only five frac stages had been completed. Chisholm's engineering analysis that the Bo Duke Federal 5 which was fully completed, is comparable in sand volume, stages or life productivity to the Daisy Duke is simply false. The Daisy Duke was fracked with 2,766,900# of sand and the Bo Duke was fracked with 6,746,312# of sand.

Traveling south from the Devon's Burton Flat in 21S-27E, Premier's Exhibit 5 equally supports East/West development for Wolfcamp wells based on Matador's drilling results for the Northwest Rustler Breaks in Township 23 South, Range 27 East. Matador who is the most active Wolfcamp driller in 23S-27E, has wells that provide a clear science experiment. Exhibit 5 shows all of Matador's wells which are primarily drilled E/W. Only a couple of N/S wells were drilled by Matador. These 2 wells have the same TVD, drilling technique, completion technique and volumes, same reservoir pressure and similar geologic characteristics as six E/W Matador wells. Premier's EUR analysis (Exhibits 8 and 9) clearly establishes better performance by East/West development as not one of the N/S wells was better than the worse E/W well.

looks to the studies and drilling of Devon, Matador, Oxy and Marathon in the area, which have been very successful in their operating practices. Chisholm is not in that category. Chisholm did not present modeling or other studies. Premier's Exhibit 4, prepared by Devon Energy, on stress orientation is clearly an example of superior study of the area. The conclusions reached in that exhibit not only deal with stress orientation but are also based on geologic and geophysical structure maps, and well production studies recommending toe-up drilling and completion for better gravity flow.

The proposed wells should be completed from East to West to allow for superior wells, reduced environmental impact and good neighbor practices. Premier who is under a JOA for Section 31 and the W/2 of 32 has offered to dilute its interest by including the E/2 of Section 32 along with a newly negotiated JOA to allow for Chisholm to maximize its value via 2-mile laterals.

Memorandum of Authorities:

This Memorandum of Authorities is intended to supplement Premier's Motion to Dismiss filed earlier with the Division.

There is no question but that the JOA encumbers the E/2 of Section 31 through which Chisholm's proposed Bone Spring and Wolfcamp wells will be drilled.

Nearburg v. Yates Petroleum Corp., 123 N.M. 526, 529, 943 P.2d 560, 563, 1997

-NMCA- 069 said the following with respect to operating agreements:

Operating agreements are commonly used in the oil and gas industry in New Mexico and other producing states to set forth the arrangement between interest owners as to exploration and development of jointly owned interests. See generally Gary B. Conine, *Property Provisions of the Operating Agreement—Interpretation, Validity, and Enforceability*, 19 Tex.Tech L.Rev. 1263, 1265 n. 3 (1988) [hereinafter Conine, *Property Provisions*] (citing numerous articles on operating agreements). (emphasis added).

There is no direct New Mexico case authority that has determined the issue with which we are confronted. However, an Oklahoma case, NBI Services, Inc. v. Corp. Commn. of State, 241 P.3d 685, 689–90 (Okla. App. Div. 2, 2010) considered a similar case. We quote liberally from that case:

¶ 16 In *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 1984 OK 52, 687 P.2d 1049, the Oklahoma Supreme Court “stated that the parties to [an OCC] forced pooling order [can] flesh out that arrangement through contract,” and “the parties’ rights and obligations under the contract [are] a matter for determination in the district courts, the proper forum for questions dealing with the respective rights of private parties.” *Samson Resources Co. v. Corporation Commission*, 1985 OK 31, ¶ 7, 702 P.2d 19, 21. In *Samson*, the parties did not “flesh out” the arrangement set forth in a forced pooling order (as occurred in *Tenneco*); instead, the spacing *690 unit in question had been developed pursuant to a voluntary pooling agreement. The Court stated that this situation “appears, even more clearly than *Tenneco*, to involve a question of private rights.” *Id.* at ¶ 8. “To prevent drainage and the concomitant waste occurring in a unit in which interest owners are *not* able to come to terms regarding voluntary development, [the OCC] is empowered, upon proper application, to order those interests pooled.” *Id.* at ¶ 11 (emphasis added). In *Samson*, however, because the interest owners were able to come to terms regarding voluntary development, the Court found that it was not within the OCC’s jurisdiction to override such a private contractual relationship.¹⁷

4 ¶ 17 This finding is in line with 52 O.S. Supp.2007 § 87.1(e), which states:

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

Therefore, a pooling applicant must establish that there is no agreement among the owners of the oil and gas rights for the development of the property. Only, among other things, “[w]here ... [the] owners have not agreed to pool their interests” does the OCC have the authority to enter a forced pooling order. *Id.*¹⁸