

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 11514 (DeNovo)
ORDER NO. R-10622**

**APPLICATION OF READ & STEVENS, INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.**

**APPLICATION FOR REHEARING
BY
READ & STEVENS, INC.**

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. of Kellahin and Kellahin on behalf of READ & STEVENS, INC. (Read & Stevens").

In accordance with the provisions of Section 70-2-25 NMSA (1978), Read & Stevens requests the New Mexico Oil Conservation Commission grant this Application for ReHearing in Case 11514 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-10622, attached as Exhibit "A" and to substitute Read & Stevens' proposed Commission Order attached as Exhibit "B" hereto. and IN SUPPORT READ & STEVENS STATES:

INTRODUCTION

On December 12, 1996, the New Mexico Oil Conservation entered its decision in this case which affirmed the prior Division decision made in this case by Examiner David R. Catanach.

In doing so, the Commission made errors of fact and of law which require that another hearing be held. A Rehearing is essential so the Commission can enter an order which correct these mistakes and which protects Read & Stevens' correlative rights.

GROUND FOR REHEARING

POINT I:

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(H) NMSA (1978) AND IN DOING SO VIOLATED READ & STEVENS' CORRELATIVE RIGHTS

The Oil Conservation Commission of New Mexico ("Commission") has the duty to "prevent waste prohibited by this act (Oil & Gas Act) and to **protect correlative rights...**" (emphasis added). Section 70-2-11 NMSA (1978).

" 'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far

as can be practicably obtained without waste, substantially in the **proportion that the quantify of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool,** and, for such purposes, to use his just and equitable share of the reservoir energy;" Section 70-2-33.H. NMSA (1978).

Pursuant to these statutory provisions, it was essential for the Commission to make findings concerning the remaining recoverable gas in this area of the pool and to apportion that volume between Read & Stevens' Section 26 and UMC's Section 35 in order to afford Read & Stevens and UMC an opportunity to produce their relative share of the remaining recoverable gas.

While the Commission made findings concerning the "estimated ultimate recovery" and the "original gas in place"¹ it forgot to make the essential finding of **the volume of remaining recoverable gas** and how that gas volume is allocated between Sections 26 and 35.

The Commission found² that "the Read and Stevens analysis had better scientific validity being derived from their 'Reservoir Simulation Study', validated by history matching gas production as compared to the

¹ See Finding (10) Order R-10622

² See Finding (10) of Order R-10622.

UMC study which resulted from planimetered gas in place derived from their "Net Sand Thickness Isopach Map".'

The Read & Steven's study³ concluded that:

(a) there is 8.4 BCF of gas now remaining to be recovered between Sections 26 and 35;

(b) of the 8.4 BCF of gas remaining to be recovered, Read & Stevens' Section 26 is entitled to 5 BCF and UMC's Section 35 is entitled to 3.4 BCF.

(c) **without** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover only 2.5 BCF while Section 35 will recover 6.4 BCF.

(d) **with** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover 4.9 BCF while Section 35 will recover 6.1 BCF⁴

(e) **With** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover an additional 2.4 BCF of gas which otherwise would not be recovered thereby preventing waste or would be confiscated by other wells in the area.

³ See Read & Stevens Exhibit 1, tab 14 (copy attached as Exhibit C)

⁴ The addition of the Harris Federal 11 Well to Section 26 allows the total recovery for Section 26 and 35 to increase from 8.9 BCF to 11.BCF which is a function of increasing recovery efficiency thereby preventing waste.

Having found the Read & Stevens' study "had better scientific validity" , then without explanation, the Commission illogically disregarded the Read & Stevens' conclusion contained in its study. Instead, The Commission applied the same 50% distance penalty as adopted by the Division Examiner who had entered his without having the benefit of considering the Read & Stevens' petroleum engineering study.

A Rehearing is essential so the Commission can correct its statutory violation and enter an order which protects Read & Stevens' correlative rights.

POINT II:

THE COMMISSION VIOLATED THE FASKIN, THE VIKING PETROLEUM AND THE CONTINENTAL OIL CASES WHEN IT FAILED TO MAKE SUFFICIENT FINDINGS TO DISCLOSE ITS REASONING

The Commission is required to make findings of ultimate facts which are material to the issues and to make sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings with substantial support in the record for such findings. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

Likewise, in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 453, 672 P.2d 280 (1983), the New Mexico Supreme Court reiterated its opinions in Continental Oil and Fasken, that administrative findings by the Commission should be sufficiently extensive to show the basis of the order and that findings must disclose the reasoning of the Commission in reaching its conclusions.

Unfortunately, the Commission failed to explain how it can accept the Read & Stevens' analysis as having the "better scientific validity," but then chose to ignore the conclusions in that study and, instead, affirm a 50% production penalty which is contrary to and inconsistent with that study. Such a conclusion is contrary to Finding (12)(b) of Order R-10622.

In Finding (12)(b), the Commission finds "drainage of the SW/4 of Section 26 from the White State No. 2 Well is likely occurring." This implies that the Commission rejected UMC's comparable 1,000 MCFPD rate argument. Thus, the only remaining evidence upon which the Commission could have relied for determining the proper producing rate to protect correlative rights is the Read & Stevens' study which showed that **an unpenalized rate** of 1,500 MCFPD for the Harris Federal 11 Well was necessary to protect the SW/4 of Section 23 from being drained by UMC's well.

A rehearing is required, if for no other reason than to afford an opportunity to the Commission to reconcile this contradiction and adopt an adequate order which complies with state law.

POINT III

FINDING (12(d)) IS WRONG, INCONSISTENT WITH FINDING (10), IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS ARBITRARY AND CAPRICIOUS

There is no substantial evidence to support Finding (12) (d) as a reasonable basis upon which to adopt a penalty. Finding (12)(d) adopts an arbitrary and capricious reason to support a penalty.

Finding (12(d) states:

"by locating the Harris Federal Well No. 11 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No 2 is located 1980 feet off the common lease line."

If the goal of the Commission is to protection of correlative rights, then that implies is a "no-flow boundary" at the common lease line between UMC and Read & Stevens. But the 50% penalty will not allow a no-flow boundary to be established at the lease line.

For example, if two wells are placed an equal distance from the common lease line and if their producing rates are equal and ***if all other reservoir properties are identical***, then a no-flow boundary is established at

the lease line and correlative rights are protected.

But, if The Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, and if its rate is 50% of the rate of the UMC well, and *if all other reservoir properties are identical*, then a no-flow boundary will be established at the common lease line and correlative rights are protected.

However, the Commission has ignored the uncontested evidence in this case which demonstrated that the reservoir properties are **not identical**. The Read & Stevens' petroleum engineering study, supported by detailed geologic and petroleum engineering evidence, showed that:

(1) because the reservoir is thicker around the Read & Steven's location than at the UMC well and because the reservoir pressure near the Read & Stevens' well is higher than at the UMC well, and if Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, then Read & Stevens' well must be produced at a **rate greater than 50%** of the rate of UMC's well in order to establish a no-flow boundary at the common lease line.

(2) if the Read & Stevens' well is limited to 50% of the rate of the UMC well, then the no-flow boundary will **not be** established at the common lease line **but** rather will be established within the Read & Steven's section and at a point **closer** to the Read & Stevens' well than required.

(3) the only way to quantify the proper rate is to use a reservoir simulation model that honors all the wells in the area. That is exactly what the Read & Stevens' study did and it demonstrated that the Read & Stevens' well could be produced at its proposed 990 foot location at a rate of

approximately 1,500 MCFPD and not impact the UMC acreage in Section 35.

It is impossible for the Commission to find that "Read and Stevens' analysis had better scientific validity" but to then reject the Read & Stevens' study as summarized above.

The Commission's order makes no sense and cannot be defended or explained. The result of Order R-10622 is to award UMC for failing to present to the Commission substantial evidence to support a 50% penalty. A Rehearing is required so that the Commission can correct its mistakes.

POINT IV:

***THE COMMISSION ORDER R-10622
FAILED TO PROVIDE FOR A MINIMUM
GAS ALLOWABLE***

Contrary to past precedents,⁵ the Commission order failed to adopt a minimum allowable for the Harris 11 Well No. 1. Without a minimum allowable, the penalty will continue to be applied to the well's producing rate ("deliverability") and as that rate declines, then the well will be limited to a gas volume which will make the well uneconomic. Such an order is punitive because it sets the producing volume for the well after Read & Stevens has invested the money to drill the well. A minimum allowable is necessary to protect Read & Stevens' correlative rights by affording a suitable rate of return on this investment.

⁵ For an example, See Order R-8804 issued December 8, 1988.

CONCLUSION

The substantial evidence in this case demonstrated that approval of the Read & Steven's application without a production penalty would afford it the opportunity to recover its share of the remaining gas without violating UMC's correlative rights. The Commission's order will not do what the Commission intended, but, instead, will cause waste and will impair Read & Stevens correlative rights. The Commission has entered an order which contains errors of fact and of law which require that another hearing be held. A Rehearing is essential so the Commission can enter an order which correct these mistakes and which protects Read & Stevens' correlative rights.

Read & Stevens petitions the Commission to withdraw Order R-10622 and substitute Read & Stevens' proposed order which is attached hereto as Exhibit "B" and incorporated herein by reference. In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in Read & Stevens' proposed Order R-10622 are made a part of this Application for Rehearing.

Respectfully submitted,



W. Thomas Kellahin, Esq.
KELLAHIN & KELLAHIN

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