

## READ & STEVENS

### Oral Argument

drainage - penalty

R & S crowding neighbors

OCC accepted R & S geology

What about Rule 74? Case file 1/24/97 & Rule 74 became effective 1/1/96.

R&S applied for an unorthodox location in Cahves Co. in Section 26. R&S already had in Sect 26 the following wells:

1. Harris Federal Well No. 8 (N/2)
2. Harris Federal Well No. 4; standard location 990 ft. From S & E lines in Sect 26 (S/2)

R&S proposed:

Federal Well No. 11 to be 990 ft from S line & 1980 from W line of Section 26  
this well wld be located 50% closer to common lease line than UMC's White State Well No. 2; this well wld be standard *vis a vis* setbacks, but unorthodox w/ respect to quarter section location

(Matador - an offset operator that appeared in support of R&S)

UMC - in Section 35, due South of Section 26

1. White State Well No. 1 - 660 ft. From S line; 1980 ft from E. Line
2. White State Well no. 2- 1980 vrom N line & 1980 from W line

Pool Rule - 320 acre spacing & proration units w/ well to be in NW/4 or SE/4 no closer than 990 ft. From boundary nor closer than 330 ft. From any gov. Quarter-quarter section line or subdivision inner boundary

Sections 26 & 35 represent a common source of supply

Harris Fed Wells Nos. 4 & 8 & White State Well Nos. 1 & 2 - correlatable channel sand that traverses Sections 26 & 35 in a North-South direction

Harris Fed #8 & White State Well #2 are best producing wells in Sections 26 & 35 while Harris Fed #4 & White State Well #1 are on the flank

engineering evidence generally in agreement for estimate ultimate recoveries (EUR); disagreement re calculated gas-in-place under Section 26: R&S projects almost twice the gas-in-place under Section 26 as UMC

R&S claims it needs Harris Fed Well No. 11 to recover all gas-in-place under Sect. 26  
R&S had "Reservoir Stimulation Study" at OCC hrng (not at OCD, tho)

**The OCC order gives R&S an option :**

**R&S can drill no closer than 1830 ft. From So. Line (standard 1980 ft setback w/  
150 ft flexibility w/o penalty; or**

**if R&S chooses to drill in proposed unorthodox location, the well will be assessed a  
50% production penalty to protect UMC's correlative rgts.**

50% penalty, based on well's distance from common lease line relative to the  
White State Well No. 2's distance from the common lease line. The well's ability to produce will  
be tested 2 times a year (deliverability test) - the penalty is applied towards the well's ability to  
produce

### **R&S Application for Rehearing**

I. OCC violated Sect. 70-2-33(H); violated R&S's correlative rights

[What's the diff btwn EUR & "original gas in place" to the "volume of remaining  
recoverable gas?]

II. OCC violated *Fasken, Viking Petroleum & Continental Oil* by failing to make  
sufficient findings of fact.

III. Finding 12(d) is wrong; not supported by substantial evidence; arbitrary & capricious. Reservoir  
properties not identical; don't need penalty R&S well must be produced at a rate greater than  
50% of rate of UMC's well to establish a no-flow boundary

IV. Order failed to provide for minimum gas allowable.

[there is no requirement for OCC to do so]

## Read & Stevens v. OCC & UMC

additional findings as directed by Judge Lynch in the Order remanding this matter to the OCC

Add to Finding 12 the following and reletter the existing “(d)” to “(i)”:

d) The calculated original gas-in-place under Section 26 is more than 11.8 BCF, but it is not as much as 18.6 BCF. The Commission declines to adopt either Read & Stevens’ specific calculation or UMC’s specific calculation. Because Read & Stevens’ analysis had better scientific validity, the original gas-in-place is a figure closer to 18.6 BCF than 11.8 BCF.

However, the evidence presented by UMC is not to be entirely disregarded, and it militates against determining the amount of the original gas-in-place to be as much as 18.6 BCF. The amount is probably between ~~16 BCF and 17 BCF~~ *11.8 BCF and 18.6 BCF, probably somewhere leaning toward the higher end.*

e) As there is between ~~16 BCF and 17 BCF~~ *11.8 BCF and 18.6 BCF* of gas-in-place under Section 26, Read & Stevens’ proposed location will drain some gas reserves from under Section 35.

f) The standard set back for the Buffalo Valley-Pennsylvanian Gas Pool, in which Section 26 is located, is 990 feet from the outer boundary. However, this set back figure is for wells in orthodox locations, *i.e.*, wells in either the northwest or southeast quarter of a standard section. Read & Stevens’ proposed location is in the southwest quarter.

g) The standard set back for the Diamond Mound-Morrow Gas Pool, in which Section 35 is located, is 1980 feet from the outer boundary, and UMC’s White State Well No. is located 1980 feet from the outer boundary and is in the northwest quarter.

h) Read & Steven’s proposed unorthodox location is 50% closer to the common boundary with UMC than is UMC’s White State Well No. 2.

Litigation Update  
July 14, 1998

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*Read & Stevens v. OCC*, No. CV 97-29, Fifth Judicial District, Chaves County —

**Plaintiffs failed to appeal the Judge's decision by the June 29 deadline, so this matter is closed.**

## **Read & Stevens v. OCC & UMC**

additional findings as directed by Judge Lynch in the Order remanding this matter to the OCC

Add to Finding 12 the following and reletter the existing “(d)” as “(k)”:

d) The calculated original gas-in-place under Section 26 is probably more than 11.8 BCF but not as much as 18.6 BCF. Even though the Read & Steven’s analysis had better scientific validity, the Commission declines to adopt either Read & Stevens’ specific calculation or UMC’s specific calculation. The evidence presented by UMC cannot be entirely disregarded, and it militates against determining the amount of the original gas-in-place to be as much as 18.6 BCF. Read & Stevens did not present any long-term pressure data to support their claims. Many of the net pay, or net thickness, numbers used by Read & Stevens changed between the time of the Oil Conservation Division examiner hearing (the record of which was incorporated into the Commission hearing) and the Commission hearing. These changes consistently resulted in higher figures for Read & Stevens and lower figures for UMC. Even so, the original gas-in-place is probably a figure closer to 18.6 BCF than 11.8 BCF.

e) The two existing wells in Section 26 are producing one million cubic feet of natural gas per day; the two existing wells in Section 35 are producing one million cubic feet of natural gas per day. The proposed Read & Stevens well is expected to produce over one million a day, so that Read & Stevens with the new well will be producing over two times as much in Section 26 as UMC is producing in Section 35. Thus, the equilibrium that formerly existed between the two sections will be changed.

f) The standard set back for the Buffalo Valley-Pennsylvanian Gas Pool, in which Section 26 is located, is 990 feet from the outer boundary. However, this set back figure is only for wells located in either the northwest or southeast quarter of a standard section. Read & Stevens’ proposed location is in the southwest quarter, so that the proposed location is unorthodox irrespective of the set back.

g) The standard set back for the Diamond Mound-Morrow Gas Pool, in which Section 35 is located, is 1980 feet from the outer boundary, and UMC’s White State Well No. 2 is located 1980 feet from the outer boundary and is in the northwest quarter.

h) Read & Steven’s proposed unorthodox location is 50% closer to the common boundary with UMC than is UMC’s White State Well No. 2 and thus would gain an unfair advantage unless penalized.

i) While Read & Stevens presented sufficient evidence to prove that a third well located off-pattern in the southwest quarter is required to drain the gas in Section 26, Read & Stevens did not present sufficient evidence to prove that a well located at an equal distance from the common boundary with UMC as UMC’s White State Well No. 2 would not drain the Section

26. Therefore, while Read & Stevens has justified a third well to be placed in the southwest quarter of Section 26 to prevent waste, it has not justified crowding its neighbor, UMC in Section 35, without the imposition of a penalty on production to protect UMC's correlative rights. Because Read & Stevens wants to crowd its neighbor by locating this third well 50% closer to the common boundary than UMC's well, Read & Stevens will gain an unfair competitive advantage and the imposition of a penalty is appropriate. Read & Steven's can drill its third well in the southwest quarter without any penalty if the well is at least 1980 feet from the common boundary with UMC.

j) As there are between 11.8 BCF and 18.6 BCF of gas-in-place under Section 26 and the proposed well will increase production from Section 26 to over two million cubic feet per day, Read & Stevens' proposed location, 50% closer to the common boundary line than UMC's well, will lower daily production and drain some gas reserves from under Section 35 if the proposed well produces without penalty.

Add to Finding 15:

The standard penalty is based on the distance from the common boundary; or in a case such as this where two sections have different set-back requirements, the penalty is based on the relative distance each well is from the lease line. Having a standard formula for a penalty for crowding a common boundary has provided predictability and consistency for industry and is an important tool in protecting correlative rights.

*to prevent waste*  
Therefore, while Read & Stevens has justified a third well to be placed in the southwest quarter of Section 26, it has not justified crowding its neighbor, UMC in Section 35, without the imposition of a penalty on production. *to protect correlative rights.* Because Read & Stevens wants to crowd its neighbor by locating this third well 50% closer to the common boundary than UMC's well, Read & Stevens will gain an unfair competitive advantage and the imposition of a penalty is appropriate. Read & Steven's can drill its third well in the southwest quarter without any penalty if the well is at least 1980 feet from the common boundary with UMC.

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Add to Finding 15:

*each well is from the lease line*  
The standard penalty is based on the distance from the common boundary; or in a case such as this where two sections have different set-back requirements, the penalty is based on the distance of the wells from one another. Having a standard ~~mechanical~~ formula for a penalty for crowding a common boundary has provided predictability and consistency for industry *and*

*relativ*  
*it protects correlative rights*

*new order incorporating new findings*

**Read & Stevens v. OCC & UMC**

*Draft*

additional findings as directed by Judge Lynch in the Order remanding this matter to the OCC

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d) The calculated original gas-in-place under Section 26 is *(probably)* more than 11.8 BCF, but ~~is~~ not as much as 18.6 BCF. Even though the Read & Stevens' analysis had better scientific validity, The Commission declines to adopt either Read & Stevens' specific calculation or UMC's specific calculation. The evidence presented by UMC cannot be entirely disregarded, and it militates against determining the amount of the original gas-in-place to be as much as 18.6 BCF. Read & Stevens did not present any long-term pressure data to support their claims. Many of the net pay, or net thickness, numbers used by Read & Stevens changed between the time of the Oil Conservation Division examiner hearing (the record of which was incorporated into the Commission hearing) and the Commission hearing. These changes consistently resulted in higher figures for Read & Stevens and lower figures for UMC. Even so, the original gas-in-place is probably a figure closer to 18.6 BCF than 11.8 BCF.

e) The two existing wells in Section 26 are producing one million cubic feet of natural gas per day; the two existing wells in Section 35 are producing one million cubic feet of natural gas per day. The proposed Read & Stevens well is expected to produce over one million a day, so that Read & Stevens with the new well will be producing over two times as much in Section 26 as UMC is producing in Section 35. Thus, the equilibrium that formerly existed between the two sections will be changed.

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g) The standard set back for the Diamond Mound-Morrow Gas Pool, in which Section 35 is located, is 1980 feet from the outer boundary, and UMC's White State Well No. 2 is located 1980 feet from the outer boundary and is in the northwest quarter.

h) Read & Stevens' proposed unorthodox location is 50% closer to the common boundary with UMC than is UMC's White State Well No. 2 *and thus would gain an unfair advantage unless penalized.*

i) While Read & Stevens presented sufficient evidence to prove that a third well located off-pattern in the southwest quarter is required to drain the gas in Section 26, Read & Stevens did not present sufficient evidence that a well located at an equal distance from the common boundary with UMC as UMC's White State Well No. 2 would not drain the Section 26.

*to prove*



## **Read & Stevens v. OCC & UMC**

additional findings as directed by Judge Lynch in the Order remanding this matter to the OCC

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26. Therefore, while Read & Stevens has justified a third well to be placed in the southwest quarter of Section 26 to prevent waste, it has not justified crowding its neighbor, UMC in Section 35, without the imposition of a penalty on production to protect UMC's correlative rights. Because Read & Stevens wants to crowd its neighbor by locating this third well 50% closer to the common boundary than UMC's well, Read & Stevens will gain an unfair competitive advantage and the imposition of a penalty is appropriate. Read & Stevens can drill its third well in the southwest quarter without any penalty if the well is at least 1980 feet from the common boundary with UMC.

j) As there are between 11.8 BCF and 18.6 BCF of gas-in-place under Section 26 and the proposed well will increase production from Section 26 to over two million cubic feet per day, Read & Stevens' proposed location, 50% closer to the common boundary line than UMC's well, will lower daily production and drain some gas reserves from under Section 35 if the proposed well produces without penalty.

Add to Finding 15:

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The Court remanded the Commission's order because the Court found the Commission had failed to explain the imposition of the 50% penalty on the Read & Steven's well. The Court pointed out that the Commission had not adopted either Read & Steven's estimate of the amount of gas under Section 26 or UMC's estimate of the amount of gas under Section 26. The Court concluded that the Commission implicitly adopted Read & Steven's estimate because it allowed Read & Steven's a 3<sup>rd</sup> well in Section 26.

On remand the Commission considered all the evidenced presented both at the Commission hearing as well as the evidence presented at the division hearing. The evidence from division hearing had been incorporated in the Commission hearing without objection.

As Mr. Kellahin has said, Read & Stevens applied to the Commission to be granted an exception. It wanted to locate a 3<sup>rd</sup> well in the southwest quadrant of Section 26. R & S already had the maximum 2 wells in that section allowed by the rules. Additionally, R & S wanted to locate this 3<sup>rd</sup> well in the southwest quadrant of Section 26. The spacing rules for that section allowed wells to be located only in the northwest and southeast quadrants.

After receiving evidence, the Commission granted Read & Steven's application for a 3<sup>rd</sup> well in an unorthodox location. The Commission granted the application to prevent waste of natural gas. The evidence presented supported the Commission's finding that the existing 2 wells in Section 26 would not adequately drain that section.

As the Commission explained in the additional findings adopted in its Order, that even though the Commission found Read & Steven's "Reservoir Stimulation Study" to have merit, the

was well known as the toughest negotiator in the Territory, probably the entire West. "I couldn't agree more strongly," Barber added. "Bradford should have to face justice."

"Thank you, George."

"It is the least I can do to compensate you for that fine library."

"It is a deal then?"

"Absolutely."

"Good."

"But I'm surprised you aren't more interested in getting Lawrence Murphy, the actual man who killed your husband. I know that is who I would go after first."

"I am interested in prosecuting Murphy, but he disappeared shortly after killing Alex. The powers in Santa Fe withdrew their support of him."

"Your letters to the President were embarrassing to the Santa Fe Ring. He's in Roswell ... drinking himself to death. I'm surprised you hadn't heard."

Susan thought about this a second and finally smiled. "If you were to file a civil suit against him might that speed up the process?"

Barber laughed.

"I already have the papers drawn up. As soon as you agree, the Sheriff and I can serve them."

Susan was very pleased to hear this. She appeared most satisfied at George Barber's initiative.

Commission could not altogether disregard evidence presented by UMC.

\*UMC noted to the lack of long-term pressure data in the study to support Read & Steven's estimate of 18.6 billion cubic feet of gas. *OLD DATA FROM 1993 WAS USED IN STUDY*

\*UMC pointed out that the figures on which Read & Stevens based its estimate at the Commission had changed from those figures presented at the Division hearing. These changed figures resulted in a larger figure for Read & Steven's estimate.

*for example, R & S reduced UMC's net pay from 18' to 5' in one instance and from 22 feet to 18 feet in another*

The Commission decided that it could not justify adopting either UMC's or Read and Steven's exact estimates for the gas-in-place below Section 26. The additional findings state that the amount of gas-in-place is somewhere between the two estimates and likely closer to the 18.6 BCF estimate of Read and Stevens.

The Commission's Order states that the evidence presented by Read & Stevens justified granting R & S a 3<sup>rd</sup> well in Section 26, because the existing two R & S's well in Section 26 would probably not drain all the remaining gas in that section. The Commission's foremost responsibility is to prevent waste of natural gas, and the Commission allowed the 3<sup>rd</sup> well to prevent waste. So, Read & Stevens got the 3<sup>rd</sup> well that it had requested; it received an exception to the existing rules.

*Tasker & Viking Petroleum*

However, Read & Stevens wanted something else. It wanted to place this well 50% closer to the common boundary line between Section 26 and Section 35 than an existing UMC well in Section 35. It is because Read & Stevens wanted to crowd its neighbor that the penalty was imposed. If R & S had been willing to locate the well at the standard setback, there would have been no penalty imposed. The penalty related to the spacing rules. The penalty is used to maintain the integrity of the spacing rules which are enacted to prevent waste and to protect correlative rights.

*The surface penalty has a rational basis considering the volume under sections 26 & 35 are ~~contained~~ in roughly equivalent containers.*

*Commission has a duty in statutes, rules or caselaw to determine specific figures for each party receiving. This is required in computing allowable for proration as in Continental Oil Co. v. Comm.*

Susan McSween and George Barber sat at a candle lit table in the Wortley's dining room. He appeared to have spared no expense in setting up as romantic an atmosphere as he could and in creating the illusion of his prosperity. They were sipping after-dinner drinks.

"How much are you asking for your ex-husband's books?" Barber asked.

"Even in used condition they are worth one hundred dollars. That is what I am asking, but I am in need of legal services in the prosecution of my claims against the Army for their just standing around while my Alex was ..."

"I understand. Would you consider giving me the books and I will perform the services?"

"No!" Susan said, shocked he would suggest such a thing. "I would, however, consider splitting the difference with you. Pay me fifty dollars and they are yours."

"You wouldn't consider a thirty - seventy split. I think my services are worth at least seventy dollars."

"Absolutely not."

"I'll send word to Roswell that I'm setting up a temporary office here. You do strike a hard bargain though." Susan took pride in hearing this. It reminded her of what she had said to Chisum who

Read & Stevens is attempting to convince the Court that today's science can predict the specific amt. of gas it is entitled to recover. This is not possible - only the actual production can determine how much gas there is to be produced.

Read & Steven's principal argument seems to be that because the Commission found some validity in the Reservoir Stimulation Study, the Commission was bound to except all the of conclusions of the study and to ignore all other evidence presented at the hearings, one before the division and one before the Commission. The Commission's duty is to evaluate the evidence presented. It found that from the evidence presented, R & S had justified that a 3<sup>rd</sup> well was needed to adequately drain Section 26. However, the Commission also found that because R & S wanted the 3<sup>rd</sup> well less than a 1000 feet from the boundary line and 50 % closer to that line than its neighbor's well in Section 35, the evidence required that a penalty be imposed to protect UMC's correlative rights.

2 quotes from *SF. Exploration v. Oll*  
114 N.M. 103, 835 P.2d 819 (1992)

prisoner dead.

"Attempting escape and resisting arrest," Bradford said, as an aside to the two soldiers.

He turned and walked to his waiting horse. He mounted and rode off. The two soldiers stood there, open mouthed.

"Now what the hell are we supposed to do?" one of them asked.

"Get him back to the fort, I suppose," the other replied. "Here, help me get him on the back of your horse."

Susan and Barber had watched silently, waiting to see what would unfold. She appeared infuriated, Barber stunned and quaking.

"That is the officer who stood by while my Alex was gunned down in cold blood."

Barber felt like puking. He certainly did not feel like standing in the road and talking.

"Misses McSween, I will come for you at seven o'clock. Until then."

Fortunately for him, Susan was still so upset by what had just transpired she had not noticed his condition. He hurried off down the street for the Wortley Hotel. Susan stood in front of her tent, still steaming and watching the soldiers load up the prisoner's body.



## Read & Stevens v. OCC & UMC

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e) The two existing wells in Section 26 are producing one million cubic feet of natural gas per day; the two existing wells in Section 35 are producing one million cubic feet of natural gas per day. The proposed Read & Stevens well is expected to produce over one million a day, so that Read & Stevens with the new well will be producing twice as much in Section 26 as UMC is producing in Section 35. Thus, the equilibrium that formerly existed between the two sections will be lost. With the proposed well in production, Section 26 will be producing ~~two~~ <sup>in excess of</sup> ~~and a half~~ times the amount of Section 35. The no flow boundary will not be at the common lease line.

f) ~~As there is between 11.8 BCF and 18.6 BCF of gas in place under Section 26,~~ Read & Stevens' proposed location will drain some gas reserves from under Section 35.

g) The standard set back for the Buffalo Valley-Pennsylvanian Gas Pool, in which Section 26 is located, is 990 feet from the outer boundary. However, this set back figure is for wells in orthodox locations, *i.e.*, wells in either the northwest or southeast quarter of a standard section. Read & Stevens' proposed location is in the southwest quarter.

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December 9, 1997

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*Read & Stevens v. O.C.*, No. CV 97-29, Fifth Judicial District, Chaves County —

Oral arguments were heard on October 21 in Roswell. We await the Court's decision.