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Commissioner

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Commissioner

DANA MURPHY  
Commissioner

**OKLAHOMA**  
**Corporation Commission**

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OF OKLAHOMA

**Oil & Gas Deliberation Decision Sheet**

**Cause No(s) &  
Type of Action:**

CD 201406590 and CD 201406591 - Pooling

**Date  
of Deliberation:**

Oral argument before Commission *en banc* held August 30, 2016

**Applicant(s):**

Continental Resources, Inc. ("Continental")

**Respondent(s):**

Fairfield Minerals Company, LLC ("Fairfield"), et al.

**Decision of  
Commissioners:**

Commissioners Murphy and Hiett decline to adopt the Reports of the ALJ and the Referee and determine as follows:

On April 13, 2011, after receiving unanimous approval from the Oklahoma Legislature, the Shale Reservoir Development Act, 52 O.S. §87.6 through 87.9 ("SRDA"), became effective. The SRDA created a new special development tool called a "multi-unit horizontal well" ("MUHW"). The SRDA modified the existing regulatory scheme to allow producers the ability to access "shale reservoirs" with horizontal laterals that could extend beyond the confines of an existing unit. These causes provide the Commission the opportunity to re-evaluate and assess the SRDA's use and limitations, based upon five years of development across Oklahoma under the SRDA.

The Legislature provided the Commission with clear legislative intent regarding the purpose of the SRDA. Section 1 of H.B. 1909 provides as follows:

"A new section of law not to be codified in the Oklahoma Statutes reads as follows: The Legislature finds that advances in horizontal drilling techniques for wells drilled and completed in shale formations in Oklahoma have advanced beyond the historical statutory spacing scheme found in Section 87.1 and Sections 287.1 through 287.15 of Title 52 of the Oklahoma Statutes, in particular with the use of extended length laterals. The Corporation Commission, as the agency charged with the protection of the correlative rights of those owning oil and gas interests in this state, the prevention of waste and the promotion of development of these Oklahoma resources, is constrained in its ability to adequately accomplish these goals by the limitations placed upon it by the existing statutory scheme. In order to prevent waste, better protect the correlative rights of the owners of oil and gas mineral interests and harmonize

the historical regulatory scheme of our state with the expanding technology of drilling and completing horizontal wells in shale reservoirs in this state, the Legislature finds it necessary to modify the oil and gas regulatory scheme in Oklahoma as set forth in this act.” (“Legislative Finding”).

The Legislature granted the Commission subject matter jurisdiction to implement the SRDA, but clearly indicated that the jurisdiction is limited and requires “conformity” with §87.8:

The Corporation Commission shall have jurisdiction, upon the filing of a proper application therefor, to permit the drilling, completing, and producing of a multiunit horizontal well *in conformity with Section 4 of this act* (which was then codified as §87.8). . . if the Commission finds that the multiunit horizontal well or the horizontal well unitization will prevent waste and will protect the correlative rights of the owners of oil and gas rights.” (emphasis added) 52 O.S. §87.7.

The limitation of the Commission’s authority is again emphasized by the Legislature in §87.8(A):

“Under the conditions contained in this section, the Corporation Commission is authorized to allow multiunit horizontal wells in order to prevent waste and protect the correlative rights of the owners of oil and gas rights.”

The Commission’s jurisdiction to permit the use of this special tool to drill a MUHW thus requires compliance with the statutory language of the SRDA and this Commission “presumes that the Legislature expressed its intent and that it intended what it expressed.”

“Legislative intent is ascertained from the whole act considering its general purpose and objective considering relevant provisions together to give full force and effect to each. The Court presumes that the Legislature expressed its intent and that it intended what it expressed. Statutes are interpreted to attain that purpose and to champion the broad public policy purposes underlying them.” (emphasis added) *Trusty v. State ex rel. Dep’t of Pub. Safety*, 2016 OK 94, ¶ 3, 381 P.3d 726, 734.

Further, “if the provisions of any code, title, chapter or article conflict with or contravene the provisions of any former code, title, chapter or article, the provisions of the latter code, title, chapter or article must prevail as to all matter and questions arising thereunder out of the same subject matter.” 75 O.S. §22. *Accordingly, to the extent that the provisions of the SRDA are in conflict with 52 O.S. §87.1, or the cases cited by the parties interpreting §87.1, e.g., Amoco Production Company*, 751 P.2d 203 (Okla.App.1985); *C. F. Braun & Co. v. Corporation Commission*, 609 P.2d 1268 (Okla. 1980); *B&W Operating, L.L.C. v. Corporation Comm’n*, 2015 OK CIV APP 88, *the provisions of the SRDA must prevail*. However, the cases cited herein can be reconciled or distinguished as further discussed below.

Various issues have arisen since the 2011 effective date of the SRDA, but the one raised in these causes has not been brought before the Commission in the form of a protested cause. Expanded and creative use of the SRDA has brought more complexities than when the earliest MUHW was drilled. To that end, the Commission is now called upon to interpret the effect of a proposed pooling order for a MUHW across two spacing units.

Continental's request of this Commission was summarized in its opening paragraph to its Response to the Exceptions of the Administrative Law Judge:

"Applicant, Continental Resources, Inc. ("Continental"), is asking the Commission to pool the Springer, Mississippian, Woodford, and Hunton common sources of supply in *two 640-acre drilling and spacing units* covering Section 3, Township 3 South, Range 4 West ("Section 3"), and Section 34, Township 2 South, Range 4 West ("Section 34"), Stephens County, Oklahoma." (emphasis added).

In the pooling applications, Continental requested *aggregation of the Springer, Mississippian, Woodford, and Hunton separate common sources of supply (which contain both shale and non-shale formations) as a single drilling and spacing unit* inasmuch as it alleged that it "is actively pursuing a plan of development for the Springer, Mississippian and Woodford common sources of supply, and that the Hunton lies immediately beneath the Woodford and should therefore also be pooled as an 'associated common source of supply' ("ACSS") pursuant to the Shale Reservoir Development Act, 52 Okla. Stat§ 87.6(8)(3)." *Id.* By Final Order No. 644825 in CD No. 201403405, Continental requested and obtained permission from the Commission to drill its initial unit well for Section 3 and for Section 34 as a MUHW wherein the targeted shale reservoir was the Woodford common source of supply ("CSS"). The Ritter #1-3-34XH ("Ritter well") has been drilled pursuant to such order.

In the hearing before the ALJ, Continental testified that it drilled a pilot well in this general area (not necessarily in the subject sections) which penetrated the Springer, Mississippian and Woodford CSS. Transcript of proceedings held on October 15, 2015 ("Transcript"), pp. 64-65. Continental further indicated it has drilled other horizontal wells in the area for development of these three CSS. Transcript, pp. 64-65. While Continental asserts it is pursuing a "plan for development" for the area in general for these three CSS, no specific plan or costs were set forth for these CSS other than for the Ritter well, which was targeting the Woodford CSS. The issue is not whether Continental has its own "Plan of Development" for the area, but whether it has a specific plan of development for these CSS in the two sections it seeks to force pool.

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<sup>1</sup> OAC 165:10-1-2 defines "common source of supply" ("CSS"):

"Common source of supply" or "pool" means "that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid by a common accumulation of oil and/or gas; provided that, if any such area is underlaid, or appears from geological or other scientific data or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by strata of earth and not connected with each other, then such are a shale, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply." [52 O.S.A. §86.1(c)].

Continental's request to aggregate four *separate* CSS as a single "unit" in its pooling application conflicts with the express terms of the SRDA:

"As used in the 2011 Shale Reservoir Development Act:

....  
***'Unit'*** means a drilling and spacing unit for a *single* CSS created pursuant to Section 87.1 of this title" (emphasis added) 52 O.S. §87.6(20).

Further, the ability to utilize 52 O.S. §87.1 to "pool" that "unit" or "single CSS" for the purpose of drilling a MUHW is authorized, but limited by 52 O.S. §87.8(B)(3):

A multiunit horizontal well shall be treated as a well in each of the affected units and shall be subject to all of the rules otherwise applicable to any other well in any of the affected units. In allowing a multiunit horizontal well, the Commission, under Section 87.1 of this title, may grant any necessary exceptions to the permitted well location tolerances in each of the affected units for the well and permit the well as an additional well in each of the affected units. *When an owner has drilled or proposes to drill a multiunit horizontal well or wells and the owners of a present right to drill in any of the affected units have not agreed to pool their interests in the unit for the affected common sources of supply, the Commission, under Section 87.1 of this title, may, upon the filing of a proper application therefor, require the owners to pool their interests in each affected unit on a unitwide basis as to the respective unit in regard to the development involving the portion of the multiunit horizontal well or wells located within the affected unit.* Furthermore, if the Commission has previously entered an order pooling the interests of owners in an affected unit in which a multiunit horizontal well or wells have been drilled or are proposed to be drilled, the Commission, under Section 87.1 of this title may, upon the filing of a proper application therefor, amend the pooling order to the extent necessary to have the pooling order cover the development involving the portion of the multiunit horizontal well or wells located within the affected unit. (emphasis added).

Considering these provisions of the SRDA as standalone provisions would lead to the unambiguous conclusion that the SRDA limits the ability to create and "*pool*" the "*unit*" to the "*single CSS*" which is the targeted shale CSS of the MUHW. However, examination cannot be isolated to these provisions; consideration must be made to the "whole act" to ascertain the Legislature's full intent and "to champion the broad public policy purposes underlying" the SRDA. (*State ex rel. Dep't of Pub. Safety*).

Analysis of the "ACSS" concept included in the SRDA can be reconciled to that concept with the clear and unambiguous language of the SRDA discussed above limiting the "*unit*" to "a drilling and spacing unit for a *single* CSS" (emphasis added) §87.6(20).

First, a MUHW may *only* be utilized to drill a horizontal well in a “*targeted reservoir*”:

“‘Multiunit horizontal well’ means a horizontal well in a *targeted reservoir* wherein the completion interval of the well is located in more than one unit formed for the same *targeted reservoir*, with the well being completed in and producing from such *targeted reservoir* in two or more of such units.” (emphasis added.) §87.6(11);

and a “*targeted reservoir*” is further limited to a “*shale reservoir*”:

“‘Targeted reservoir’ means any shale reservoir.”<sup>2</sup> (emphasis added.) §87.6(16);

A “*shale reservoir*” is defined for purposes of the SRDA as:

“a CSS which is a shale formation that is so designated by the Commission through rule or order and shall also include *any ACSS* as defined in this section.” (emphasis added.) §87.6(15).

An “ACSS” is defined by the SRDA as:

“a CSS which is subject to a drilling and spacing unit formed by the Corporation Commission and located in all or a portion of the lands in which the completion interval of a multiunit horizontal well is located . . . and *which is immediately adjoining the shale common source of supply* in which the completion interval of the horizontal well is located, *and which is inadvertently encountered* in the drilling of the lateral of such horizontal well when such well is drilled out of or exits, whether on one or multiple occasions, such shale CSS.” (emphasis added) §87.6(3).

In order to be considered an ACSS, the statute specifically required both that the CSS be “*immediately adjoining* the shale” and that it be “*inadvertently encountered*” by a horizontal multi-unit lateral. The ACSS is not intended for piggy-backing the ACSS as either the primary target for the MUHW, or inclusion of the ACSS in a pooling for later development as a targeted reservoir. Accordingly, the ACSS designation, and the inclusion of the ACSS as part of the “*shale reservoir*” is *solely* for the purpose of, *and limited to*, possible *inadvertent penetrations* during the drilling of the MUHW. If the MUHW is drilled without inadvertently penetrating the ACSS, the ACSS should be dismissed in the multi-unit cause as part of the final order in that cause and this is the current practice at the Commission once all MUHW wells have been drilled.

Considering the SRDA as a whole, and reconciling its provisions in a manner so as to give full force and effect to each of its provisions, the “*targeted reservoir*” a/k/a the “*shale reservoir*” is a single “*unit*”, which by definition, *restricts the scope of the “unit” and ultimately the pooling* of that unit to:

<sup>2</sup> In 2014, the Legislature expanded to SRDA to allow for the use of a MUHW to drill the Marmaton CSS (a non-shale CSS) in Texas and Beaver Counties only, which has no implication in the instant causes.



- (1) a "single" CSS which is a *shale formation* that is so designated by the Commission through rule or order; and
- (2) the CSS "*which [are] immediately adjoining the shale CSS*", but only for the purpose of "inadvertent" penetration during the drilling of the lateral in the shale formation (i.e., the ACSS), but not otherwise.

Accordingly, for purposes of the instant cases, the "Woodford Unit" in each Section shall be defined as:

- (1) the Woodford CSS; and
- (2) the ACSS consisting of:
  - a. the Mississippian CSS, but only for the purpose of "inadvertent" penetration during the drilling of the lateral in the Woodford CSS, but not otherwise; and
  - b. the Hunton CSS, but only for the purpose of "inadvertent" penetration during the drilling of the lateral in the Woodford CSS, but not otherwise.

Except to the limited extent expressed above as to inclusion of the ACSS for inadvertent deviations, the Commission concludes that the SRDA does not provide for the aggregation of separate CSS as a single unit for the purpose of drilling a MUHW. Consistent with C.F. Braun v. Corporation Commission, 1980 OK 42, 609 P.2d 1268 an owner's election in a MUHW where ACSSs are part of the shale reservoir would not be the same as a non-horizontal or a horizontal well being drilled solely for a CSS which is the same ACSS.

"If the parties treat the different CSS or spacing units as separate and distinct spacing units, and the evidence discloses an intent or desire on the owners; part that they be considered separately, an owner may not be required to have his rights under one spacing unit be dependent or contingent upon his rights or his election in another spacing unit." *Id.* 1271

In these cases, proper application of the SRDA would require that the Woodford "shale reservoir", consisting of the Woodford CSS and its ACSS (Mississippian and Hunton) for inadvertent penetrations would be a separate and distinct spacing unit. Fairfield indicated its desire for a separate election of each separate CSS as set out in the Pre-Hearing Conference Agreement and in the hearing before the ALJ. Owners not interested in drilling the Woodford shale reservoir may be interested in the development of the other CSS. No plan or use of the Woodford MUHW borehole for development of the other CSS was provided in the record made before the ALJ for Fairfield or any other owner to consider. Thus, neither Continental nor Fairfield have treated the four (4) CSS or spacing units as a single unit in either Section 3 or Section 34, nor could they under the express wording of the SRDA. In C.F. Braun, the Court held:

**“As we view our spacing and pooling statutes, the thirteen common sources of supply underlying the 640 acre tract in the case at bar constitute thirteen separate and distinct spacing and drilling units where one bore hole can be used to test and develop one or all of the thirteen units.” (Id. ¶10)**

The Springer, Mississippian, Woodford and Hunton CSS underlying Sections 3 and 34 have been designated as, and constitute, *separate and distinct drilling and spacing units except as to the shale reservoir consisting of the Woodford and inadvertent penetration into the Mississippian and/or the Hunton*. The SRDA limits the use of the MUHW, to developing the “shale reservoir” (§87.6(15)) such that “each MUHW borehole” is to be used to “develop” the “targeted reservoir”.

In these cases, the Springer, Mississippian and Hunton separate CSS, by definition, are not able to be *developed* by the proposed (and now drilled) Woodford MUHW. As set forth in C.F. Braun, “the pooling order should be responsive to the application and evidence” (Id. ¶11). In these cases, Continental elected to drill a Woodford MUHW; with that decision comes the limitations upon the use of that special tool imposed by the SRDA. C.F. Braun further held:

**“If the parties treat two or more spacing units underlying the same tract as a single unit, the pooling order may treat them as a single unit. *If the parties treat the different common sources of supply or spacing units as separate and distinct spacing units*, and the evidence discloses an intent or desire on the owners’ part that they be considered separately, an owner may not be required to have his rights under one spacing unit be dependent or contingent upon his rights or his election in another spacing unit.” (emphasis added.) Id. ¶11.**

The mere use of the SRDA to drill a MUHW, by its very terms, evidences the parties’ intent to treat the shale reservoir as a separate and distinct unit and necessitates any other CSS named in the application to be considered separately. ***Owners should not be required to have their rights in the non-targeted CSS for a MUHW be dependent or contingent upon their rights or their election in the spacing unit for the MUHW.***

Continental asserts that B&W Operating v. Corporation Commission, 2015 OK CIV APP 88, 362 P.3d 277 is controlling in this case. B&W is a Court of Civil Appeals decision, released for publication by the COCA, and is not considered precedential authority. (Oklahoma Supreme Court Rule 1.200) Further, B&W is easily distinguishable. In B&W, Devon was *not* proposing to drill a MUHW pursuant to the SRDA; therefore, the limitations on the “unit” as discussed herein were not present. The issue involved in B&W was the proposed subsequent well election within the unit, not what should constitute a unit, or separate elections for separate units (it does not appear that B&W challenged the treatment of the Mississippian and Woodford common sources of supply as a single “unit” for the drilling of a non-MUHW strictly pursuant to §87.1):

"B&W asserts that after electing to participate in an initial horizontal test well, a non-operator working interest owner, such as B&W, should have the right to elect to participate in subsequent horizontal wells within a pooled unit, or elect not to participate in a given well, without forfeiting its unit leasehold interests." *Id.* ¶6.

An appropriate pooling election for the Woodford Unit in each section must be afforded in the pooling orders, and that election must be "on a unitwide basis as to the respective unit in regard to the development involving the portion of the multiunit horizontal well or wells located within the affected unit." §87.8(B)(3). To this extent, the SRDA is consistent with Amoco v. Corporation Commission, 1986 OK CIV APP 16, 751 P.2d 203, *i.e.*, that is to pool the Woodford Unit on a "unit wide basis rather than on an individual well basis." (*Id.* ¶24).

As stated in Amoco, three distinct requirements specifically arise from 52 O.S. §87.1(e). The statute mandates developing the spacing unit as a unit. *Id.* 206. Additionally, the statute authorizes pooling when the terms and conditions are just and reasonable. *Id.* 206-207. Finally, the statute requires that owners will receive a just and fair share of the oil and gas. *Id.* 207. Thus, these three requirements must all be evaluated when considering a pooling order, not just the aspect of pooling by the unit.

In the cases at hand, the unit to be pooled was comprised of the Woodford, a shale CSS, and Mississippian (above) and the Hunton (below) as the ACSS in each respective section. The spacing unit(s) to be developed were for the shale reservoir targeted by the MUHW extending across Section 3 and Section 34. Thus, the pooling order(s) for the units encompassing the shale reservoir was for the MUHW that traversed these two sections. Such pooling orders could provide for multiple wellbores accessing the shale reservoir.

The second requirement of the statute provides that the pooling order is authorized when terms and conditions are just and reasonable. Wellbores which could be drilled for ACSS not as part of the shale reservoir for the MUHW, but as separate wells would either need to be addressed by terms in the pooling order providing for separate elections or by a separate pooling order. Continental indicated that separate elections would not impede its plan of development. Transcript, pp. 82-83, 90. It cannot be considered just and reasonable for owners in a unit who are not interested in an expensive horizontal multi-unit well to be forced to relinquish their interests in a CSS that can be drilled by stand alone wells in one unit. Moreover, to allow for this result would not be providing for a just and fair share of oil and gas from such CSS.

The Commission must next address the remaining status of the Springer, Mississippian and Hunton CSS included in Continental's Applications.

"Our statutes do not limit the number of separate spacing units that can be included in a pooling application or proceeding. However, whether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit as argued by appellant depends upon the facts and circumstances in each pooling proceeding." (C.F. Braun ¶10).



As to the Springer CSS, Continental indicated it would be developed as a separate project and likely through a MUHW. Transcript, p. 85. The Mississippian CSS was also to be a separate project developed through a MUHW. *Id.* Moreover, Continental has indicated that it has no definite plans for developing the Hunton CSS. Transcript, pp. 72-73. Accordingly, the Commission finds its inclusion is solely for purposes as an ACSS and part of the Woodford Unit described above, and not for development purposes. It may not be pooled for any other purpose at this time.

Based on the record, the analysis set forth herein and for purposes of judicial economy and effectiveness in allowing for development beyond the initial Woodford Unit without requiring separate pooling applications, the Commission determines that:

- (1) the Woodford Unit may be pooled as a separate unit in each section, with a separate election, consisting of:
  - a. the Woodford CSS, and
  - b. its "ACSS" consisting of:
    - i. the Mississippian CSS, limited to its "inadvertent" penetration during the drilling of the lateral in the Woodford CSS; and
    - ii. the Hunton CSS, limited to its "inadvertent" penetration during the drilling of the lateral in the Woodford CSS,
- (2) the Mississippian CSS may be pooled for development purposes with a separate election to be provided to respondents in each section;
- (3) the Hunton CSS may be included as an ACSS for inadvertent penetration, but should be dismissed for development purposes; and
- (4) the Springer CSS may be pooled for development purposes with a separate election provided to respondents in each section; and
- (5) the causes should be remanded to the ALJ for further testimony and evidence as to the fair market value and terms to be provided in the orders for separate pooling elections as to the Woodford Unit in Sections 3 and 34, the Mississippian CSS as a separate unit in Sections 3 and 34, and the Springer CSS as a separate unit in Sections 3 and 34. Terms shall include, but not be limited to, a provision allowing a respondent to make an election under paragraphs (2) and/or (4) during the same time frame as the initial election for the Woodford Unit in paragraph (1) and allowing a respondent to separately elect within 20 days of a Notice of Proposed Unit well under paragraph (2) or (4) which should be sent to respondents and include estimated dry hole and completed well costs.

For the special tool known as the MUHW, the Commission's jurisdiction is limited to provisions of the SRDA, and the legislative intent expressed therein. Unless and until the Legislature removes the shale formation limitation from the SRDA and/or allows for the possible aggregation of CSS for the drilling of multiple MUHW under a plan of development involving more than one CSS, the Commission's and the producers' options shall be constrained and limited as herein determined by the Commission.

**E-mail notice to:** David Pepper, Attorney for Continental  
Richard A. Grimes, Attorney for Fairfield and Dunlap-Black Investments, LLC  
Fred Gist, Attorney for Tarpon Jumper, LLC

**Order to be  
prepared by:** David Pepper

**Date Order Due:** As soon as possible following the remand proceeding before the ALJ as set forth  
herein.

**Copies to:** Paul E. Porter, Administrative Law Judge  
Patricia D. MacGuigan, Oil & Gas Appellate Referee  
Michael Decker, Director, OAP  
James L. Mylcs  
Matt Mullins  
Elizabeth Cates  
Garey Wortham  
Erica Martin