
* KEY ISSUES: CONFISCATION *
* Legal Subdivision *
* SWR 38(d)(3) *
* Reasonable location *
* *
* FINAL ORDER: R37 EXCEPTION GRANTED *

RULE 37 DOCKET NO. 0210767

APPLICATION OF COTTON VALLEY OPERATIONS, INC., FOR AN EXCEPTION TO STATEWIDE RULE 37 FOR ITS S.S. BARTON WELL NO. 1 IN THE WILLOW SPRINGS, W (TRAVIS PEAK) AND WILDCAT FIELDS, GREGG COUNTY, TEXAS

APPEARANCES:

REPRESENTING:

FOR APPLICANT:

Flip Whitworth
Kerry Pollard
Dan Elbert
H.C. Woolsey

Cotton Valley Operations, Inc.

FOR PROTESTANT:

R. Byron Roach, Trustee
Douglas Moore
Anda Roach

R. Byron Roach

INTERESTED PARTY:

James Doherty

Sonat Exploration

PROCEDURAL HISTORY

DATE APPLICATION FILED:

November 28, 1995

NOTICE OF HEARING:

December 15, 1995

HEARING DATE:

January 31, 1996

TRANSCRIPT RECEIVED:

February 19, 1996

PFD CIRCULATION DATE:

HEARD BY:

Jeffrey T. Pender, Hearings Examiner
Donna Chandler, Technical Examiner

STATEMENT OF THE CASE

Cotton Valley Operations, Inc. ("Cotton Valley"), has applied to drill its Well No. 1 on the 43.5 acre S.S. Barton Lease in the Willow Springs W. (Travis Peak) and Wildcat Fields, Gregg County, Texas ("subject tract" and "subject well"). Field rules require 467' lease-line and 1,200' between-well spacing on 40 acres. At the proposed location, the subject well will be 352' from the eastern-most west line of the subject tract. There are no regular locations on the subject tract. Cotton Valley claims that the location is necessary to prevent waste and confiscation.

R. Byron Roach, trustee ("Roach"), an offset operator, protests the application claiming that the subject lease is already pooled in the adjacent M.C. Salter Unit No. 1 (TP) and, in the alternative, that the proposed location is not reasonable.

DISCUSSION OF EVIDENCE**IS THE PROPOSED LOCATION REASONABLE?**

Kerry Pollard, an engineer for Cotton Valley, testified that Cotton Valley could recover over 41,000 barrels of oil from the Travis Peak interval. Roach did not dispute this recovery estimate. Roach does, however, dispute the reasonableness of the applied-for location. He believes that the proposed location, 110 feet from Grace Creek, presents an unreasonable risk of harm to the creek. Grace Creek originates just north of the subject lease and flows southeast toward the City of Longview. Roach suggests that a more reasonable location would be about 100 feet directly south of the proposed location because it would be further from the creek and on flatter ground. Roach does not dispute that several East Texas Field wells have been drilled and subsequently plugged on the subject tract.

Cotton Valley Exhibit #6 shows the presence of three sand members near the top of the Travis Peak in the Clemens #1 Well, about 900 feet south of the south line of the subject tract. Exhibit #6 shows that the two lower of the three sand members pinch out somewhere between the Clemens #1 and the J.W. Falvey #1 located about 1,200 feet north of the subject tract. Roach contends that Cotton Valley is more likely to penetrate all three sand members if it drills its well closer to the south line of the subject tract.

Cotton Valley's president, Mr. Woolsey and its attorney, Mr. Whitworth, both indicated that although Cotton Valley believes that the proposed location presents no unreasonable risk to Grace Creek or the environment, Cotton Valley had no objection to moving its proposed location 100 feet to the south as suggested by Roach.

IS THE SUBJECT TRACT ALREADY POOLED IN THE M.C. SALTER UNIT NO. 1 (TP)?

Roach claims that Cotton Valley cannot drill a well on the subject tract because the lease is already pooled in the unit formed to drill the M.C. Salter Unit No. 1 (TP) which is adjacent to the

subject tract on the west. The unit was filed on November 8, 1993 by H.C. Woolsey, President of Cotton Valley. The unit, as originally filed contained 40 acres, more or less, directly to the west of the subject tract. Three days later Woolsey amended the Declaration of Unit to include the subject tract and other tracts for a total of 162.62 acres. On March 16, 1995, Woolsey filed a document entitled, "Clarification and Correction of Amended Unit Declaration - Cotton Valley Operations, Inc. - M.C. Salter No. 1 (TP)," in the Gregg County courthouse. This document corrects the earlier Amended Unit Declaration by stating the following:

- (1) [the] Amended Unit Declaration and Amended Unit Area are invalid and ineffective as to the production and development of oil; and
- (2) that the Cotton Valley Operations, Inc. - M.C. Salter Unit No. 1 (TP) contains only the 40 acres of land and the leases that are described in the Original Unit Declaration for the development and production of oil.

Roach maintains that these filings by Cotton Valley do not alter the fact that the subject tract is currently pooled for gas and cannot be included in any other Commission-recognized pooled unit unless the prior unit is properly dissolved pursuant to Statewide Rule 38(d)(3).

Cotton Valley believes that the subject lease was never validly pooled for oil, that any pool for gas expired on May 16, 1994 and that it does not need an exception to Statewide Rule 38(d)(3).

Cotton Valley does not believe that the subject lease was ever validly pooled for oil. The lease on the 43.5 acres in the subject tract limited pooling authority for oil to 80 acres and gas, to 640 acres. Therefore, any lessee of the subject tract has no authority to pool the subject tract, for oil, if the total acreage in the resulting pooled unit exceeds 80 acres. It is Cotton Valley's contention that it exceeded its authority under its lease on the subject tract when it pooled the subject tract, for oil, in the 162.62 acre M.C. Salter Unit and that its subsequent "Clarification and Correction of Amended Unit Declaration" declaring the pooling for oil to be invalid was therefore, justified and effective.

Cotton Valley does not dispute that the "Amended Declaration of Unit" filed November 12, 1993 effectively pooled the subject tract, for gas. It contends, however, that because operations on the pooled unit ceased February 16, 1994, the lease on the subject tract expired 90 days later on May 16, 1994. Cotton Valley also contends that because the Commission never relied on any certification of pooling authority for the subject tract in assigning allowables, an exception to Statewide Rule 38(d)(3) is not necessary before including the subject tract in the proration unit of the proposed well.

It is unrefuted that the subject tract took its current shape and size on January 30, 1919, and that it has not come under common ownership with any adjacent tract since then. The formation of the subject tract predates the discovery of oil in the area during the 1930's.

EXAMINER'S OPINION

The examiners believe that Cotton Valley is entitled to an exception to Statewide Rule 37 to drill the proposed well.

Cotton Valley does not need the Commission's approval for the dissolution of the gas pool formed for the drilling of the M.C. Salter Unit No. 1 before committing the subject tract to a drilling or proration unit for the proposed well. Statewide Rule 38(d)(3) requires that:

"If two or more separate tracts are joined or unitized for oil, gas, or geothermal development **and accepted by the Commission**, the joined or unitized tracts may not thereafter be divided into the separate tracts with the rules of the Commission applicable to each separate tract, if the division results in any tract composed of substandard acreage at the time of division, unless and until the Commission approves such division after application, notice to all current lessees and unleased mineral interest owners of each tract within the joined or unitized tract, and an opportunity for hearing...."

16 T.A.C. §3.38(d)(3) (emphasis added). The rule requires that when the Commission records reflect that a tract of land is already committed to a pooled unit in a particular field, an operator wanting to use the same acreage to form a different pooled unit in the same field must seek Commission approval to dissolve the prior unit under Rule 38(d)(3) before asking the Commission to consider the acreage to be part of the new unit. The rule serves a dual purpose of preventing the "double assignment" of acreage and preventing operators from circumventing the statewide spacing and density rules. If a tract has never been committed by an operator to a drilling or proration unit; that is, the Commission has never "accepted" the dedication of the tract for drilling or proration purposes, requiring Commission approval before reusing the tract in another unit would serve no Commission purposes.

There is no evidence that the subject tract was ever included in the "certification of pooling authority" in the drilling permit application for the M.C. Salter Unit No. 1 (TP) nor is there any evidence that the subject tract has ever been assigned to any well in the target field for proration purposes. Accordingly, the current lessees do not need to seek Commission approval under Rule 38(d)(3) before committing the subject tract to the drilling unit for the proposed well.

Because the tract is not subject to Rule 38(d)(3) and is a legal subdivision, it is entitled to a first well to prevent confiscation. It is undisputed that at the applied-for location, Cotton Valley can recover over 41,000 barrels of oil that it could not otherwise recover. Accordingly, confiscation will occur if the application is not granted. The only question remaining is whether the location is reasonable.

The proposed location is closer to the geometric center of the subject tract than Roach's proposed alternate location 100 feet to the south and will allow Cotton Valley a reasonable opportunity to recover its share of hydrocarbons. There is no evidence that there will be less

drainage of adjacent leases at any other location. Moreover, mere proximity to a creek does not automatically mean that there is an unreasonable environmental risk. Accordingly, the proposed location is reasonable.

FINDINGS OF FACT

1. Notice of hearing was given on December 15, 1995, to all designated operators, lessees of record of tracts that have no designated operator, and owners of record of unleased mineral interests for each adjacent tract and each tract nearer to the well than 467 feet.
2. Cotton Valley Operations, Inc. ("Cotton Valley"), has applied on Form W-1, filed with the Commission on 11-29-95, to drill its Well No. 1, ("subject well") on the 43.5 acre S.S. Barton Lease ("subject tract") to the Willow Springs, W. (Travis Peak) and Wildcat Fields, Gregg County, Texas. The proposed location is 352 feet from the eastern-most west line of the subject tract.
3. The subject tract took its current shape and size on January 30, 1919 and has not, since that time, come under common ownership or control with any adjacent tracts.
4. Oil was first discovered in the area during the 1930's.
5. The subject tract was voluntarily pooled for gas in the M.C. Salter Unit No. 1 (TP) on November 12, 1993. The subject tract has never been pooled for oil. The subject tract was not included on any "certification of pooling" authority for the M.C. Salter Unit No. 1 (TP).
6. Operations on the M.C. Salter Unit No. 1 (TP) ceased on or about February 16, 1994.
7. The Unit Declaration for the M.C. Salter No. 1 requires that the unit expire if operations cease for more than 90 days.
8. There are no regular locations on the subject tract.
9. There are 41,000 barrels of recoverable oil under the subject tract.
10. The location proposed by Cotton Valley is reasonable.
 - a. There is no unreasonable risk of pollution to Grace Creek at the proposed location.
 - b. A well has been previously drilled to the East Texas Field in virtually the same location as the proposed location.
 - c. Roach has not demonstrated that there is another irregular location that will cause less drainage of surrounding leases.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.
3. The subject tract is a legal subdivision entitled to a well to prevent confiscation.
4. An exception to Statewide Rule 38(d)(3) is not necessary because the M.C. Salter Unit No. 1. (TP) was never "accepted" by the Commission.
5. Cotton Valley is entitled to an exception to Statewide Rule 37 at the proposed location to prevent confiscation.

RECOMMENDATION

The examiners recommend that the above findings and conclusions be adopted and that the application of Cotton Valley Operations, Inc. be approved.

Respectfully submitted,

Jeffrey T. Pender
Hearings Examiner

Donna Chandler
Technical Examiner

JTP/bjw