

**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA**

Respondent
APPLICANT: DWAIN HOOKS)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: SW/4 SW/4 SE/4 OF)
SECTION 7, TOWNSHIP 1 SOUTH, RANGE)
2 WEST, CARTER COUNTY, OKLAHOMA)

CAUSE CD NO. 201601963

FILED
NOV 17 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

REPORT OF THE ADMINISTRATIVE LAW JUDGE

On 19 October 2016, this cause came on for hearing before Patrick O. Colaw, Administrative Law Judge (ALJ) for the Corporation Commission (Commission) of the State of Oklahoma, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

SUMMARY OF THE CASES:

Mr. Dwain Hooks has the right to drill in the Southwest quarter of the Southwest quarter of the Southeast quarter (SW/4 SW/4 SE/4) of Section 7, Township 1 South, Range 2 West, Carter County, Oklahoma and seeks to pool the Upper Goodwin and Lower Goodwin in order to recomplete the Hogan 1-A Well. Mr. Joseph R. Hooks (respondent #2) owns one (1) mineral acre in the unit and protests the cause. According to the Pre-Hearing Conference Agreement, the disputed matters are fair market value and operations. However, after the cause was opened, Mr. Joseph Hooks narrowed his protest to fair market value.

The only matter at issue is fair market value; specifically, Mr. Joseph Hooks does not believe the values offered him were high enough.

Additionally, Mr. Chaffin, counsel for the Applicant, stated at the outset of the case that Ms. Eartha Taylor protested the cause on behalf of her deceased mother, Ms. Davetta Austin (Respondent #1); however, no one appeared on behalf of Ms. Davetta Austin. Mr. Chaffin asserted that Ms. Austin's protest was fair market value and operator competency. It was stated by Mr. Chaffin and agreed to by Mr. Joseph Hooks that Ms. Austin was aware of Mr. Joseph Hooks' protest and was supporting his position.

RECOMMENDATIONS:

It is the recommendation of the ALJ that the Application of Dwain Hooks in Cause CD No. 201601963 be granted and Applicant be named the unit operator in the SW/4 SW/4 SE/4 of Section 7, Township 1 South, Range 2 West, Carter County, Oklahoma.

APPEARANCES: Donald J. Chaffin, attorney, appeared on behalf of Applicant, Dwain Hooks

Joseph R. Hooks appeared pro se as the Protestant

FINDINGS AND SUMMARY OF EVIDENCE:

A. The following exhibit was offered by the Applicant and accepted into evidence in Cause CD No. 201601963:

1. Authorization for Expenditure (AFE), dated 10 October 2016 (one page).

B. Applicant called **Scott Heller** to give testimony. Mr. Heller testified he is a landman employed by the Applicant. Mr. Heller has testified before the courts of the Commission on more than one occasion and has had his qualifications as an expert in the field of petroleum land management accepted. He sponsored Exhibit 1. The entirety of his testimony is contained in the transcript of the proceedings.

1. Under direct examination, Mr. Heller testified Dwain Hooks owns 2.5 acres (25% of the unit) and is seeking to pool 7.5 acres. He stated Respondent # 19, Giffey Davis Oil & Gas, LLC, owns 1.5 acres and Respondent # 18, Jennifer Neilson Bridgham, owns 1 acre and is part of the Giffey Davis family. Additionally, he testified Respondents # 18 and # 19 wish to have their 25% interest in the unit pooled instead of being leased.

2. Mr. Heller testified the Dwain Hooks' plan is to recomplete the Hogan 1-A Well in the Upper and Lower Goodwin common sources of supply. The well is located in SW/4 SW/4 SE/4 of Section 7, Township 1 South, Range 2 West, Carter County, Oklahoma.

3. Mr. Heller testified that Respondents # 5 and # 6 did not claim the notification mailed to them although the addresses were correct. Additionally, he testified the notifications sent to Respondents # 10 and # 11 were returned as "not deliverable as addressed." Mr. Heller testified as to the efforts he made to identify and contact each of the Respondents. His search included a review of county records, whitepages.com, pangea.com, the Oklahoma Treasurer's web page, probate records, and accurant.com (an online tool that checks a variety of online resources including the Oklahoma State Court Network records and the Oklahoma Department of Corrections). His most recent search of records for his cause was on 14 October 2016. He asks

that Notice by publication be approved for the parties he was unable to reach via certified mail. Furthermore, he stated when he spoke with Mr. Joseph Hooks, he indicated he spoke for his family¹.

4. In addition, Mr. Heller testified that Ms. Eartha Taylor informed him Respondent # 1, Ms. Davetta Austin, is deceased. Ms. Taylor also informed Mr. Heller she was the daughter of Ms. Austin and the trustee of Ms. Austin's trust which was executed on 12 April 2016. According to Ms. Taylor, Ms. Austin died in April 2016. Mr. Heller found no notice of death for Ms. Austin in Carter County nor did he find any conveyance of ownership filed in Carter County.

5. Mr. Heller sponsored Exhibit 1, AFE. Additionally, he testified to the fair market value (FMV) of the Upper and Lower Goodwin. His opinion is that FMV is \$150 an acre with a $\frac{1}{8}$ royalty or \$100 an acre with a $\frac{3}{16}$ royalty. These amounts represented the highest and best values in the surrounding sections. On 27 April 2016, another entity took a three-year lease in Section 9 for \$3,500 per acre and $\frac{1}{5}$ royalty for all formations. Mr. Jenkins testified this lease was not indicative of fair market value as it included all formations ("surface to basement") and had a term of three (3) years.

6. The Applicant requests a time frame of twenty (20) days to make elections, twenty-five (25) days to pay costs, and thirty-five (35) days to pay bonus for the recompletion of the well. Furthermore, Mr. Heller testified only parties participating in the initial well will be eligible to propose and/or participate in any subsequent well.

7. Mr. Heller requested the Order grant 365 days to recomplete the well. He testified Mr. Joseph Hooks is the owner of the surface location. However, due to the inability to come to an agreement with him, a Surface Damage Act action will be filed in District Court delaying the operation. Additionally, further negotiations for the remaining equipment on the surface location will resume which could delay the proposed operation. Dwain Hooks shall be named the operator. He is bonded and in good standing with the Commission.

8. The Protestant, Mr. Joseph Hooks, asked questions of Mr. Heller. Mr. Joseph Hooks confronted Mr. Heller with a copy of what he purported to be a mineral lease in Garvin County, Oklahoma. After Mr. Heller and Mr. Chaffin examined the document, Mr. Heller testified that he did not dispute the legitimacy of the lease for \$900 per acre. However, he identified the many differences between the lease and the current situation. Among the differences are (1) the lease covered a location over two miles away (2) the lease included all depths targeting the Woodford common source of supply (3) the lease was not for a recompletion of an old existing well (4) and the lease was dated 2 March 2012. The purported lease was not taken as evidence.

9. Mr. Joseph Hooks asked Mr. Heller how he defined "negotiations." Mr. Heller explained the negotiation efforts he makes in general and the negotiation efforts he made with Mr. Joseph Hooks. He said he generally calls the mineral owners with an offer and generally a dialog ensues. However, in this specific case, he spoke with Mr. Joseph Hooks on the telephone and made an offer for the Upper and Lower Goodwin common source of supply.

¹ Respondents # 3, # 7, and # 9.

10. Mr. Joseph Hooks finished his examination of Mr. Hooks by asking if a need or emergency existed prompting Mr. Dwain Hooks desire to recomplete this well or if it was "just for profit?" Mr. Heller testified this operation is just part of the oil business.

11. On redirect examination, Mr. Heller elaborated on the efforts he made to lease Mr. Joseph Hooks' interests. He stated he called Mr. Joseph Hooks two or three times and each time he did not feel he would succeed in obtaining a lease as he and Mr. Joseph Hooks could not agree on a value of the Upper and Lower Goodwin common source of supply. Mr. Heller testified that Mr. Joseph Hooks initially wanted \$500 and $\frac{3}{16}$ royalty per acre and as time passed, Mr. Joseph Hooks wanted \$500 and $\frac{1}{4}$ royalty per acre. Each of these amounts exceeded the authority given to Mr. Heller.

E. Following Mr. Heller's testimony, the Applicant rested its case.

F. Mr. Joseph Hooks did not offer any evidence nor did he wish to make a statement and he rested his case.

G. Having heard the testimony of the witnesses and after reviewing the evidence submitted, the ALJ took the cause under advisement and closed the record.

RECOMMENDATIONS AND CONCLUSIONS:

In the present case, Dwain Hooks seeks to pool the mineral interests of owners in the Upper Goodwin and Lower Goodwin common sources of supply and to be named the operator of the well in SW/4 SW/4 SE/4 of Section 7, Township 1 South, Range 2 West, Carter County, Oklahoma.

After taking into consideration all of the testimony, facts, circumstances, and evidence presented in this cause, it is the recommendation of the ALJ that the application of Dwain Hooks be granted.

In accordance with OAC 165:5-7-7, an Applicant seeking to pool the interest of mineral owners shall: (1) present evidence they exercised due diligence to locate each respondent and that a bona fide effort was made to reach an agreement with each such respondent as to how the unit would be developed; (2) give proper notice of the hearing for a pooling order no less than fifteen (15) days prior to the date of the hearing upon each respondent; (3) publish notice of the hearing pursuant to 165:5-7-1(n)(2); and (4) offer into evidence an AFE which was prepared or revised within forty-five (45) days of the date of the hearing.

In the present pooling application, the Applicant presented substantial evidence satisfying each element of OAC 165:5-7-7. Undisputed testimony was presented that the Applicant has ownership and right to drill in Section 17. The Applicant exercised due diligence in attempting to locate each respondent and made a bona fide effort to reach an agreement with each

respondent as to how the unit would be developed. Further, notice was proper on the respondents as well as with the publications in Carter and Oklahoma counties. Finally, Applicant presented an AFE (reviewed within 45 days of the hearing) into evidence.

The Applicant presented substantial evidence supporting the pooling application. The only issue in dispute is fair market value.

“The Corporation Commission's duty in this case was to set a just and reasonable amount of compensation to be paid to those working interest owners who did not wish to participate in the drilling of the unit well. The measure of this compensation is the fair market value of the interest.” *North American Royalties, Inc. v. Corporation Com'n*, 683 P.2d 539 referencing *Miller v. Corporation Commission*, Okl., 635 P.2d 1006 (1981).

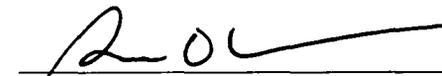
The only evidence relevant to fair market value in this unit was presented by the Applicant. Mr. Joseph Hooks attempted to impeach the testimony with a purported lease from 2012 for \$900 per acre for all depths in Gavin County; however, the purported lease was distinguished by the disparate facts. Therefore, the only evidence before the court relevant to FMV was that presented by the Applicant.

After taking into consideration all of the facts, circumstances, evidence and testimony presented in this Cause, it is the recommendation of the ALJ that Cause No. 201601963, the Forced Pooling Application of Dwain Hooks, be granted and Dwain Hooks be named the unit operator in the SW/4 SW/4 SE/4 of Section 7, Township 1 South, Range 2 West, Carter County, Oklahoma. Additionally, it is the recommendation of the ALJ that any Respondent wishing to participate in the recompletion operation make their election in 20 days; however, be provided with sixty (60) days notification prior to the commencement of operations and twenty (20) days to pay their proportional part of the actual costs of the operation.

The overarching mandate for the Oklahoma Corporation Commission is the prevention of waste and protection of the correlative rights of interested parties.² It is my determination that it is in the best interest of parties being pooled and is the best option to effect the prevention of waste and protection of correlative rights.

In accordance with OAC 165:5-13-5(a)(2), any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) business days in which to file exceptions to the report before the Commission en banc.

RESPECTFULLY submitted this 17th day of November, 2016.



Patrick O. Colaw
Administrative Law Judge

² Paraphrased from 52 O.S. 87.1(a)

cc: Donald J. Chaffin
Joseph R. Hooks
Michael L. Decker, OAP Director
Oil Law Records
Court Clerk
Commission Files