

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: SILVER CREEK OIL AND GAS, LLC)
)
RELIEF SOUGHT: DRILLING AND SPACING UNITS) CAUSE CD NO.
HORIZONTAL WELL UNITS) CD 201403671
)
LEGAL DESCRIPTION: SECTION 32, TOWNSHIP 7 NORTH,)
)
RANGE 8 EAST, HUGHES AND)
SEMINOLE COUNTIES, OKLAHOMA)

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RELIEF SOUGHT: LOCATION EXCEPTION) CAUSE CD NO.
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SEMINOLE COUNTIES, OKLAHOMA)

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CORPORATION COMMISSION
OF OKLAHOMA

REPORT OF THE ADMINISTRATIVE LAW JUDGE

This cause came on for hearing before Niles E. Stuck, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 20th day of August, 2014, at 8:30 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to the notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

CASE SUMMARY:

The Applicant, Silver Creek Oil and Gas, LLC (Silver Creek), is seeking to establish a 640 acre horizontal drilling unit for the Mississippian, Woodford, Sylvan and Viola common sources of supply underlying Section 32, Township 7 North Range 8 East in Hughes and Seminole Counties (Section 32). Silver Creek further seeks authority to drill a well in the West Half of Section 32 closer to the North and South boundaries of that section than would otherwise be allowed. The Protestant, Michael Majors (Mr. Majors), believes such horizontal development would communicate with plugged vertical wells and would pollute freshwater reservoirs.

RECOMMENDATIONS:

1. The relief requested by Silver Creek is likely to promote production, prevent waste and protect correlative rights and as such should be approved by the Oklahoma Corporation Commission (OCC).
2. Mr. Majors' concerns may or may not be valid, but it is beyond the authority of OCC to deny a spacing or location exception application based on the theory

that development may cause pollution. Mr. Majors may seek an injunction in District Court or report the violation of existing rules to the proper parties in the OCC.

HEARING DATE: August 20, 2014

APPEARANCES: John C. Moricoli, Jr., Attorney at Law, appeared on behalf of Silver Creek Oil and Gas, LLC.

Michael Majors, appeared Pro Se.

FINDINGS AND SUMMARY OF EVIDENCE

1. That CD 201403671 is the application of Silver Creek seeking to establish a 640 acre horizontal spacing unit for the Mississippian, Woodford, Hunton, Sylvan and Viola common sources of supply underlying Section 32, Township 7 North Range 8 East in Hughes and Seminole Counties (Section 32). The Hunton was dismissed at the hearing.

2. That Cd 201403673 is the application of Silver Creek seeking authorization to drill a horizontal well in a location not authorized by the requested spacing order. The first perforation of the proposed well would not be located closer than 165 feet from the south line of the unit and the last perforation of which would not be located closer than 165 feet from the north line of the unit. No portion of the lateral would be closer than 165 feet from the west line of the unit.

3. In both causes, the OCC has jurisdiction over the subject matter and notice has been given in all respects as required by law and the rules of the Commission.

4. The following numbered exhibits were accepted into evidence:

1. A nine section plat centered on Section 32 showing what wells drilled in the subject section and surrounding sections. The plat also showed production information and highlighting the wells used in Exhibit 2.
2. A cross section showing the depths of the subject.
4. A township plat showing wells drilled throughout the area.

5. At the outset of the hearing, the Court requested statements from the parties describing the issues in controversy. Mr. Davis summarized his protest, "I protest this case because I am concerned about the protection of our freshwater. I do not think the frac jobs from these horizontals can be contained in this area due to the number of old holes that have penetrated these reservoirs. That's pretty much it."

6. Joe Ferguson, a land man qualified to testify in matters of this type, appeared on behalf of the Applicant and testified that the Applicant had complied with the rules of the OCC regarding notice and, with regard to un-locatable respondents, stated that the Applicant had exercised due diligence in attempting to locate those

respondents and serve them with notice. The Applicant requested the OCC approve notice by publication for those un-locatable respondents.

The Applicant argued that Mr. Majors was not a proper respondent to the application and moved that his protest be dismissed. The Applicant argued that Mr. Majors' father had been a mineral interest owner, but Mr. Majors' father's interest had been conveyed to a trust through probate. Because title was vested in the trust, Mr. Majors could not represent himself.

Mr. Majors argued that the mineral interest had been conveyed to all beneficiaries of the trust, including him, but that the tract of land at issue in the hearing was not included in the deed due to a scrivener's error.

Upon further questioning, Mr. Ferguson stated that there was a deed of record conveying mineral interests from the trust to the beneficiaries of the trust, but that deed did not describe the tract of land at issue in the hearing.

The Court overruled applicant's objection to standing. The deed described by Mr. Ferguson was labeled "Exhibit 3." No one offered Exhibit 3 into evidence.

7. Michael Glenn Davis, an Engineer and Geologist qualified to testify in matters of this type, appeared on behalf of the Applicant and testified that the Hunton is not present under this section. The applicant dismissed the Hunton. The Mississippian is at a depth of 3,775 feet, the Woodford at 3,865 feet, the Sylvan at 4,050 feet and the Viola at 4,110 feet. All formations are expected to be productive of oil. The Hunton and Viola were spaced as 40 acre units by Order Number 186605, but there is no current production.

The porosity and permeability of the Mississippian, Woodford, Sylvan and Viola common sources of supply result in them being appropriate for horizontal development rather than vertical.

The witness expects that more than one well will be necessary to fully develop the unit and 640 acre spacing will allow for proper spacing of the wells, as well as the ability to build an infrastructure to more efficiently drill and operator wells.

Due to the tight nature of the target formations, the wells are not expected to adversely impact owners in offsetting units.

During cross examination, Mr. Majors inquired as to what databases the witness relied on to gather information, create exhibits and to come to his ultimate expert opinions. Mr. Davis said he relied primarily on IHS data and also used the National Resource Information Study database to find older completion records. The witness stated that he found the information available through the Oklahoma Tax Commission to be unreliable.

The Applicant rested.

8. Mr. Majors read a statement into the record in which he described his belief that horizontal wells will be fracture treated in proximity to ancient wellbores. The locations of those wells are speculative. Older wells were not plugged in such a way to properly protect fresh water.

Mr. Majors attempted to submit a packet of exhibits. The Applicant objected to Mr. Major's testimony and exhibits as being incompetent, irrelevant and immaterial. After a lengthy discussion to ensure scope of Mr. Majors protest, the Court ruled that Mr. Majors' exhibits and general argument were irrelevant to a spacing and location exception application.

RECOMMENDATIONS AND CONCLUSIONS

Mr. Majors' objection is that horizontal wells will communicate with older wells in the area and that communication will result in pollution of fresh water. Mr. Majors used the phrase "co-mingle," but based on the context in which it was used it appears Mr. Majors is concerned with communications between wells rather than co-mingling as defined by OCC rules.

Mr. Majors is concerned with pollution, but one could argue that he is also concerned with the correlative rights of the owners of up-hole zones. While Mr. Majors did not present an eloquent correlative rights argument at the hearing, such an argument would not be persuasive absent the actual presence of vertical wells with which horizontal wells could communicate.

Mr. Majors described the number and locations of existing well bores as "speculative at best." OCC rules prohibit any well bore to be located nearer than 600 feet of an existing well bore. That is the rule that prevents the communication that Mr. Majors is concerned about. The rules of the OCC do not require operators to ensure they do not interfere with wells whose existence is speculative. How such a rule could possibly be followed is difficult to imagine.

Mr. Majors' concerns may well be valid, and nothing in this report should be construed as dismissing those concerns as being unfounded, but Mr. Majors' is bringing those concerns to the wrong court. In essence, Mr. Majors is asking for any oil company to be prohibited from drilling a horizontal well in an effort to protect fresh water from what he believes to be an inappropriate risk of pollution. That is a request for equitable relief and the Oklahoma Corporation Commission does not have the constitutional nor statutory authority to grant that request in this specific type of cause. Mr. Majors should seek an injunction in district court.


The OCC is tasked with establishing and maintaining spacing units that prevents various types of waste, that protects correlative rights, and that promotes the orderly development of Oklahoma's natural resources. The testimony provided by the Applicant leads me to the conclusion that the requested relief would accomplish those goals. The

proposed development may also result in pollution, but it is beyond the scope of the hearing at hand.

The OCC has issued a series of rules designed to protect the public from pollution. For instance, surface casing is required to be set to sufficiently protect against pollution of fresh water. There is no allegation that the Applicant in the action at hand has violated any specific Commission rule. It may be that these rules are insufficient to protect the public, but it is not up to an Administrative Law Judge to second guess the legislature or the OCC Commissioners in a spacing or location exception recommendation.

Mr. Majors may seek immediate relief at the district court in the form of an emergency injunction and may also petition his representatives at the state legislature and at the OCC.

RESPECTFULLY submitted this 5th day of November, 2014.



Niles Stuck
Administrative Law Judge

CC: John Moricoli
Michael Majors
Michael Decker, OAP Director
Oil Law Records
Court Clerk
Commission Files