
* KEY ISSUES: CONFISCATION *
* Reasonable location *
* Small tract *
* Voluntary subdivision *
* *
* FINAL ORDER: R37 EXCEPTION GRANTED *

Rule 37 Case No. 0202866

APPLICATION OF MUSTANG OPERATING COMPANY FOR EXCEPTIONS TO
STATEWIDE RULES 37 AND 38 TO DRILL ITS WELL NO. 1, M. C. SALTER LEASE,
WHITE OAK (COTTON VALLEY SAND), WILLOW SPRINGS (COTTON VALLEY, W.)
AND WILDCAT FIELDS, GREGG COUNTY, TEXAS

APPEARANCES:

REPRESENTING:

APPLICANT

Flip Whitworth (Attorney)
Daniel L. Elbert
Kerry Pollard

Mustang Operating Company

PROTESTANT

James Bostic (Attorney)

R. Byron Roach, Trustee

PROCEDURAL HISTORY

Application Filed:	August 13, 1993
Notice of Hearing:	August 19, 1993
Hearing Held:	October 8, 1993
PFD Circulated	December 1, 1993
Heard by:	Jeffrey T. Pender, Hearings Examiner Donna Chandler, P.E., Technical Examiner

STATEMENT OF THE CASE

Mustang Operating Company has made application to drill its Well No. 1 on the 35.62-acre M. C. Salter Lease ("subject tract") 220 feet from the northernmost north line of the lease. The well is targeted for the White Oak (Cotton Valley Sand), Willow Springs (Cotton Valley, W.) and Wildcat Fields, all of which require 467' lease line spacing and 40-acre density. Exceptions to Statewide Rules 37 and 38 are sought to prevent confiscation. The application was protested by R. Byron Roach, Trustee, an offset mineral interest owner. The protestant's attorney did cross-examine the applicant's experts but did not present a direct case.

DISCUSSION

The drillsite tract came into its current shape and size on October 30, 1933, when Shell Petroleum conveyed 2.88 acres out of their 38.5 acre M. C. Salter lease to Whitman Petroleum Corporation. At that time, the lease could have supported a regular location. Statewide rules in 1933 required only 150 feet lease line spacing and 2 acre density. No evidence was presented indicating whether there was oil and gas activity in the area at the time of the subdivision. The earliest reported activity by either party was the discovery of the Willow Springs (Cotton Valley) in 1975. The White Oak (Cotton Valley Sand) was not discovered until July 1991.

There are royalty interest owners in the drillsite tract that do not participate in production from either of the subject fields. The nearest production from the White Oak (Cotton Valley) is 2400' south of the lease. The nearest Willow Springs production is 3900' to the southeast. The applicant presented uncontroverted testimony that neither well could drain hydrocarbons from the M. C. Salter lease.

The proposed location is not at the geometric center of the tract. The tract is split down the middle by a live creek and has relatively steep slopes leading down to the creek, making the building of a location at the geometric center not feasible. A site at the geometric center would require clearing many trees down to the site and significant destruction of the local environment in general. The applicant has proposed its location near the top of the stream divide on a relatively flat, stable portion of the tract which is also accessible by an existing service road. The protestant cross-examined the applicant's witness, Mr. Kerry Pollard, about the reasonableness of the proposed location, but elicited no persuasive evidence refuting the proposed location's reasonableness.

EXAMINERS' RECOMMENDATION

The tract is a legal subdivision and is entitled to a first well to prevent confiscation. The tract took its present size and shape prior to the discovery of oil and gas in the area. The mineral ownership of the tract is not in common with ownership in surrounding tracts. In fact, there are royalty owners in the M. C. Salter tract which do not share in any production from the applied-for fields.

Though the proposed location is not at the geometric center of the lease, it is a reasonable location in that it minimizes environmental damage.

The examiners recommend granting the exception to Rule 37. An exception to Rule 38 is not necessary. According to Statewide Rule 38(d)(1)(B), a density exception is not required when the lease took its present size and shape after the date of attachment of the voluntary subdivision rule and was not composed of substandard acreage according to the density rules in effect at the time it took its present size and shape. As discussed earlier, the statewide rules in 1933 required only 2 acre density.

FINDINGS OF FACT

1. Notice of hearing was given on August 31, 1993, to all designated operators, lessees of record for 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 the prescribed minimum lease-line spacing distance.
2. Mustang Operating Company ("applicant") has applied on Form W-1 for a permit to drill Well No. 1 on the M. C. Salter Lease. Applicant proposes to drill its well at a location 220 feet from the north line of the lease. Applicant has applied for completion of its proposed well in the White Oak (Cotton Valley Sand), Willow Springs (Cotton Valley, W.) and Wildcat Fields, having spacing rules of 467' lease line and 40-acre density. This is the applicant's first well on the lease in the indicated fields.
3. The proposed location is 220' from the lease line.
4. The well will be drilled on 35.62 acres.
5. The tract is not a voluntary subdivision.
 - a. The tract took its current shape and size in 1933.
 - b. The earliest reported oil and gas discovery in the area occurred in 1975.
6. There are some mineral interest owners in the tract who do not participate in production from the applied-for fields on any other tract.
7. The geometric center of the lease is not available as a location because of surface obstructions.
8. The proposed location is reasonable because:
 - a. it minimizes logistical difficulties in operating the well;

- b. it minimizes environmental impact;
- c. it makes use of an existing service road; and
- d. no other site on the tract is geologically more or less desirable.

CONCLUSIONS OF LAW

- 1. Proper notice of hearing was timely given to all persons legally entitled to notice.
- 2. All things have occurred and have been done to give the Commission jurisdiction to decide this matter.
- 3. The M. C. Salter lease is not a voluntary subdivision.
- 4. An exception to Rule 38 is not necessary pursuant to 16 T.A.C. §3.38(d)(1)(B).
- 5. Approval of the applied-for permit to drill a well at the proposed location is necessary to give the mineral interest owners of the subject tract a reasonable opportunity to recover their share of hydrocarbons in the applied-for fields underlying the tract.

Respectfully submitted,

Jeffrey T. Pender
Hearings Examiner

Donna Chandler, P.E.
Technical Examiner

JTP/kam