
* **KEY ISSUES: Waste** *
* **Notice** *
* **Trial by Consent** *
* *
* **FINAL ORDER: Application Withdrawn** *

RULE 37 CASE NO. 0217680

APPLICATION OF MUELLER ENGINEERING CORP. FOR AN EXCEPTION TO STATEWIDE RULE 37 TO DRILL WELL NO. 2, WILLIAM D. BOZKA GAS UNIT, HOLYFIELD FAN MAN SAND (YEGUA), HOLYFIELD FAN MAN SAND (YEGUA 1), BOZKA (2700 FRIO SAND), VIENNA (MIOCENE 2000), BOZKA (1600) AND WILDCAT FIELDS, LAVACA COUNTY, TEXAS.

APPEARANCES:

FOR APPLICANT:

Joseph Mueller

FOR PROTESTANT:

Larry E. Carlisle

APPLICANT:

Mueller Engineering Corp.

PROTESTANT:

Barrier Resources, L.L.C.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:

September 17, 1997

NOTICE OF HEARING:

November 20, 1997

DATE CASE HEARD:

January 21, 1998

HEARD BY:

Marshall Enquist, Hearings

Examiner

Thomas H. Richter, Technical

Examiner

TRANSCRIPT DATE:

February 10, 1998

PFD CIRCULATION DATE:

April 7, 1998

STATEMENT OF THE CASE

Mueller Engineering Corp. ("Mueller") seeks an exception to Statewide Rule 37 to drill its Well No. 2 on the William D. Bozka Gas Unit [see Attachment I]. Mueller has applied for exceptions in the Holyfield Fan Man Sand (Yegua), Holyfield Fan Man Sand (Yegua 1), Bozka (2700 Frio Sand), Vienna (Miocene 2000), Bozka (1600) and Wildcat Fields, all of which have field rules requiring lease line spacing of 467 feet and between-well spacing of 1200 feet, on 40 acre units. If this application is granted, the well will be drilled 130 feet from the southwest line of the unit, a distance less than the 467 foot spacing required for a regular location.

The applicant presented its case based on prevention of waste. The application is protested by Barrier Resources, L.L.C., a partner with Mueller in the Haidusek Lease, which offsets the Bozka Lease to the southwest. Mueller has a 50% interest in the Haidusek Lease.

DISCUSSION OF THE EVIDENCE

Mueller Engineering Corp.'s Evidence

Mueller presented 3 exhibits: 1.) an area map of the top of the primary target reservoir, designated as the Holyfield Fan Man Sand (Yegua), containing an upper and a lower lobe, the Y-3-U and Y-3-L, 2.) an isopach map [see Attachments II and III] supplemented with well logs [see Attachment IV], and 3.) a seismic line trending approximately through three existing wells (Haidusek Well Nos. 1 & 2 and Bozka Well No. 1) and the applied-for location. Mueller argues that it is necessary to penetrate two or more gas sands to make a commercial completion. Mueller further argues that, if forced to drill at a regular location, it would likely not make a commercial completion in the lower lobe of the Holyfield Fan Man Sand (Yegua), the Y-3-L. In that event, the 250 MMCF of gas in the lower lobe, the Y-3-L, would remain unrecovered, resulting in waste.

Barrier Resources' Evidence

Barrier presented no exhibits, but did conduct cross-examination. Barrier argues that Mueller has not presented any calculations of the currently recoverable reserves for Haidusek Well Nos. 1 & 2 (wells on the adjacent lease) and the Mueller Bozka Well No. 1 on the subject tract, nor any fair share calculations, and has not evaluated what percentage of its fair share is recoverable in the Haidusek Wells in which it has a 50% interest. Barrier also suggests that Mueller's reliance on seismic is misplaced, in that it has only been accurate on the Haidusek and Bozka leases 75% of the time, and because its results are contrary to the general trend of the regional geology.

EXAMINERS' OPINION

Exceptions to Statewide Rule 37 may be granted to prevent waste or to protect correlative rights/prevent confiscation.

Barrier's arguments as to Mueller's failure to provide estimates of currently recoverable reserves and fair share calculations would be relevant if Mueller had made its case based on correlative rights/confiscation. However, Mueller presented a case based on waste, for which estimates of currently recoverable reserves and fair share are not a requirement.

An applicant seeking an exception to Statewide Rule 37 based on waste must establish three elements: 1.) unusual conditions, different from conditions in adjacent parts of the field, exist under the tract for which the exception is sought; 2.) as a result of the unusual conditions, hydrocarbons will be recovered by the well for which the permit is sought that would not be recovered by any existing well or by additional wells drilled at regular locations; and 3.) that the volume of otherwise unrecoverable reserves is substantial.

A. Bozka (2700 Frio), Bozka (1600) and Vienna (Miocene 2000) Fields.

The applicant, Mueller, did not present any evidence as to the Bozka (2700 Frio), Bozka (1600) and Vienna (Miocene 2000) Fields. The applicant stated that the fields were listed on the W-1 because they are of erratic distribution and might possibly be encountered by the applied-for well. Because the applicant did not meet any of the three elements of a waste case for these three fields, the examiners recommend that the applied-for SWR 37 exceptions as to those fields be denied.

B. Holyfield Fan Man Sand (Yegua 1) Field.

Applicant's evidence as to the Holyfield Fan Man Sand (Yegua 1) indicates only that the field is continuous across a wide area [see Attachment IV]. The evidence does not indicate any unusual conditions pertaining to the field, nor does it indicate that any hydrocarbons will be lost if the applied-for location is not granted. The examiners recommend that the applied-for SWR 37 exception as to the Holyfield Fan Man Sand (Yegua 1) be denied.

C.) Holyfield Fan Man Sand (Yegua) Field, upper (Y-3-U) and lower (Y-3-L) lobes.

The applicant asserts that the Holyfield Fan Man Sand (Yegua) consists of an upper and a lower lobe, designated the Y-3-U and the Y-3-L respectively [see Attachments II and III]. The protestant disagreed, stating that the Holyfield Fan Man Sand (Yegua) is not present on the Haidusek or Bozka Leases. Even if this is true, it is of limited relevance for reasons which will be discussed momentarily. The examiner notified the parties that he proposed to take official notice of the New Field Designation files for the disputed fields and gave the parties 10 days to file objections. No objections were received. A review of Commission records reveals that the Discovery Well for the Holyfield Fan Man Sand (Yegua) is the H.R. Baass Well No. 1, located only 6,000 feet SW of

Mueller's proposed location and 3,000 feet SW of the adjoining Haidusek Lease. This review also finds that the correct Commission-recognized names for the applicant's target field, the Holyfield Fan Man Sand (Yegua) with its upper and lower lobes (the Y-3-U and 3-Y-L), are the Holyfield Fan Man Sand (EY-3-A) and the Holyfield Fan Man Sand (EY-3-B), respectively. Barrier's well logs, submitted in its new field discovery application to designate the Holyfield Fan Man Sand (EY-3-B) demonstrate that this field, in Haidusek Well Nos. 1 & 2, is the same as the field referred to by Mueller as the Holyfield Fan Man Sand (Yegua) (Y-3-L).

The confusion over the correct name for the target field/fields raises notice issues that must be addressed, bearing in mind that the protestant, Barrier Resources, is partly responsible for the ensuing confusion. The designation of the Holyfield Fan Man Sand (EY-3-A) and the Holyfield Fan Man Sand (EY-3-B) Fields was requested by Barrier Resources and was approved by the Commission on January 8, 1998. The applicant's W-1 is dated almost four months earlier, on September 17, 1997, prior to the time the two subject fields were officially named.

A "sufficiency of notice" problem arises if any party failed to appear due to being misled by the disparity between the names of the fields listed in the Notice of Application and the current Commission-recognized names of the fields sought. The Commission issued a Notice of Application on October 21, 1997 and a Notice of Hearing on November 20, 1997. Due to the recent date of approval (January 8, 1998) of the new field names, the Notice of Hearing did not and could not provide notice that two Holyfield Fan Man Sand Fields, the (EY-3-A) and the (EY-3-B), were part of the subject of the hearing. However, under the particular circumstances of this case, no harm is done. Notice of Hearing was provided to only a single offset, Barrier Resources, and Barrier appeared at the hearing. Thus, there is no affected party that did not appear due to the possible defect in notice.

Any doubts concerning possible technical defects in the applicant's pleadings raised by confusion over the correct field names are laid to rest, in this instance, by the doctrine of trial by consent. "The doctrine of implied consent applies only where it appears from the record that the issue was actually tried, although not pleaded." Watts v. Watts, 563 S.W.2d 314, 316 (Tex Civ. App.--Dallas 1978, writ ref'd n.r.e.). The doctrine "...is intended to cover the exceptional case where it clearly appears from the record as a whole that the parties tried out a controverted issue, perhaps having overlooked the omission in the pleadings, or else having failed to plead carefully or clearly the issues upon which the case was tried." Foxworth-Galbraith Lumber Co. v. Southwestern Contracting Corporation, 165 S.W.2d 221, 224 (Tex. Civ. App. - Fort Worth 1942, rehearing denied). Documents in the New Field Designation files indicate that Barrier Resources, prior to the grant of the new field designations, also referred to the target interval as the Yegua-3 sands. Finally, the record of the hearing clearly shows that Barrier Resources and Mueller argued the merits of drilling to the target fields, by whatever name, from the applied-for location.

Applicant did not prove the existence of unusual conditions under its tract as to the Holyfield Fan Man Sand (EY-3-A) and the Holyfield Fan Man Sand (EY-3-B). The applied-for location is near the top of the structure, which may qualify as an unusual condition when combined with a

strong water drive reservoir. The applicant testified that the drive of the reservoir is gas expansion. It is not necessary to drill to the top of structure in a gas expansion reservoir. Any well within the reservoir will recover the reserves in the reservoir. Applicant also testified that, although there is a gas/water contact between 4775 and 4800 feet subsea, the water encroachment is not the primary reservoir drive mechanism.

Q. (By Examiner Richter) On your Exhibit 3, you have indicated a gas/water contact. This is a pressure depletion drive reservoir you've already testified to?

A. (By Mueller) Yes, sir.

Q. Does the water play any kind of a role?

A. Well, if it over -- you know, if it loads up your well and kills your well, it will. I understand one of the Haidusek wells is now making water, but it's apparently not increasing so it doesn't indicate a strong water pattern.

Q. So it is not an active water encroachment?

A. Yes, sir, that's correct.

(Transcript p. 34, lines 6-17). Applicant's argument that reserves will be lost if the well is drilled at a regular location is based on the possibility that the lower field (Applicant's Holyfield Fan Man Sand (Yegua) (Y-3-L) [see Attachment III] and its equivalent Commission-recognized Holyfield Fan Man Sand (EY-3-B)) might be missed or uneconomical to complete at a regular location, resulting in waste of those reserves. This argument is defeated by the applicant's own exhibits in two ways. First, applicant's own structure map contradicts this assertion by indicating that a well drilled at a regular location will fall well within the lower field's reservoir and within the highest structure contour line [see Attachment III]. Second, the applicant's structure map and logs show that the lower field is penetrated by the Haidusek Well Nos. 1 & 2 on the adjoining Haidusek Lease. Those wells are already draining that reservoir, making it unlikely that any waste will result even if a regular location does miss the lower field [see Attachments III and IV]. The examiners recommend that Mueller's application for a SWR 37 exception as to the upper and lower lobes of the Holyfield Fan Man Sand (Yegua) [equivalent in this instance to the Holyfield Fan Man Sand (EY-3-A) and Holyfield Fan Man Sand (EY-3-B) Fields] be denied.

Mueller failed to meet any of the elements of a confiscation case or a waste case, therefore there is no basis to grant the Statewide Rule 37 exception.

FINDINGS OF FACT

1. Notice of hearing was given on November 20, 1997 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. The only affected party, Barrier Resources, LLC, appeared at the hearing in protest of the subject Rule 37 application.
3. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
4. The applicant, Mueller Engineering Corp., seeks an exception to Statewide Rule 37 to drill Well No. 2 on the William D. Bozka Gas Unit. Applicant proposes to drill its well at a location 130 feet FSWL and 1400 feet FSEL of the unit, and 2330 feet FSWL and 1600 feet FNWL of the survey. Applicant has applied for completion of its proposed well in the Holyfield Fan Man Sand (Yegua), Holyfield Fan Man Sand (Yegua 1), Bozka (2700 Frio Sand), Vienna (Miocene 2000), Bozka (1600) and Wildcat Fields, all of which have field rules requiring 467 feet leaseline spacing and 1200 feet between-well spacing, on 40 acre units.
5. Applicant's William D. Bozka Gas Unit #2 is a tract of regular size and shape, containing 40 acres. A regular location exists on the tract.
6. Applicant's primary objective is the Holyfield Fan Man Sand (Yegua) Field, consisting of an upper unit designated the Y-3-U and a lower unit designated the Y-3-L. After the applicant filed its W-1, the Commission officially recognized the same sands as the Holyfield Fan Man Sand (EY-3-A) and the Holyfield Fan Man Sand (EY-3-B), respectively. [These fields are hereinafter referred to by their Commission-recognized field names.]
7. Applicant and protestant (the only affected party in this case) argued the merits of drilling the applicant's actual target fields, recognized under different names by the parties, but occupying the same intervals on exhibits presented at hearing and other exhibits presented by Barrier to the Commission in its request for a new field designation.
8. There are no unusual conditions beneath the William Bozka Gas Unit as to the Bozka (2700 Frio Sand), Bozka (1600) and Vienna (Miocene 2000) Fields.
9. There are no unusual conditions beneath the William Bozka Gas Unit as to the Holyfield Fan Man Sand (Yegua 1) Field.
10. The currently recoverable reserves in the Holyfield Fan Man Sand (Yegua 1) beneath the William Bozka Gas Unit can be recovered by a well drilled at a regular location.
11. There are no unusual conditions beneath the William Bozka Gas Unit as to the Holyfield Fan Man Sand (EY-3-A) or the Holyfield Fan Man Sand (EY-3-B) Fields.

12. The currently recoverable reserves in the Holyfield Fan Man Sand (EY-3-A) and Holyfield Fan Man Sand (EY-3-B) Fields beneath the William Bozka Gas Unit can be recovered by wells drilled at regular locations.
13. Applicant has a 50% interest in the adjoining Haidusek Lease.

CONCLUSIONS OF LAW

1. Proper notice was timely given to all parties legally entitled to notice.
2. The application on Form W-1 was properly filed.
3. All things have occurred and have been done to give the Commission jurisdiction to decide this matter.
4. The mineral interest owners of the William Bozka Gas Unit are not entitled to a Statewide Rule 37 exception to drill Well No. 2 to the Bozka (2700 Frio Sand), Bozka (1600), Vienna (Miocene 2000), Holyfield Fan Man Sand (Yegua 1) and Wildcat Fields based on waste.
5. The mineral interest owners of the William Bozka Gas Unit are not entitled to a Statewide Rule 37 exception to drill Well No. 2 to the Holyfield Fan Man Sand (EY-3-A) and Holyfield Fan Man Sand (EY-3-B) Fields [represented by the applicant as the Holyfield Fan Man Sand (Yegua) Field, upper (Y-3-U) and lower (Y-3-L) lobes] based on waste.

RECOMMENDATION

The examiners recommend that Applicant's request for an exception to Statewide Rule 37 for its William D. Bozka Gas Unit, Well No. 2, as to the Holyfield Fan Man Sand (EY-3-A), Holyfield Fan Man Sand (EY-3-B), Holyfield Fan Man Sand (Yegua 1), Bozka (2700 Frio Sand), Bozka (1600), Vienna (Miocene 2000) and Wildcat Fields, Lavaca County, Texas, be denied.

Respectfully submitted,

Marshall F. Enquist
Hearings Examiner

Thomas H. Richter
Technical Examiner

MFE