
* KEY ISSUES: CONFISCATION *
* Century Doctrine *
* *
* FINAL ORDER: R37 GRANTED *

RULE 37 CASE NO. 0220370; DISTRICT 03

APPLICATION OF COBRA OPERATING COMPANY FOR EXCEPTIONS TO STATE-WIDE RULES 37 AND 38 TO DRILL WELL NO. 1 ON THE V. V. RAMSEY LEASE CHANNELVIEW (YEGUA 10,000) AND WILDCAT FIELDS, HARRIS COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:

William Osborn - Attorney
Phillip Patman - Attorney
Jim Thorp - President
William A. Sawyer - Consultant
Jim Troxel - Consulting Geologist
Warren Dalton - Landman

APPLICANT:

Cobra Operating Company
" " "
" " "
" " "
" " "
" " "

FOR PROTESTANTS:

David Gross - Attorney
Kerry A. Pollard - Consultant
Bob Frederick - Landman
Larry E. Williams

PROTESTANTS:

Ballard Exploration Company, Inc.
" " "
" " "
" " "

OTHER APPEARANCES:

James Bostic - Attorney

Etoco Incorporated

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:

September 28, 1998

NOTICE OF HEARING:

October 20, 1998

HEARD BY:

Daniel W. Ortman - Hearings Examiner
Thomas Richter - Technical Examiner

HEARING DATE:

November 18 and 19, 1998

HEARING RECONVENED:

January 7, 1999

TRANSCRIPT DATE:

November 28, 1998

PFD CIRCULATION DATE:

February 1, 1999

STATEMENT OF THE CASE

Cobra Operating Company ("Cobra") filed an application for exceptions to Rules 37 and 38 to drill a first well, Well No. 1 (the "subject well"), on a 10-acre tract ("Ramsey tract") covered by the V. V. Ramsey Lease (the "Ramsey Lease") to the Channelview (Yegua 10,000) ("subject field") and Wildcat Fields. The proposed location of the subject well is 192.83 feet from the nearest lease-line of the Ramsey tract. The Channelview (Yegua 10,000) Field requires a minimum spacing of 467 feet to the nearest lease-line and 1200 feet between wells on a minimum of 40 acres.

Ballard Exploration Company, Inc. ("Ballard") appeared in opposition to the instant application. Etoco Incorporated ("Etoco") appeared at the hearing neither in support, nor in opposition to, Cobra's applications.

In written closing arguments Cobra sought to withdraw its Form W-1A (Substandard Acreage Drilling Unit Certification). Cobra also asked to include the adjacent 3.7 acre Hart tract ("Hart tract") under the legal theory known as the "Century Doctrine." Railroad Comm'n v. Magnolia Petroleum Co., 109 S.W.2d 967 (Tex. 1937). In its written reply Ballard asked for an opportunity to cross-examine Cobra's witnesses regarding this new theory. An Amended Notice of Hearing specifically referencing the Century Doctrine was issued and the hearing reconvened on January 7, 1999 to consider Cobra's amended application.

POSITIONS OF THE PARTIES AND DISCUSSION OF THE EVIDENCE

Applicant Cobra's position and evidence:

Initially, Cobra contended that the 10-acre Ramsey tract is a legal subdivision and that the applied-for exceptions are necessary to protect the correlative rights of the mineral owners of the Ramsey tract to reserves underlying that tract in the Channelview (Yegua 10,000) and Wildcat Fields. It was undisputed that the 10-acre Ramsey tract was carved from a larger parcel by fee deed on December 11, 1947. Cobra argued that because the Ramsey tract was created by fee conveyance prior to the discovery of any Commission-designated fields within a 2 1/2 mile radius, it was not created in contemplation of oil and gas development. Cobra contended that the Ramsey tract was therefore a legal subdivision and entitled to protection from confiscation. The Form W-1A submitted with Cobra's original application recites that the 10-acre Ramsey tract has not been under common ownership with any adjacent tract since it assumed its original size and shape.

Cobra's witnesses testified that 528.3 Mmcft of recoverable gas lies in place beneath the 10-acre Ramsey tract in the subject field. Therefore, Cobra concludes, the Ramsey Lease is entitled to a well and exceptions to Rules 37 and 38 to protect the owners of the Ramsey tract from confiscation.

At the reconvened hearing Cobra introduced a revised plat (see Attachment A) which identifies the base tract as the 10-acre Ramsey Lease and the adjacent 3.7-acre Hart Lease. Cobra argues that the drilling unit was unproven territory, and therefore field rules did not attach until 1960

when the Channelview, N. (10,000) Field was discovered as the first field within 2 1/2 miles of the proposed well.

Protestant Ballard's position and evidence:

At the original hearing, Ballard contended the 10-acre Ramsey tract is not a legal subdivision and therefore is not entitled to protection from confiscation. Ballard introduced evidence that the 10 acres that were later subdivided to create the Ramsey tract were first leased as part of a much larger 820.2 acre tract on December 18, 1924. Ballard presented evidence of the discovery of numerous Commission-designated fields (including other Yegua reservoirs) in Harris County and of leasing activity in the vicinity of the proposed well-site prior to the creation of the Ramsey tract in 1947. Based on this activity, Ballard argued that the deed which created the Ramsey Lease was executed in contemplation of oil and gas development and therefore that the Ramsey Lease is a voluntary or illegal subdivision and is not entitled to protection from confiscation. Ballard also presented evidence the Ramsey tract was merged by common ownership with the adjoining Hart tract from 1957 to 1972. Ballard contended the Ramsey tract took its present size and shape when the common ownership ceased on May 17, 1972.

At the reconvened hearing Ballard presented evidence that there was substantial oil and gas exploration activity in the Yegua sands in Harris County between 1947 and 1957. Ballard demonstrated that 28 new Yegua Fields were recognized by the Commission in Harris County during this period. The parties stipulated that at least one oil and gas lease, and possibly more, were executed within 2.5 miles of the reconstituted base tract prior to 1957. Ballard asserted that Statewide Rules requiring 20 acre units attached prior to 1957 when the base tract acquired its present size and shape. Ballard contended the applicable date is not March 1960 when the Channelview, N. (10,000) Field Rules attached, but an earlier date when Statewide Rules attached due to field discoveries and oil and gas leasing activity in Harris County. Therefore, Ballard concluded, Statewide Rules attached prior to 1957 and neither the 10 Ramsey tract nor the reconstituted 13.7 acre base tract are legal subdivisions and Cobra is not entitled to an exception to prevent confiscation.

Ballard complains that Cobra will recover approximately 4.5 Bcf from its proposed well but that only 0.5 Bcf lie under the Ramsey Lease in the subject field. Ballard claims Cobra has included unproductive acreage in its adjacent Texas Northern Railway Unit ("TNR Unit") and should pool the Ramsey Lease with this 311 acre unit which was filed with the Commission 18 days before this proceeding.

EXAMINERS' OPINION

The Ramsey tract:

In written arguments submitted after the original hearing concluded, Cobra asked to withdraw its Form W-1A for the Ramsey tract and also asked the examiners to consider Cobra's application on a reconstituted 13.7 acre tract (the "base tract") composed of the Ramsey tract and the adjacent

Hart tract under a legal theory known as the Century Doctrine. The parties agree on the facts comprising title to the Ramsey tract: the Ramsey tract was created on December 11, 1947 when Houston Realty Company filed a subdivision plat with the Harris County Clerk; on December 12, 1947 Houston Realty deeded the Ramsey tract to Sam J. Johnson; in 1949 Johnson deeded the Ramsey tract to J. J. Martin who owned the tract until 1979. Martin also owned the adjacent Hart tract from 1957 until 1972.

The 10-acre Ramsey tract and the adjacent 3.7 acre Hart tract merged on August 3, 1957 when both tracts were acquired by Martin. Martin sold the Hart tract, again in fee, in 1972 and retained the Ramsey tract. If Field Rules (or Statewide Rules) attached to the base tract prior to the time it took its size and shape in 1957 then the base tract is not a legal subdivision and is not entitled to protection from confiscation. But if Field Rules or Statewide Rules attached to the base tract after 1957, then the base tract is a legal subdivision and is entitled to protection from confiscation.

Ballard contends that Field Rules attached to the Ramsey tract in 1919 with the advent of Statewide Rules or, at the latest sometime prior to 1957, due to ongoing oil and gas production and leasing in Harris County. Therefore, Ballard argues, because the Ramsey tract was subdivided from a larger tract after Statewide Rules attached, it is a voluntary subdivision and is not entitled to protection from confiscation. Similarly, if Field Rules (or Statewide Rules) attached to the base tract in 1919 and if the base tract was subdivided from a larger tract after 1919 then the base tract is not a voluntary, or legal, subdivision and is not entitled to protection from confiscation. But if Field Rules or Statewide Rules attached after the base tract took its present size and shape in 1957 then the base tract is a legal subdivision and is entitled to protection from confiscation.

Statewide Rule 37(g)(2):

Short-acreage subdivisions for which a spacing exception is sought are governed by Statewide Rule 37(g). Statewide Rule 37(g)(2) states that a tract smaller than the minimum size is not entitled to an exception to prevent confiscation if the tract was either "segregated from a larger tract in contemplation of oil, gas, or geothermal resource development . . ." or "segregated by fee title conveyance from a larger tract after the spacing rule became effective and the voluntary subdivision rule attached." Thus, to be entitled to a permit to prevent confiscation, the applicant must show that neither of these statements are true with regard to its reconstituted base tract.

The voluntary subdivision rule attached when the "certain continuous reservoir" that is the subject to the application was discovered. (See Statewide Rule 37(g)(3).) In this case the subject field was discovered on January 15, 1998. Accordingly, the base tract took its current size and shape long before the attachment of the voluntary subdivision rule.

As to the requirement of Statewide Rule 37(g)(2)(A), if the 13.7 acre base tract was segregated from a larger tract in contemplation of oil, gas or geothermal resource development, it (the base tract) is a voluntary subdivision and is not entitled to protection from confiscation.

A plat showing the 10-acre Ramsey tract and the 3.7 acre Hart tract, was filed by Houston Realty Sales Company ("Houston Realty") on December 11, 1947 with the Harris County Clerk. The undisputed evidence shows that the deeds creating the Hart and Ramsey tracts were conveyances in

fee. The plat, introduced at the original hearing, clearly depicts streets and residential lots. The plat reflects no evidence of oil and gas development or contemplation of oil and gas development. The plat contemplates only development of a residential subdivision. Further, the minerals under the base tract were never subsequently leased and the minerals under the Ramsey and Hart tracts were not individually leased until May 1, 1993, more than thirty-five years after the base tract took its size and shape. The base tract was not created in contemplation of oil and gas development.

Ballard introduced numerous oil and gas leases executed in Harris County beginning in 1924. Ballard's evidence shows that oil and gas exploration activity in the area of the subject well began in 1924 and has continued, with some interruptions, until the present. But Texas Courts have long distinguished between a subdivision created by oil and gas lease and a lot or tract created in fee. Railroad Commission of Texas v. Delhi-Taylor Oil Corp., 302 S.W.2d 273 (Tex. Civ. App -- Austin, 1957, n.r.e.) In Delhi-Taylor the Court is careful to record that "As a result of this activity many oil and gas leases were made in the general area." Id. The Court continues: "[M]any leases were procured including leases on three tracts immediately west of the tract out of which the [subject] tract was formed . . ." According to Delhi-Taylor a fee deed creating a tract adjacent to areas which have been leased is not, without more, a conveyance in contemplation of oil and gas development.

Statewide Rule 38(d)(1):

An exception to Statewide Rule 38 is not required when:

. . . for the first well in a field on a lease, pooled unit, or unitized tract composed of substandard acreage, when the leases, or the **drill site of a pooled unit** [emphasis added] or unitized tract. . . or unitized tract . . . took its present size and shape prior to the [date of the attachment of field rules prescribing units larger than the tract at issue] . . .

16 Tex. Admin. Code 3.38(d)(1) (West Jan. 1, 1997) (emphasis added)

As discussed above, the Channelview (Yegua 10,000) Field was discovered in 1998 and therefore Field Rules for the subject tract attached in 1998. The Ramsey tract has not been segregated by fee title conveyance from a larger tract after Field Rules attached. The Ramsey tract is a legal subdivision and is therefore entitled an exception to Statewide Rule 38 to protect it from confiscation.

Fair Share:

Ballard argues that granting Cobra's applications will allow Cobra an opportunity to recover far more than the gas in place beneath the Ramsey Lease. Ballard argues that Cobra may benefit from the reserves existing under its proposed drilling unit by pooling the acreage in the drilling unit into Cobra's adjacent TNRY Unit. Even if the drilling unit were pooled, voluntarily, with Cobra's adjacent TNRY Unit, the production accorded to the owners of the Ramsey tract would be far less

than the amount of reserves currently existing beneath this 10-acre tract. Based on Cobra's isopach map the reserves beneath the Hart tract are similar to the reserves, per acre, beneath the Ramsey Lease. The owners of the Hart tract do not own an interest in any other portion of the field. Neither the owners of the Ramsey or Hart tracts would have a reasonable opportunity to recover their fair share of reserves by pooling with the existing TNRY Unit.

Further, Ballard effectively seeks an order requiring Cobra to pool the Ramsey tract with its existing TNRY Unit. The Commission has authority only pursuant to the Mineral Interest Pooling Act to consider forced pooling and any proceeding convened to consider forced pooling must be appropriately noticed. This notice for this hearing does not state that the hearing will consider forced pooling. Therefore, jurisdiction does not exist for a Final Order which would require Cobra to pool its acreage with its existing TNRY Unit.

Ballard argues that Cobra may recover more than its fair share of reserves and, by implication, Ballard argues that Cobra will recover reserves underlying adjacent tracts. The Austin Court of Appeals has held that the lessors and lessees of a tract are independently entitled to protection from confiscation. Texaco, Inc. v. Railroad Commission of Texas, 716 S.W.2d 138 (Tex. App. -- Austin, 1986, writ ref'd n.r.e.). Even if Cobra is already recovering its fair share, or more, Cobra's lessors, Ramsey and Hart, are entitled to protection from confiscation. Id. Granting the applied-for exceptions is necessary to allow Ramsey and Hart, lessors, a reasonable opportunity to recover their fair shares. In affirming a property right referred to as the "Rule of Capture" Texas Courts have consistently held that a mineral owner may recover more than his fair share. Ryan Consolidated Petroleum Co. v. Pickens, 285 S.W.2d 201 (Tex. 1955). Ballard's has no legal remedy if Cobra recovers more than its fair share. If Cobra will recover more than its fair share Ballard's remedy is to develop its own property.

Location:

Cobra selected the proposed location to accommodate the landowner's request to drill away from a large stand of occupying the center of the tract. A location at the center of a tract is presumed to be a reasonable location and the proposed location is as near as practical to the center of the tract. A well at the proposed location will recover the same amount of reserves as a well at the center of the tract. Ballard protests drilling the well on the tract but does not specifically protest the location chosen by Cobra for the well. The proposed location is a reasonable location.

CONCLUSION:

The 13.7-acre base tract is a legal subdivision and is entitled to protection from confiscation. Exceptions to Statewide Rules 37 and 38 are necessary to prevent confiscation of reserves currently underlying the base tract. Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At least 10 days notice of this hearing was given to the designated operator, all lessees of record for tracts that have no designated operator, and all owners of unleased mineral interests for each tract nearer to the proposed well location than the prescribed minimum distance.
2. An application for exceptions to Rule 37 and 38 was filed with the Commission on September 28, 1998 by Cobra Operating Company ("Cobra" or "applicant") on Form W-1 (Application to Drill, Deepen, Plug Back or Re-Enter).
3. On January 7, 1999 Cobra amended its application to seek reconstitution of the 10-acre Ramsey Lease with the adjacent 3.7 acre Hart Lease pursuant to the Century Doctrine. The resultant reconstituted tract is known as the "base tract." An Amended Notice of Hearing was issued giving offset operators notice that Cobra's application would be considered under the Century Doctrine.
4. The base tract took its current size and shape on August 3, 1957.
5. Cobra seeks exceptions to Statewide Rules 37 and 38 to drill Well No. 1 on the reconstituted base tract to the Channelview (Yegua 10,000) and Wildcat Fields. The location of the proposed well is 192 feet from the nearest lease-line. The Channelview (Yegua 10,000) Field requires a minimum spacing of 467 feet to the nearest lease-line and 1200 feet between wells on a minimum of 40 acres.
6. The Channelview (Yegua 10,000) Field (the "subject field") was discovered on January 15, 1998.
7. The first Commission-designated field within 2 1/2 miles of the base tract was the Channelview, North (10,000) Field which was discovered on March 14, 1960.
8. The applied-for well is the first well on the 13.7 acre base tract.
9. No regular location is available on the base tract. The proposed location near the geometric center of the base tract and was chosen to accommodate the landowner's request to avoid trees located in the approximate center of the tract. The proposed location will not recover any more reserves from offsets than a location at the center of the tract and is a reasonable location.
10. The base tract was not subdivided from a larger tract in contemplation of oil and gas development. The base tract has not been under common ownership with any adjoining tract since it took its size and shape.
11. A well would not be drilled at the proposed location on the base tract only to recover previously undiscovered reserves in a Wildcat Field.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to the 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 base tract was not subdivided from a larger tract in contemplation of oil and gas development. The base tract assumed its size and shape prior to the attachment of the voluntary subdivision rule.
4. The base tract is a legal subdivision and is entitled to protection from confiscation.
5. Granting Cobra's application to drill a well on the base tract is necessary to allow the mineral owners of the Ramsey tract a reasonable opportunity to recover their fair share of reserves currently underlying the subject tract in the Channelview (Yegua 10,000) and Wildcat Fields.

EXAMINERS' RECOMMENDATION

The examiners recommend that Cobra Operating Company's application for exceptions to Statewide Rules 37 and 38 to drill Well No. 1 into the Channelview (Yegua 10,000) and Wildcat Fields on the 10-acre V. V. Ramsey Lease be **GRANTED**.

Respectfully submitted,

D. W. Ortman
Hearings Examiner

Thomas H. Richter
Technical Examiner