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CONSERVATION DIVISION
WICHITA, KS

2015.06.03 09:14:32
Kansas Corporation Commission
/S/ Amy L. Gilbert

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF LINN OPERATING, INC. FOR AN ORDER PROVIDING FOR THE UNITIZATION AND UNIT OPERATION OF A PART OF THE HUGOTON AND PANOMA COUNCIL GROVE GAS FIELDS IN THE ALTERNATE TRACT UNIT DESCRIBED AS SECTION 12-27S-38W (SE/4), SECTION 07-27S-37W (SW/4) SECTION 18-27S-37W (NW/4), SECTION 13-27S-38W (NE/4) IN GRANT COUNTY, KANSAS (**ATU 150X**)	) DOCKET NO. 15-CONS-776-CUNI) OPERATOR NO. 33999) CONSERVATION DIVISION

AMENDED WRITTEN PROTEST
AND
REQUEST FOR HEARING
(NE/4 of 18-27-37)

COMES NOW, Don K. Williams (hereafter referred to as "Mineral/Surface Owner" and/or "Outlander"), and does hereby protest the formation of the proposed "Alternate Tract Unit" (ATU), and in the unlikely event the Commission allows the formation of the ATU then, Don K. Williams protests and insists the proposed Unit Plan is not reasonable, is not fair, and is not equitable.

Don K. Williams, requests a hearing concerning the proposed application and the proposed Unit Plan.

This "Mineral/Surface Owner", specifically states:

The Original 1958 Unit

1. Don K. Williams, is one of the Owners of the surface and mineral rights in the **NE/4 of Section 18-27-37** West of the Sixth P.M., located in Stanton County, Kansas. Said property hereafter referred to as "NE/4 of 18" or "Outlander Property".

2. The current operational Oil and Gas Lease on the "NE/4 of 18", was signed on May 22nd, 1940. The Lease was dated June 6th, 1940. The Lease was filed of record in Stanton County, in Book 5 at Page 34.

3. All of the original oil and gas leases which encumbered Section 18-27-37, were consolidated pursuant to a Declaration of Consolidation which was filed on October

30th, 1957. The Declaration of Consolidation was filed in Miscellaneous 22 at Page 322, and an Affidavit of Production was filed on January 30th, 1951, stating that the producing well had been completed on August 10th, 1951. There has existed in the Unit, at least one producing well from that date to the present day.

4. The Unit Agreement Plan is set out verbatim in the 1958 Unit Declaration. The document contains four, one sentence paragraphs describing each of the leases and then a two sentence paragraph, describing the Unit Plan. Significantly:

   A. The old production unit is essentially the same as the ATU being proposed here (except for the different legal descriptions) and,

   B. The Agreement has totally accomplished its purpose and thus establishes that the one sentence paragraph is all that is needed and,

   C. That the proposed ATU Unit Plan which is no less than 21 pages plus an incorporated "Operating Agreement", (curiously dated January 14th, 2013) is too complex, over reaching and mostly, not necessary.

5. The original 1958 Unit (which operations continue to this date) have exactly the same purpose as the new proposed ATU - a Unit Plan for a simple production unit. Neither Plan is for the purpose of addressing a more complicated Unit such as a water flood project.

6. The Alternate Tract Unit contains(as required by regulation) four quarter sections, to-wit:

   SE/4 of Section 12-27S-38W, SW/4 of Section 07-27S-37W
   NE/4 of Section 13-27S-38W, NW/4 of Section 18-27S-37W,

Don K. Williams' NE/4 of 18 is not in the Alternate Tract Unit described above but, Don Williams as an Owner of the southwest quarters oil and gas lease, is entitled to participate in receiving royalty from the ATU via the old Unit Declaration Agreement - if in fact an ATU is approved by the Commission.

Since the Williams real estate (as well as 9 other quarter sections) are not actually in the proposed Alternate Tract Unit for clarity sake, those quarter sections are hereafter termed, **"Outlanders"**.

Jurisdiction.

7. The Corporation Commission, as of this filing, does not have the statutory jurisdiction to approve or disapprove of the proposed ATU Unit for the reason that the statutorily required percentage (75%) of the mineral owners have not executed any document consenting to the formation of the Unit. The Petitioner has not accounted for each spouse (in calculating the gross number of signatures). The spousal ownership right is presumed to be of record and is acknowledged in every Kansas real estate transaction (which can be seen by the spouse joining in each Oil and Gas Lease of real estate in the twelve quarter sections at issue here).

8. In order to have an "agreement", each of the parties to the agreement must agree to each and every term. In order for there to be a 75% agreement, the parties approving the agreement, must have approved the very same agreement - ie., the very same terms. Apparently, this is not th case here. If in fact there are different terms for different signors then, the 75% requirement has not been met. If there are different terms for different signors then, Section 17.1 of the Unit Plan Agreement is completely bogus and mis-leading.

9. It is the Petitioner's burden to prove the existence of the required percentage of approving mineral owners. The Petitioner must prove its calculations. The Protestor requests the opportunity to examine the signatures in order to determine whether he wants to protest the authenticity of any one or more of the signatures.

10. Since the "Outlander Real Estate" (and particularly the Williams "NE/4 of 18") is not part of the ATU, the KCC jurisdiction over the NE/4 minerals is limited to allocating 25% of production to the NW/4 of Section 18 and then ordering it to be further divided and paid pursuant to the old Unit Agreement for Section 18. Therefore, Don Williams and the "NE/4 of 18", would not be subject to or have an interest in the Unit Plan which is the subject matter of these proceedings, provided the Operator is required to take all of the Section 18 into account when making distributions of royalty payments for the old Unit Declaration for Section 18.

11. The surface owners of land from which the minerals have been severed are necessary parties to these proceedings. The "Unit Agreement" has an entire Article (Article 10) dedicated to surface rights (as well as Section 3.8 which

appears to give the unit operator the power of attorney to grant easements and surface consumption for operations that are not directly related to the well to be drilled in the unit area.) Recent legislation requiring notice to surface owners of new drilling operations also makes their participation in these proceedings mandatory.

Unreasonable Unit Plan

12. In formulating a Unit Agreement the Applicant (Linn) has an extreme advantage in negotiating over the individual mineral owners due to its giant size, available funds, and advanced knowledge in a very technical area, and access to in-house experts (including geologists, engineers, attorneys), thereby creating an opportunity to perfect an unconscionable "adhesion" contract, a contract that contains many provisions that are unnecessary, unconscionable or unreasonable and are over reaching.

13. The differential in bargaining position is increased multiple times by the fact that (with the proper amount of signatures from the unsophisticated) the applicant can summon the Commission's mighty power to enforce the terms upon the mineral owners. The beginning paragraph of the Agreement seems to bolster this position even further by implying that the Commission's order is a "done deal".

    At no time were the mineral owners advised that if they did not sign the proposed Unit Agreement that they would not be deemed to have entered into the Contract but instead, the Corporation Commission would impose upon them (if the ATU was approved) a Unit Plan which had been reviewed and found by the Commission, to be "fair, reasonable and equitable". (Parkin vs. The State Corporation Commission of Kansas, et al., 234 Kan. 994; 677 P.2d 991).

14. There exists several obvious red flags within the Unit which confirm that many of the provisions may be "overreaching". Those red flags include:

    A. An attempt to barr the royalty owners from the courts by preventing a declaration of default "during the term of this agreement". Specifically, the grossly offending clause reads, (Section 3.3):

    "Royalty owners agree that **any default**, forfeiture, or penalty provision in any such oil and gas lease or other contract shall be suspended and of no force or effect during the term of this Agreement."

B. The "mirage" provisions which give the appearance of quality provision for the mineral owner when read and comprehended in full, actually state the opposite. An example is Section 3.7 which reads:

"**Nothing herein** shall relieve the Working Interest Owner **from any obligation** to reasonably develop the lands and leases committed hereto, **except as the same may conflict with the provisions hereof** ***and*** **Unit Operations which may be conducted hereunder.**"

Although at first glance the provisions seem to be for the benefit of the mineral owner but, when read and interpreted in its entirety, it is the exact opposite and even worse. The working interest owner does not have to "reasonably develop the lands" because of what is in the Agreement - but even worse, does not have to reasonably develop the lands if it would conflict the unit operations which may be conducted under this Agreement. It is a true improper mirage clause.

C. The definitions of "unit area", "tract", "tract participation" in the incorporation by reference, "Exhibit B and Exhibit B1" are also "mirages", in that the loose and broad descriptions enlarge the actual four quarter ATU beyond the four quarters which are intended to be within the ATU Unit.

D. The "Unit Operating Agreement" provides that it is to become(in its entirety), the Unit Plan. If adopted as the KCC's order, it improperly converts items that are in the "Agreement" as mineral/surface owner action which are beyond the scoop of what can be declared by the KCC.

E. The huge size of the ATU Agreement (21 plus pages, single spaced) when 60 years of operation have proved that one simple paragraph is enough.

Requirement of Reasonable and Fair

15. Three sections of Article 13 of Chapter 55 of Kansas Statutes Annotated - the sections dealing with "unitization" require the Commission to address the issue of "fair", the issue of "reasonable", and the issue of "equitable". The three sections are K.S.A. 55-1303c), K.S.A. 55-1304c) and K.S.A. 55-1305.

The most important of these sections is K.S.A. 55-1303. It requires the applicant within its application to present "a

copy of a *proposed plan of unitization* which the applicant considers fair, reasonable and equitable".

16. When an application is contested, the applicant has the burden of proving the statements and facts required to be in the application. In this case, the applicant has to prove that the proposed Unit Plan is "fair, reasonable and equitable", in all of its provisions and as a whole.

In short, the entire plan has to be "fair, reasonable and equitable". If the Unit Plan contains provisions that are not "fair, reasonable and equitable" then, it is not a proper application and the unit cannot be approved.

17. Section 55-1305, places two requirements. Both requirements can be found in the first portion of K.S.A. 55-1305 which reads:

> "The order providing for the unitization and unit operation of a pool or a part thereof shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include: (a list of items)"

Thus, the Commission must first review the Unit Plan to determine if each of its terms and each of its conditions are "just and reasonable" and then, the Commission shall also examine the Unit Plan to make sure that it includes each of the items on the list.

Unit Plan vs. Unit Agreement.

18. The KCC's order approving of the ATU should include a clause that makes it perfectly clear that the Unit Plan approved by the KCC is not the agreement or contract presented by the Applicant but instead, is a free-standing KCC decree (Parkin vs. The State Corporation Commission of Kansas, 234 Kan. 994; 677 P.2d 991)

19. Since the decree is the product of the KCC, the KCC cannot assign or delegate its obligation to approve only those Unit Plans which are fair, reasonable and equitable. The KCC cannot assign or delegate that obligation to the Applicant.

20. Attached are Exhibits A through G, which describe requested and suggested amendments, corrections, eliminations and additional provisions for the Unit Declaration. Said Exhibits are incorporated herein by reference.

Clauses That Must Be Eliminated
See Exhibit A attached

Clauses Which Need to Be Amended
See Exhibit B attached

Shelf Life
See Exhibit C attached

Surface Rights and Damage
See Exhibit D attached

Clauses Related Specifically to Outlander Property
See Exhibit E attached

Miscellaneous Provisions
See Exhibit F attached

Requests Related to Documents
See Exhibit G attached

WHEREFORE, Don K. Williams (Protestor) requests the KCC to:

A. Review each and every clause of the Unit Plan and determine whether it is "fair", whether it is "reasonable", and whether it is "equitable".

B. Declare (in its order) that the non-signing parties are not subject to the Unit Agreement but instead, are subject only to the KCC plan declaration.

C. Recognize that the "Outlander Minerals" (and its surface owners) are not actually part of the ATU and thus have a different position in need of different protection and provisions relating to:

(1) Their duties (if any), obligations and rights.

(2) Damages and other matters related to the operation of the surface of their real estate and minerals.

(3) Any unreasonable extension via ATU production of existing oil and gas lease on "Outlander" property.

D. Recognize that surface owners have a significant interest in these proceedings and make provisions to protect their property and their rights related thereto.

E. Consider the corrections, adjustments and proposals of the

Protestor as outlined above (as well as the presented testimony) in the same light as the Applicant's proposals.

Respectfully submitted,
Don K. Williams by
KIMBALL LAW FIRM, LLP.

By _____

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Attorney for Don K. Williams

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF GRANT)

K. Mike Kimball, being of lawful age, first being duly sworn upon oath, states and avers:

That he is the attorney for Don K. Williams, and has read the foregoing WRITTEN PROTEST AND REQUEST FOR HEARING, and is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.

_____
K. Mike Kimball

SUBSCRIBED AND SWORN to before me this 4th day of June, 2015.

_____
Tamera J. Oliver

My Appointment Expires: 12/18/18

CERTIFICATE OF MAILING

I, K. Mike Kimball, do hereby certify that on this 4th day of June, 2015, a true and correct copy of the above **Amended**

Written Protest and Request for Hearing, was mailed by depositing the same in the United State's Mail, postage prepaid and properly addressed to:

Linn Operating, Inc., by serving its attorney:

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K. Mike Kimball

Exhibit A
Clauses That Must Be Eliminated

A-I There are a number of clauses in the Unit Agreement which should not become the order of the KCC in declaring the Unit Plan. Those clauses include (but are not limited to):

A. The last sentence of Clause 3.3, which effectively barrs all of the parties from use of the courts to enforce the agreements by eliminating the parties ability to declare a default in any contract term.

B. Those sections which are "mirages" such as Section 3.7.

C. All of Article 17 since it deals only with those persons signing the Unit Agreement.

D. Any provision that implies that the mineral owner has "agreed" to the Unit Agreement or that the mineral owner has "agreed" to a provision or "grants" a right (or there might exist unanimous approval by the royalty owners) such as the lead in paragraph under "Witness", Section 1.13 (declaring the Unit Operating Agreement to be the Unit Plan).

E. Article 14 (Force Majeur). The provision is not necessary since the courts recognize a force majeur and the provision presented are unreasonable. It is overly broad, particularly in its definition of a force majeur and grants the operator almost complete discretion interpreting how the clause is to be applied. It is also a mirage in that it appears to be for the advantage of "any party" when, as a practical matter, the only party which could take advantage of the clause is the Unit Operator.

F. The indemnity and hold harmless provisions of Article 9. The KCC does not the authority to place an indemnity or hold harmless provision upon a mineral owner when such a provision is not in his original lease.

G. Section 19.2 should be eliminated.

Exhibit B
Clauses Which Need to Be Amended

B-I Clauses that must be re-drafted and re-constructed in order for those clauses to be equitable, fair and reasonable include but are not limited to:

A. A separate definition section describing the "Unit Area" as being the specific four sections described in the Application.

B. A definite definition section which describes the "Outlander" property.

C. Amendments to Exhibits B and B1, so that they specifically denote the difference of the "Unit Area" and the "Outlander" real estate participates.

D. The clauses that are related to the above described clauses including but not limited to Sections 1.2,1.7,1.8, 1.9, 2.1, 2.2, 2.3, 3.1, 5.1, 5.2, 6.1. The related exhibits also need to be amended so that they clearly show that only the four quarters are designated as "the unit area".

Exhibit C
Shelf Life

C-I The KCC decree should provide that the entire ATU shall terminate unless, an operating well producing paying quantities has been drilled in the ATU within 12 months after the KCC decree.

C-II In the event:

A. The ATU well is not located on one of the Sections (ie., one of the old Unit areas), and

B. There exists no operating well on the Section (the old Unit)

then, the mineral owners (if they unanimously agree) have the option of declaring that they are withdrawing from participating in the ATU and thereby securing a release of their oil and gas lease. In the event of a withdrawal (as just described) the prorations of those entitled royalty from the ATU would have to be re-calculated.

C-III In the event the only producing well within the four sections (12 quarter sections) is the ATU well then, all non-producing zones should be released provided however, the release should not be granted if there is being drilled an exploration well.

Exhibit D
Surface Rights and Damage

D-I Article 10 should be limited to the actual real estate within the ATU four quarters. A separate article should be devoted to the surface rights of the "Outlanders".

D-II The Unit Operator (and his sub-contractors, jointly and severely) should pay surface owners for damages to growing crops, CRP stands and CRP grass, pasture grass, timber, fences, improvements and structures, in the unit area and "Outlander" area which result from unit operations.

D-III The "Unit Operator" shall cooperate with the local groundwater management district and the related state agencies to insure their operations will not adversely affect the water available for irrigation and municipal use.

D-IV In both Articles, the Unit Operator and the Working Interest Owners should be responsible for payment to the "Outlanders" and all other parties, for damage caused by injection of substances including resulting earth quakes.

D-V The Article Plan Section dealing with the surface rights and easements on "Outlander Property" should:

A. Prohibit the injection and disposal of waste water including brine, salt water, etc., for operations, and drilling of the ATU well.

B. Require payment of minimum damage amounts for surface damage to include:

1) A minimum per acre amount for each operational site of any kind.

2) A minimum amount should be no less than $1,000 per acre (or any part thereof) for grass, $2,000 per acre for dryland farmland and $3,000 per acre for irrigated farm land.

3) A minimum amount ($100) per rod for roads (used or built), pipeline (whether underground or otherwise), and high lines.

D-VI The unit operator shall install and maintain quality cattle

guards for any roads created or used which run across "Outlander" land. In the event of construction of a pipeline across "Outlander" land, the pipeline trench shall be double packed after the installation of the pipe, with appropriate and quality top soil at the surface, and if located within grass pasture, planted to comparable grass.

Exhibit E

Clauses Related Specifically to Outlander Property

E-I New clauses should be created and constructed that relate only to the "Outlander" property including but not limited to:

A. Definition section.

B. Limitations on use of surface and damage (see above).

C. Mechanics for release of the encumbrance of the oil and gas lease on "Outlander" property when the only wells that are producing are not located on the land described in the "Outlander" lease.

D. A specific declaration that "Outlander" property is available for inclusion in other ATU's that may be formed in the future.

E. The owners of "Outlander" real estate, minerals and surface, shall not be deemed to have entered into the "Model Operating Agreement".

Exhibit F
Miscellaneous Provisions

F-I A provision needs to be added to Section 6.5, which reads: "Unit Operator and Leasehold Owners" shall be jointly and severely responsible for the payment of all royalties due to mineral interest owners. The royalty paid for production from the ATU well should no less than $500.00 per acre/per year per mineral acre for all mineral royalty interests in the four sections.

F-II A sentence needs to be added to Section 6.6, which reads: "in the event it is difficult to determine whether or not a substance produced or obtained from the unitized formation is original or "an outside substance" shall be rebutabbly presumed that it is not a "outside substance" and that royalty is due thereon.

F-III A phrase should be added to the end of Section 8.2, which reads: "Except for the loss of unitized substances resulting from the gross negligence or intentional conduct of the unit operator and its sub-contractors".

F-IV A sentence should be added to Paragraph 9.4, which reads: "A copy certified by the Register of Deeds, of a "Notice of Equitable Interest" giving notice of an installment sale contract or similar transaction.

F-V Section 9.5 should be added which requires the Unit Operator to place into a "trust account" (and not mingle with the operators own funds) all royalty or other payments which are "suspended or impounded" for any reason.

F-VI Section 13.2 should specifically state, "The laws of Kansas".

F-VII Section 19.1 should be eliminated. At the very least it should be amended to eliminate the obvious conflict in its provision and define the percentage of the required majority vote (75% or 100%).

F-VIII Section 19.3 should read: "The unit operator shall have a lien upon and a security interest in the interest of a royalty owners in a unit area only to the extent provided by law".

Exhibit G

Requests Related to Documents

G-I Don K. Williams hereby requests that the following documents be made part of the record:

A. A copy of each oil and gas lease for the land located within the four section area with a separate binding for the oil and gas leases related to the four quarter sections which are in the actual ATU.

B. A copy of the original Unit Declarations (1940s and 1950s vintage) for each of the four Units (one section per Unit).

C. Copies of the additional, side or related agreements that Linn Operating made in connection with the presented "Unit Agreement" should be made available to the Protestor and if either party hereto requests, those agreements or portions thereof be included within the record.

D. The signatures of those mineral interest owners approving the "Unit Agreement" be made available (in the Applicant's lawyers office) for examination by the counsel for Don K. Williams.