

BOARD OF OIL & GAS REVIEW

DIVISION OF OIL & GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

DAVID M. JORDAN,

Appellant,

vs.

APPEAL NO. 359

J. MICHAEL BIDDISON, CHIEF  
Division of Oil & Gas  
Ohio Department of Natural Resources  
Fountain Square  
Columbus, Ohio 43224,

Appellee,

Stocker & Sitler, Inc.  
575 Industrial Parkway  
Health, Ohio 43056

Interested Party,

Appearances:

For Appellant: John N. Teeple, Esq.  
GEIGER, TEEPLE, SMITH &  
HAHN  
404 Bank One Building  
Alliance, OH 44607

For Appellee: Anthony J. Celebrezze, Jr.  
Attorney General  
By Todd Musheff  
Assist. Attorney General  
Building A  
Fountain Square  
Columbus, Ohio 43224

For Interested Party: Kevin Sykes, Esq.  
Emens, Hurd, Kegler &  
Ritter Co., L.P.A.  
65 East State Street  
Suite 1800  
Columbus, OH 43215

### ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on August 30, 1989 in Building E, Department of Natural Resources, Fountain Square, Columbus, Ohio, pursuant to a timely Notice of Appeal filed by the Appellant. The appeal was taken from the Order of the Chief, Division of Oil and Gas, #89-511 ordering that mandatory pooling is established for the drilling unit requirements of the well to be known as the Ault Unit No. 1 Well, located in Morrow County, Ohio.

### ISSUE

The question in this Appeal is whether the Chief of the Division of Oil and Gas lawfully and reasonably ordered the mandatory pooling which mandatory pooling be established that included land of the appellant into the Ault Unit No. 1 Well by issuance of order No. 89-511.

### BACKGROUND

This Appeal involves the mandatorily pooled landowner and Stocker and Sitler, the interested person, as the producer who submitted an application for mandatory pooling under §1502.24 to the State of Ohio. It also involves a hearing before the Technical Advisory Council which recommended denial of said mandatory pooling and the subsequent Order of the Chief granting the mandatory pooling application by Chief's Order No. 89-511.

In a full day hearing before the Board, numerous witnesses and documents were presented by Appellant, by Appellee and by Stocker and Sitler. Additionally, parties submitted post-hearing briefs.

#### FINDINGS

1. In Order No. 89-511, dated July 10, 1989, the Chief found, inter alia that:

"2. Given the parameters of the geological reservoir, the drilling unit owned by the applicant is of insufficient shape to meet the requirements for drilling a well thereon as provided in §1509.24 of the Ohio Revised Code, and the applicant has been unable to form a drilling unit under agreement provided in §1509.26 of the Ohio Revised Code on a just and equitable basis.

3. The owner of land within the area, proposed to be included within the Order was notified by certified mail of the filing of such application and of a hearing scheduled for June 22, 1989.

4. A hearing on this matter was held by the Technical Advisory Council on Oil and Gas on June 22, 1989, at the Division of Oil and Gas Region B Office, 3575 Forest Lake Drive, Uniontown, Ohio.

5. The applicant testified that reasonable attempts were made to work out an agreement with the affected owner

whereby mandatory pooling would not be necessary. The applicant testified that all attempts were unsuccessful.

6. After having given due consideration to all testimony present at the hearing all facts filed by the applicant concerning this matter, a determination has been made that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide for the effective development, use and conservation of oil and gas."

The Board hereby affirms all of the aforementioned Findings of the Chief No. 2 - No. 6 and is in agreement with said Findings.

2. The Board further finds and affirms that the definition of the term "tract" includes the prior definitions contained in Jerry Moore, Inc. vs. State of Ohio (Appeal No. 1 Ohio Oil & Gas Board of Review, 1966) as well as the Ohio Attorney General Opinion No. 78-006 which expands said definition beyond the narrow statutory construction. Furthermore, "tract" may also be broadly defined geologically or geophysically to denote the underlying oil and gas pool of the leasehold or consolidation of leaseholds.

3. The Chief of the Ohio Division of Oil & Gas has the exclusive right to issue a mandatory pooling order, even without the approval of the Technical Advisory Council. The Chief must consult and obtain the approval of the Technical Council when adopting, amending, modifying or rescinding rules regarding the

conservation of oil and gas reserves. Rules are not involved in this particular matter and therefore approval of the Technical Advisory Council is not warranted.

4. Based upon the evidence presented, the Order of the Chief is fair since the size and shape of the Trempealeau geologic formation is site specific. The well permit holder has pooled more than the minimum amount of acreage required for the proper spacing. If the unit had been made larger on the Appellant's side, it would have precluded the Appellant from drilling a second well on his own farm. The drilling of said well is necessary for the conservation of natural resources. If the well is not drilled there could be a considerable amount of oil and/or gas that would never be produced.

5. The Board further affirms the Chief's Order that the nonparticipating owner would back in after 150% of payout. Let it be noted that the Chief could have ordered that the operator/well permit holder be allowed to recover 200% of the cost of drilling and equipping the well before the nonparticipating owner (Appellant) started receiving his proportionate share of the working interest.

6. All of the statutory conditions precedent to the granting of the mandatory pooling application were met such that the Chief was mandated by Section 1509.27 of the Revised Code to issue an Order granting the mandatory pooling application.

CONCLUSION

Members of the Board have read and discussed the evidence and post-hearing briefs of the Appellant, of the interested party, of Stocker & Sitler, and of the Chief. The Board finds that due to the leasehold well site's specific nature of the Trempealeau formation, presentation of size, shape, seismic, and other geological data, and the upholding of the conservation of natural resources, the Board concludes the following:

The Board of Oil & Gas Review finds the Chief's Order No. 89-511 to be lawful and reasonable and the Board orders that Appeal No. 359 is hereby denied, and that the Chief's Order No. 89-511 is hereby affirmed.

  
\_\_\_\_\_  
William G. Williams

Approved Per Telephone 12/5/89  
Robert H. Alexander, Secretary

\_\_\_\_\_  
Gail Ignatz-Hoover

Approved Per Telephone 12/5/89  
John Carney

CERTIFICATE OF SERVICE

A true copy of the foregoing Entry was mailed by certified mail, return receipt requested to John N. Teeple, Esq., 404 Bank One Building, Alliance, OH 44601, attorney for David N. Jordan; and Kevin L. Sykes, Emens, Hurd, Kegler & Ritter Co., L.P.A., 65 East Street, Suite 1800, Columbus, Ohio 43215, attorney for Stocker & Sitler this 6<sup>th</sup> day of December, 1989.

Will G. Williams  
William G. Williams  
Oil & Gas Board of Review

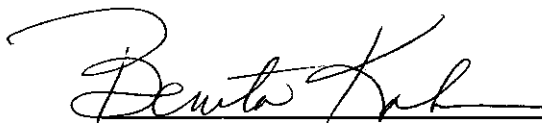
A true copy of the foregoing Entry was mailed by regular U.S. Mail to Todd Musheff, Assist. Attorney General, Building A, Fountain Square, Columbus, Ohio 43224, this 6<sup>th</sup> day of December, 1989.

Will G. Williams  
William G. Williams  
Oil & Gas Board of Review

CERTIFICATION

I, Benita Kahn, Secretary of the Oil & Gas Board of Review, hereby certify that the foregoing CONCURRENT ENTRY is a true and accurate copy of such CONCURRENT ENTRY.

IN WITNESS WHEREOF, I have hereunto signed my name this 30th day of March, 1990.

A handwritten signature in cursive script, appearing to read "Benita Kahn", written over a horizontal line.

Secretary  
Oil & Gas Board of Review



BOARD OF OIL & GAS REVIEW

DIVISION OF OIL & GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

DAVID M. JORDAN,

Appellant

vs.

J. MICHAEL BIDDISON, CHIEF  
Division of Oil & Gas  
Ohio Department of Natural Resources  
Fountain Square  
Columbus, Ohio 43224

Appeal No. 359

Appellee

Stocker & Sitler, Inc.  
575 Industrial Parkway  
Heath, Ohio 43056

Interested Party

Appearances:

For Appellant: John Teeple, Esq.,  
Geiger, Teeple, Smith & Hahn  
404 Bank One Bldg.  
Alliance, OH 44607

For Appellee: Anthony J. Celebrezze, Jr.  
Attorney General  
By Todd Musheff  
Asst. Attorney General  
Building A, Fountain Square  
Columbus, OH 43224

For Interested Party:

Kevin Sykes, Esq.  
Emens, Hurd, Kegler, &  
Ritter, Co. L.P.A.  
65 East State Street  
Suite 1800  
Columbus, OH 43215

FILED  
COMMON PLEAS COURT  
90 APR -2 AM 10:22  
FRANKLIN COUNTY, OHIO  
THOMAS J. ENRIGHT  
CLERK OF COURTS

## CONCURRENT ENTRY

Through administrative inadvertence, the Board's opinion was mailed prior to the final date for comments of the board members; thus, this member's comments were not incorporated into that opinion and this concurrent entry is submitted to clarify this board member's opinion regarding the above-captioned case.

This concurrent entry adopts the section of the entry dated December 5, 1989 issued by the Board stating the Background of the case.

## ISSUE

Whether the Order No. 89-511 issued by the Chief of the Division of Oil and Gas lawfully and reasonably ordered the mandatory pooling of a portion of the Appellant's land into the Ault Unit No. 1.

## FINDINGS

1) In the Order No. 89-511, dated July 10, 1989, the Chief found the following:

1. An application for a Mandatory Pooling Order for drilling unit requirements for the drilling of a well in Section 11, Congress Township, Morrow County, Ohio, to be known as the Ault Unit #1 Well, was submitted by Stocker and Sitler, Inc., 575 Industrial Parkway, Heath, Ohio 43056 on May 4, 1989.

2. Given the parameters of the geological reservoir, the drilling unit owned by the applicant is of insufficient shape to meet the

requirements for drilling a well thereon as provided in §1509.24 of the Ohio Revised Code, and the applicant has been unable to form a drilling unit under agreement provided in §1509.26 of the Ohio Revised Code on a just and equitable basis.

3. The owner of land within the area proposed to be included within the Order was notified by certified mail of the filing of such application and of a hearing scheduled for June 22, 1989.

4. A hearing on this matter was held by the Technical Advisory Council on Oil and Gas on June 22, 1989, at the Division of Oil and Gas Region B Office, 3575 Forest Lake Drive, Uniontown, Ohio.

5. The applicant testified that reasonable attempts were made to work out an agreement with the affected owner whereby mandatory pooling would not be necessary. The applicant testified that all attempts were unsuccessful.

6. After having given due consideration to all testimony presented at the hearing and all facts filed by the applicant concerning this matter, a determination has been made that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide for the effective development, use and conservation of oil and gas.

2) This member concurs with all findings of the Chief and thus, concurs with the Board's ruling that the Chief's order was lawful and reasonable.

3) Appellant argued that the Chief's finding #2 was unlawful as the Ault property was sufficient in shape and size to meet the requirements for drilling a well under Chapter 1509 and its

attendant rules. Arguments, briefs and testimony were considered by the Board in its consideration of Appellant's argument.

4) This member concludes that the Ohio Oil & Gas Board of Review, in its decision in the case captioned Moore Inc. vs. State of Ohio (Appeal No. 1, Ohio Oil & Gas Board of Review, 1966) though not deciding said case upon the statutory definition of the term "tract," stated its position in dicta that a narrow construction of the statutory definition would be entirely unworkable both as it is used in many sections of Chapter 1509 and as it is used in the industry. Further, the Board stated the following:

(T)he Board is of the opinion, and believes that the Legislature intended that an integral part of conservation is to encourage development of oil and gas resources in the State of Ohio. As a consequence thereof, this Board questions whether, in the event a party wished to drill a wildcat well in a location similar to that set forth in Exhibit X hereto, and a preponderance of geological and geophysical evidence indicated a test well was warranted, and if all reasonable efforts had been made to voluntarily pool but were unsuccessful, a narrow construction of the definition of the word "tract" would be utilized to prevent such well from being drilled... (Id. at Page 18)

5) This member concludes that the Ohio Attorney General, in its opinion number 78-006, likewise approved of the Board's broader construction of the term and concluded that the term "tract of land" includes a portion of a "tract" as defined in R.C. 1509.01(J).

6) This member is of the opinion that the statutory intent of conserving natural resources requires that the definition of

tract include not only those noted in the above opinions, but also a drilling site when that drilling site is limited by its geological or geophysical properties.

7) Based upon the evidence presented, this member concurs that the Order of the Chief was lawful and reasonable due to the site-specific nature of the Trempealeau geologic formation. This member notes that the pooling application granted Appellant more acreage than that which would have been required by the statute and, therefore, grants Appellant a more generous share of the royalty than would have been obtained if the statutory minimums had been adopted. More importantly, however, this member concludes that the application did not utilize so much acreage so as to eliminate Appellant's ability to drill a well on his own property and, thus, the application protects Appellant's correlative rights (as well as Appellee's correlative rights) and promotes development of our State's natural resources.

8) This member concurs with the Chief's finding that reasonable efforts were made to voluntarily pool on a just and equitable basis, but were unsuccessful.

9) Thus, this member concurs with the Board's finding that the statutory conditions precedent to the granting of the mandatory pooling application were met such that the Chief was mandated by Section 1509.27 of the Ohio Revised Code to issue an Order granting the mandatory pooling application.

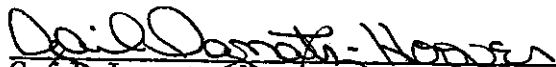
10) Further, this member concurs with the Board's finding that the Chief of the Ohio Division of Oil and Gas has the

exclusive right to issue a mandatory pooling order, without the approval of the Technical Advisory Council. The Chief must consult and obtain the approval of the Technical Advisory Council when adopting, amending, modifying or rescinding rules regarding the conservation of oil and gas reserves. As the applicable law is one of statute rather than one of administrative rules, approval of the Technical Advisory Council is not required.

11) This member concurs with the Board's finding that the Chief's Order allowing the nonparticipating owner "back in" as a working interest owner after 150% of payout was lawful and reasonable, especially in light of the statutory authority to authorize participation after 200% of payout.

#### CONCLUSION

Due to the the failed efforts of Appellee to voluntarily pool the acreage of the Appellant, the site-specific nature of the Trempeleau wells, the geological data presented to define the nature and size of the subject drill site and the statutory goal of conserving natural resources, this member concurs with the Board's affirmation of the Chief's Order No. 89-511 as lawful and reasonable and concurs with the Board's Order that Appeal No. 359 be denied.

  
Gail Ignatz-Hoover, Member, Board of  
Oil and Gas Review

ORDER BY THE CHIEF

ORDER NO. 89-511

ISSUE DATE: July 10, 1989

TO WHOM IT MAY CONCERN:

SUBJECT: MANDATORY POOLING

Pursuant to Section 1509.27 of the Ohio Revised Code, the Chief of the Division of Oil and Gas, having given due consideration to the matter contained herein, makes the following Findings and issues the following Orders:

Findings

- 1) An application for a Mandatory Pooling Order for drilling unit requirements for the drilling of a well in Section 11, Congress Township, Morrow County, Ohio, to be known as the Ault Unit #1 Well, was submitted by Stocker and Sitler, Inc., 575 Industrial Parkway, Heath, Ohio 43056 on May 4, 1989.
- 2) Given the parameters of the geological reservoir, the drilling unit owned by the applicant is of insufficient shape to meet the requirements for drilling a well thereon as provided in Section 1509.24 of the Ohio Revised Code, and the applicant has been unable to form a drilling unit under agreement provided in Section 1509.26 of the Ohio Revised Code on a just and equitable basis.
- 3) The owner of land within the area, proposed to be included within the order, was notified by certified mail of the filing of such application and of a hearing scheduled for June 22, 1989.
- 4) A hearing on this matter was held by the Technical Advisory Council on Oil and Gas on June 22, 1989, at the Division of Oil and Gas Region B Office, 3575 Forest Lake Drive, Uniontown, Ohio.
- 5) The applicant testified that reasonable attempts were made to work out an agreement with the affected owner whereby mandatory pooling would not be necessary. The applicant testified that all attempts were unsuccessful.

- 6) After having given due consideration to all testimony presented at the hearing and all facts filed by the applicant concerning this matter, a determination has been made that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide for the effective development, use and conservation of oil and gas.

Orders

- 1) It is hereby ordered that mandatory pooling is established for the drilling unit requirements of the well to be known as the Ault Unit #1 Well.
- 2) The pooled unit shall be as follows:
- a. The boundaries of the drilling unit shall be in accordance with the unit boundaries indicated on the surveyor's plat identified as Exhibit A, attached hereto and made a part hereof.
  - b. The designated drilling site is located 815 feet from the north line and 180 feet from the east line of Section 11, Congress Township, Morrow County, Ohio as indicated on Exhibit A.
  - c. The tracts of land or parts thereof pooled by this Order are described in Exhibit B, attached hereto and made a part hereof.
  - d. The pro rata portion of the production allocated to each tract owner is indicated on Exhibit B.
  - e. The costs and expenses of drilling, equipping and operation of the well will be assumed by Stocker and Sitler, Inc. since they are the owner, as this term is defined in Section 1509.01(K) of the Ohio Revised Code, of all the acreage within the designated drilling unit with the exception of 2.57 acres owned by Michael Jordan, and since Michael Jordan will be a nonparticipating owner.
- 3) The estimated costs of drilling, equipping and operation of the well are itemized in Exhibit C, incorporated by reference as if fully rewritten herein. Should the actual costs vary substantially from the estimates, Stocker and Sitler, Inc. will notify the Chief and, in turn, all concerned parties will be notified of any authorized adjustments.



Order No. 89-511  
Mandatory Pooling  
Stocker and Sitler, Inc.  
Page 3

- 4) Since Stocker and Sitler, Inc. shall bear the costs of drilling, equipping and operation of the well for the benefit of the nonparticipating owner, Stocker and Sitler, Inc. shall be entitled to the share of production from the drilling unit accruing to the interest of the nonparticipating owner, exclusive of his proportionate share of the one-eighth (1/8) royalty interest, until the share of costs charged to the nonparticipating owner plus 50% has been recovered. The share of costs to the nonparticipating owner will be based on actual costs to Stocker and Sitler, Inc.
- 5) Stocker and Sitler, Inc. must make available to the Division of Oil and Gas and to the affected owner, all records relating to actual drilling, equipping and operating expenses; oil/gas production records; and payments to Stocker and Sitler, Inc. for production from the well.
- 6) A permit will be issued to Stocker and Sitler, Inc. for the Ault Unit #1 Well.

July 10, 1989  
Date

J. Michael Biddison  
J. Michael Biddison, Chief

Addressee is hereby notified that this action is final and effective and may be appealed to the Oil and Gas Board of Review pursuant to Section 1509.36 of the Ohio Revised Code. The appeal must be in writing and must set forth the Orders complained of and the grounds upon which the appeal is based. Such appeal must be filed with William G. Williams, Secretary, Oil and Gas Board of Review, 640 Citizens Savings Building, Canton, Ohio 44702 within thirty (30) days after receipt of this Order.

In addition, within three (3) days after the appeal is filed with the Oil and Gas Board of Review, notice of the filing must be submitted to the Division of Oil and Gas, 4435 Fountain Square, Building A, Columbus, Ohio 43224.

JMB:TGT:pm

Enclosures

EXHIBIT A

L. & P. GROGG  
39.22 AC.  
127-29

L. & P. G. JGG  
80.0 AC.  
244-338

R. GROGG  
0.78 AC.  
245-171

FORMER MILLER SCHOOL  
24-625

SECTION 2  
SECTION 11

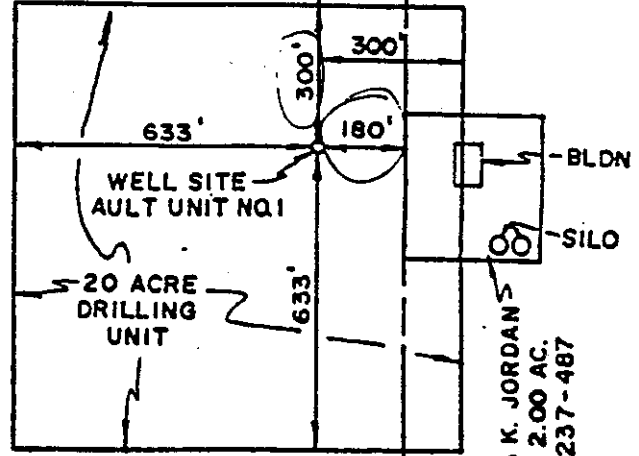
SECTION  
SECTION 1

☐ MARIAN & JOHNSVILLE RD. - C. R. 59



515'  
300'  
815'

E. JORDAN  
80.00 AC.  
215-297



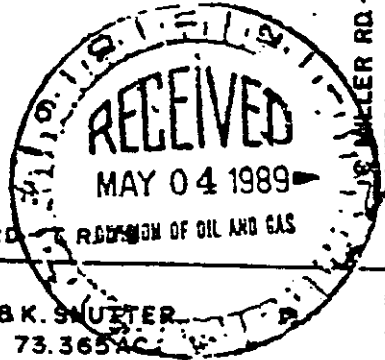
D. & K. JORDAN  
2.00 AC.  
237-487

W. & J. AULT  
80.00 AC.  
178-304

D. & K. JORDAN  
48.00 AC.  
237-487

T. & S. BURKAN  
5.00 AC.  
298-259

☐ MAXWELL RD. - C. R. 56



R. & B. WHITNEY  
40.00 AC.  
177-174

D. & J. JORDAN  
40.00 AC.  
257-23

J. & K. SMUTTER  
73.365 AC.  
240-400



NOTE:  
BLDNG. & SILO LOCATION  
TAKEN FROM AERIAL MAP  
OF AREA.

11 1/4 & 180' EL OF SEC 11 20 acres SCALE IN FEET TPI-POOL-RTAF

I hereby certify that all drilling or producing wells within 600 feet and all buildings and streams within 150 feet have been shown, there are no drilling unit lines nearer than 300 feet, that this plat is true and correct and was prepared according to the current State of Ohio, Department of Natural Resources, Division of Oil and Gas Regulation.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

DAVID JORDAN,	]	CASE NO. 90CVH01 0063
Appellant,	]	JUDGE STRATTON
vs.	]	
J. MICHAEL BIDDISON, etc.,	]	
Appellee,	]	
STOCKER & SITLER,	]	
Interested party.	]	

FILED  
 FRANKLIN COUNTY COURT  
 JAN 23 AM 8 17  
 CLERK OF COURTS

REFEREE'S REPORT

Rendered this 18th day of January, 1991

TO: THE HONORABLE EVELYN J. STRATTON, JUDGE,  
FRANKLIN COUNTY COMMON PLEAS COURT

STEWART ROBERTS, REFEREE

This cause came on for oral argument before this Referee pursuant to Rule 53, Ohio Rules of Civil Procedure, with the parties present in court and represented by counsel. This action is an appeal by Appellant pursuant to O.R.C. Section 1509.37 from the December 6, 1988, Order of the Oil and Gas Board of Review.

From the Certified Record, this Referee finds that the Board's Order was lawful and reasonable, and was an appropriate exercise of its authority pursuant to O.R.C. Section 1509.36 of orders by the chief of the Division of Oil and Gas.

Appellee Stocker & Sitler had applied for a mandatory pooling order pursuant to O.R.C. Section 1509.27, which provides in part:

"If a tract of land is of insufficient size

well in a location such that a portion of the oil in the pool would not be able to be extracted. O.R.C. Section 1509.27 provides for the mandatory pooling of additional tract(s) where the tract which is owned by the application "...is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in Section 1509.24 or 1509.25 of the Revised Code, ...". Appellant argues that as the Ault tract is 80 acres, they can meet the 20-acre, 300 foot radius minimums provided in O.A.C. Section 1501:9-1-14(C). However, this Referee concludes as a matter of law that O.R.C. Section 1509.27 contemplates that the best location (most effective, most efficient) for a well be chosen in light of the public purpose outlined above. This Section must operate to allow or deny an application for mandatory pooling based upon the specific well site sought. Appellant's argument, that Appellees could just move the well site farther away from the Ault-Jordan boundary, is illogical. The law and common sense require that a well be drilled where the oil is -- the optimum production concept discussed above.

This Referee concludes that just because an applicant such as Appellee Stocker & Sitler has more land than 20 acres, that does not mean that the benefits of O.R.C. Section 1509.27 should be denied where the tract of land is of insufficient size and shape to meet the spacing requirements for drilling the well that needs to be drilled. This Section must be interpreted to deal with the question of mandatory pooling for the specific well site



to appellant Jordan's property to meet the minimum set-back that Ohio law requires from the boundary of a drilling unit to the oil and gas well. Thus, without appellant Jordan's R.C. 1509.26 voluntary inclusion in the Ault drilling unit by means of an oil and gas lease or some other type of arrangement, the only way for this well to be drilled is with the R.C. 1509.27 mandatory pooling of sufficient acreage for the drilling unit to meet the minimum set-back, spacing and acreage requirements of Ohio law.

The production of oil and gas under Ohio law presents an issue of three dimensional scope. It is not merely a question of sufficient surface acreage, but also of depth; that is, the nature and geology of the sub-surface formation from which the oil and gas are produced. Appellant Jordan contends that geology is irrelevant to the production of oil and gas such that the existence of sufficient surface area to locate a legally spaced well precludes any consideration of where the oil and gas are actually located. The law and common sense, however, demand that a well be drilled where the oil is located. Thus, appellant's contention is illogical and ignores the public interest in having wells drilled that conserve natural resources by obtaining the optimum production from a reservoir. R.C. 1509.27 must be interpreted to address the question of mandatory pooling in context of the specific well site in the application, and not just some well somewhere on the land owned by the applicant.

The record contains no evidence to support appellant's challenge to the location of the well, nor of the propriety of the designated drilling unit. Appellant's rights and economic interests are fully protected as the mandatory pooling order guarantees that appellant receive a share of the proceeds from the well equal to his proportionate participation in the Ault #1 drilling unit.


The record contains a valid factual basis to support the Chief's determination that Stocker & Sitler's unsuccessful attempts to lease the 2.5 acres of Jordan property adequately constitute an inability to voluntarily pool on a just and equitable basis pursuant to R.C. 1509.27. Likewise, there is no question but that the Ault tract, because of the site-specific nature of the Trempealeau formation, is of insufficient shape to permit the legal drilling of the Ault #1 well. Therefore, the R.C. 1509.27 threshold conditions precedent to mandatory pooling are met. Because the record provides a valid factual basis to support the finding that the instant mandatory pooling is necessary to protect correlative rights and to provide for the effective development, use and conservation of oil and gas, the Chief acted lawfully and reasonably in issuing the mandatory pooling order. The Oil and Gas Board


of Review decision affirming the Chief was, therefore, also lawful and reasonable and the decision of the Oil and Gas Board of Review is hereby affirmed. Appellant to bear costs of the appeal, including, pursuant to R.C. 1509.37, the cost of preparing and transcribing the record.

---

Hon. Evelyn J. Stratton, *Judge,*  
*Franklin County Court of Common Pleas*

LEE FISHER  
ATTORNEY GENERAL OF OHIO

  
TODD M. MUSHEFF (MUS11)  
Assistant Attorney General  
Environmental Enforcement Section  
Division of Oil and Gas  
Fountain Square, Building A  
Columbus, Ohio 43224  
Counsel for Appellee Chief of  
the Division of Oil and Gas

  
O. JUDSON SCHEAF, III (SC255) (by TMM as per  
Emens, Hurd, Kegler & Ritter phone authority)  
65 East State Street—Suite 1800  
Columbus, Ohio 43215  
Counsel for Interested Party  
Stocker & Sittler, Inc.

submitted for approval but not signed  
DAVID MJORDAN, *pro se*  
7320 CR 56 RT. 2  
Mt. Gilead, Ohio 43338  
Appellant

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

David M. Jordan,  
Appellant,

vs.

J. Michael Biddison, Chief,  
Appellee,

Stocker and Sitler, Inc.

Interested Party.

FINAL APPEALABLE ORDER

Case No. 90CVF-01-0063

JUDGE STRATTON

TERMINATION NO. 8  
BY KB

JUDGMENT ENTRY

For the reasons set forth in its Decision filed June 5, 1991, the Court finds that the Order of the Chief of the Division of Oil and Gas, Department of Natural Resources, State of Ohio, is supported by reliable, probative, and substantial evidence, and is in accordance with law.

JUDGMENT is therefore entered in favor of Appellee J. Michael Biddison, Chief, Division of Oil and Gas, and the Appeal of appellant David M. Jordan is hereby DISMISSED with prejudice.

*E. Stratton*

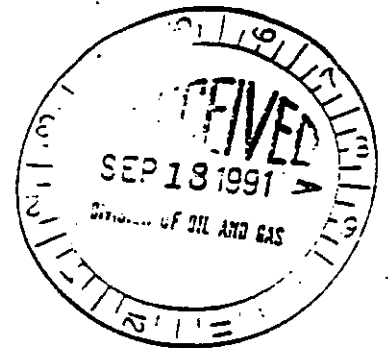
Evelyn J. Stratton, Judge

Copies to:

David M. Jordan, Appellant

Todd Musheff  
Assistant Attorney General  
Attorney for Appellee  
Chief of Div. of Oil & Gas

O. Judson Scheaf III, Esq.  
Attorney for Interested Party



ATTACHMENT B



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

David M. Jordan,

Appellant,

vs.

J. Michael Biddison, Chief,

Appellee,

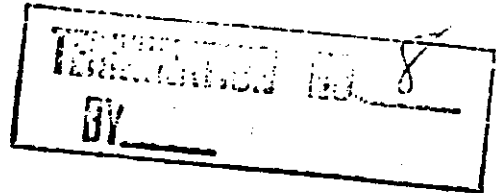
Stocker and Sitler, Inc.

Interested Party.

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Case No. 90CVF-01-0063

JUDGE STRATTON



JUDGMENT ENTRY

For the reasons set forth in its Decision filed June 5, 1991, the Court finds that the Order of the Chief of the Division of Oil and Gas, Department of Natural Resources, State of Ohio, is supported by reliable, probative, and substantial evidence, and is in accordance with law.

JUDGMENT is therefore entered in favor of Appellee J. Michael Biddison, Chief, Division of Oil and Gas, and the Appeal of appellant David M. Jordan is hereby DISMISSED with prejudice.

*E. Stratton*

Evelyn J. Stratton, Judge

1991 JUN 17 AM 10:40  
CLERK OF COURT  
FRANKLIN COUNTY, OHIO

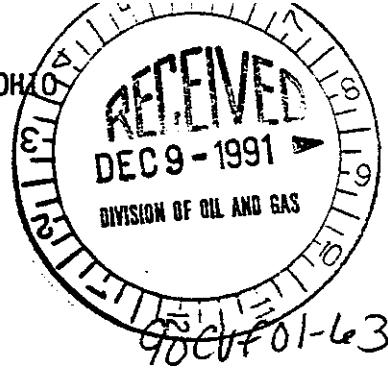
Copies to:

David M. Jordan, Appellant

Todd Musheff  
Assistant Attorney General  
Attorney for Appellee  
Chief of Div. of Oil & Gas

O. Judson Scheaf III, Esq.  
Attorney for Interested Party

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT



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David M. Jordan, :  
Appellant-Appellant, :  
v. :  
J. Michael Biddison, Chief, Division of: :  
Oil & Gas, Ohio Department of Natural :  
Resources, :  
Appellee-Appellee. :

No. 91AP-1309  
(REGULAR CALENDAR)

JOURNAL ENTRY OF DISMISSAL

Appellant has filed a notice of appeal from an entry of the trial court which entry withdrew a second entry of dismissal mistakenly filed after the first entry of dismissal had been journalized by the trial court. The October 11, 1991 entry of the trial court appealed by appellant did not terminate the action below but, rather, was in the nature of a procedural clarification. Accordingly, the court finds that the trial court entry of October 11, 1991 is not a final appealable order and sua sponte dismisses this appeal.

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
1991 DEC -2 PM 2:30  
THOMAS J. ENRIGHT  
CLERK OF COURTS

\_\_\_\_\_  
Judge Dean Strausbaugh

\_\_\_\_\_  
Judge John W. McCormac

\_\_\_\_\_  
Judge John C. Young

cc: David M. Jordan  
Todd Musheff, AAG  
O. Judson Scheaf, III

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
1991 DEC -5 AM 8:54  
THOMAS J. ENRIGHT  
CLERK OF COURTS

David M. Jordan, :  
Appellant-Appellant, :  
v. :  
J. Michael Biddison, Chief, Division :  
of Oil & Gas, Ohio Department of :  
Natural Resources, :  
Appellee-Appellee, :  
Stocker & Sitler, Inc., :  
Interested Party-Appellee. :

90 CVF-01-63  
No. 91AP-1201  
(REGULAR CALENDAR)


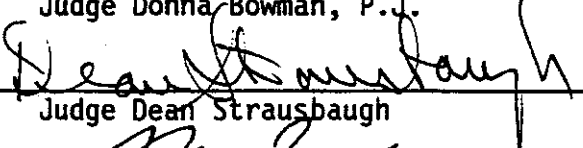

JOURNAL ENTRY OF DISMISSAL

Appellant filed a notice of appeal on October 15, 1991, from a purported final order of the trial court filed on September 17, 1991. Appellee and interested party Stocker & Sitler, Inc. have filed a motion to dismiss on the basis that the appeal of appellant is untimely. Appellant has filed a response to the motion to dismiss.

Upon review of the memoranda and the record in this case, a final order terminating the instant action was journalized on August 29, 1991. The trial court, in an entry filed on September 17, 1991, mistakenly issued another order also purportedly terminating the case. The September 17, 1991 order was subsequently withdrawn by the trial court in an entry filed on October 11, 1991, for the reason that the September 17, 1991 order was mistakenly entered after termination of the case by the August 29, 1991 judgment entry. Consequently, appellant has erroneously attempted to file a notice of appeal from the September 17, 1991 order of the trial court which has been withdrawn.

A final order terminating this case was entered on August 29, 1991, and written notice was mailed to the parties on August 30, 1991, in accordance with Civ. R. 58. The notice of appeal was not filed with the clerk of the trial court within thirty days of the date of the August 29, 1991 judgment entry as required

by App. R. 4(A). The defect is jurisdictional and the time may not be extended. Hence, appellee's motion to dismiss is granted and this appeal is hereby dismissed.

  
\_\_\_\_\_  
Judge Donna Bowman, P.J.  
  
\_\_\_\_\_  
Judge Dean Strausbaugh  
  
\_\_\_\_\_  
Judge G. Gary Fyack

cc: David M. Jordan, pro se  
Todd M. Musheff, AAG  
O. Judson Scheaf, III

