

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 2213

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RHP
Gray
**JAMES J. DAVIDSON, III, KIMBERLY KAY DAVIDSON,
NOW MARRIED TO A. HARTIE SPENCE AND/OR THE
KIMBERLY KAY DAVIDSON TRUST, JAMES J.
DAVIDSON, IV, NOW MARRIED TO KIM THIBODEAUX
AND/OR THE JAMES J. DAVIDSON, IV TRUST, LYND
LEIGH DAVIDSON NOW MARRIED TO SCOTT A. JONES
AND/OR THE LYND
LEIGH DAVIDSON TRUST AND
VIRGINIA HOLLAND DAVIDSON NOW MARRIED TO
ADAM HOOVER AND/OR THE VIRGINIA HOLLAND
DAVIDSON TRUST**

VERSUS

**THE COMMISSIONER OF CONSERVATION, JAMES H.
WELSH AND/OR THE OFFICE OF AND/OR
DEPARTMENT OF CONSERVATION A DIVISION OF
THE DEPARTMENT OF NATURAL RESOURCES, THE
DEPARTMENT OF NATURAL RESOURCES OF THE
STATE OF LOUISIANA, THE STATE OF LOUISIANA
AND/OR GARY ROSS, THE ASSISTANT SECRETARY TO
THE COMMISSIONER**

Judgment Rendered: JUN 17 2011

On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
Docket No. 567,249

Honorable R. Michael Caldwell, Judge Presiding

Theodore G. Edwards, IV
Lafayette, LA

Counsel for Plaintiffs/Appellants
James J. Davidson, III, et al.

J. Blake Canfield
Baton Rouge, LA

Counsel for Defendants/Appellees
Commissioner of Conservation, et al.

* * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a district court's judgment, upholding an order issued by the Louisiana Commissioner of Conservation ("Commissioner"), concerning the creation of a drilling and production unit. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On November 16, 2007 Precision Holdings, LLC ("Precision") applied to the Commissioner for a public hearing:

(1) To establish rules and regulations and to create a single drilling and production unit for the exploration for and production of gas and condensate from the Miogypsinoides Sand, Reservoir D, in the Maurice Field, Lafayette and Vermilion Parishes, Louisiana, said unit to be designated MIOGYP RD SUA.

(2) To force pool and integrate all separately owned tracts, mineral leases and other property interests within the proposed unit with each tract sharing in unit production on a surface acreage basis of participation.

(3) To designate [Precision] as operator of the proposed unit.

(4) To designate [Precision's] J. [I.] Broussard Heirs No. 1 Well as unit well for the proposed unit.

(5) To provide that any future substitute and/or alternate unit wells drilled to the Miogypsinoides Sand, Reservoir D, within or outside the unit created herein, should be located in accordance with the spacing provisions of [La. Admin. Code] 43:XIX.1901 et seq. (Statewide Order No. 29-E).

(6) To provide that the [Commissioner] should be authorized to reclassify the proposed sand and reservoir by supplemental order without the necessity of a public hearing if the producing characteristics of the reservoir change and evidence to justify such reclassification is submitted to and accepted by the [Commissioner].

(7) To consider such other matters as may be pertinent.

The unit proposed by Precision contained approximately 143 acres. However, an adjoining landowner, James Davidson, raised an objection to being omitted from the unit, and after he presented a counter plan during a

2007 prehearing conference, Precision decided to incorporate a portion of the acreage suggested in the counterplan into the unit. On January 2, 2008 Precision filed a revised application with the Commissioner to submit a revised unit structure map, containing approximately 178 acres. A hearing on the proposed matters was scheduled for January 29, 2008.

At the hearing, in addition to Precision's revised proposed unit, two other proposed units were presented by: (1) David Sturlese, a petroleum geologist, who proposed the same unit as Precision had originally presented to the Commissioner, before reaching an agreement with Mr. Davidson, and which contained approximately 143 acres (on behalf of "Broussard, et al."); and (2) Bill Clay, a petroleum geologist, who proposed a unit containing approximately 126 acres (on behalf of "Aurelia Broussard Clay, et al."). After receiving testimony, evidence, and statements by interested persons, on March 31, 2008, the Commissioner signed and issued Order No. 366-F-8, which was made effective as of January 29, 2008, and defined the MIOGYP RD SUA as "being that gas and condensate bearing sand encountered between the depths of 13,481 feet and 13,568 feet (electrical log measurements) (13,357 feet and 13,444 feet TVD) in the [Precision] J. I. Broussard Heirs No. 1 Well, having a surface location in Section 49, and a bottom hole location in Section 41, Township 11 South, Range 4 East, Vermilion Parish, Louisiana." The Commissioner further issued and implemented the following findings in Order No. 366-F-8:

- (1) That the establishment of rules and regulations and the creation of a single drilling and production unit for the exploration for and production of gas and condensate from the Miogypsinoides Sand, Reservoir D, in the Maurice Field, Lafayette and Vermilion Parishes, Louisiana, are necessary to insure orderly development, to prevent waste and to avoid the drilling of unnecessary wells.

(2) That the available geological, engineering or other appropriate information indicates that the unit designated MIOGYP RD SUA, as more particularly shown on the plat labeled, "State Exhibit A for Docket No. 08-14", [a copy of which was attached to the Order and contained approximately 158 acres], is reasonable and should be adopted; that said unit can be efficiently and economically drained by one well, and that creation of such unit should reasonably assure to each separate tract included therein an opportunity to recover its just and equitable share of the contents of the reservoir.

(3) That the separately owned tracts, mineral leases and other property interests within the unit created herein should be force pooled and integrated with each separate tract sharing in unit production on a surface acreage basis of participation.

(4) That [Precision] should be designated as operator of the unit created herein.

(5) That the [Precision] J. I. Broussard Heirs No. 1 Well should be designated as the unit well for the unit created herein.

(6) That any future substitute and/or alternate unit wells drilled to the Miogypsinoides Sand, Reservoir D, within or outside of the unit created herein, should be located in accordance with the spacing provisions of [La. Admin. Code] 43:XIX.1901 et seq. (Statewide Order No. 29-E).

(7) That the [Commissioner] should be authorized to reclassify the reservoir by Supplemental Order, without the necessity of a public hearing, if the producing characteristics of the reservoir change and evidence to justify such reclassification is submitted to and accepted by the [Commissioner].

On May 22, 2008 the Commissioner's ruling was appealed to the district court by the plaintiffs/appellants, pursuant to LSA-R.S. 30:12. Following a July 26, 2010 hearing before the district court, a judgment was signed on August 9, 2010, confirming and upholding the Commissioner's Order No. 366-F-8. The plaintiffs/appellants thereafter appealed to this court, asserting the district court erred: (1) in not finding that the Commissioner had acted arbitrarily and capriciously in rendering Order No. 366-F-8, which excluded the appellants' property from an oil and gas production unit established by the order; and (2) in accepting, without

independent review or consideration of the facts before it, the conclusion of the Commissioner as set forth in Order No. 366-F-8.

LAW AND ANALYSIS

As stated in LSA-R.S. 36:358(A) and (C), the Office of Conservation, within the Department of Natural Resources, exercises the functions of the state with respect to the regulation, conservation, and use of the natural resources of the state, which are not specifically within the jurisdiction of other state departments or agencies. The Office of Conservation's functions include, but are not limited to: the conservation of the oil and gas resources of the state and matters pertaining thereto; the promotion and encouragement of exploration, production, and refining efforts for oil, intrastate gas, and other hydrocarbons; the control and allocation of energy supplies and distribution; the lease or construction and operation of intrastate pipeline systems; the implementation and enforcement of any emergency gas shortage allocation plan and the setting of priorities; regulation of the minimum sale price of intrastate natural gas; and management of ground water resources. LSA-R.S. 36:358(C).

The Commissioner of Conservation has jurisdiction and authority over all persons and property necessary to enforce effectively all laws relating to the conservation of oil or gas, and has authority to make, after notice and hearings as provided by law, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of the conservation laws. See LSA-R.S. 30:1; LSA-R.S. 30:4. For the prevention of waste and to avoid the drilling of unnecessary wells, the Commissioner has the authority to establish drilling units and designate unit operators therefor. LSA-R.S. 30:9 and 30:10; **Enerquest Oil and Gas, LLC v. Asprodites**, 2002-0822, p. 7 (La. App. 1 Cir. 4/2/03), 843 So.2d

535, 539. A drilling unit is the maximum area which may be efficiently and economically drained by one well; this unit constitutes a developed area as long as a well is located thereon that is capable of producing oil or gas in paying quantities. See LSA-R.S. 30:9(B). In determining the location and extent of a drilling unit and well, the Commissioner is required to consider all available geological and engineering evidence and shall provide for the unit well to be located at the optimum position in the drilling unit for the most efficient and economic drainage of such unit, and so that the landowners receive their just and equitable share of the oil and/or gas in the pool. See LSA-R.S. 30:9(C) and (D); LSA-R.S. 30:10(A). The Commissioner's order establishing a compulsory drilling unit deprives all of the owners in the unit, except the unit operator, of the right to explore for minerals and reduce them to possession. In this context, the unit operator becomes the managing owner for the purposes of exploration and production. **Enerquest Oil and Gas, LLC v. Asprodites**, 2002-0822 at p. 7, 843 So.2d at 539.

Any interested person has the right to have the Commissioner call a hearing for the purpose of taking action with respect to a matter within the jurisdiction of the Commissioner, by making a request therefor in writing. Upon receiving the request, the Commissioner shall promptly call a hearing. LSA-R.S. 30:6(F). Any person who is aggrieved by a ruling of the Commissioner may appeal to the district court. LSA-R.S. 30:12(A).

Review by the district court is conducted by the court without a jury and is confined to the record. LSA-R.S. 30:12(B)(4). The district court may affirm the agency decision or remand the case for further proceedings; or may reverse or modify the decision if substantial rights of an appellant have been prejudiced because the administrative findings, inferences, conclusions,

or decisions are: in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Where the agency had the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard is required to be given to the agency's determination on credibility issues. See LSA-R.S. 30:12(B)(5). Questions of law are to be determined upon judicial review with little or no deference to the decision of the administrative body, while the manifest error standard of review is used in reviewing the facts found by the Commissioner. See **Tex/Con Oil and Gas Company v. Batchelor**, 634 So.2d 902, 907 (La. App. 1 Cir. 1993), writ denied, 94-0270 (La. 3/18/94), 635 So.2d 1102. Further, in reviewing the conclusions and exercises of agency discretion by the Commissioner, the reviewing court must apply the arbitrariness test, and the party challenging the Commissioner's decision must make a clear showing that the administrative action was arbitrary and capricious. **Enerquest Oil and Gas, LLC v. Asprodites**, 2002-0822 at p. 6, 843 So.2d at 539.

When reviewing an administrative decision, the district court functions as an appellate court. An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. On review of the district court's judgment, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal.

Consequently, this court will conduct its own independent review of the record and apply the standards of review provided by law. **Doc's Clinic, APMC v. State ex rel. Department of Health and Hospitals**, 2007-0480, pp. 8-9 (La. App. 1 Cir. 11/2/07), 984 So.2d 711, 718-19, writ denied, 2007-2302 (La. 2/15/08), 974 So.2d 665. See also LSA-R.S. 30:15; LSA-R.S. 49:965.

In this case, the appellants assert that the Commissioner established the boundaries of the drilling unit arbitrarily and “without one scintilla of evidentiary support.” Appellants further contend on appeal that “not a single witness, or expert . . . , or document of any description entered into the record of this proceeding discussed a ‘production barrier’ much less the propriety of a ‘production barrier’ being placed at the location placed by the Commission[er].” (Underscoring omitted.)

In contrast, the appellate brief filed on behalf of the Commissioner states that the Commissioner’s decision was based on the evidence, as a whole, that “a barrier to production forms an outer limit of the productive natural gas area, which falls short of Appellants’ property. . . . [and that] opponents to the application testified multiple times that Appellants’ property was no longer capable of production.” Further, the Commissioner asserts on appeal that the production barrier labeled on the drilling unit plat is not his “creation,” but is supported by the evidence. The Commissioner also contends that all parties to this dispute recognize that there are production limits to the reservoir and that wells north and northwest of the unit are no longer productive. The Commissioner points out that the only argument among the parties “is where to draw the line.”

Our review of the record reveals that the drilling unit boundaries advocated by the appellants during the agency hearing (wherein the

appellants joined in the unit proposed by Precision), coincided in all respects with the drilling unit established by the Commissioner's Order No. 366-F-8, except along what is roughly the western or northwestern edge of the unit. On the Commissioner's drilling unit map attached to Order No. 366-F-8, the approximate northwestern boundary of the unit was labeled "PRODUCTION BARRIER." Although the appellants take issue with both the location of the unit's northwestern boundary, as their property lies outside this boundary, and with its denomination as a "production barrier," we find evidence in the administrative record that supports the Commissioner's findings.

The administrative record states that in attendance at the public hearing, representing the Office of Conservation, were: James H. Welsh, Commissioner of Conservation; Todd Keating, Director of Engineering; Dr. Madhurendu Kumar, Geological Director; Mike Kline, Petroleum Geologist; and Steven Giambrone, Petroleum Engineer. Further, although the appellants state in brief to this court that Frank Cormier was the only "petroleum engineer" to testify at the hearing, the agency's hearing transcript stated that Mr. Cormier was "an expert in petroleum geology (sic)." Furthermore, other witnesses who testified at the agency hearing were identified as "petroleum geologists," and included: David Comeaux, David Sturlese, Bill Clay, and Frank Harrison.

While the Commissioner did not expressly enunciate his reason(s) for choosing to locate the northwesterly boundary of the drilling unit in a position falling between that supported by the appellants and that supported by other landowners (which was originally proposed by Precision), we believe the geologists' testimony, particularly that of Mr. Sturlese, provided a reasonable basis for the Commissioner's decision. In particular, we note

Mr. Sturlese's testimony that a "syncline" separated the structure of the instant reservoir from that of another to the northwest, which had previously been tapped by other wells. Further, Mr. Sturlese's Exhibit No. 3, introduced into evidence at the agency hearing, depicted a "strike" direction that fell along a portion of the northwesterly boundary established by Order No. 366-F-8. Even though the appellants contend on appeal that "production barrier" is not a term that has "heretofore ever been used to describe subsurface geological structures," it is clear that the Commissioner's meaning, in ascribing the term to the northwestern boundary of the drilling unit, was to indicate that the geological structure(s) beyond that boundary of the unit prevented the property outside that boundary from having a share in the reservoir.

Our duty as a reviewing court is to give a full review to the facts of the particular case and determine the validity and reasonableness of the order. If the decision has a rational basis in the administrative record, this court must uphold that decision. Our judicial review requires this court to determine if the order is supported by a reasonable interpretation of the evidence. If so, the order is accorded great weight and will not be reversed or modified in the absence of a clear showing that the administrative action was arbitrary and capricious. **Matter of Dravo Basic Materials Company, Inc.**, 604 So.2d 630, 640 (La. App. 1 Cir. 1992). In the instant case, we find the Commissioner's order is supported by a reasonable interpretation of the evidence; therefore, we find no error.

CONCLUSION

For the reasons assigned herein, the judgment of the district court upholding the decision of the Commissioner of Conservation is affirmed.

All costs of this appeal are to be borne by the appellants.

AFFIRMED.