

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
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COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: PANOAK OIL & GAS CORPORATION)
)
)
RELIEF SOUGHT: RESOLUTION OF POLLUTION COMPLAINTS) CAUSE PD NO. 201100024-T)
)
LEGAL DESCRIPTION: THE LITTLE RANCH)
 SECTIONS 1, 2, 11, 13, 14,)
 23, 24 AND 25, TOWNSHIP 23)
 NORTH, RANGE 12 EAST AND)
 SECTIONS 5, 18, 19, 20, 29,)
 30 AND 32, TOWNSHIP 23)
 NORTH, RANGE 13 EAST AND)
 SECTIONS 31 AND 32,)
 TOWNSHIP 23 NORTH, RANGE)
 24 EAST, WASHINGTON)
 COUNTY, OKLAHOMA)

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF A MOTION TO DISMISS AND/OR STAY**

This Motion came on for hearing before **Curtis Johnson**, Deputy Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 19th day of April, 2011, in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission.

APPEARANCES: **William H. Huffman**, attorney, appeared for applicant, Panoak Oil and Gas Corporation ("Panoak"); **Ira L. Edwards, Jr.**, attorney, appeared for respondent, Mary Jean Little ("Little"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Motion to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions were referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 13th

day of May, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

LITTLE APPEALS the ALJ' recommendation to deny Little's Motion to Dismiss and/or Stay Panoak's application. Little has filed a petition and an amended petition against Panoak in Case No. CJ-2009-05578 in the District Court of Tulsa County alleging that Panoak has caused and continues to cause damage to the surface owned by Little asking for the Tulsa County court and jury to determine damages resulting from the actions of Panoak. Said District Court case has now been transferred to Washington County.

The application by Panoak seeks to determine the location, source and proper remediation of the alleged pollution in order to abate an allegedly continuing pollution. Little alleges that the District Court has jurisdiction to determine all of the issues being asserted in the lawsuit against Panoak. Little cites the case of *Meinders v. Johnson*, 134 P.3d 858, (Okl.Civ.App. 2006) stating that the jurisdiction of the Corporation Commission is limited and the Corporation Commission has no jurisdiction to award damages or determine private disputes arising from mineral production. Only the district courts possess jurisdiction to award nuisance or negligence damages for pollution and cleanup. Little alleges that the Corporation Commission has only concurrent jurisdiction to resolve some but not all of the issues between the parties. Little cites the case of *Booth v. McKnight*, 70 P.3d 855 (Okl. 2003) for the proposition that whenever two courts have concurrent jurisdiction the tribunal that first assumes authority must be allowed to determine the case. Little argues that since the Corporation Commission can at best have concurrent jurisdiction to resolve some of the issues but not all of the issues between the parties, and since the district court action has priority, the Corporation Commission action should be dismissed and the issues resolved in the district court action.

In the alternative, Little asserts that the Corporation Commission has an obligation to stay this application and proceeding pending the outcome of the District Court case which was filed before this Panoak application. See *State of Oklahoma ex rel Cartwright v. Ogden*, 657 P.2d 142 (Okl. 1982). When two courts have concurrent jurisdiction of the subject matter, the Court first acquiring jurisdiction will retain such jurisdiction to the exclusion of the other. Thus, Little asserts the Corporation Commission should dismiss this application since it is not brought by the surface owners but brought in bad faith by Panoak to attempt to interfere and confuse the pending lawsuit in Washington County against Panoak and its nuisance and pollution activities. In the alternative to dismissal, Little asserts that the Commission is required to stay these proceedings pending the outcome in the District Court.

In response to the Motion to Dismiss and/or Stay, Panoak alleges that the landowner Little claims that this is a continuing public nuisance occurring on the Little Ranch. By citing 27A O.S. § 2-6-105 as a basis of relief, Little has necessarily enacted the jurisdiction of the Commission under 17 O.S. § 52 (A)(1)(j), which reads in pertinent part: "Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to: (j) spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities . . ."

Panoak is not asking the Commission to settle a private rights dispute between Panoak and Little. Panoak is requesting this tribunal to determine the location, source and proper remediation of the alleged pollution in order to abate an allegedly continuing pollution. Little has alleged there is a public nuisance on the land. If the landowner is going to allege that a public nuisance has occurred, then the landowner must submit to the jurisdiction of the Commission pursuant to 52 O.S. § 139; *NBI Services, Inc. v. Corporation Commission of the State of Oklahoma*, 2010 OK CIV APP 86, at ¶14, 241 P.3d 685 ("the OCC oversees the conservation of oil and gas and its jurisdiction is limited to the resolution of public rights"). The landowner should not be permitted to allege the applicant is committing a public nuisance and violating the Commission's rules and regulations and at the same time argue that the Commission has no jurisdiction to enforce its rules.

Little relies on *Meinders v. Johnson*, 134 P.2d 858, (Okl.Civ.App. 2006) as authority for its position that the Commission is without jurisdiction to act in this instance. Little is mistaken. The *Meinders* case deals with a party attempting to keep the District Court from exercising jurisdiction. Panoak is doing no such thing. The *Meinders* case is not on point. The case that is most instructive to the Commission is *Union Texas Petroleum Corp. v. Jackson*, 909 P.2d 131, (Okl.Civ.App. 1995) where a party was attempting to keep the Commission from exercising jurisdiction. In the *Union* case, appellant Citation argued that the Commission had no jurisdiction over abatement of a public nuisance. Id. at ¶ 15. In analyzing this argument, the *Union* court recognized the Commission's "jurisdiction, power, and authority to make and enforce rules, regulations, and orders governing and regulating the handling, storage and disposal of saltwater for the purpose of preventing pollution of surface and subsurface waters of this state." Id. at ¶ 17 (citing 52 O.S. § 139). In doing away with Citations' argument, the *Union* court held "[a]lthough the district court does have jurisdiction to hear [a] damages action for nuisance, this does not prevent the Corporation Commission from proceeding to abate the existing contamination." Id. at ¶ 19. The *Union* court stated further: "[t]his is not inconsistent with our holding that [the] Commission may proceed to abate such 'nuisance' including assessment of liability therefore, in accordance with this

State's statutes and court decisions, including the law of nuisance in order to enforce compliance with its rules and regulations duly promulgated to effectuate its statutory duties." Id. at ¶ 24.

Little is essentially requesting the Commission to allow an allegedly ongoing public pollution source to continue unabated while the District Court action is pending. If the "air, land or waters of the state" are being as heavily polluted as the landowner claims, then the Commission must investigate the matter. See 27A O.S. § 2-6-105.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ CURTIS JOHNSON reported that the first contention of Little is that the surface owners were to bring complaints regarding pollution on their land and that it really wasn't for the operator Panoak to bring those alleged complaints to the attention of the Commission. OCC-OAC 165:5-1-25 defines Pollution Complaint as "any communication, whether verbal or written, from any person." Based upon that definition, the ALJ contends that the operator, as well as the surface owner, adjacent surface owner or just another concerned citizen, could bring a complaint to the attention of the Commission.

The second contention by Little was that the District Court and the Commission have concurrent jurisdiction, which the ALJ agrees with. But as a result of this contention, Little further argued that the Commission action should be dismissed or stayed because the District Court's action was filed before the Commission action was filed. Little cites *Meinders v. Johnson*, 134 P.3d 858 (Okl.Civ.App. 2006) in support of their contention. Little urges that the *Meinders* case gave the District Court jurisdiction to hear a nuisance and negligence cause for pollution and cleanup. The ALJ agrees that this is what the language indicates. However, the ALJ believes the *Meinders* case noted that a party may pursue damage claims in District Court concurrently with remediation action before the Commission. The *Meinders* case cited *Schneberger v. Apache Corporation*, 890 P.2d 847 (Okl. 1994) in support thereof. Panoak also provided the case of *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Okl.Civ.App 1995) as further support. The ALJ contends that while concurrent jurisdiction exists between the District Court and the Commission, an action brought by one venue would not preclude a party from seeking relief from the other Court.

The third basis for Little's argument is their cited case of *Booth v. McKnight*, 70 P.3d 855 (Okl. 2003) which gave priority to the court where the application was first filed. The *Booth* case dealt with a quiet title action filed in Lincoln County

after an action was commenced in the Probate Court in Craig County. The Supreme Court held that the District Court exceeded its jurisdiction by usurping the Probate Court's exclusive authority over an estate inquiry concerning a mineral interest title. The ALJ believes this *Booth* case is distinguished from the cause here due to the fact that the Probate Court under Title 58 O.S. § 7 provides that: "The District Court of the county in which an application is first made for letters testamentary or of administration in any of the cases above mentioned, shall have jurisdiction co-extensive with the State in the settlement of the estate of the decedent and the sale and distribution of his real estate and excludes the jurisdiction of the District Court of every other county."

Here, the ALJ contends there is no such statute which could be or has been interpreted to exclude the jurisdiction of the subsequent Court. There is only the Commission's limited jurisdiction to hear oil and gas pollution and remediation matters and the District Court's general jurisdiction. Based on the *Tenneco Oil Company v. El Paso Natural Gas*, 687 P.2d 1049 (Okl. 1984) which quoted *Northern Pipeline Construction Company v. Marathon Pipeline Company*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) the ALJ contends that both courts can maintain jurisdiction with the Commission dealing with issues arising between the government and a person subject to its authority, and the District Court disposing of the private rights disputes between the operator and surface owner. Thus, based upon these conclusions, the ALJ recommends that the Motion to Dismiss and/or Stay be denied.

POSITIONS OF THE PARTIES

LITTLE

1) **Ira L. Edwards, Jr.**, attorney, appearing on behalf of Little, stated that the Amended Petition against Panoak in Case No. CJ-2009-05578 in the District Court of Tulsa County (now in the District Court of Washington County) is an action for pollution damage and also for negligent operation. The District Court case was filed a long time before the Panoak application in the Corporation Commission. The District Court case in Tulsa County was originally filed in July of 2009 while the present application by Panoak was filed in January of 2011 and then refiled in February of 2011.

2) The District Court case filed by Little in Tulsa County is an action for gross negligent operations. There are some royalty claims and some other claims related to royalties due and whether paid. There is also a nuisance claim. There is also in the action for a request for an abatement, an equitable

order seeking abatement of the pollution and also remediation of the pollution with abatement of the activities that caused the pollution. The Panoak application is asking ultimately for the Corporation Commission to first declare that Panoak's operations are proper. The application then asks in the alternative to determine if there is pollution, and if there is pollution to oversee a plan of remediation or reclamation of the pollution problems. With these two remedies asked for at the Corporation Commission by the Panoak application it is clear that most of the legal issues and all of the issues surrounding the pollution claim except for the damage claims are the same as being asked in the District Court now in Washington County. Little has never taken the position that the Corporation Commission does not have jurisdiction to investigate pollution claims and to require them to be fixed.

3) What we are attempting to assert in this Motion to Dismiss and/or Stay is that because we have these requests in the District Court now in Washington County to enter an injunction against the nuisance and enter an injunction against the activity that is causing the pollution and to also order a remediation of that damage, they are exactly the same issues and relief requested as in the Panoak application.

4) The issue therefore is one of concurrent jurisdiction. Little believes there is concurrent jurisdiction and that there are a lot of cases that deal with this concurrent jurisdiction idea. The District Court case that is filed first is generally the action that will proceed. If one is filed in one county, then the first one filed is generally the case that will proceed, with the second case being filed, where there are the same common questions of law, common questions of fact, the second case filed is required to stay their proceedings until the outcome of the first case filed is accomplished.

5) The Panoak application was not brought by the surface owners. Surface owners pick the form that they are asking for. The EXCO Resources Inc. case here at the Oklahoma Corporation Commission, PD 201000115 turned on the idea that even though there were some common issues of facts that there wasn't a possibility or probability that there could be differing and inconsistent results with the District Court judgments in that case. Little clearly believes that the claims made in the Amended Petition in the District Court by Little are very similar and therefore there is a very real possibility there would be and could be conflicting and differing results based on the same facts. If the Commission were to investigate the pollution claims that are prevalent or appear in this application before the Commission and determine it in a different way than the District Court or a jury in the District Court might determine it, there would be a serious potential for conflict of decisions.

6) Judicial economy is the policy behind these cases that involve the well established rule that when two district courts have the same claims, the first one filed will continue and the second action will be stayed pending the

outcome of the first case. These cases are well established and I think it should apply in these facts in this case and in this instant.

7) In Little's District Court case there is a claim that there is pollution. There is a claim that there is a need for a nuisance injunction because the pollution is continuing and it has continued for a long time. The District Court case has been pending for a long time and the plaintiffs have spent a considerable amount of money on expert witness fees. In the District Court case Panoak has taken the position and claims that there is no pollution. Panoak claims they have done nothing wrong and that they have conducted their operations properly in accordance with the rules of the Commission and with the prudent operator standards.

8) Since this is a case concerning the issue of concurrent jurisdiction the Commission should as the case authority states that the second filed requested relief should be stayed, the Commission should at least stay the proceedings until the District Court case has been finalized.

PANOAK

1) **William H. Huffman**, attorney, appearing on behalf of Panoak, stated that the ALJ very clearly and meticulously addresses the issues that were raised by Little in support of this Motion to Dismiss and/or Stay and sets forth his reasoning.

2) Little's District Court case filed in Tulsa County in July of 2009 states in its petition that Panoak has in the past and continues to allow oil and saltwater to spill on Little's land, to flow across those lands into the ground water of Little's real estate. They also allege that Panoak has failed to comply with provisions of 52 O.S. § 296 by, among other things, allowing refuse from tanks and wells and saltwater to flow over the surface of Little's land. Little also asserts in the Petition in paragraph 13 that Panoak "has released and continues to release hazardous substances on Little's property and continues to violate this statute."

3) Operators are required to notify the Corporation Commission if there have been any incidents of releases. Anybody, including an interested citizen, can bring a pollution action before the Commission for an investigation. This very issue has been addressed previously in PD 201000115, the EXCO Resources Inc. case. In the EXCO case the Nelson family came before an ALJ and asked that the Commission proceedings be stayed until their District Court case in Grady County could be decided. This is the same thing that Panoak is seeking in the present case-to have this particular proceeding

stayed. The Nelsons in the EXCO case made the very same arguments that Little is making today. In the EXCO case the Appellate Referee came to the conclusion that there is no basis for the Commission to invoke the doctrine of concurrent jurisdiction as a basis to request a Motion to Stay action. Further, the Appellate Referee found that the Commission had jurisdiction over the matters encompassed by EXCO's application, i.e. remediation of the soil and alleged water pollution, and the District Court had jurisdiction over the Nelsons' claim for monetary damages, i.e. arising from the trespass or nuisance. The Appellate Referee therefore in the EXCO case affirmed the ALJ's decision denying Nelsons' Motion to Stay.

4) This is not a new issue before the Commission. In PD 980000290, a Texaco Exploration and Production Inc. case, the Commission heard the exact same arguments and denied the attempts to Stay or Dismiss the Commission's jurisdiction or proceedings requesting a Plan of Remediation covering the Velma Simms Sand unit where there had been a district court case that had been filed.

5) What should also be kept in mind is that this District Court action by Little was filed first in Tulsa County. Between the hearing on this motion and today it was refiled in the proper jurisdiction in Washington County. It has been two years and there's been nothing done to stop this apparently ongoing pollution that's occurring out there on the property. Panoak wants to see if there is some pollution out there and wants to clean it up. We believe this Commission has the jurisdiction and in fact has the duty to proceed forward in this particular case. The denial of the Motion to Stay or Dismiss the cause we believe was proper and should be affirmed.

RESPONSE OF LITTLE

1) In the Report of the Oil and Gas Appellate Referee in the EXCO Resources case on the Oral Exceptions of a Motion to Temporarily Stay proceedings, there is a statement on page 10 in about the middle part of paragraph two that the Referee agrees with EXCO's determination in the two pending proceedings, while involving some similar fact issues, raised entirely distinct legal issues. In the EXCO case the Nelsons are basically seeking trespass and nuisance damages to which the District Court can give relief but the Commission cannot give relief. In the present Panoak case I don't think that we can say the same thing. Little believes that there is exactly the same relief requested in the District Court proceeding for the abatement of the nuisance and injunction by the Court for remediation to stop the pollution as there is in the Commission case. Panoak in its application is asking for exactly the same thing.

2) Little is not sure this is important but the lawsuit in Tulsa County was not dismissed by the Court, the lawsuit was transferred. After a year or so, and after the additional defendants were brought into the case, one of those defendants filed a Motion to Transfer the case to Washington County under a statute that they cited and the District Judge decided to transfer the whole case. It wasn't dismissed and refiled, it was simply transferred under the District Court rules.

3) The parties should not lose sight of the fact that this is the Plaintiff's/Little's property. Little's property is the one that is being damaged. The failure of the operator to do anything about these problems and this pollution has required Little to go to the District Court. If the District Court decides, as Panoak's position is, that Panoak has done nothing wrong and there is no pollution then that decision can be made in District Court and the Commission won't need to investigate anything. If there is no pollution or ongoing pollution then that would be the decision for the District Court to make.

4) Under the cases cited by Little where the first filed case proceeds, Little thinks that the Commission should stay any proceedings concerning the application of Panoak. Panoak takes the position that there was no pollution in their application, which is another difference and distinction in the EXCO case. There was definitely pollution in the EXCO case, but Panoak says here that there is none on this property.

5) Little believes that under the case law and the fact that the exact same relief is being requested legally and factually in the District Court case, there is just such a potential for different results and a problem that shouldn't be presented until one forum decides these issues. Under the law, the District Court should be the first case that decides these issues.

RESPONSE OF PANAOK

1) In Little's District Court petition they allege breach of contract, constructive and actual fraud, negligence and gross negligence, nuisance, and punitive damages. The prayer for relief in the District Court petition further seeks "Panoak to abate the soil and groundwater pollution and abate the activities causing such pollution." The EXCO case is therefore applicable in the present case and therefore the ALJ properly denied Little's Motion to Dismiss and/or Stay.

CONCLUSIONS

The Referee finds that the Oral Report of the Administrative Law Judge should be affirmed.

1) 17 O.S. Section 52(A)(1)(j) states:

Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to: ...j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,...

2) Panoak in the present case is asking the Oklahoma Corporation Commission to determine the location, source and proper remediation of the alleged pollution asserted by Little in order to abate an allegedly continuing pollution. Little in their District Court case has asserted that "Panoak has failed to comply with the provisions of 52 O.S. Section 296 by among other things allowing refuge from tanks and wells and saltwater to flow over the surface of Little's land." Little is also allegedly in its District Court case that:

13. Pursuant to 27(A) O.S. § 2-6-105, it is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any waste in locations where they are likely to cause pollution of any air, land or waters of the state. Panoak has released and continues to release hazardous substance on Little's property and continues to violate this statute.

14. This pollution problem has continued and continues to exist and the flow of contaminated groundwater has caused and it continues to cause contamination of the soil and groundwater of Little's property. Little has incurred damages and, until the contamination and its source are rectified, will continue to incur damages to her property."

3) Thus, Little is asserting that a public nuisance has occurred and a public nuisance concerning pollution is subject to the jurisdiction of the Oklahoma Corporation Commission pursuant to 52 O.S. Section 139 which states:

A. The Corporation Commission is vested with exclusive jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules and orders governing and regulating the handling, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells and brine wells within the state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

4) In the context of private oil and gas rights there is "long-standing Oklahoma law recognizing district court jurisdiction to provide a remedy for damages based on common law theories of recovery, such as private nuisance and negligence." *NBI Services, Inc. v. Ward*, 132 P.3d 619, 626 (Okl.Civ.App. 2006).

5) In the present application Panoak does not assert the Oklahoma Corporation Commission has jurisdiction over Little's claims for monetary damages which are pending in the District Court action. Panoak asserts that the Commission has jurisdiction over the matters encompassed by Panoak's application (remediation of soil and alleged water pollution). Little in its District Court action is seeking an award of monetary damages for breach of contract, constructive and actual fraud, negligence and gross negligence, nuisance and punitive damages. Panoak in its application here seeks approval of a plan of remediation operations which is the jurisdiction of the Commission. See 17 O.S. Section 52 and 52 O.S. Section 139(B)(2) which give the Commission jurisdiction over site remediation.

6) The case of *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Okl.Civ.App. 1995) stands for the proposition that "the Corporation Commission has the jurisdiction, power and authority to make and enforce rules, regulations and orders governing and regulating the handling, storage and disposal of saltwater for the purpose of preventing pollution of subsurface waters in this State. *Id.* at ¶17 (citing 52 O.S. Section 139). However the proper forum for Little to recover damages for nuisance caused by encroaching saltwater is in District Court. *Greyhound Leasing and Financial Corporation v.*

Joiner City Unit, 444 F.2d 439 (10th Cir. 1971); *Harper-Turner Oil Company v. Bridge*, 311 P.2d 947 (Okla. 1957). The District Court has jurisdiction to hear Little's damage action for nuisance. This does not however prevent the Corporation Commission from proceeding to abate the existing contamination. The Court states in *Union Texas Petroleum Corporation v. Jackson*, supra at page 133 that "Commission may proceed to abate such "nuisance", including assessment of liability therefore, in accordance with this State's statutes and court decisions, including the law of nuisance in order to enforce compliance with its rules and regulations duly promulgated to effectuate its statutory duties." *Id.* at ¶24.

7) Case law provides that a party may pursue a damage claim in District Court concurrently with a remediation action before the Corporation Commission. *Schneberger v. Apache Corporation*, 890 P.2d 847 (Okla. 1994). The Supreme Court in the *Schneberger* case states:

It was further agreed that Apache would request the Oklahoma Corporation Commission (Commission) to stay further proceedings regarding a Commission mandated cleanup. However, the Commission exercised its exclusive jurisdiction on pollution matters and ordered a cleanup. Pursuant to the agreement, if the Commission action was not stayed, the parties agreed to be subject to its regulatory requirements. The action was not stayed. The Commission has maintained jurisdiction and monitored Apache's progress. Apache continues to be subject to the cleanup plan approved by the Commission. Apache has spent significant sums implementing the cleanup plan ordered by the Commission.

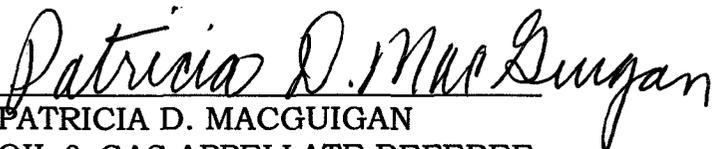
8) The *Meinders v. Johnson* case, 134 P.3d 858 (Okla.Civ.App. 2006) states:

¶ 28 As the Tenth Circuit has noted, however, "Oklahoma courts have not yet decided that a district court lacks all jurisdiction to order a cleanup when the [Corporation Commission] has not yet exercised its jurisdiction." *Bowen v. Amoco Pipeline Company*, 254 F.3d 925, 937-938 (10th Cir. (Okla.) 2001). On consideration of the above-cited authorities, we hold the district courts of Oklahoma possess jurisdiction to order cleanup.

Thus, the *Meinders* case states that the district court can not order cleanup if the Corporation Commission has exercised its jurisdiction, which it has in the present Panoak application.

9) In the present case for the reasons stated above the Referee finds that the Commission has jurisdiction over the matters encompassed by Panoak's application, i.e. remediation of soil and alleged water pollution and the District Court has jurisdiction over Little's claims for monetary damages, i.e. arising from breach of contract, constructive and actual fraud, negligence and gross negligence, nuisance, and punitive damages. Accordingly, the Referee affirms the decision of the ALJ to deny Little's Motion to Dismiss and/or Stay.

RESPECTFULLY SUBMITTED THIS 21st day of June, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
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