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BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

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<u>APPLICANT:</u>	PANOAK OIL & GAS CORPORATION)	COURT CLERK'S OFFICE — OKC
)	CORPORATION COMMISSION
)	OF OKLAHOMA
<u>RELIEF SOUGHT:</u>	RESOLUTION OF POLLUTION COMPLAINTS)	CAUSE PD NO.
)	201100024-T
)	
<u>LEGAL DESCRIPTION:</u>	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
ORAL EXCEPTIONS TO A MOTION FOR INTERROGATORIES
AND MOTION FOR PRODUCTION OF DOCUMENTS**

These Motions came on for hearing before **Curtis M. Johnson**, Deputy Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 30th day of August, 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"); **Ron M. Barnes**, attorney, appeared for respondent, Mary Jean Little and Buddy Edwards, Jr. (collectively "Little"); **Keith Thomas**, Assistant General Counsel, appeared for Conservation Division of the Oklahoma Corporation Commission; 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 Motions for Interrogatories and Production of Documents to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 14th day of October, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

PANOAK APPEALS the ALJ's recommendation to deny Panoak's combined Motion for Interrogatories and Production of Documents.

The property being affected by the oil and gas operations of Panoak, is located in parts of T23N, R12-14 East, Washington County, Oklahoma.

Panoak is the owner of a portion of the working interest in the oil and gas leases which cover the property. Mary Jean Little is the surface owner on a portion of the land on the Panoak's oil and gas operations.

The subject oil and gas leases have produced certain quantities of oil and gas and Panoak alleges that substantial additional reserves of oil and gas will be recovered in the event of the continued operations of these oil and gas leases.

Mary Jean Little has made various pollution complaints concerning the oil and gas operations of Panoak on the oil and gas leases and which allegations are specifically stated in her petition which was filed in the District Court of Tulsa County Oklahoma in Case No. CJ-2009-05578. Little has not identified the areas of the property which she considers have been damaged by Panoak's operations, or are in need of remediation and cleanup. Panoak, requests that Little, specifically identify any areas in which she considers that pollution has occurred on the oil and gas leases so that an investigation could be made under the direction of the Commission concerning such allegations.

Upon identification by Little, of the areas of her pollution concerns from the oil and gas operations of Panoak on the property, the Commission would then conduct an investigation concerning the alleged pollution which has occurred on the property. However, such inspection by the Commission should only be required after Little has specifically identified to the Commission the areas where she considered that pollution has occurred.

Panoak is requesting that the Commission determine the necessary course of any remediation which is required or clean-up that is necessary concerning the

property. Further, if the property is deemed to require remediation by the Commission in order to become in compliance with the rules and regulations of the Commission, then an Order should issue defining the remediations required to be performed by Panoak.

In the absence of the granting of this requested relief, Panoak would have to abandon and terminate the operations of the subject leases and it would affect all of the other parties and entities which are sharing in the production of oil and gas from these oil and gas leases. Further, in the interest of the prevention of waste and the protection of correlative rights, it is imperative that the relief requested by Panoak be granted. In addition, this will provide Panoak, and any other agency having jurisdiction over this oil and gas spill, the right to participate in the proper course of remediation for the property.

PANOAK TAKES THE POSITION:

1) Panoak is requesting a Resolution of a Pollution complaint. Panoak believes it is incumbent upon the Commission to go out and investigate such complaints and identify what remediation actions might need to be taken regarding the alleged pollution activities or those that exist on the property itself. Panoak notes this is a very large ranch of nearly 10,000 acres which makes it impossible for a party to simply walk across the property and identify any apparent pollution problems. The interrogatories being sought would allow Little to locate the places where any contaminates may have been spilled, escape or ran across onto Little's property. Panoak wishes that any found occurrences be properly remediated. Panoak has asked for Little to provide Panoak any and all complaints made by Little about the Panoak operated wells in the area and to provide any environmental assessments Little may have hired for their property with regard to the alleged pollution. Panoak would want the results of any assessments regarding pollution or environment requests made by Little by outside parties.

2) Panoak believes that their requested interrogatories are necessary in order for the Commission to make a thorough investigation if any pollution exists on the property that warrants remediation action taken by Panoak. Panoak claims that Little merely asserts the whole property is polluted without any specifics or documentations with which Panoak can investigate the alleged pollution in order to resolve the problems here. Panoak would request that the specific interrogatories be issued along with any required documents related thereto produced to Panoak in a reasonable timeframe. Further, Panoak would request that Little be required to answer such interrogatories and produce supporting documents.

3) Little alleges they have never complained to the Commission about Panoak's operations, hence no documents are available. Little notes that Panoak operates 80 plus wells on this ranch. Little notes that Panoak is

wanting the Commission to make rulings on their relief request despite Little never having complained to the Commission.

4) Little notes there is a district court case ongoing related to this property. Little points out that this district court case can exist at the same time that the Commission filing of Panoak is being processed without causing conflict. Little notes that Panoak can attempt discovery through the District Court as well, which is where it properly lies, not at the Commission. Little owns the property at issue here. Little has filed their appropriate court action at the proper court, being District Court of Washington County.

5) Panoak noted that the Commission had requested Panoak to find the specifics on where this alleged pollution is located on this 10,000 acre ranch. Panoak does not know if any Commission field inspectors have contacted Little about the alleged pollution. Panoak noted that there had been a discussion about the appropriate procedure for contacting the Bristow district field office regarding alleged pollution on the Little's property. Panoak stated that Panoak had not been furnished any documents that indicated Little had filed an official complaint with the Commission.

THE ALJ FOUND:

1) The Court noted that the Commission has the right to make investigation of such alleged pollution yet not certain if it was incumbent upon the surface owner to be subject to interrogatories and depositions if the field inspectors have not even contacted the surface owners about this matter.

2) As opposed to having applications filed at the Commission, one would go to the field office concerning the pollution allegations and then the field inspectors would be charged with investigating.

3) Panoak acknowledged there was a lawsuit ongoing concerning releases of saltwater and hydrocarbons upon the Little's property. The Court stated that the field inspector would need to be involved for that particular county and discuss the matter with the surface owner. Then if the Commission reports back there is no existing pollution, then Panoak could take that information to their District Court case.

4) The Court asked if the Commission field inspectors had ever contacted the surface owners here, to which Panoak could not answer. The Court agreed with Panoak in that it is the Commission's responsibility to do any pollution investigation, not Panoak. The Court noted that the Panoak requests for interrogatories and production of documents is a bit extreme under the circumstances here where no field inspector has been involved. The Court noted that it is a field inspector's duties to investigate allegations of pollution

per the Commission rules regarding wells. The Court believes the Motion is premature.

5) The Court found that a pollution violation falls under the Commission's jurisdiction and the Commission needs to look at the allegations. At this point in time, it is unknown whether the field inspectors have taken any type of action here. The Court is concerned that this request of Panoak may be a fishing expedition for matters not related to the Commission filing, i.e. the district court case. The Court notes that if the Commission would find there was no pollution on the property, it could report to Panoak so they can take that to District Court. Panoak could merely point out to the District Court that the Commission had found no alleged pollution if that were the facts. The Court believed the matters herein are really for district court to resolve, not the Commission.

POSITIONS OF THE PARTIES

PANOAK

1) **William H. Huffman**, attorney, appearing on behalf of Panoak, stated that this cause concerns resolution of pollution on the Little property. Mary Jean Little has alleged that there is pollution on her 10,000 acre ranch. Panoak brought this cause, the resolution of the pollution complaints in order to allow the Corporation Commission and all parties to go out on the property and discover where the pollution is alleged to have occurred and remediate it as quickly as possible. Little has alleged that there is ongoing pollution and Panoak has attempted to find out where this pollution occurs, but the area in question, the Little ranch, covers 10,000 acres. Panoak filed the Motion for Interrogatories and Production of Documents asking basically where is this pollution and where is this ongoing pollution and where are these public nuisances that Little has claimed in the District Court case.

2) Title 12 O.S. Section 928 addresses public nuisance and says where you allow deleterious substances to flow across property that constitutes a public nuisance.

3) Panoak requested the interrogatories and production of documents so that they could obtain any reports from Little's experts that described what and where the pollution was occurring. This is necessary so that the Corporation Commission field inspectors can look at it and remediate it if necessary. Little has objected to this stating that Little should not have any obligation whatsoever to tell you where any pollution has occurred. Little alleges it is Panoak and the Commission's job and duty to go out on the property and search and locate the pollution themselves. Considering the size of the ranch

being 10,000 acres, it would certainly require a huge amount of effort on Panoak's and the Commission's part to have the field inspector looking everywhere on these 10,000 acres for the pollution.

4) The other issue that was brought up was there was an ongoing district court case filed in Tulsa County which was dismissed and subsequently refiled in Washington County. The Commission has jurisdiction over this pollution issue and this particular cause can go forward. The rules of the Commission provide for discovery. It is irrelevant as to whether this is the type of discovery that you would utilize in district court. The discovery that Panoak has requested is relevant to the issues in the present case. What is relevant is that in the present Commission case Panoak has asked Little where is the pollution. When Little contends there is a public nuisance that has been created under 12 O.S. Section 928, what is this public nuisance and where is this pollution located. If Little has documents from their experts where they believe pollution has occurred or is continuing to occur, then it is relevant as then the field inspectors and Panoak can go out and see if remediation is necessary. Also, it gives Panoak the opportunity to determine whether this is historical pollution. It is germane and pertinent and regardless if it is the same thing we can ask for in the district court, it is also allowed at the Corporation Commission. This Oklahoma Corporation Commission has jurisdiction as it has the issue before it and this particular discovery request is germane to the issues in the present case and Panoak is entitled to this discovery. Therefore, the combined Motion for Interrogatories and Production of Documents by Panoak should be granted.

LITTLE

1) **Ron M. Barnes**, attorney, appearing on behalf of Little, stated Little has done nothing at the Commission concerning this pollution. Little is a property owner and Panoak operates the 80 wells contained on the Little ranch. If they want to take the Commission inspector out to the Panoak wells and then the Commission can come back and say there is no pollution, then that's okay. Panoak can not now bring Little into something that they have had nothing to do with and it is up to Panoak to present the evidence of pollution or not. Let the Commission inspector inspect the property and if they find something, then that's fine. If they don't find something, then Little is taking this risk in their district court case. The ALJ's decision and transcript presents Little's position and Little relies on what was argued before the ALJ concerning the Motion for Interrogatories and Production of Documents.

2) The ALJ did refer to a previous case that he had been involved in that had similar issues and was handled the same way by having the Commission go out and review the property, the Uplands case. It is inappropriate for the

surface owner to be dragged into the present case and make them do the discovery when Little has not even asked to be a party in the present case. The inspection has not even been made by the Commission. The Littles have not even made a complaint. The Commission needs to investigate and make a determination themselves as to the alleged pollution. It is making the Littles do a lot of things not necessary based on the fact that they have not participated in anything at the Commission.

CONSERVATION DIVISION

1) **Keith Thomas**, attorney, appearing on behalf of the Conservation Division, stated that the Commission has jurisdiction over any kind of oil field pollution and any pollution that does exist on the Little property. The Commission is very interested in locating it and any information that would help locate said pollution is in the interest of the Corporation Commission. It would help the Commission if Little has made an investigation and could point out to the operator where the pollution is for remediation.

RESPONSE OF PANOAK

1) Mr. Huffman stated further that there is no Uplands procedure that Panoak is aware of. There are no rules or anything out here at the Commission as to this is the way it is done. The fact that the ALJ had the inspector look at and find the pollution in that case before the application was filed is that particular case and not the present case.

2) When Little says that they are being dragged into this case, remember that Little has alleged that there is ongoing pollution out there on their property. They are alleging the property has been polluted by oil field activity. In order to make those allegations Little has to have some knowledge where this ongoing pollution is located or where this pollution has occurred and exists on their property. They are here because they have made these allegations in district court and this is something that the Corporation Commission has a statutory duty and jurisdiction to go out, once these allegations have arisen, and investigate and determine what's necessary. The Corporation Commission has discovery rules in order to assist Panoak and the Commission in these particular cases.

RESPONSE OF LITTLE

1) Mr. Barnes further stated that the Oklahoma Corporation Commission has not requested this discovery. This has not been an application for discovery by the Oklahoma Corporation Commission.

CONCLUSIONS

The Referee finds the Report of the Administrative Law Judge should be reversed and the Combined Motion for Interrogatories and Production of Documents should be granted.

1) OCC-OAC 165:5-11-1(b) and (c) provide:

(b) Production of documents.

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the cause, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required...

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure

except where directly relevant to the issues in the cause.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(c) Interrogatories.

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required...

2) The Referee finds the ALJ's oral determination to recommend denial of Panoak's Combined Motion for Interrogatories and Production of Documents should be reversed as being contrary to law, the Commission rules and the hearing procedures set by the Commission rules of practice.

3) Generally, when the Commission rules are not specific, the Commission procedures for discovery matters follow the Oklahoma Code of Civil Procedure. 12 O.S. Section 3226, the General Provisions governing Discovery, provides in relevant part:

A. DISCOVERY METHODS; INITIAL DISCLOSURES.

1. DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written

questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Except as provided in this section or unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL.

a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence

4) Little asserts that Panoak is the operator of approximately 80+ wells on this particular 10,000 acre Little ranch. Little asserts that the Corporation Commission should be the one that investigates whether or not there is pollution. Panoak wants the Commission to make a determination what sort of remediation or cleanup is required. It is Panoak that has gone to the Commission requesting that Panoak be declared as record operator to properly operate the oil and gas leases and should any remediation and/or cleanup be required that the Commission specify what remediation measures are needed. Little asserts that they have not complained to the Commission and have never gone to the Commission to determine what pollution has occurred and what remediation is required. Mary Jean Little is the owner of the property and has

gone to District Court complaining that Panoak's conduct constitutes a public nuisance pursuant to 27(A) O.S. Section 2-6-105. Little claims that the District Court is where discovery should be done for the complaints that Little has brought against Panoak and in the present case Panoak should be required to go out to their 80 wells that they operate and have the Commission investigate and come up with a determination.

5) While it is true that Little has never complained to the Commission concerning the alleged pollution caused by Panoak, the Commission however is given exclusive jurisdiction on the remediation and abatement of pollution resulting from oilfield activities within the State of Oklahoma. 52 O.S. Section 139. There is a large-public interest matter at stake concerning the protection of the state surface and subsurface waters.

6) Under 17 O.S. Section 52 and 52 O.S. Section 139 the Corporation Commission is vested with exclusive jurisdiction, power and authority to pursue remediation for the purpose of preventing the pollution of the surface and subsurface waters in the State. Said power is not limited to the site upon which the activities occur but extends to any lands polluted in connection with the drilling, development, producing, and operating of oil and gas wells and brine wells within the State. *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Okl.App. 1995). When the Commission is protecting public rights by remediating pollution through the use of the police power of the State, private rights must yield to the extent necessary to accomplish the legitimate objective. *Grison Oil Corp. v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).

7) Panoak in the present case is asking the 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. The Tulsa County District Court case brought by Mary Jean Little, which apparently has now been transferred to Washington County, 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 salt water to flow over the surface of Little's land." Little also alleged in the Tulsa District Court case, CJ 200905578 that:

13. Pursuant to 27(A) O.S. Section 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 ground water 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.

15. Panoak has continually refused to cease such pollution causing activities and to abate, pay for and accept responsibilities for its actions.

8) Consequently, Little is asserting that a public nuisance has occurred. 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 salt water, 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 this 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.

9) It is clear that the data sought by Panoak from Little constitutes a request for discovery regarding matters that are not privileged and are relevant to the subject matter involved in the pending Panoak application. The request is in accordance with the Commission's discovery rules and the civil rules of procedure regarding discovery.

10) Since Little has brought the action in District Court it can be assumed that Little would have ascertained the location of the alleged pollution by Panoak's wells and it would certainly be economical, both timewise and moneywise, for Little to disclose where such pollution has occurred rather than requiring the Corporation Commission to investigate 10,000 acres and 80+ wells. The answers to these discovery requests by Little will help the Oklahoma Corporation Commission field inspector to determine where and if said

pollution is occurring. The Commission then can pursue its duty and power to remediate and abate any pollution that has occurred on the Little property.

11) Therefore, the Oral Report of the ALJ should be reversed and the Combined Motion for Interrogatories and Production of Documents should be granted.

RESPECTFULLY SUBMITTED THIS 1st day of November, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Curtis M. Johnson
William H. Huffman
Keith Thomas
Ron M. Barnes
Office of General Counsel
Michael L. Decker, OAP Director
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