

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: DON W. TUCKER)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: S/2 SECTION 15, TOWNSHIP)
11 NORTH, RANGE 6 EAST,)
POTTAWATOMIE, COUNTY,)
OKLAHOMA)

CAUSE CD NO.
201000867

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Paul E. Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 24th day of February, 2011, at 8:30 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Charles A. Adams**, attorney, appeared on behalf of applicant, Don W. Tucker ("Tucker"); **Ron M. Barnes**, attorney, appeared on behalf of New Dominion, LLC ("ND"); and **Sally Shipley**, Deputy General Counsel, and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, appeared for the Corporation Commission.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 23rd day of March, 2011, to which Exceptions were timely filed 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 12th 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

TUCKER FILED EXCEPTIONS to the ALJ's recommendation that pooling Order No. 500663 met federal and state minimum due process requirements

and is valid and not void and effective as to Ms. Opal Betty West's ("West") interest because she confirmed the order by her later evidencing a clear understanding and acceptance of the pooling order by effectively ratifying and confirming the pooled order as to her interest. The ALJ further found that Tucker stands in the shoes of West and is bound by the pooling Order No. 500663. The ALJ found that West's due process rights were met and were sufficient to satisfy constitutional requirements.

ND drilled a well pursuant to Order No. 500663 which issued on February 2, 2005 and it has produced for several years. This application listed West as respondent #27 with an address of 2029 Glenview Street, Philadelphia, PA 19140. West's notice mailing was returned to ND. Although the subject property was located in Pottawatomie County, notice by publication was in the paper of record for Seminole County. Tucker filed a pooling application in CD 201000867 for the same property as has been pooled representing that he acquired West's interest and alleging that said interest had not been pooled. ND filed a motion to dismiss. The ALJ recommended granting the ND motion because the original pooling remained in full force and effect as to West's interest and West's due process rights were met and were sufficient to satisfy constitutional requirements.

TUCKER TAKES THE POSITION:

(1) Notice was not reasonably calculated to apprise Respondent of the pending pooling Application. The original notice of pooling in Cause CD-200401337-T and the second Notice of Pooling mailed to West in Cause CD-200408866-T were returned as unclaimed or unknown. Both mailings contained the incorrect address of 2029 Glenview Street, Philadelphia, PA 19140. Further, both mailings contained the wrong zip code. The correct zip code was 19141. The correct address for West since 1999, some five years prior to the pooling applications in both causes, was the address of 8900 Roosevelt Avenue, Philadelphia, PA 19141. Coupled with the fact that ND published in Seminole County rather than Pottawatomie County there was no way notice of the pooling was reasonably calculated to give the respondent notice and the opportunity to be heard. See *State ex rel. Christian v. McCauley*, 193 P.3d 615 (Okla.Civ.App. 2008) citing the case of *Mullane v. Century Hanover Bank & Trust Company*, 339 U.S. 306, 314 (1950) which held that, "Notice...must be reasonably calculated, under the particular circumstances of the case, to apprise interested parties of the pooling action."

(2) The constitutional violation was not cured by subsequent actions of the parties. The Report of the ALJ fails to address whether West's Constitutional due process rights were adversely affected by lack of notice and the failure of ND to publish in the proper county. The violation of due process cannot be

cured after it has already taken place and the damage inflicted. West was never accorded proper notice and the opportunity to be heard at the time the pooling took place. Any subsequent actions, five or six years after the fact does not cure the original violation. The ALJ relied upon the case of *Kincaid v. Black Angus Motel*, 983 P.2d 1016 (Okla. 1999) which dealt with the voidability of contracts and not whether subsequent actions cured constitutional violations. Apparently there is not a case directly on point which has been decided by the Oklahoma Supreme Court. The ALJ made an analogy to the above referenced case based on contract law and Constitutional law, concerning ratification of a prior adjudication.

(3) The ALJ exceeded authority granted by Remand Order No. 579022. The ALJ exceeded the bounds of the jurisdictional authority granted to the Oklahoma Corporation Commission by ruling on the ND's oral Motion to Dismiss the Pooling Application for lack of standing of Tucker at the hearing on remand. The Motion to Dismiss for lack of standing effectively circumvented Tucker from presenting his case on remand. ND's motion was outside the scope of the remand ordered by the Commissioners and further, falls within the sole purview of Pottawatomie County District Court jurisdiction.

(4) The ALJ exceeded the jurisdictional authority by ruling on matters of equity between the parties, namely: ND, West and Tucker. The issue of whether an oil and gas lease is valid or constitutes a cloud on title is something properly tried before the District Court not the Commission as is the determination of ownership.

(5) The ALJ misunderstood the testimony of Fred Buxton, General Counsel for ND where he states on cross examination that he did not check the Pottawatomie County records for Tucker's lease. He also stated he did not check the records for the allegedly unrecorded non-notarized assignment purportedly from West to her two daughters which ND relied upon in their Motion to Dismiss for lack of standing of Tucker in this matter.

(6) The ALJ failed to consider that Tucker was a bona fide purchaser for value at the time he acquired the interest from West which was prior to her accepting any bonus and royalties from the Oklahoma unclaimed property fund. No evidence was presented as to the date that West actually received the bonus and royalty monies from the unclaimed property fund. Nor was there any showing that West or her two daughters are in pay status from ND. West's interest in the S/2 of Section 15, T11N, R6E is not bound by pooling Order No. 500663. The ALJ Report states that ND's witness, Fred Buxton, admitted that it was possible that Tucker was unaware of the assignment when he leased his interest from West.

(7) Tucker respectfully requests that the Commission enter an Order in the above styled and numbered cause reversing the ALJ; finding that West's interest was not previously pooled by Order No. 500663; granting the pooling application of Tucker; and for such other and further relief to which Tucker is entitled under the law and facts.

THE ALJ FOUND:

(1) The "lands embraced" are in Pottawatomie County and the Seminole Producer newspaper is published in Seminole County (the adjoining county). Generally, the order would be void or voidable, meaning it would be void as to unknown respondent West and any successor in interest to her. Contracts are voidable and without judicial recognition where they are entered into without the knowledge and consent of the party whose interests would thereby be injuriously affected. However, ratification or adoption has been found in cases where a party has accepted the benefits of a contract, whether void or voidable with full knowledge of the facts at a time when the accepting party was fully competent and capable of contracting for himself. See *Kincaid v. Black Angus Motel*, 983 P.2d 1016 (Okl. 1999).

(2) In these specific circumstances several factors mitigate against a void or voidable finding. OAC-OCC 165:-5-7-1(i) states: "(S)ervice prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order."

(3) This is a case of defective notice and there is considerable evidence that diligent effort was made to locate the unknown respondents. West, at some point, acquired knowledge of the pooling and took sufficient measures to protect her interest. Since West's due process rights were satisfied there is no reason to allow a collateral attack on an otherwise valid Commission order. See *Pettis v. Johnston*, 190 P. 681 (Okl. 1920). The whole point for due process is to protect all interests in the litigation. The Commission rule requiring publication in the proper county is to insure due process, but in the instant cause, West's due process rights were fully realized by the pooling procedure and cured by later acquired actual knowledge.

(4) At some point during the well's production West acquired knowledge of the pooling and its effect on her because she hired an attorney to collect monies owed. She received the requested sums. West suffered no detriment because publication was had in the wrong county. West lives in Pennsylvania. Publication in Pottawatomie County is hardly more effective notice to West than is publication in Seminole County.

(5) Considering the totality of the circumstances, the over 90 years of Oklahoma case law, the equities involved (especially since West suffered no harm), and that she accepted full benefit of the pooling order (evidencing a clear understanding and acceptance of the pooling order, effectively ratifying and confirming the pooling order as to her interest), the ALJ believed the notice that was given together with the subsequent actions of West subject her to the pooling terms and do satisfy due process. There was no evidence, argument or implication that West was other than fully competent during the entire relevant time period.

(6) The ALJ therefore recommended that the Commission find pooling Order No. 500663 met federal and state minimum due process requirements and is valid and not void. West's interest was pooled at that time and remains pooled to the present. For the aforementioned reasons and after taking additional evidence and argument under consideration the ALJ recommended the ND Motion to Dismiss Tucker's pooling application should be granted because sufficient notice was provided for issuance of Order No. 500663. A pooling cannot be granted concerning interests already pooled.

(7) Even assuming West's interest is found as not pooled, it remains unknown whether Tucker has standing to bring his application for pooling until a title dispute is resolved in District Court. The issues raised by an unfiled assignment of interest to West's daughters and a filed lease with Tucker are issues properly before District Court in a quiet title action.

(8) The specific facts **and** actions in this matter, along with application of law, show West was not **deprived** of her due process rights and West's interest is pooled.

POSITIONS OF THE PARTIES

TUCKER

1) **Charles A. Adams**, attorney, appearing on behalf of Tucker, stated that this case has had a very lengthy litigation history. Most recently there was Order No. 579022 dated 9-29-10 remanding the cause back to the ALJ for a specific purpose. The specific purpose of the Remand was to allow the parties the opportunity to address whether the newspaper publication in Cause CD 200408866-T afforded West proper due process.

2) ND complicates this matter by bringing a Motion to Dismiss based upon lack of standing due to belief that Tucker lacks standing by not owning

any interest or the right to drill in the property subject to pooling Order No. 500663. Tucker submits that the Motion to Dismiss was outside of the scope of the Remand Order No. 579022.

3) West was unaware that her property interest had been pooled. West never had a chance to exercise her rights. West's unclaimed monies from the successful well had been placed into escrow. Later when these escrow funds were unclaimed by West, these escrow funds were turned over to the Unclaimed Property Fund of the State of Oklahoma.

4) Tucker believes that West's rights were more than just unsatisfied. West's constitutional and due process rights were violated. Tucker disagrees with the ALJ's belief that West's actions five years after final pooling Order No. 500663 was signed on 2-2-05 resulted in West's falling under the pooling order.

5) Tucker contends that what events that have occurred since 2-2-05 are not relevant today. These events cannot cure the past due process violation of West.

6) Tucker submits that it is a bona fide purchaser of value for the lease acquired from West after pooling Order No. 500663 was entered into. Tucker had no prior knowledge that West had accepted any proceeds from the Unclaimed Property Funds.

7) Tucker believes it stands in the shoes of West. Tucker does not believe that West's actions here affect the valid lease that Tucker made with West. Tucker had a valid lease from West prior to the events in 2009-2010 and West cannot go backwards.

8) ND admitted through their witness Buxton that Buxton relied on West's paperwork which transferred West's interest to her children in 2009. Tucker notes that Buxton did not check any county records, despite being a purported expert land witness.

9) Tucker notes that the documentation relied on was not filed of record in Pottawatomie County where the property is located. Further official records for the property in Pottawatomie County indicates it is in West's name, not her children. The latest thing filed has been Tucker's lease dated September 30, 2009 (See Exhibit 6).

10) Tucker believes the ALJ decided on matters of equity, which were outside of the scope of the Remand Order. Equity concerns are not a matter of law. Tucker asserts the ALJ failed to take into consideration Buxton's statements that West's transfer of interest was never recorded. Tucker further believes that as an expert land witness, had Buxton checked the county

records he would have had a proper basis to support his expert opinion as to who held proper title to the lease. Tucker disagrees with Buxton's belief that Tucker had no interest in the property.

11) Tucker notes that the ALJ did not accept the fact that Tucker was a bona fide purchaser of value for the West lease. Tucker paid for his lease. Tucker's lease agreement with West should not be affected by any wild transfers that West may have made before Tucker's lease was signed. Tucker further believes that the lease agreement with West was made effective as to the date of the first well's production in 2005.

12) Tucker asserts the averment of title is adequate for Tucker to have standing to be here today. Tucker believes that the ALJ ruled on a title dispute. Tucker notes that title disputes are for the jurisdiction of the District Court, not the Commission. The Pottawatomie County District Court would be the appropriate place to determine the disputes here that relate to title issues.

13) Tucker acknowledges that West did obtain some royalty monies from the previous expired pooling Order No. 490390 where the well was never drilled. However, Tucker differs with the ALJ's belief that West had satisfied the terms of the second pooling Order No. 500663, where a well was actually drilled and West did not take the benefits of said pooling order. Tucker submits that West's other bonus money relating to Order No. 500663 is still within the Unclaimed Property Fund. Hence, West has not accepted the benefits of pooling Order No. 500663.

ND

1) **Ron Barnes**, attorney, appeared on behalf of ND, stated that Order No. 500663 shows West's status as address unknown. ND notes the hearing for Order 500663 was in January 2005. Five years have passed.

2) ND would reference the following exhibits for the Court in their presentation: 1) Exhibit 3, a copy of the second pooling Order No. 500663 dated 2-2-05; 2) Exhibit 4, a letter from West's attorney dated 6-30-09 requesting money from the Unclaimed Property fund; 3) Exhibit 5, copies of Commission records reflecting West's payout on West's interest in this well dated 7-29-09; and 4) Exhibit 6, a copy of Tucker's lease agreement with West, dated September 30, 2009.

3) ND notes this case comes down to two questions: 1) Was West adversely affected by the publication not being made in Pottawatomie County? and 2) Was West's due process rights harmed?

4) ND notes that the ALJ references case law regarding effective notice in his Report. ND believes the ALJ's analysis of the issues here was proper. ND notes that West made no assertion that West would have known about the matter, regardless of which Oklahoma newspaper it was published in.

5) ND notes that Tucker has filed numerous applications over the past 5 years claiming an interest and requesting to be pooled. ND acknowledges that on occasions a party's interest may be overlooked, resulting in the operator filing another pooling application to pick up such interests.

6) ND reviewed the file relating to pooling Order No. 500663. It was true that the publication was sent to Seminole County rather than Pottawatomie County. Final Order No. 500663 issued. ND notes that all parties, even the Commission staff, missed this error. ND concurs with Tucker that the purpose of the Remanded hearing was for determination of harm to West's due process rights.

7) ND knew about the West assignment to her children from the information gained from the hearing regarding title. Regardless of whether this transfer was recorded or not, Buxton was aware of the assignment. ND submits that prior to 6-24-09 that West knew about the pooling interest (See Exhibit 4 re Assignment agreement that references pooling Orders No. 490390 and No. 500663.) ND believes that the 6-24-09 assignment to West's daughters does not matter in the case at bar.

8) ND asserts the Court must focus on relevant facts. West upon discovering she had money in the Unclaimed Property fund took steps to hire legal counsel to accept the escrow bonus money concerning her pooled interest.

9) ND notes the Tucker lease (Exhibit 6) while dated 9-30-09, was actually recorded on 10-14-09. ND's witness had said the Tucker lease was effective as to the lessor's interest on the day it was executed, not the date of first production. ND disagrees with Tucker that the lease was effective as to the first date of production. The lease language states the lease shall "relate back and be effective as of the date of capture of said production". However, the "lease shall be effective as to each lessor on execution hereof", .i.e. 9-30-09.

10) ND cites the case of *Samson Resources v. Oklahoma Corporation Commission*, 859 P.2d 1118 (Okl.App. 1993) regarding the title dispute Tucker previously mentioned. The Samson case said that the determination of mineral ownership or the right to drill is a finding of fact for the Commission to

make, based upon substantial evidence. It also states the Commission has no jurisdiction to determine title.

11) The *Samson* case states that "under Section 87.1(a), the Corporation Commission has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit." ND notes that in the *Samson* case that color of title isn't sufficient, but a determination by the Commission of ownership of minerals or the right to drill based upon substantial evidence is sufficient.

12) ND wishes to point out that the Exhibit 5 payout records reflect both pooling Orders No. 490390 and No. 500663. The first pooling Order No. 490390 was where monies were put in by the parties due to bonuses being due, yet no well was ever drilled, resulting in pooling Order No. 490390 expiring on its own terms. The second pooling Order 500663 however did have a well successfully drilled. Both pooling orders cover the subject property of Tucker and/or West.

13) ND submits the pooling Order No. 500663 is the order at issue in this cause. The amount paid to West for total royalty and bonus was \$44,402. ND notes that on 7-20-09 a bonus amount of \$297.50 was paid out to West.

14) ND notes that Exhibit 4 resulted from West hiring an attorney to send a letter to the Unclaimed Property Division of the State Treasurer's office wherein West provided documentation to claim the escrow money for her property. West clearly was aware of the effect of her actions in accepting and taking the bonus money. ND submits that West had full knowledge of the matters herein.

15) Tucker was aware West was named in the pooling order and her interest was subject to it.

16) ND notes whether West's transfer to her daughters was recorded or not is a matter for the district court to decide, not the Commission. ND further notes that if West's transfer to her daughters was valid, then Tucker would have leased from West only the nonpooled zones excluded from pooling Order No. 500663.

17) The ALJ Report confirms the sequence of events up to the current date. ND notes that West has not had any issue with the pooling of her interest once she accepted the benefits from the escrow account.

18) ND cites the case of *Ballinger v. Sarkeys*, 360 P.2d 515 (Okl. 1961) which states:

A person who accepts the benefits of a judgment, decree, or judicial order is estopped to deny the results for want of jurisdiction of the person or of the subject matter of the suit.

19) West's acceptance of the bonus money from the Unclaimed Property Fund bound her and all others who may have had that interest to pooling Order No. 500663.

20) Tucker merely leased an interest that was already subject to a pooling order. West, upon discovering the mispublication in the wrong newspaper, had no problem in accepting the benefits of the escrow money from the pooling order in the Unclaimed Property fund.

21) ND submits that Tucker owns no interest here in relation to the zones under pooling Order No. 500663. ND believes there was no detriment or violation of any due process due to the untimely publication in Seminole County.

RESPONSE OF TUCKER

1) Tucker and West agreed to make their lease effective per the date shown at the top of the lease form. The lease language says "By agreement this lease is effective on the 22nd day of July." Tucker thus contends that West did not receive any benefits until July 29th.

2) Even if West's children by virtue of the non-notarized, nonfiled assignment had received any benefits, it would nevertheless have been 7 days too late to have affected Tucker's acquired interest. Tucker asserts these matters are title issues for the District Court to deal with.

3) Tucker notes that ND claims that Tucker has no interest here in the property related to pooling Order No. 500663. Yet Tucker observes that in between the time the Commission heard this case and the remand hearing before ALJ Porter, ND filed a pooling application in CD 20104890-T seeking to pool all unpooled interests, except that of Tucker's, and requesting to ratify and confirm pooling Order No. 500663 which issued on 2-2-04. Tucker believes that ND did this new filing due to ND's belief that there could be a problem with that final Order No. 500663.

4) Tucker contends the lease was effective as of 7-22-09, rather than the date executed as alleged by ND. Tucker notes that West's children acceptance of any benefits would have occurred on 7-29-09, after the Tucker lease.

5) The issue here on remand is whether West's constitutional rights of due process were obtained by virtue of the hearing notice being published in Seminole County and not in the correct county of Pottawatomie . Tucker submits the ALJ's duty was to address this question on remand, nothing else.

6) Tucker notes that prior to West's acceptance of benefits from pooling Order No 500663 which wound up in the Unclaimed Property Fund, that Tucker, thought his lease, stood in West's shoes. Tucker believes this gave Tucker the right to assert whether Tucker had been accorded proper due process. Tucker asserts that once West conveyed the lease to Tucker with the effective date to date of first production that West lost her current right to protest any due process issues. Tucker in essence acquired that right to attempt to cure the constitutional violations of due process rights upon Tucker's lease with West.

7) Tucker has an interest in pooling Order No. 500663. Tucker believes the ALJ's decision to be harmful error as West had no opportunity to voice her opinions on electing in pooling Order No. 500663 and the violation was not cured by the ALJ's decision.

8) Tucker asserts there was a violation of due process by virtue of improper publication in the wrong county and that the separate issue of due process belongs at the Commission with the title dispute for district court. Tucker thus believes by virtue of the notice being improperly published that West's due process rights were violated.

RESPONSE OF ND

1) ND reiterates that West hired legal counsel to retrieve and accept her bonus monies due her under her property. ND submits that West's claiming the money from the Unclaimed Property fund, caused West's interest to be subject to pooling Order No. 500663. ND notes that while West may have learned of the mispublication after the fact, West opted to accept the bonus and royalties which are the benefits of a pooling order, and thus the matter was resolved.

2) ND reminds the Court that Tucker's lease (Exhibit 6) states:

This lease shall be effective as to each lessor on execution hereof as to his or her interest."

The execution date by West was September 30, 2009.

CONCLUSIONS

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

1) The Referee finds that the ALJ's determination that due process was satisfied as West accepted full benefit of the pooling order by accepting and collecting all monies owed to her under the pooling order should be affirmed. On June 30, 2009 West's attorney by letter requested payment of all funds held by the State of Oklahoma owed her pursuant to pooling Orders No. 490390 and No. 500663. The referenced letter from West's attorney dated June 30, 2009 references Order No. 500663 and therefore West knew of this order by at least June 30, 2009. The lease from West as lessor to Tucker as lessee reflects the lease was effective as to lessor West on September 30, 2009. See Exhibit 6 which states: "This lease shall be effective as to each lessor on execution hereof as to his or her interest." West's claims pursuant to Pooling Order No. 490390 and No. 500663 were paid to her on July 29, 2009. See Exhibit 5.

2) The Supreme Court of Oklahoma states in *Ballinger v. Sarkeys*, 360 P.2d 515 (Okl. 1961):

A person who accepts the benefits of a judgment, decree, or judicial order is estopped to deny the results from want of jurisdiction of the person or of the subject matter of the suit. 31 C.J.S. Estoppel, § 110f, page 357; *Burgess v. Nail*, 10 Cir., Okl., 103 F.2d 37; *Turner v. Kirkwood*, 168 Okl. 80, 31 P.2d 935.

3) West clearly accepted and retained the benefits of pooling Order No. 500663 and therefore is estopped to assert its invalidity concerning due process/lack of personal jurisdiction. Clearly West's actions reflect that her due process rights were afforded her. West suffered no detriment because publication was in Seminole County instead of Pottawatomie County.

4) The Referee would also affirm the determination by the ALJ that ND's Motion to Dismiss Tucker's pooling application should be granted because sufficient notice was provided for issuance of Order No. 500663 and Tucker's

present pooling application cannot be granted concerning interests that have already been pooled. West was subject to jurisdiction of the Commission in pooling Order No. 500663 and is bound by the terms and conditions of that order. Therefore, the pooling application by Tucker is a collateral attack on this prior Commission Order No. 500663. A pooling order pools the working interest named and makes that working interest, once vested, subject to the pooling order regardless of how the individual transfers their interest thereafter. To hold otherwise, "would permit parties adverse to the pooling application to defeat it by simply transferring their property to another at or about the time the pooling hearing was held and/or to standby and, if the well is a producer, elect to participate. Again, this was never the intent of the pooling statute." *Chancellor v. Tenneco Oil Company*, 653 P.2d 204 (Okl. 1982). The Commission is without authority to issue a second pooling order covering the same interest, unit, and sources of supply. See *Amoco Production Company v. Corporation Commission*, 752 P.2d 835 (Okl.App. 1987); approved for publication by the Oklahoma Supreme Court. See also *Harding and Shelton, Inc. v. Sundown Energy Inc.*, 130 P.3d 776 (Okl.App. 2006) in which the Court affirmed an order of the Commission dismissing a pooling application insofar as the application sought to pool the same formations and interests as covered by a prior pooling order. The Court held that the prior pooling order remained in effect as so long as there was production from a pooled formation and that the order could not be modified without a showing of a change of conditions. The Court held that the true issues in the case concerned a collateral attack and the power of the Commission to modify its prior orders. An applicant must present a change of conditions or knowledge of conditions necessitating the appeal, amendment or modification of a pooling order. The Court also found that the second pooling application constituted a collateral attack on the previous pooling order which was prescribed by 52 O.S. Section 111 and that under 52 O.S. Section 112 an applicant has to show a change of conditions or knowledge of conditions necessitating the repeal, amendment, or modification of a prior pooling order. The Court further noted:

The prior pooling order constitutes a final determination of the rights and obligations of any present or future holders of a mineral interest in the affected common source(s) of supply, because to hold otherwise would cast the established rights and obligations of any holder of a mineral interest in the previously pooled common source(s) into chaos every time there was a change in ownership of mineral or leasehold rights in any pooled formation. *Id.*, 130 P.3d at 779.

See also Kuntz, a Treatise on the Law of Oil and Gas, Section 77.4(m) at 151 (2009).

RESPECTFULLY SUBMITTED THIS 1st day of June, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Paul Porter
Charles A. Adams
Ron M. Barnes
Sally Shipley
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