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FILED
MAR 28 2012
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CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:	**CHESAPEAKE OPERATING, INC. AND CHESAPEAKE EXPLORATION, LLC**	)
RELIEF SOUGHT:	**DETERMINE INVALIDITY OF ELECTION UNDER POOLING ORDER NO. 571611**	) **CAUSE CD NO. 201104864**
LEGAL DESCRIPTION:	**SECTION 17, TOWNSHIP 2 NORTH, RANGE 7 WEST, STEPHENS COUNTY, OKLAHOMA**	)

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

This Motion came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 5th day of December, 2011, 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 purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Richard K. Books**, attorney, appeared for applicant, Chesapeake Operating, Inc. and Chesapeake Exploration, LLC ("Chesapeake"); **J. W. Doolin**, attorney, appeared for David A. Staats and Jennifer R. Staats ("Staats" or "Respondents"); 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 was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 17th day of February, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

On August 28, 2009, Chesapeake filed an application to pool the rights in the Upper Hoxbar, Middle Hoxbar, Lower Hoxbar, Deese Group, Permian, Cisco and Springer common sources of supply underlying Section 17, T2N, R7W, Stephens County, Oklahoma. The Staats were listed as Respondents to the application. Prior to the filing of the application, the Staats engaged in unsuccessful negotiations in an attempt to enter into an oil and gas lease with Chesapeake.

On September 10, 2009, a Chesapeake representative sent an e-mail to the Staats' attorney with the Application and Notice of Hearing attached. On September 30, 2009, Chesapeake mailed the Application and Notice of Hearing to the Staats, by certified mail, return receipt requested. The mailing was sent to the Staats' known address where they had received mail on prior occasions. The Application was heard on October 26, 2009. The Staats did not appear or protest the Application.

On November 18, 2009, the Commission entered Order No. 571611 pooling the named common sources of supply mentioned above for Section 17 in Stephens County, Oklahoma. On November 25, 2009, Chesapeake received a return on the certified mailing sent to the Staats reflecting that the envelope was "unclaimed." Pooling Order No. 571611 was unappealed and became final. No election was ever received from the Staats nor was any money ever received by Chesapeake from the Staats.

Pooling Order No. 571611 provided that when a party failed to timely elect or, having timely elected, failed to timely pay or secure their share of well costs, such interest was, by operation of law, transferred to Chesapeake. Under this Order, the Staats were deemed to have accepted $350 per acre and a total of a 1/8th royalty.

The Staats have now filed a quiet title suit in Stephens County District Court with respect to the pooled acreage, Case No. CJ-2009-619E, *Staats v. Chesapeake Energy Corporation.* Chesapeake then filed CD 201104864 on September 29, 2011, seeking to have the Commission clarify Pooling Order No. 571611 and determine that the Staats were properly pooled and made no elections under Pooling Order No. 571611.

CHESAPEAKE TAKES THE POSITION:

(1) The Commission is the proper forum to determine the validity of its prior pooling order and any election under that order.

(2) This case involves the Commission's jurisdiction to pool a respondent that refuses to claim their mail, and is therefore a public rights determination.

(3) The pending District Court claims do not preclude the Commission from hearing this application.

(4) The notion that this is a private rights issue involving title to property mischaracterizes the nature of the dispute. The issue presented in this Application is whether the Commission properly exercised its jurisdiction and whether the Staats made a proper election.

(5) Pursuant to existing Oklahoma law, this is a public rights issue. The Commission has the authority to hear this case. This will not decide the District Court action or involve private rights. There is no private contract involved in this case.

(6) The Commission is the proper forum to determine the validity of its prior Pooling order and any election under that order. The Commission has determined the validity or invalidity of election on many prior occasions, and one Supreme Court case has upheld its power to do so. Accordingly, Chesapeake's application should not be dismissed.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

(1) **ALJ Michael Decker** stated that this matter had been continued over until the 5th of December in order to review the filed briefs and for further research. The cases referenced in the Chesapeake filed Brief along with other recent past Supreme Court cases unreferenced by the parties were reviewed by the ALJ. From a review of the filed Briefs, looking over the application and reading over Pooling Order No. 571611, the ALJ recommended that the Motion to Dismiss be granted yet not on the basis of the grounds requested in Staats' filings herein.

(2) Based upon a review of *Tucker v. Special Energy Corp.*, 187 P.3d 730 (Okl. 2008); and *Tucker v. New Dominion, L.L.C.*, 182 P.3d 169 (Okl.Civ.App. 2008) which references similar cases on the question of public rights versus private rights (see *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982) and *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984), this current application in CD 201104864 is a private rights matter which should be heard by the District Court and therefore the Commission application in CD 201104864 should be dismissed.

The *Tucker v. Special Energy Corp.* case in 2008 indicates that a matter that involves essentially a royalty dispute under a pooling order can be determined through the District Court's power to review the affect of the pooling order on the mineral interests that might be involved in a particular dispute. In the current application the Commission has a situation which is strictly a royalty dispute as well as a constitutional argument. This is not unlike the arguments concerning the insufficiency of the publication notice, as in the *Tucker v. New Dominion L.L.C.*, 82 P.3d 169 (Okl.Civ.App. 2008) case, and the *Tucker v. Special Energy Corp.*, 187 P.3d 730 (Okl. 2008) case.

(3) A dispute like this, even though it might involve a determination by a party in the District Court to cause a Commission order to be held void for lack of proper notice affecting a single mineral owner, is a private dispute that should be resolved in the District Court. The ALJ notes the overall power of the Corporation Commission or a District Court to declare a pooling order void has been held many times to only affect the specific interest involved.

(4) Here, the ALJ notes there is an argument about notice being presented by one mineral owner. The ALJ does not believe there is anything different from a factual basis shown in the *Tucker v. Special Energy* (Okl. 2008) case which was a private dispute. The ALJ believes that upon looking at all the above cases across time one can understand that what the Supreme Court did in *Tucker v. Special Energy* (Okl. 2008) case was to attempt to clarify what it felt would be the best solution for that kind of a question, i.e. would be for the District Court to determine that in a quiet title suit.

(5) The ALJ does not reach any of the elements of the request on a constitutional basis that were represented by the Staats nor does the ALJ think it is best at this point to make any statements on behalf of what the Staats argued as to its validity or invalidity. Rather, the ALJ believes this case should go to Stephens County District Court . The ALJ believes that is what the Supreme Court meant in its decision in the *Tucker v. Special Energy* (Okl. 2008) case.

(6) The ALJ states that he made reference to the arguments of the parties because he determined that it was necessary to conduct more research regarding Chesapeake's brief which referenced *Jones v. Flowers*, 547 U.S. 220 (2006). The ALJ states that Oklahoma case law and decisions prior to and following *Jones v. Flowers* suggest that Oklahoma courts take issue with the proposition that an unclaimed letter would be valid constitutional notice. The ALJ states that *Jones v. Flowers* holds that when a letter is unclaimed, the State authority is placed upon notice that the address is invalid and more is necessary for proper constitutional notice. The ALJ states that Chesapeake's brief was incomplete in that it did not address the Oklahoma case law in this matter. The ALJ states that the notice analysis contained in Chesapeake's brief was not in the context of a forced pooling, but rather requirements for tax

deeds. The ALJ states that in the Oklahoma statutory context, an unclaimed letter is an issue.

(7) ALJ restates his belief that this matter, under the holding of *Special Energy*, the notice issue is a determination to be made by the district court.

POSITIONS OF THE PARTIES

CHESAPEAKE

1) **Richard K. Books**, attorney, appearing on behalf of Chesapeake, stated that its position is that a determination of jurisdiction ought to be made at the Commission and then appealed to the Supreme Court of Oklahoma.

2) Chesapeake contends that the application raises two issues: (a) whether the Commission properly exercised its jurisdiction; and (b) whether an election was made.

3) Chesapeake contends that it filed its pooling application on August 28, 2009, and that the Staats were named. Chesapeake asserts that the proper address was used, and that the mail was unclaimed.

4) Chesapeake asserts that an electronic copy of the Application and Notice was e-mailed to James W. Doolin, attorney for the Staats. Chesapeake contends that the e-mail was received and opened by Mr. Doolin, even if he claims that he does not remember receiving the e-mail.

5) Chesapeake reasserts that the Application and Notice was sent by certified mail on September 30, 2009, and that the documents were sent to the proper address.

6) Chesapeake states that there was a hearing on October 26, 2009, at which no appearance was made on behalf of the Staats.

7) Chesapeake states that the Order was issued thereafter, and that the envelope was returned as unclaimed.

8) Chesapeake contends that the Staats knew that the Order was sent, and that the Staats willfully ignored the mailing.

9) Chesapeake advances three arguments in support of its contention that the Commission ought to hear this matter: (a) that such is the normal course in general jurisprudence; (b) that prior case law supports this contention; and (c) that this matter is not a private rights issue.

10) Chesapeake contends that it is the proper course for the Commission to evaluate its jurisdiction first.

11) Chesapeake asserts that the concept of due diligence varies by tribunal. Chesapeake contends that Mr. Doolin argued previously that the Commission must comply with district court procedure for default judgment. Chesapeake highlights asserted differences between district court and Commission procedure, i.e. the district court requires three instances of publication for a default judgment. Chesapeake contends that in unprotested cases at the Commission, an applicant must check county deed records, probate records, tax records, local directories, internal records, internet records, the Supreme Court Network, the Department of Corrections, and the Commission's website. Chesapeake reasserts that due diligence in the district court and due diligence at the Commission are separate standards. Chesapeake reasserts that the standard of due diligence is dependant upon the forum.

12) Chesapeake reasserts that it is proper for the Commission to evaluate its own jurisdiction. Chesapeake notes the differences in the actions heard in the district court and at the Commission. Chesapeake contends that an ALJ initially determines due diligence.

13) Chesapeake asserts that the purpose of pooling as stated by the Supreme Court of Oklahoma is to allocate risk at the outset of drilling. Chesapeake contends that purposefully avoiding a mailing is contrary to the purpose of the pooling statute.

14) Chesapeake reasserts that if jurisdiction is at stake in this matter, then the Commission ought to first make a ruling addressing its jurisdiction. Chesapeake contends than an ALJ ought to evaluate the actions taken to locate litigants. Chesapeake asserts that evaluation by an ALJ fits within the purpose of the pooling statute, which is to ensure that those who will benefit from drilling activities do not remain inactive to the detriment of the risk-takers.

15) Chesapeake contends that the Staats should not be afforded more time via their willful disregard of notice.

16) Chesapeake cites *Samson Resources v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987), contending that the Supreme Court of Oklahoma held that proper election under a pooling is to be determined by the Commission.

17) Chesapeake cites *Tucker v. Special Energy Corp.*, 187 P.3d 730 (Okl. 2008), noting that the ALJ also cited this case. Chesapeake contends that the ALJ's interpretation of *Special Energy* is incorrect, and that *Special Energy*

supports the position that the Commission ought to determine the scope of its jurisdiction. Chesapeake also contends that *Special Energy* supports the notion that the district court determines rights after the Commission determines its jurisdiction.

18) Chesapeake contends that *Samson Resources* and *Special Energy* support the contention that this is not a private rights issue.

19) Chesapeake asserts that *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982), and *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984), both cited by the ALJ, do not support the assertion that the district court should challenge the Commission's jurisdiction.

20) Chesapeake contends that the holding of *Chancellor v. Tenneco* is that a taker of an interest after a pooling application is subject to that application.

21) Chesapeake asserts that, unlike this matter, *Tenneco Oil Co. v. El Paso Natural Gas Co.* dealt with a private contract.

22) Chesapeake contends that *Jones v. Flowers*, 547 U.S. 220 (2006), does not address the issue of venue, and therefore should not be considered at this time.

23) Chesapeake asserts that it is important that the Commission evaluate this issue. Chesapeake respectfully requests that the ruling of the ALJ be reversed.

THE STAATS

1) **James W. Doolin**, attorney, appearing on behalf of the Staats, stated that any inferences drawn from the unclaimed letter are unsupported by the record. The Staats assert that they had no notice of the prior hearing.

2) The Staats contend that the property was developed beginning in 2004 and contains 10 oil and gas wells.

3) The Staats assert that they were not included in the 2004 Pooling Order No. 571611, under which royalty elections were primarily for a 3/16 interest.

4) The Staats contend that a land man solicited their mineral interest in 2009, without disclosing the presence of oil and gas wells.

5) The Staats assert that Chesapeake refused an accounting of the previous five years, and that Chesapeake demanded that the Staats accept a 1/4th royalty and a summary of the previous net revenues.

6) The Staats contend that negotiations stalled in the summer of 2009.

7) The Staats assert that the record reflects that they claimed other correspondence sent by certified mail. The Staats contend that there is no factual support for the assertion that they willfully ignored the notice.

8) The Staats assert that Chesapeake filed another pooling application and published notice in The Journal Record, published in Oklahoma County, and a newspaper published in Stephens County. The Staats assert that they reside in Comanche County.

9) The Staats contend that contemporaneous correspondence with Chesapeake does not contain mention of the pooling application.

10) The Staats contend that Mr. Doolin did not receive electronic notice, and that this was stated in a sworn affidavit.

11) The Staats state that they filed suit in the District Court of Stephens County, prior to the pooling order, seeking an accounting, payment of royalty under the Oklahoma Production Revenue Standards Act, fraud, bad faith, and breach of fiduciary duty. The Staats assert that Chesapeake's motion for summary judgment was denied by the district court.

12) The Staats contend prior to hearing in district court, Chesapeake sought a declaration by the Commission of the invalidity of the prior election, an election that did not occur.

13) The Staats assert that Chesapeake is attempting to wrestle jurisdiction from the District Court and put off actual trial of the case.

14) The Staats contend that their Motion to Dismiss in this matter was filed under issues of notice. The Staats assert that there is both an issue of notice jurisdiction and subject matter jurisdiction in this proceeding.

15) The Staats, agreeing with the ALJ, assert that this proceeding concerns a matter of private rights.

16) The Staats ask that the Appellate Referee take note of p. 4, lines 10-15, of the transcript of the prior hearing. The Staats assert that the subject matter, primarily an accounting, is an issue for the district court to consider. The Staats cite *Tucker v. Special Energy Corp.*, 187 P.3d 730, 733-34 (Okl. 2008), in support.

17) The Staats also cite *Special Energy*, ¶ 11, 187 P.3d at 734 (Okl. 2008), analogizing the escrow proceeds at issue in that case to this matter.

18) The Staats assert that the public rights jurisdiction of the Commission is an improper forum to decide the issues of accounting, payment of royalty under the Oklahoma Production Revenue Standards Act, fraud, bad faith, and breach of fiduciary duty.

19) The Staats question the purpose of an election invalidation. The Staats assert that there is not an issue of vindication of rights regarding notice.

20) The Staats cite the Production Revenue Standards Act 52 O.S. Section 570.1 et. seq at section 10(c)(4), which states that the district court has jurisdiction to determine proper payment of royalty.

21) The Staats assert that although they do not challenge the public rights portion of the pooling order, the Commission lacked notice jurisdiction in this matter.

22) The Staats contend that Chesapeake did not cite Oklahoma authority for its position that attempted delivery supplies sufficient notice.

23) The Staats cite 52 O.S. Section 107, which states that service of process in a pooling application is to be "in the same manner as is provided for the service of summons in civil actions in the district courts of the state."

24) The Staats contend that the employment of 52 O.S. Section 107 or the employment of 52 O.S. Section 87.1 is the seminal determination in this hearing.

25) The Staats assert that 12 O.S. Section 2004(c) provides that service by mail shall not be the basis of a default judgment unless the record contains a return receipt showing acceptance by the Defendant or a returned envelope showing refusal of the process by the Defendant. The Staats reassert that service satisfactory to district court standards has not been made in this matter. The Staats contend that because 52 O.S. § 87.1 does not contain reference to an unclaimed letter, the Commission must rely upon 52 O.S. Section 107 and 12 O.S. Section 2004.

26) The Staats cite *Cravens v. Oklahoma Corporation Commission*, 613 P.2d 442 (Okl. 1980) which holds that due diligence is required prior to publication notice and that due process requires that all notice be given by a means reasonably calculated to inform all affected parties.

27) The Staats cite *Miller v. Wenexco*, 743 P.2d 152 (Ok.Civ.App. 1987), contending that it supports the notion that the district court has jurisdiction to inquire into notice, and that service by publication alone is insufficient.

28) The Staats reassert that the Commission lacks both subject matter jurisdiction and notice jurisdiction in this matter.

29) The Staats contend that Chesapeake is attempting to impose an election amount upon them from an election in which the Staats did not participate.

RESPONSE OF CHESAPEAKE

1) Chesapeake contends that the inferences from the facts and evidence will be determined at trial.

2) Chesapeake asserts that the Staats do not explain their contention that this is a matter of private rights. Chesapeake contends that the *Samson* and *Special Energy* cases mandate the interpretation of this issue as a public rights issue. Chesapeake asserts that, just as in *Special Energy*, the proper course is for the Commission to first determine if the parties were pooled in this case, prior to proceeding to district court. Chesapeake contends that the Commission ought to determine the effect of the unclaimed letters, just as in Special Energy.

3) Chesapeake asserts that it disagrees with the characterization of the Staats as royalty owners by the ALJ. Chesapeake contends that status as a royalty owner or a working interest owner should not determine the forum for adjudication.

4) Chesapeake asserts that *Special Energy* holds that the Commission must first determine its jurisdiction.

5) Chesapeake contends that it has not been given the proper opportunity to be heard regarding the notice issue, and that that issue should not be decided without hearing.

6) Chesapeake contends the ALJ is incorrect in his determination that this matter is a private rights issue.

7) Chesapeake reasserts that it is improper to uphold the Motion to Dismiss on the grounds of defective notice without a complete hearing.

8) Chesapeake reasserts that the present determination is whether the Commission or the district court is to determine the Commission's jurisdiction in this matter.

9) Chesapeake contends that the Commission ought to rule upon its own jurisdiction.

CONCLUSIONS

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

1) Chesapeake's application in the present cause is not seeking or requesting the Commission to determine the Staats' private rights quiet title suit filed by the Staats in Stephens County, *Staats v. Chesapeake Energy Corporation*, Case No. CJ-2009-619-E. The District Court in Stephens County has jurisdiction to hear the quiet title claims and consider the legal effect of the Commission orders on those claims. Chesapeake's present application is seeking a determination of the invalidity of the Staats' election. The Commission has determined the validity or invalidity of elections in many prior cases and the Supreme Court has held that the Commission, not the District Court is the proper forum to determine the validity of or invalidity of an election. The Supreme Court in *Samson Resources Company v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987) stated:

> The controversy in this case is whether Samson Resources Company, the appellant, timely elected under a forced-pooling order of the Corporation Commission to participate in the development of an oil and gas well, and whether the Commission has jurisdiction to hear the matter."
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> In two cases decided after *Tenneco* [*Tenneco Oil Company v. El Paso Natural Gas*, 687 P.2d 1049 (Okl. 1984)] this Court also found that the district court was the proper forum for the disputing parties. In both *Samson Resources Co. v. Corporation Comm'n*, 702 P.2d 19 (Okl. 1985), and *MM Resources, Inc. v. Huston*, 710 P.2d 763 (Okl. 1985), as in *Tenneco*, the issues

involved the construction of private contracts between the parties. In all three of the cases cited this Court found that no issue of public interest was involved and that therefore the Corporation Commission was without jurisdiction in the matter.

Conversely, the case of *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okl. 1985) involved the clarification of a Corporation Commission order relating to the authorization "to drill and operate a well" on the unit. Ports of Call had interpreted this phrase to mean a completed well into the target formations, and that it necessarily contemplated continuous operations to achieve that end, including the commencement of a second and third borehole following blowout problems which had been encountered. The opposing parties construed "a well" to be limited to the initial borehole. We found that the parties were clearly entitled to have the issue clarified by the Corporation Commission. This holding was based on the rule that the Commission has the power to clarify its previous orders, and that a clarification was called for in *Nilsen.*

In the case at bar, the Corporation Commission was called upon to clarify paragraph 4 of its order number 226092, dated October 13, 1982 which states:

> That each owner of the right to drill in said drilling and spacing unit to said common sources of supply covered hereby, who has not agreed to develop said unit as a unit, other than the Applicant, shall elect which of the alternatives set out in paragraph 3 above such owner accepts, said election to be made to applicant, in writing, within 15 days from the date of this Order...

The issue before the Commission was whether either the letter written by Pettit, the letter written by Samson, or both taken together satisfied the order set out above. As in *Nilsen,* the Commission was

> attempting to clarify its order, and therefore we find that jurisdiction was properly before the Commission.

2) In *Tucker v. Special Energy Corporation*, 187 P.3d 730 (Okl. 2008), the facts were that Don Tucker filed an amended application with the Commission, asking it to "construe, clarify and vacate" the pooling order issued in 1998. The ALJ concluded that Don Tucker's application was an impermissible collateral attack on the 1998 pooling order. Tucker appealed the ALJ's Report and the Referee affirmed the ALJ's Report. On May 5, 2006, the Commission denied Tucker's application and Tucker did not appeal from the order. There was an action filed in district court seeking an order "determining and quieting title" in Tucker's leasehold interest and Taft's mineral interest as well as an accounting of the proceeds from the production of the minerals attributable to those interests. Special Energy filed motions to dismiss asserting that Tucker and Taft's action constituted a collateral attack on the 1998 pooling order. The District Court agreed and dismissed the action and then Tucker and Taft appealed and the Court of Civil Appeals affirmed. Tucker and Taft then filed a Petition for Certiorari which the Supreme Court granted. The Supreme Court stated at ¶11 in *Tucker v. Special Energy Corp.*, 187 P.3d 730, 733:

> According to their pleadings, Plaintiffs are not attempting to obtain an order declaring the 1998 Pooling Order void. Such an effort would be an impermissible collateral attack. Okla. Stat. tit. 52, § 111 (2001); *James Energy Company v. HCG. Energy Corporation*, 1992 OK. 117, ¶ 24, 847 P.2d 333, 339. Instead, Plaintiffs seek to clarify their ownership of a property interest that may entitle them to the proceeds held in escrow. Claims regarding "the relationship of the parties; their duties; their rights and obligations; and the existence of liability for the breach of such duties," are exclusively within the district court's jurisdiction. *Samson Resources Company v. Corporation Commission*, 1985 OK 31, ¶ 15, 702 P.2d 19, 23; see also *Tenneco*, 1984 OK 52, 687 P.2d 1049, "The district court clearly has jurisdiction to adjudicate the legal effect...of a Commission order...upon title to land." *Nilsen*, 1985 OK 104, ¶ 12, 711 P.2d at 101.

3) Thus, the *Tucker v. Special Energy Corporation* case, supra, provides that the Commission should determine the validity or invalidity of the prior pooling and the validity or invalidity of any election by the Staats. After that determination by the Commission, it would be the district court's jurisdiction

to determine the rights of the parties flowing from the valid or invalid election. The validity of the pooling order and the validity of the election must be determined by the Commission and the rights flowing from that valid or invalid election must be determined by the district court. Public rights issues are involved in the area of oil and gas conservation when a unitization order, pooling order, or order setting the allowables on the unit well affects the correlative rights of all mineral right owners in a common source of supply in a unit. *Grayhorse Energy, LLC v. Crawley Petroleum Corporation*, 245 P.3d 1249 (Okl.Civ.App. 2010). Only the Oklahoma Corporation Commission however has jurisdiction to interpret, clarify, amend and supplement its orders as well as resolve any challenges to the public issue of conservation of oil and gas. The district court has jurisdiction to determine the legal effect of Oklahoma Corporation Commission rules and orders. *Grayhorse Energy, LLC v. Crawley Petroleum Corporation*, supra at 1254. District Courts have jurisdiction to resolve disputes over private rights involving mineral interests and oil and gas leaseholds. Subject matter jurisdiction "rests solely with the district court to determine private rights in mineral interests and oil and gas leaseholds..." *Leek v. Continental Oil Company*, 800 P.2d 224, 226 (Okl. 1989).

4) 52 O.S. Section 112 provides that the Oklahoma Corporation Commission can "repeal, amend, modify or supplement" its orders. See also *Forest Oil Corporation v. Corporation Commission*, 807 P.2d 774, 781 (Okl. 1990) and *Centurion Oil Inc. v. Stephens Production Company*, 857 P.2d 821, 824 (Okl.Civ.App. 1993).

5) For the above stated reasons the Referee recommends reversing the ALJ's determination to grant Staats' motion to dismiss. The Referee would recommend that the Commission exercise its jurisdiction to construe and clarify Oder No. 571611 and determine whether a proper election was made by the Staats. This will not determine the district court action or involve private rights. The district court can then determine the legal effect of the Commission's order pertaining to Staats' quiet title suit in Stephens County with respect to the pooled acreage.

RESPECTFULLY SUBMITTED THIS 28th day of March, 2012.

PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
Michael L. Decker, ALJ/OAP Director
Richard K. Books
J.W. Doolin
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