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**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA**

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: **REDBUD E&P INC.**)
 SUCCESSOR IN INTEREST TO)
 MAHALO ENERGY (USA) INC.)
)
RELIEF SOUGHT: **VERIFY AND CONFIRM**) **CAUSE CD NO.**
 ELECTIONS MADE PURSUANT) **201305699-T**
 TO POOLING ORDER NO.)
 548316)
)
LEGAL DESCRIPTION: **SECTION 12, TOWNSHIP 9**)
 NORTH, RANGE 15 EAST,)
 MCINTOSH 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 **Curtis Johnson**, Deputy Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 12th day of December, 2013, 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: **Michael D. Stack**, attorney, appeared for Redbud E&P Inc. ("Redbud"); **William H. Huffman**, attorney, appeared for movant, Concorde Resources Corporation ("Concorde"); and **Jim Hamilton**, Deputy General Counsel for Deliberations, 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 14th day of February, 2014. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

1) In the present cause Redbud has asked the Commission to:

(a) Interpret and clarify pooling Order No. 548316 issued on December 28, 2007; (b) determine that said pooling order properly pooled and adjudicated the rights of the working interest and leasehold owners in respect to the development of the Hartshorne common source of supply in the 640 acre well unit formed for Section 12, T9N, R15E, McIntosh County, Oklahoma; (c) conclude that the elections made under said pooling order remain in full force as to the interest of all of the parties to the order, including the interest of Concorde; and (d) grant any additional relief deemed proper based upon the evidence presented.

Redbud has, thus, asked the Commission to confirm the viability of pooling Order No. 548316.

2) In its Motion to Dismiss, Concorde has questioned the jurisdiction of the Oklahoma Corporation Commission and alleges that Redbud "is attempting to circumvent the jurisdiction of the district court" by requesting that the Commission interpret, clarify and determine the validity of pooling Order No. 548316. Concorde's Motion to Dismiss alleges that the Redbud requested relief in the present cause is a vague attempt to quiet title to the Concorde interest requesting a ruling as to "all of the interest of Concorde Resources Corporation arising and vesting under pooling Order No. 548316." Concorde alleges that Redbud is asking the Commission to determine the effect of the pooling order on the Concorde interest. Concorde states that the dispute that gives rise to the claims for relief in the present cause are within the jurisdiction of the district courts to determine and such jurisdiction is vested with the McIntosh County District Court. Concorde further alleges that the McIntosh County District Court issued a ruling on June 11, 2013, wherein it quieted title to the subject oil and gas leases in Concorde and denied defendants' (Redbud, Williamson, Kepco) counterclaims. Thus, Concorde requests the present matter be dismissed.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) In this cause Concorde in its Motion to Dismiss argued that Redbud's application to verify and confirm elections made pursuant to pooling Order No. 548316 is an attempt to circumvent the McIntosh County District Court quiet title action between the parties. The ALJ disagrees with this argument because elections under pooling orders have nothing to do with determining title to property.

2) The McIntosh County District Judge in the quiet title action in the Journal Entry of Judgment issued October 15, 2013 mentioned, after finding in Concorde's favor in the quiet title action, that additional proceedings were likely to be required before the Oklahoma Corporation Commission to determine whether Concorde was pooled by Redbud in the original pooling. Therefore, the District Court Judge determined that additional proceedings before the Corporation Commission might be needed to make this determination and the Commission had jurisdiction to make this determination.

3) Concorde additionally argued that Redbud is requesting the Commission to determine the effect of the pooling order on Concorde's interest. The ALJ also disagreed with this argument as Redbud is just requesting that Concorde's interest that was resolved in the quiet title action is subject to the pooling order, not what effect the pooling order has on Concorde's interest.

4) The ALJ relied upon *Southern Union Production Company v. Corporation Commission*, 465 P.2d 484 (Okla. 1970). This case involved a pooling order where a well had been drilled and abandoned as a dry hole and the second Commission order then issued concluding that the prior pooling order had terminated and that all rights to the development created by the pooling order in respect to the Tonkawa, Cottage Grove, Oswego, Chester, Mississippian and Cherokee common sources of supply had terminated and that the parties were now in the same position as they would have been if no such pooling order had been entered. The Court concluded that the second order of the Commission represented the Commission's determination as to the legal effect upon the rights of Southern Union when it pooled the interest then drilled and abandoned a well. The Court further concluded that while such order could perhaps be valid, if it was necessarily relying upon the exercise of statutory power of the Commission to prevent or assist in preventing waste or the protection of correlative rights of the interested parties, such was not the intent nor was it in fact the effect of the Commission's second order, because the later second order was not expressly nor by implication authorized by the Constitution or the statutes of Oklahoma. Thus, the second order was void as being beyond the power of the Commission to enter. The *Southern Union* case, supra, was then clarified by *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okla. 1985). The Supreme Court determined in *Nilsen* that the Commission did have authority to determine whether its order had ceased by its own terms to be in full force and effect. However, the district court had the power to adjudicate the legal effect of the Commission's order on the private interest involved. The *Nilsen* holding was reiterated in *Tucker v. Special Energy Corporation*, 187 P.3d 730 (Okla. 2008). Thus, the ALJ must recommend that the Motion to Dismiss be denied.

5) As noted by the *Southern Union Production* case, supra, the Commission's authority is limited and must be based on constitutional or statutory authority. 57 O.S. Section 87.1(e) clearly grants the Commission the power to pool

interests of parties that cannot reach an agreement as was done by the Commission when it issued pooling Order No. 548316.

6) Concorde also did not argue that they were not given proper notice of this application that resulted in the issuance of pooling Order No. 548316 or that the Commission did not have subject matter jurisdiction to issue that order. Concorde's sole contention is that Redbud's application should be dismissed because the Commission did not have authority to determine the interests in the unit which is the subject of a pooling order issued by the Commission, because this would be the same as determining the legal effect of the order on Concorde's interest or be akin to trying title.

7) The ALJ contends that each one of these arguments must fail. The only determination that Redbud seeks to have made is whether Concorde's interest is subject to the pooling Order No. 548316. Redbud does not seek to determine the effect of the pooling order on Concorde's interest or the amount of Concorde's interest in the unit. These are clearly the jurisdiction of the district court. As was noted in the *Nilsen v. Ports of Call* case, supra, the Commission has the authority to determine if an order has ceased by its own terms to be in full force and effect. Therefore, the ALJ must also conclude that the Commission has the authority to determine whether its order is in effect as to certain interests pooled by an order.

POSITIONS OF THE PARTIES

CONCORDE

1) **William H. Huffman**, attorney, appearing on behalf of Concorde, stated the main crux is that Concorde does not believe that its interests are subjected to and affected by pooling Order No. 548316. Concorde is saying that the pooling Order No. 548316 is not effective as to Concorde's interests.

2) Redbud is seeking to have the Commission find the pooling order remains in full force and effect as to all interests of Concorde arising and vesting under the pooling order.

3) The Supreme Court has determined that the Commission has no authority or jurisdiction to determine title. Title is a private rights interest.

4) Paragraph 15 of the Journal Entry of Judgment of the District Court of McIntosh County entered on October 15, 2013 states:

This Judgment does not dispose of Plaintiff's Fourth Cause of Action for an Accounting and Money Damages for Oil or Gas Sold from when REDBUD operated the Conner 2-12H well. As such, this adjudication resolves fewer than all the claims in this action. However, this Court finds that there is no just reason for delay in the entry of judgment and accordingly the Court directs the filing of this judgment as a final judgment, because the adjudication of Plaintiff's Fourth Cause of Action will likely require proceedings before the Oklahoma Corporation Commission that will not be necessary if this judgment were to be reversed on appeal.

The District Judge is saying there will not have to be any determination with regard to the pooling if the District Court judgment is reversed on appeal as that would determine Concorde has no interest. Until the issues are actually determined in the district court, the district court doesn't know whether there will be questions that have to be resolved by the Corporation Commission.

5) Until the private interests are resolved, there is no need to make a determination on the pooling order. Any determination by the Commission would have the effect of trying to resolve a dispute over private rights.

6) Redbud's request for a determination is a similar collateral attack on the Commission's pooling order as determined by the Supreme Court in *Tucker v. Special Energy Corp.*, 187 P.3d 730 (Okl. 2008). The Corporation Commission has the authority to clarify a previous order but only the district court has the power to adjudicate the legal effect of Order No. 548316 on private interests involved. Determining whether the order is effective against a particular party is beyond the jurisdiction of the Commission. It is a private dispute between the parties.

7) The District Court of McIntosh County, where this case currently is, is the proper jurisdiction to determine whether a party's interest is subject to a pooling order.

REDBUD

1) **Michael D. Stack**, attorney, appearing on behalf of Redbud, stated Redbud and Concorde both filed for pooling on the same section and both desired to be named operator on the pooled unit. Redbud was named operator.

The issue then surrounded ownership of leases. That issue was filed and decided in the District Court of McIntosh County, and is currently on appeal.

2) Concorde files a Supplemental Petition in the district court on June 13, 2012 which states in paragraph 6: "That the interest owned by Plaintiff Concorde Resources Corporation, in Section 12-T9N-R15E, McIntosh Co., OK, is not leased and is not pooled by the Defendant Mahalo Energy (USA), Inc. or its successor, Redbud E&P, Inc. That any pooling order... obtained by Defendant Mahalo Energy (USA), Inc. or its successor, Redbud E&P, Inc., is invalid and ineffective against the Plaintiff." It was this that caused Redbud to file the present application.

3) Concorde is trying to get the district court to decide a public rights issue, to say you have an invalid order. Redbud believes this is in the Commission's jurisdiction. Redbud is not trying to try title at the Commission. The District Judge states in his Journal Entry of Judgment that there is "no just reason for delay in entry of judgment and accordingly the Court directs filing of this judgment as a final judgment, because the adjudication of Plaintiff's Fourth Cause of Action will likely require proceedings before the Oklahoma Corporation Commission." That is why Redbud filed the present cause.

4) The Supreme Court in *Tucker v. Special Energy Corp.*, 187 P.3d 730 (Okl. 2008) was not seeking to declare the pooling order void. Such a request would be an "impermissible collateral attack." The Supreme Court *Tucker* case was about an accounting on monies paid, not on an interpretation of a Commission order. Redbud is not asking for an accounting, rather asking only to determine if the existing pooling order is in effect.

5) Concorde was a joint applicant to this pooling order, and now they want to get out of the pooling by asserting under their request in the district court that they are not under a pooling order that they and we brought at the Commission.

6) Redbud is not attempting to attack or determine any private party rights. The District Court of McIntosh County has ruled on that matter. Redbud is asking only that the pooling order be validated and declared in effect.

7) In *Gulfstream Petroleum Corporation v. Layden*, 632 P.2d 376 (Okl. 1981) the Court recognized three things that must exist in order for the Corporation Commission to have jurisdiction. Those are: 1) subject matter jurisdiction; 2) personal jurisdiction over the parties involved; and 3) jurisdictional power to issue specific relief requested.

8) Regarding personal jurisdiction, both Redbud and Concorde own oil and gas leases in Oklahoma in the subject unit. They were properly noticed.

Therefore, the Commission has personal jurisdiction over both Redbud and Concorde.

9) Regarding subject matter jurisdiction, 52 O.S. 112 as highlighted and reaffirmed in *Tenneco*, any person affected by any legislative or administrative order of the Commission shall have the right to apply to the Commission to repeal, amend, modify or supplement the same order.

10) Regarding the power to issue the specific relief sought, the Supreme Court stated in *Forest Oil Corporation v. Corporation Commission*, 807 P.2d 774 (Okl. 1990) "[T]he power to clarify a previous order is continuous in nature, and flows from the entry of the original order."

11) The Commission has personal jurisdiction, subject matter jurisdiction, and the authority to grant the relief sought in this motion. The Motion to Dismiss should be denied and the Commission should determine that the pooling order is in effect and valid.

RESPONSE OF CONCORDE

1) The *Concorde Resources Corporation v. Kepco Energy Inc.*, 254 P.3d 734 (OK.CIV.APP 2011), was about the Pyle well previously discussed. Concorde renamed the Pyle well to the Connor well. In that case, the District Court granted Summary Judgment in favor of Kepco and Mahalo. The Court of Appeals reversed and remanded. In that case shut-in royalties were paid and subsequent questioning of the Mahalo landman stated that Kepco/Mahalo never checked on the well, never asked if any mineral owners were receiving shut-in royalties.

2) In the *Southern Union Production Co. v. Corporation Commission*, 465 P.2d 454 (Okl. 1970), the Commission tried to determine the rights of the parties. The Supreme Court said that the Commission did not have the authority to determine private rights. Here, Concorde is challenging the pooling order. Concorde contends that its interests are not included under the pooling order. That makes this issue an issue for the District Court and not the Corporation Commission.

3) The *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984) case was a dispute over a Joint Operating Agreement. That is contractual matter and not subject to the jurisdiction of the Commission.

4) Pursuant to *Gulfstream Petroleum Corp. v. Layden*, 632 P.2d 376 (Okl. 1981) the Commission clearly does not have the jurisdiction to determine the legal effect of a pooling order on a party.

5) *McDaniel v. Moyer*, 662 P.2d 309 (Okl. 1983) stated that the Commission has the power to clarify orders, but that particular case was about a location exception, not a pooling order as we have here.

6) The *Southern Union* and *Tucker* cases state clearly that the Commission does not have the power or jurisdiction to enter an order that determines a party's interest. The Commission cannot determine the legal effect of a pooling order on a party's private interest.

7) Concorde is not claiming that the order is an invalid order, only that the order does not include Concorde's interests.

CONCLUSIONS

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

1) The issue in this case is whether pooling Order No. 548316 remains in full force and effect as to all working interest owners with respect to the Hartshorne common source of supply in the 640 acre well unit formed for Section 12, T9N, R15E, McIntosh County, Oklahoma, and whether such pooling order and election made therein remains in full force and effect as to all the interest of Concorde. Concorde pursued an issue of title in certain oil and gas leases at the district court level where the district court quieted title in those leases in Concorde, which has been appealed. The Commission does not have the authority to adjudicate the effect of its pooling order on a legal title to property. *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okl. 1985). The district courts have jurisdiction to resolve disputes over private rights. *Leck v. Continental Oil Company*, 800 P.2d 224 (Okl. 1989). The Supreme Court in *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984) stated: "The Commission oversees the conservation of oil and gas; its jurisdiction is limited to the resolution of public rights." Private right issues are to be determined by the district courts as the district courts' proper role is to resolve disputes over private rights. *Southern Union Production Company v. Corporation Commission*, 465 P.2d 454 (Okl. 1970).

2) The application in the present matter however is seeking to verify and confirm elections made pursuant to pooling Order No. 548316. 52 O.S. Section 112 states: "Any person affected by any...administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same." The Oklahoma Supreme Court has also held that Section 112 gives the Commission authority to interpret and clarify its orders. *Forest Oil Corporation v. Corporation*

Commission of Oklahoma, 807 P.2d 774 (Okl. 1990), citing *Tenneco Oil Company v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989) and *Cabot Carbon Company v. Phillips Petroleum Company*, 287 P.2d 675 (Okl. 1955). In *Nilsen v. Ports of Call Oil Company*, supra, at 102-103, the Supreme Court has held that the "authority of the Commission to enter an order clarifying a previous order is continuing in nature, flowing from the entry of that prior order." The Commission further has the authority and jurisdiction to determine whether a prior pooling order continues to be effective as to a specific interest. See *Samson Resources Company v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987).

3) 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. While the Oklahoma Corporation Commission 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*, 245 P.3d 1249 (Okl.Civ.App. 2010); *Arrowhead Energy, Inc. v. Baron Exploration Co.*, 930 P.2d 181 (Okl. 1996); *Tucker v. New Dominion, L.L.C.*, 182 P.3d 169 (Okl.Civ.App. 2008).

4) Lastly, the Referee would agree with Redbud's conclusion that the district judge in McIntosh County who presided over the quiet title action concerning Concorde confirmed that the present case is properly before the Commission. Concorde filed a Supplemental Petition in the District Court of McIntosh County on June 13, 2012 wherein in paragraph 6, Concorde stated:

That the interest owned by Plaintiff, Concorde Resources Corporation, in Section 12-T9N-R15E, McIntosh Co., OK., is not leased and is not pooled by the Defendant, Mahalo Energy (USA) Inc. or its successor, Redbud E&P, Inc. That any pooling order covering 12-T9N-R15E, McIntosh Co., OK., of the Oklahoma Corporation Commission obtained by the Defendant, Mahalo Energy (USA) Inc., or its successor, Redbud E&P, Inc., is invalid and ineffective against the Plaintiff. Supplemental Petition, Case No. CJ 08-81.

In the Journal Entry of Judgment issued on October 15, 2013, the district judge acknowledged that the invalidation of a Commission order is not proper before the district court and concluded the following:

This judgment does not dispose of Plaintiff's Fourth Cause of Action for an Accounting and Money

Damages for Oil or Gas Sold from when Redbud operated the Connor 2-12H well. As such, this adjudication resolves fewer than all the claims in this action. However, this Court finds that there is no just reason for delay in the entry of judgment and accordingly the Court directs the filing of this judgment as a final judgment, because the adjudication of Plaintiff's Fourth Cause of Action will likely require proceedings before the Oklahoma Corporation Commission that will not be necessary if this judgment were to be reversed on appeal.

The Referee agrees with Redbud's position that the ALJ therefore recognized that the Oklahoma Corporation Commission has the exclusive jurisdiction over the issues in the Fourth Cause of Action to determine whether Concorde was pooled under Order No. 548316 and to determine whether the Order NO. 548316 is valid and effective against Concorde, which is exactly what Redbud is requesting in the present cause.

5) Accordingly the election issues presented by Redbud's present application are within the Commission's exclusive jurisdiction and therefore the Oral Report of the ALJ denying Concorde's Motion to Dismiss should be affirmed.

RESPECTFULLY SUBMITTED THIS 9th day of April, 2014.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Douglas
Commissioner Murphy
Jim Hamilton
ALJ Curtis Johnson
William H. Huffman
Michael D. Stack
Office of General Counsel
Michael L. Decker, OAP Director
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