

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

APPLICANT: **REDBUD E&P INC.)**
 SUCCESSOR IN INTEREST TO)
 MAHALO ENERGY (USA) INC.)
)
RELIEF SOUGHT: **VERIFY AND CONFIRM)**
 ELECTIONS MADE PURSUANT)
 TO POOLING ORDER NO.)
 548316)
)
LEGAL DESCRIPTION: **SECTION 12, TOWNSHIP 9)**
 NORTH, RANGE 15 EAST,)
 MCINTOSH COUNTY,)
 OKLAHOMA)

**CAUSE CD NO.
201305699-T**

FILED

DEC 12 2014

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CORPORATION COMMISSION
OF OKLAHOMA

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

This Motion came on for hearing before Curtis Johnson, Deputy Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 21st day of October, 2014, 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** and **John B. Chandler**, attorneys, appeared for Redbud E&P Inc. ("Redbud"); **William H. Huffman**, attorney, appeared for movant, Concorde Resources Corporation ("Concorde"); and **James L. Myles**, 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 November, 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 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) Redbud, in Oklahoma Supreme Court Appellate Case No. 112,340, filed a Petition in Error alleging an error of the District Court "....in quieting title in Concorde as to the Savanna, Red Fork, Bartlesville and Hartshorne common sources of supply where it was undisputed that Redbud acquired such rights by virtue of Oklahoma Corporation Commission Pooling Order No. 548316....". Redbud in outlining the issues stated "involves claims for cancellation of oil and gas leases". Redbud further contends there is a "legal impossibility of Appellee (Concorde) owning valid leases." The District Court has, subsequent to the issuance of pooling Order 548316, quieted title to the interest in Concorde.

3) In its Motion to Stay Concorde states the following in paragraph 3 and paragraph 4:

3. The decision in the pending appeal will quiet the title and determine who owns the lease interests. If the Appellate Court rules in favor of Redbud, the decision will render the necessity of this action moot. Throughout the District Court and Appellate Court proceedings, Redbud has contended

that Concorde's leases are invalid. If that is true, as contended by Redbud, there is no poolable interest owned by Concorde. In order to avoid an unnecessary expense and waste of judicial time, this matter should be stayed pending the outcome of the District Court appeal.

4. Operations on the unit have not been suspended and there will not be any interference in the continued operations by Redbud by the granting of this stay.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) A Motion to Dismiss was filed by Concorde on September 24, 2013 and was heard by ALJ Johnson on December 12, 2013. ALJ Johnson denied the Motion to Dismiss and the Appellate Referee issued her Report on April 9, 2014, finding that 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. Order No. 624713 was issued by the Commission denying Concorde's Motion to Dismiss on April 30, 2014.

2) The ALJ stated that Concorde's Motion to Dismiss was basically the same arguments that are presented in their present Motion to Stay. Concorde has a judgment from the District Court that found that Concorde's leases were valid. That decision by the district court is being appealed to the Supreme Court of Oklahoma and that is one of the basis for which Concorde is requesting the present matter be stayed. Concorde states that it would be a waste of judicial economy to hear the case and make a determination whether a pooling was effective as to Concorde's interest because if the Appellate Court determines Concorde owns no interest then basically the pooling Order No. 548316 wouldn't be effective as to them.

3) The ALJ believes that's not the issue in the present case. The issue is whether the pooling is effective, what the pooling order pertains to and is it effective as to the interests in the unit.

4) Basically the same arguments that were heard in the Motion to Dismiss are persuasive in the present Motion to Stay. The ALJ relied upon the *Southern*

Union Production Company v. Corporation Commission, 465 P.2d 454 (Okl. 1970) and the *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okl. 1985) cases. In those two cases the court basically determined that the Commission could determine whether an order was effective or not. As far as the effect on someone's interest that is a district court matter. All the present case is trying to determine is whether the pooling Order No. 548316 is still valid and whether it is still in effect. The District Court is going to determine the interest and whether Concorde's leases are still valid or not. The Commission can delve into the interest but not the quantum of interest. The Commission does have the right to determine whether there is a scintilla of interest held by a party as far as giving the Commission jurisdiction. For the above stated reasons the ALJ determined that the Motion to Stay should not be granted and the Commission should proceed on the merits of the present cause.

POSITIONS OF THE PARTIES

CONCORDE

1) **William Huffman**, attorney, appearing for Concorde, argues that the Commission does not have jurisdiction to determine title. The case is also concurrently before the district court, which has proper jurisdiction to the exclusion of the Commission.

2) The ALJ was correct in stating the Commission can determine if a party has a scintilla of interest to decide whether or not jurisdiction is proper. In *Samson Resources Company v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987), the court held that the Commission cannot determine interests in title and can only look into the presence of an interest to determine if jurisdiction within the Commission is proper.

3) The District Court case was filed first and already in progress when the present case was filed with the Commission. The District Court ruled that Concorde's leases were valid. Redbud has appealed the District Court ruling stating the District Court should not have quieted title in Concorde as to the Savanna, Red Fork, Bartlesville and Hartshorne common sources of supply where it was undisputed that Redbud acquired rights by virtue of the Oklahoma Corporation Commission pooling Order No. 548316, and that Concorde's oil and gas leases have expired, meaning Concorde owns no interests. By Redbud's own admission the District Court has considered the effect of the pooling order. If the appeals court upholds the previous ruling this particular present case is a collateral attack on the District Court's ruling. On the other hand, if the appeals court overturns the ruling then the present case

is moot. If the case is remanded back to the District Court, the District Court may ask for some guidance from the Commission in regards to the pooling order.

4) In *State v. Lohah*, 434 P.2d 928, 934 (Okl. 1967), the Supreme Court stated that: "The general rule is that when a court of component jurisdiction acquires jurisdiction of a subject and of the parties, its jurisdiction continues as to all matters until the issues are finally disposed of, and no other court with coordinate jurisdiction should interfere." Precedent clearly indicates that because the issue was first filed in the District Court and jurisdiction was proper, this case should not be heard by the Commission.

REDBUD

1) **John B. Chandler**, attorney, appearing for Redbud, contends that the Motion to Stay is nothing more than an attempt to procrastinate. The case heard by the District Court is separate and the Commission has jurisdiction to hear the present case.

2) The Motion to Dismiss was properly decided by the ALJ. Nothing has changed since then, no new facts and no new claims, prompting a res judicata defense.

3) Redbud merely wants to confirm that the working interest has been properly pooled by the previous pooling Order No. 548316. Regardless of who comes out on top of the quiet title action in the district court, clarification and verification of the pooling order is still needed.

4) There are two separate and distinct jurisdictions at issue here. The Commission does not have authority to adjudicate the effect of its pooling order on the legal title of property, which is what the district court is deciding. Redbud simply wants the Commission to verify and confirm elections made pursuant to pooling Order No. 548316 which follows precedent and 52 O.S. Section 112.

RESPONSE OF CONCORD

- 1) The delay in this proceeding has been caused by the bankruptcy of Mahalo Energy (USA) Inc., the original interest holder.
- 2) Redbud filed this petition to attack the title issues regarding the interests being considered by the district court. Redbud is not asking for an election to be determined, they are asking the Commission to find that the interests of Concorde have vested in Redbud through Mahalo. Redbud is asking pooling Order No. 548316 and elections made therein remain in full force and effect as to all of the interests of Concorde arising and vesting with pooling Order No. 548316.
- 3) The Court of Appeals ruling will impact how this case goes forward. To continue with this case in front of the Commission is premature and a waste of time and money.
- 4) This case needs to be stayed until the case with the district court comes to a final decision because it involves the same parties, same issues, and Supreme Court precedent dictates so.

CONCLUSIONS

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

- 1) Redbud's application concerning the interpretation, clarification, verification and confirmation of elections made pursuant to pooling Order No. 548316 is specifically authorized by 52 O.S. Section 112 which 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 also has 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. Corporation Commission*, 775 P.2d 296 (Okl. 1939) and *Cabot Carbon Company v. Phillips Petroleum Company*, 287 P.2d 675 (Okl. 1955). The Oklahoma Supreme Court has also 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." See *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98, 102-03 (Okl. 1985). The Commission

also has the authority and jurisdiction to determine whether a prior pooling order continues to be effective as to a specific interest and such authority and jurisdiction are incidental to the Commission's authority determining if a subsequent pooling proceeding should be approved or denied. *Buttram Energies, Inc. v. Corporation Commission of Oklahoma*, 629 P.2d 1242, 1254 (Okl. 1981). Thus the Commission has the jurisdiction to determine whether pooling Order No. 548316 was and is effective as to the working interest or drilling rights claimed by Concorde in the Connor #2-12H well involved herein, supra at 1254; and *Gose v. Corporation Commission*, 460 P.2d 118 (Okl. 1969). The Oklahoma Supreme Court has consistently and continuously authorized the Commission's review of activities outside the judgment roll of a pooling proceeding when clarifying, interpreting or supplementing a pooling order entered in such proceeding.

2) The Commission issued pooling Order No. 548316 on December 28, 2007. This Order was issued in a contested hearing of Cause CD No. 200703903-T; CD No. 200704059-T and CD No. 200704890-O/T. The contested hearing involved Mahalo Energy (USA) Inc. and Concorde. Both companies requested that they be named operator for a horizontal Hartshorne well to be drilled in Section 12. Concorde also alleged ownership of certain oil and gas leases covering the SW/4 of Section 12 claiming the same were held by production from the Connor #1 vertical well located in the SW/4 of Section 12. Mahalo Energy (USA) Inc. contended that Concorde's leases covering the SW/4 of Section 12 had expired by their own terms. The Commission ordered that Mahalo Energy (USA) Inc. be named operator and that leasehold ownership should be determined in District Court and not at the Commission. Pursuant to the provisions of pooling Order No. 548316 Concorde filed a timely election to participate in the well proposed by Mahalo Energy (USA) Inc. Concorde's election included the alleged interest in the oil and gas leases owned by Concorde covering the SW/4 of Section 12. Concorde gave Mahalo Energy (USA) Inc. a check in the amount of \$171,111.72 which included the disputed acreage alleged by Concorde. The check was later returned to Mahalo Energy (USA) Inc. for insufficient funds due to the fact that Concorde placed a stop payment order on the check. By reason of Concorde's failure to pay their proportion of the cost to participate in the proposed well, Concorde was treated by Mahalo Energy (USA), Inc. as having not elected to participate in the Connor #2-12H well and a check in the amount of \$1,875 was sent to Concorde representing their share of uncontested bonus under Order No. 548316.

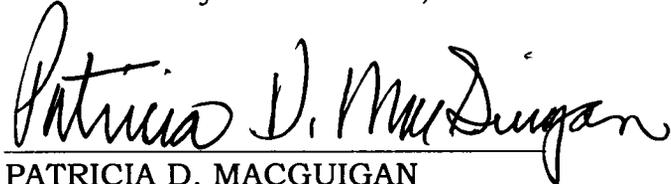
3) Under pooling Order No. 548316 Mahalo Energy (USA), Inc., as operator, timely commenced operations on the initial well covered by such pooling order, being the Connor #2-12H well, and continued such operations with due diligence to the completion of such well in the Hartshorne common source of supply in Section 12 for the 640 acre unit. Such well continues to produce from the Hartshorne common source of supply. Redbud was the successor in

interest to Mahalo Energy (USA), Inc. and has continued to fulfill the requirements under pooling Order No. 548316.

4) The Commission does not have authority to adjudicate the effect of its pooling order on a legal title to property. *Nilsen v. Ports of Call Oil Company*, supra at 103; *Leck v. Continental Oil Company*, 800 P.2d 224 (Okl. 1989); *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984); and *Southern Union Production Company v. Corporation Commission*, 465 P.2d 454 (Okl. 1970).

5) The Referee agrees with the ALJ's conclusion that all the present case is trying to determine is whether the pooling Order No. 548316 is still valid, whether it is still in effect and determine whether Concorde was pooled under Order No. 548316. The determination of whether Order No. 548316 is valid and effective against Concorde is the exclusive jurisdiction of the Oklahoma Corporation Commission. The District Court will decide the interest owned by Concorde and whether Concorde's leases are still valid or not. The Referee agrees with the ALJ that the election issues presented by Redbud's present application are within the Commission's exclusive jurisdiction and the Motion to Stay therefore should not be granted and the Commission should proceed on the merits of the present cause.

RESPECTFULLY SUBMITTED THIS 12th day of December, 2014.



PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Douglas
Commissioner Murphy
James L. Myles
ALJ Curtis Johnson
William H. Huffman
Michael D. Stack
John B. Chandler
Michael L. Decker, OAP Director
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