

**FILED**  
MAR 13 2015

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

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
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**    )

**CAUSE CD NO.**  
**201305699-T**

**LEGAL DESCRIPTION:**        **SECTION 12, TOWNSHIP 9**                    )  
   **NORTH, RANGE 15 EAST,**                    )  
   **MCINTOSH COUNTY,**                    )  
   **OKLAHOMA**    )

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON  
A MOTION TO RECONSIDER ORDER NO. 634787**

Concorde Resources Corporation ("Concorde") filed this Motion to Reconsider Order No. 634787 on January 20, 2015. Order No. 634787 was the Order Denying Motion to Stay. Concorde's Motion to Stay was filed by Concorde on October 14, 2014. Concorde's Motion to Stay was denied by ALJ Curtis Johnson. Oral Exceptions to the denial of the Motion to Stay were heard by the Oil and Gas Appellate Referee who found that the pooling election issues presented by the Redbud E&P Inc. ("Redbud") application are within the Commission's exclusive jurisdiction. The Referee therefore affirmed the Oral Report of the ALJ recommending that Concorde's Motion to Stay should be denied. Order No. 634787 was then issued on January 6, 2015 wherein the Commission denied Concorde's Motion to Stay. Concorde then filed the Motion to Reconsider Order No. 634787 which denied Concorde's Motion to Stay this proceeding. The Commission then referred to the Oil and Gas Appellate Referee the Motion to Reconsider Order No. 634787.

**APPEARANCES:** **Michael D. Stack** and **John B. Chandler**, attorneys, appeared for Redbud; **William H. Huffman**, attorney, appeared for movant, Concorde; and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Appellate argument concerning Concorde's Motion to Reconsider order No. 634787 was referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 6<sup>th</sup> day of March, 2015. 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 of action Redbud has asked the Commission to: (1) to interpret and clarify pooling Order No. 548316; (2) to determine that said pooling order properly pooled and adjudicated the rights of the working interest and leasehold owners with 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; (3) conclude that the elections made under said pooling order remain in full force and effect as to the interest of all of the parties to the Order, including the interest of Concorde; and (4) grant any additional relief deemed proper based upon the evidence presented. Thus, Redbud has asked the Commission to confirm the validity of pooling Order No. 548316.

2) The initial causes of action, which resulted in pooling Order No. 548316 concerned the issue of the designation of operator. Mahalo Energy (USA) Inc. (predecessor-in-interest to Redbud and herein "Mahalo/Redbud") filed Cause CD 200703903-T and Cause CD 200704059-T seeking to pool multiple common sources of supply. Concorde filed Cause CD 200704890-O/T seeking to pull the identical common sources of supply. Both Mahalo/Redbud and Concorde sought to be named operator in the subject unit well. There was a title issue concerning certain Oil and Gas Leases which the parties acknowledged should be resolved in the District Court.

3) After pooling Order No. 548316 was issued, Mahalo/Redbud was named operator and Concorde pursued the title issue in District Court. The District Court quieted title to those leases in Concorde's favor and Redbud has appealed the decision. The District Court declined to rule on whether Concorde was properly pooled by Redbud under pooling Order No. 548316 stating it did not have the proper jurisdiction to do so but the Commission did. This cause was filed by Redbud to resolve this issue.

4) In Concorde's Motion to Stay, Concorde argued that this application should be stayed because the quiet title decision from District Court was on appeal, and if Redbud prevailed on that appeal, it would render this cause moot. Concorde asserted that continuing this cause without waiting for the appellate decision would be an unnecessary expense and a waste of judicial

time. The ALJ and the Referee found and came to the 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 Referee found that the determination of whether Order No. 548316 is valid and effective against Concorde is the exclusive jurisdiction of the Oklahoma Corporation Commission. The Oil and Gas Deliberation Decision Sheet was filed on December 31, 2014 with Commissioners Anthony and Murphy who affirmed the Report of the Oil and Gas Appellate Referee which recommended that the Oral Report of the Administrative Law Judge be affirmed and which recommended denying Concorde's Motion to Stay.

5) Concorde's Motion to Reconsider Order No. 634787 adopted and incorporated the original arguments in its Motion to Stay. Concorde's Motion to Reconsider also presents the argument that the Commission does not have the proper jurisdiction to review its pooling Order No. 548316. Concorde asserts that the determination by the Oklahoma Corporation Commission to fail to stay the subject decision would infringe on the rights of the district court where the entirety of the issues could be rendered moot. Concorde also asserts there is a likelihood that the Oklahoma Corporation Commission and the district court, two courts with concurrent jurisdiction over the subject matter, may come into conflict by issuing contrary orders regarding the specific property. Concorde argues that under case law the first court having jurisdiction of the property has "exclusive jurisdiction". *Wooley v. Shaw*, 136 P.2d 398 (Okl. 1943).

## **POSITIONS OF THE PARTIES**

### **CONCORDE**

1) **William Huffman**, attorney, appearing on behalf of Concorde, stated that he thought the case of *Jones Drilling Company v. Hon. Woodson*, 509 P.2d 116 (Okl. 1973) was an important case. The District Court of McIntosh County, Oklahoma, first acquired jurisdiction of the underlying District Court case on March 24, 2008. Redbud's application was not filed until August 27, 2013. Concorde argues that because both the Commission and McIntosh County District Court have concurrent jurisdiction of the subject matter, namely rights, titles, and interests in and to a pooled property, McIntosh County District Court, as the "court first acquiring jurisdiction" in which "should retain jurisdiction of the case" to the exclusion "of the Commission. See *Jones Drilling Company*, 509 P.2d at 119; see also *Wooley v. Shaw*, 136 P.2d 398 (Okl. 1943).

2) Concorde states that Redbud's application wants the Commission to determine the interests of Concorde arising and vesting under pooling Order No. 548316, and basically Redbud wants the Commission to place or determine consummated rights in Redbud for this particular interest, which is exactly the issue that is before the District Court at this particular time.

3) Concorde argues that the *Tenneco Oil Company v. El Paso Natural Gas Company* case, 687 P.2d 1049 (Okl. 1984) states that the Corporation Commission is a venue of limited jurisdiction. Also in the *Grayhorse Energy LLC v. Crawley Petroleum Corporation*, 245 P.3d 1249 (Okl.Civ.App. 2010) the Court finds that the District Court clearly has jurisdiction to adjudicate the legal effect of Oklahoma Corporation Commission's rules and orders. Also, in *Arrowhead Energy Inc. v. Baron Exploration Company*, 930 P.2d 181 (Okl. 1996) the Court states that 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, but the district court has jurisdiction to determine the legal effect of the Oklahoma Corporation Commission rules and orders. Thus, Concorde argues that the question of what the legal effect of the particular Order No. 548316 on the title to property is the District Court's quiet title suit. The Court of Civil Appeals of the State of Oklahoma case *Morgan v. Oklahoma Corporation Commission*, 274 P.3d 832 (Okl.Civ.App. 2012) says:

With respect to private rights disputes, "[s]ubject matter jurisdiction rests solely with the district court to determine private rights and mineral interests and oil and gas leaseholds..." *Grayhorse Energy, LLC v. Crawley Pet. Corp.* 2010 OK CIV APP 145, ¶ 12, 245 P.3d 1249, 1245-55 (citing *Leck v. Continental Oil Co.*, 1989 OK 173, ¶ 6, 800 P.2d 224, 226.)

4) Concorde further argues that failure by the Oklahoma Corporation Commission to stay the subject decision could infringe on the rights of the District Court where the entirety of the issues could be rendered moot, dependent upon the decision of an appellate court. The District Court is the court with exclusive jurisdiction due to the potential mootness of the issue to be decided by the Oklahoma Corporation Commission. Concorde states that neither party would be harmed by the granting of the stay and justice would be more properly served by the granting of Concorde's request to stay the pending Oklahoma Corporation Commission action.

**REDBUD**

1) **Michael D. Stack**, attorney, appearing for Redbud, stated that there isn't anything else in Concorde's Motion to Reconsider Order No. 634787 that has not already been discussed. Concorde's Motion to Reconsider, Concorde's Motion to Stay and Concorde's Motion to Dismiss all present the same arguments.

2) Concorde has filed an Application to Vacate Order No. 548316 in Cause CD 201500280-T on January 20, 2015. The Application states that Redbud failed to commence a well within the required 180 days as set out in the pooling Order No. 548316, which was evidenced by the spud date on the Conner #2H-12 well's Form 1002A which states the well was not spudded until July 16, 2008. Concorde further asserts that Redbud has failed to produce any oil and gas from the subject property for a period of at least 16 months. Thus, Concorde has now filed the same type of relief that Redbud has requested, except reverse. Redbud has filed saying the orders are in effect and Concorde has now filed an application saying they are not in effect. How can Concorde assert that their Application to Vacate Order No. 548316 is within the jurisdiction of the Commission and assert in Redbud's proceeding that jurisdiction is in the District Court.

3) Redbud filed in Concorde's case Cause CD 201500280-T a request for affirmative relief asserting that Concorde's application should be denied because Redbud's well is producing and has produced since August of 2013 and the Mahalo Conner #2H-12 well was commenced timely.

4) There is no logic why Concorde's case should proceed and Redbud's case should be stayed. The Commission has jurisdiction to determine if this pooling order is in effect or not. If it is in effect Redbud wins. If it is not in effect then Concorde's application wins.

5) The Commission records show that the Mahalo Connor #2H-12 well has produced every month and it has actually produced very well. It is a solid well. It has produced since August of 2013.

6) A 1002A gives you a spud date but the pooling order says commence operations which has been shown to be building a location.

**RESPONSE OF CONCORD**

1) Redbud's case in the present proceeding is Appeal #2. Redbud went to District Court and lost in District Court. The court determined the title was in Concorde and Redbud lost so they brought this action. One of the things they are asking for in their present case CD 201305699-T is that the interest is vested in Redbud. What they are trying to get the Commission to do is say that the interest is vested in Mahalo/Redbud so that they can go back to the District Court and say District Court you're wrong in your ruling and you need to change your ruling.

2) If the District Court determines that the pooling order has no legal effect upon the property or the title as a result of a failure to produce in paying quantities, whatever happens here at the Commission is inconsequential, and moot, whether the Order No. 548316 is in force and effect or not, because the District Court has determined that it has no legal effect upon the legal title to that property. That's why all of these proceedings at the Commission should be stayed until the District Court has an opportunity to fully address all of the issues and challenges to the pooling order.

3) Whether the well is producing or not is a fact question and if you take a look at the Oklahoma Tax Commission production it shows no production for 2014 so you have a fact question here of why there was a discrepancy. When this well was commenced is also a fact question.

### CONCLUSIONS

**The Referee finds that Concorde's Motion to Reconsider Order No. 634787 should be denied.**

1) As previously addressed by the Referee in her Report of the Oil and Gas Appellate Referee on an Oral Appeal of a Motion to Stay filed on December 12, 2014 and her Report of the Oil and Gas Appellate Referee on an Oral Appeal of a Motion to Dismiss filed on April 9, 2014, the Commission absolutely has jurisdiction to grant the relief requested: to determine the validity of pooling Order No. 548316 and verify and confirm the elections made thereunder. 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. The Commission also has the authority and jurisdiction to determine whether a prior pooling order continues to be effective as to a specific interest. *Buttram Energies Inc. v. Corporation Commission of Oklahoma*, 629 P.2d 1252 (Okla. 1981). The *Oklahoma Court of Civil Appeals in Harding & Shelton, Inc. v. the Prospective Investment and Trading Company, Ltd.*, 123 P.3d 56 (Okla.Civ.App. 2005) that "The Commission also has primary jurisdiction to determine if an election was

effective...If a dispute arises regarding the rights under a pooling order, the Commission has primary jurisdiction to determine the interest holder's rights and liabilities under the order". See also *Samedan Oil Corporation v. Corporation Commission*, 755 P.2d 664 (Okl. 1988) and *Arkla Exploration Company v. Shadid*, 710 P.2d 126 (Okl.Civ.App. 1985). The Supreme Court in *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okl. 1985) states that the Commission has the authority to determine whether its own pooling order remains in full force and effect.

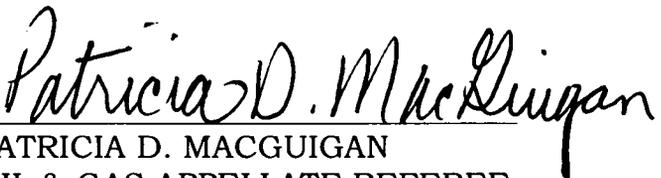
2) As stated previously, the Referee also acknowledges that the Commission does not have the authority to adjudicate the effect of its pooling order on a legal title to property. *Nilsen v. Ports of Call Oil Company*, supra. Concorde pursued an issue of title on certain oil and gas leases at the District Court level where the district court quieted title in those leases in Concorde. The District Court's decision has since been appealed. 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) found that the Commission oversees the conservation of oil and gas and its jurisdiction is limited to the resolution of public rights. Private right issues are to be determined by district courts. *Southern Union Production Company v. Corporation Commission*, 465 P.2d 454 (Okl. 1970).

3) 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 Supreme Court of Oklahoma 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). The Supreme Court of Oklahoma 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*, supra at 102-03.

4) 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 Corp.*, 245 P.3d 1249 (Okl.Civ.App. 2010); *Arrowhead Energy Inc. v. Baron Exploration Company*, 930 P.2d 181 (Okl. 1996); *Tucker v. New Dominion, L.L.C.*, 182 P.3d 169 (Okl.Civ.App.2008).

5) For the above stated reasons the Referee believes that Redbud's present application in Cause CD 201305699-T is within the Commission's exclusive jurisdiction and the Motion to Reconsider Order No. 634787 therefore should not be granted and the Commission should proceed on the merits of the present cause which has been consolidated with Concorde's application to vacate Order No. 548316 in Cause CD 201500280-T to be heard in a protested hearing on April 1, 2 and 3, 2015.

RESPECTFULLY SUBMITTED THIS 13<sup>th</sup> day of March, 2015.

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
ALJ Curtis Johnson  
William H. Huffman  
Michael D. Stack  
John B. Chandler  
Michael L. Decker, OAP Director  
Oil Law Records  
Court Clerks – 1  
Commission Files