

DH
10-17

**RECOMMENDATION SHEET
OF THE OIL & GAS APPELLATE REFEREE**

FILED
SEP 18 2017

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	MEWBOURNE OIL COMPANY)	
)	
<u>RELIEF SOUGHT:</u>	POOLING)	CAUSE CD NO.
)	200604826
<u>LEGAL DESCRIPTION:</u>	SECTION 1, TOWNSHIP 20)	
	NORTH, RANGE 24 WEST,)	
	ELLIS COUNTY, OKLAHOMA)	

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S
RULING ON MOTION TO DISMISS THE MOTION TO REOPEN**

Andrew Dunn, Administrative Law Judge, for the Oklahoma Corporation Commission, pursuant to proper notice, heard on the 21st day of July, 2017 the above Motion to Dismiss in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma.

APPEARANCES: **Richard A. Grimes**, attorney, appeared for applicant, Mewbourne Oil Company ("Mewbourne"); and **Russell J. Walker** and **Andrew J. Waldron**, appeared on behalf of Optima Oil & Gas Company, LLC ("Optima").

The ALJ filed his Report of the Administrative Law Judge on the 26th day of July, 2017, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Oral Arguments on the Oral Appeal were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 8th day of September, 2017. After considering the arguments of counsel and the record contained within this cause, the Referee finds as follows:

STATEMENT OF THE CASE

Cause CD 200604826 is the application of Mewbourne for pooling covering Section 1, T20N, R24W, Ellis County, Oklahoma filed by Mewbourne on June 1, 2006; was heard on June 27, 2006 uncontested without appearance by Optima, and approval recommended. Thereafter on August 10, 2006, Mewbourne's Order No. 528230 was granted by the Commission concerning Mewbourne's present pooling in CD 200604826.

After the pooling application was recommended, but before the pooling Order No. 528230 was issued Optima appeared and argued to the Commission a Motion to Stay in an effort to stay the issuance of pooling Order No. 528230. Optima contended that Optima's operations manager had mislaid Mewbourne's pooling notice and therefore Optima should be excused for not appearing to protest the pooling application by Mewbourne. The Commission denied Optima's motion on August 10, 2006. The Commission issued pooling Order No. 528230 which pooled the working interests of Optima and designated Mewbourne as operator. Optima filed a motion to vacate order No. 528230 and to reopen the record for purposes of a protested hearing. The Commission denied Optima's request to reopen and to vacate the order on September 8, 2006. Optima elected not to participate in unit development under Order No. 528230 but appealed Commission Order No. 528230 to the Oklahoma Supreme Court. The Oklahoma Court of Civil Appeals by opinion filed April 8, 2008, in Case No. 103,742 vacated Order No. 528230 upon finding that: "Mewbourne's counsel misled the Oklahoma Corporation Commission and caused it to enter an erroneous order granting P.O. 528230." See opinion of Oklahoma Court of Civil Appeals filed April 8, 2008, Case No. 103,742, paragraph 42. The Court of Civil Appeals opinion was upheld by the Oklahoma Supreme Court on September 8, 2008, and the case remanded to the Commission for further proceedings consistent with the opinion.

In subsequent legal proceedings between Mewbourne and Optima, it was determined that the adjudicative finding on appeal that "Mewbourne counsel's misled the Oklahoma Corporation Commission and caused it to enter an erroneous order granting P.O. 528230" was a "determination necessary to [Court of Appeal's] judgment" and that "[Mewbourne had] a full and fair opportunity to litigate this issue." Accordingly the United States District Court for the Western District of Oklahoma by order filed July 21, 2010, determined that "issue preclusion bars relitigation" of whether Mewbourne misled the Oklahoma Corporation Commission. See Order of Honorable Robin Cauthron filed July 21, 2010, Case no. CIV-09-145, pp. 7-8. This ruling was not appealed and is now final.

Ultimately, the U.S. Court of Appeals for the 10th Circuit, by order and judgment filed October 23, 2012, held that Mewbourne's misconduct was in the nature of "intrinsic fraud" and that as such is a "public rights" issue which is within the jurisdiction of the Commission.

Optima is requesting in its Motion to Reopen to determine the proper sanctions and equitable restitution due to Optima as a result of Mewbourne's intrinsic fraud upon the Commission consistent with the final opinions, orders, and judgments of the Oklahoma Court of Appeals, the U.S. District Court for the Western District of Oklahoma, and the U.S. Court of Appeals for the 10th Circuit. Mewbourne is alleging among other things that the Commission lacks

jurisdiction to grant the relief Optima requests; even if proved, intrinsic fraud upon the Commission cannot result in money damages to Optima; and therefore Mewbourne filed its Motion to Dismiss.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) **ALJ Andrew Dunn** referenced OCC-OAC 165:5-9-5(d), Joinder and consolidation of parties and proceedings where it states "The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

2) The ALJ withheld his decision on Mewbourne's Motion to Dismiss with Optima's motion to Reopen Cause CD 200604826 until hearing Optima's motion to Reopen, consolidating both motions. The ALJ recommended that the parties agree upon a date to set Optima's motion to Reopen and that Mewbourne's Motion to Dismiss be heard and continued until that date.

3) The ALJ believes that this decision will aid in the full development of the record and provide each party a full opportunity to present its arguments on whether the Commission must reopen the cause to apportion relief. Additionally, the ALJ based his recommendation on the belief that Optima's Motion to Reopen will cover much of the same material as Mewbourne's Motion to Dismiss. Finally, the ALJ made his oral recommendation to consolidate Mewbourne's Motion to Dismiss with Optima's Motion to Reopen Cause CD 200604826 under OCC-OAC 165:5-9-5(d). For the aforementioned reasons, the ALJ finds that this "action is just" because it will limit the possibility of hearing redundant motions.

RECOMMENDATION OF THE OIL & GAS APPELLATE REFEREE

1) The Referee finds the ALJ's recommendation to consolidate Mewbourne's Motion to Dismiss with Optima's Motion to Reopen CD 200604826 and continue said motions to be heard together at a later date is supported by substantial evidence and free of reversible error. Therefore, the ALJ's recommendations should be affirmed.

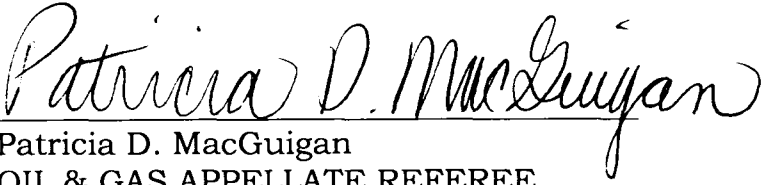
2) The ALJ, as the trier of fact, has the duty to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okla. 1940); *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okla. 1951); *El Paso Natural Gas Company v. Corporation Commission of the State of Oklahoma*, 640 P.2d 1336 (Okla. 1981).

3) The ALJ stated in his Report of the ALJ filed on July 22, 2017 on page 2, paragraph 4:

The ALJ believes that this decision will aid in the full development of the record and provide each party a full opportunity to present its arguments on whether the Commission must reopen the cause to apportion relief. Additionally, the ALJ based his recommendation on the belief that Optima's Motion to Reopen will cover much of the same material as Mewbourne's Motion to Dismiss. Finally, the ALJ made his oral recommendation to consolidate Mewbourne's Motion to Dismiss with Optima's Motion to Reopen CD No. 200604826 under OAC 165:5-9-5(d), which provides that; "The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just." For the aforementioned reasons, the ALJ finds that this "action is just" because it will limit the possibility of hearing redundant motions.

4) The Referee agrees with the ALJ that these motions will be presented with "much of the same material." Therefore administrative convenience and prevention of waste of judicial resources will occur if these motions are consolidated and heard together. Therefore, the Referee, for the reasons stated by the ALJ, finds that the ALJ's recommendation to consolidate Mewbourne's Motion to Dismiss with Optima's motion to Reopen CD 200604826 (OCC-OAC 165:5-9-5(d)) should be affirmed.

RESPECTFULLY SUBMITTED THIS 18th day of September, 2017.


 Patricia D. MacGuigan
 OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
 Commissioner Hiatt
 Commissioner Anthony
 ALJ Andrew Dunn
 Richard A. Grimes
 Russell J. Walker
 Andrew J. Waldron

Maribeth Snapp, J&LS Director
Oil Law Records
Court Clerks
Commission Files