TABLE OF CONTENTS

SELECTED OIL AND GAS DECISIONS...................................................................................................................2
SELECTED WATER DECISIONS............................................................................................................................6
SELECTED AGRICULTURE DECISIONS .................................................................................................................7
SELECTED WIND DECISIONS...............................................................................................................................9
ARTICLES OF INTEREST ......................................................................................................................................10

From the Editor:

Hello again from the staff here at the Newsletter. In this Edition, we would like to make our readers aware that on February 24, 2014, the United States Supreme Court heard oral arguments in Utility Air Regulatory Group v. Environmental Protection Agency. The decision in this case will be monumental in defining the scope of the EPA’s authority to regulate greenhouse gases. This will necessarily affect all of the areas of law covered by this Newsletter. The full transcript of the hearing can be found at http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-1146_nk5h.pdf. We will keep a close watch on this case and will include the brief once an opinion is rendered. As always, please send any comments or questions to us so we can continually improve the quality of this Newsletter. Enjoy!

Oklahoma Bar Association Mineral Law Section Newsletter

<table>
<thead>
<tr>
<th>Brad Torgerson</th>
<th>John Paul Albert</th>
<th>Derek Haysom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Editor</td>
<td>Editor-in-Chief</td>
<td>Associate Editor</td>
</tr>
</tbody>
</table>

All case citations are as of 3-4-2013. The citations provided in this Newsletter do not reflect changes made by Lexis or Westlaw, or the case’s addition to a case reporter after that date. This Newsletter contains case decisions issued through 2-10-2013. This PDF version of the newsletter is word-searchable. If you have any suggestions for improving the Newsletter, please e-mail the editorial staff at ou.mineral.law@gmail.com.
Federal

5th Circuit


An energy services company (“Plaintiff”) contracted with an oil production company (“Defendant”) to provide services and supplies to Defendant’s offshore floating production facility (“Platform”). After Plaintiff performed the services, Defendant declared bankruptcy, and Plaintiff remained unpaid. Plaintiff brought suit in federal district court asserting maritime liens, and Defendant moved to dismiss, alleging that the district court lacked in rem admiralty jurisdiction over the Platform. The district court granted Defendant’s motion, and the appellate court affirmed, concluding that federal jurisdiction did not attach to the Platform because the Platform failed to qualify as a “vessel” under federal law.

10th Circuit


An independent petroleum landman (“Plaintiff”) entered into a contract (the “Contract”) to provide consulting services for an Indian tribe (the “Tribe”). After the Tribe terminated the Contract, Plaintiff sued various companies and individuals (“Defendants”), but not the Tribe. Plaintiff served the Tribe with a non-party subpoena duces tecum (the “Subpoena”), requesting documents relevant to the suit. The Tribe moved to quash the Subpoena based on tribal immunity, but the trial court denied the motion. The appellate court reversed, holding that since the Tribe is immune to suit, including “judicial process,” and since the Subpoena is a form of judicial process, the Tribe’s motion to quash the Subpoena should have been granted based on tribal immunity.

State

Arkansas

Chesapeake Exploration, LLC v. Whillock, 2014 Ark. App. 55

An oil and gas company (“Lessee”) sought to lease mineral rights from surface owners (“Lessors”) whom Lessee thought also owned the minerals. After Lessors told Lessee that Lessors did not own the minerals, Lessee insisted they did and leased the mineral rights after making a bonus payment. Upon discovery of correct title, Lessee filed a release of oil and gas lease and requested Lessors refund the Bonus. After Lessors refused, Lessee brought suit. The trial court granted summary judgment in favor of Lessors, but the appellate court reversed in part and remanded, holding that while Lessee could not seek a contractual remedy because of the release, the release did not bar recovery on equitable grounds and the trial court should weigh the equities.

Louisiana


After a municipality (the “Municipality”) annexed property owned by its encompassing county (the “Parish”), both the Municipality and the Parish executed oil and gas leases in favor of separate oil and gas companies. One of those companies filed suit to determine whether the Municipality or the Parish was entitled to receive royalty proceeds (the “Royalties”) attributable to the mineral acreage underlying public roads. The trial court found that the Parish was entitled to the Royalties, but the appellate court reversed, holding that the Municipality’s...
annexation of public roads formerly owned by the Parish effectively transferred ownership of minerals, therefore entitling only the Municipality to the Royalties.

North Dakota

Sagebrush Resources, LLC v. Peterson, 2014 ND 3, 841 N.W.2d 705

An oil and gas company ("Appellant") owned an oil and gas lease (the "Lease"). After the surface owners ("Appellees") entered the Lease to take pictures of various well sites, Appellees filed complaints with the state regulatory agency (the "Agency") over Appellant’s activities. Appellant subsequently brought an action for trespass and injunctive relief. The trial court summarily dismissed the suit with prejudice and awarded attorney’s fees to Appellees. The appellate court affirmed, holding that Appellant had no action for trespass against Appellees since Appellees had not interfered with any of Appellant’s leasehold rights and that the suit was frivolous since at the time it brought the action, Appellant had already sold its interest and thus had no basis for injunctive relief.

Ohio

Henry v. Chesapeake Appalachia, L.L.C., 739 F.3d 909 (Ohio 2014)

An oil company ("Assignee") was assigned an oil and gas lease (the "Lease") covering the property of a mineral owner ("Lessor"). Three days before expiration of the Lease’s primary term, Defendant filed a Declaration and Notice of Pooled Unit ("DPU") to pool Lessor’s acreage as permitted under the Lease. Lessor brought suit asserting that the Lease had expired. The trial court summarily dismissed the suit with prejudice and awarded attorney’s fees to Appellees. The appellate court affirmed, holding that Assignee had no action for trespass against Appellees since Appellees had not interfered with any of Assignee’s leasehold rights and that the suit was frivolous since at the time it brought the action, Assignee had already sold its interest and thus had no basis for injunctive relief.

Oklahoma


A group of individuals and oil and gas companies (collectively "Plaintiffs") entered into an area of mutual interest agreement (the "Agreement") with another oil and gas company ("Defendant"). The Agreement contained a provision mandating that the parties would offer each other their proportionate shares of any subsequently-acquired interest inside the area of mutual interest. After one party to the Agreement declined to accept its proportionate share, Defendant did not offer the declined acreage to Plaintiffs. Plaintiffs then brought suit, but the trial court granted summary judgment in favor of Defendant. The appellate court affirmed, holding that since the Agreement was silent on whether Defendant must offer declined acreage to the other parties to the Agreement, the trial court did not err in granting summary judgment to Defendant.


Two individuals ("Plaintiffs") were lessors to an expired but unreleased oil and gas lease (the “Old Lease”). A lease broker ("Broker"), working on behalf of an oil and gas company ("Principal"), sent Plaintiffs a letter and a new lease (collectively the “Agreements”) which was to vest upon release of the Old Lease. The letter also contained a promised lease bonus in consideration for the new lease. Before the Old Lease was released, Principal instructed Broker to stop leasing. After Plaintiffs obtained a release of the Old Lease, Principal refused to pay the bonus payment, and Plaintiffs brought suit. The trial court granted summary judgment in favor of Plaintiffs, and the appellate court affirmed, holding that Broker had apparent authority to bind Principal and the Agreements fulfilled every requirement for validity.


A charitable foundation (the “Foundation”) owned oil and gas interests (the “Interests”) in Oklahoma. The Foundation also owned the majority of a corporation (the “Corporation”). The Foundation deeded most of the Interests to the Corporation, but some of the Interests were accidentally omitted (the “Omitted Interests”). After the Corporation purchased all of the Foundation’s remaining interest in the Corporation, the Corporation was sold to an oil and gas company (“Grantee”). When Grantee’s successors-in-interest (“Defendants”) claimed the Omitted Interest, the Foundation brought suit to quiet title in the Omitted Interests. The trial court granted summary judgment in favor of the Foundation, and the appellate court affirmed, holding that the Foundation gifted the Interests to the Corporation, but did not gift the Omitted Interests, so the Foundation retained the Omitted Interests.
Texas


A mineral owner (“Lessor”) leased its oil and gas interests to two oil and gas companies (“Lessees”). The lease contained a horizontal Pugh clause which triggered “[a]t the expiration of the Primary Term or the conclusion of the continuous development program.” After Lessees established production and the primary term of the lease expired, Lessor brought suit to cancel the lease as to the deeper, non-producing formations. The trial court found in favor of Lessees, and the appellate court affirmed, holding that the disjunctive “or” in the triggering language did not operate to cancel the non-productive formations since the continuous development program was still ongoing.


A married couple (“Grantors”) conveyed land to another couple (“Grantees”), subject to the following:

SAVE AND EXCEPT, however, there is reserved unto George Prochaska, his heirs and assigns, one-half (1/2) of the one-eighth (1/8) royalty to be provided in any and all leases for oil, gas and other minerals now upon or hereafter given on said land, or any part thereof, same being equal to one-sixteenth (1/16th) of all oil, gas and other minerals of any nature, free and clear of all costs of production, except taxes;

***

AND PROVIDED this reservation is burdened with paying the two outstanding mineral royalty reservations, each of One-Fourth (1/4) of one-eighth (1/8) royalty, one of which reservations is described in the deed from John Hancock Mutual Life Insurance Company to E.S. Joslin, now of record in Vol. 141, page 161, Deed Records of Karnes County, Texas, and the other reservation is described in the deed from E.S. Joslin, et ux to A.W. Powell, Jr., et al now of record in Vol. 165, page 80 of the Deed Records of Karnes County, Texas; And this reservation shall only be effective to the extent that one or both of said outstanding reservations become terminated.

It being the intent of the parties hereto that John W. Regmund and wife, Frances E. Regmund, as of the effective date hereof, shall be vested with and entitled to one-half (1/2) of the usual one-eighth (1/8) royalty in and to all oil, gas and other minerals in on and/or under the property herein conveyed, and the reservation herein above recited in favor of the grantor herein, shall relate to and cover only the one-half (1/2) of one-eighth (1/8) royalty interest previously reserved in favor of John Hancock Mutual Life Insurance Company and Ennis Joslin, if, as and when said interest in favor of said parties terminate

After existing leases expired and new leases were executed for a higher royalty, heirs of Grantees (“Appellants”) sought a declaratory judgment that heirs of Grantors (“Appellees”) were only entitled to a 1/16th royalty on oil and gas production. The trial court found in favor of Appellees, holding that they owned a “floating” 1/2 of the lease royalty. The appellate court affirmed.


An oil and gas investor (“Appellee”) sought to separate from his business with his partner (“Appellant”) in which Appellee owned a 50% interest. The parties negotiated an agreement (the “Agreement”) for the separation, which contained an indemnity provision (the “Indemnity”) in favor of Appellee. Subsequently, Appellee was sued by another oil and gas company and found liable for breach of trade secrets among other claims. Appellee sued Appellant to enforce the Indemnity and the trial court reversed, holding the Indemnity did not specifically expressly indemnify Appellee for liability from his own intentional torts, and thus there was no obligation for Appellant to indemnify Appellee.


An oil and gas company (“Appellee”) purchased a leasehold interest covered by an oil and gas lease (the “Old Lease”) containing a continuous drilling provision (the “Provision”) that had been recently amended. After continuous drilling ceased, Appellee obtained a new oil and gas lease (the “New Lease”) on the same acreage. Appellee then filed a declaratory judgment action seeking a declaration that the Old Lease terminated, and the overriding royalty interest (“Override”) attached to the Old Lease terminated as well. The trial court granted
summary judgment in favor of Appellee, and the appellate court affirmed, holding that since the Old Lease terminated due to breach of the Provision more than one year earlier, the Override terminated as well under the terms of the reservation and did not burden the New Lease.

West Virginia


Landowners (“Petitioners”) entered into a written agreement with neighboring landowners (“Respondents”) to install a gas line (the “Pipeline”) across Respondents’ property. Respondents later demanded that Petitioners remove the Pipeline from Respondents’ property, but Petitioners refused and filed an action seeking injunctive relief to maintain the Pipeline. The trial court, in ordering the Pipeline removed, found that Respondents’ permission to cross Respondents’ property had been properly withdrawn, and the appellate court affirmed, holding that Petitioners could not claim any easement, express or implied, across Respondents’ property because Respondents’ permission constituted a license that was subsequently revoked by Respondents in a manner contemplated by the party’s written agreement.
**Kansas**


Water appropriation permit holders (“Appellees”) held permits (the “Permits”) which were subject to oversight and amendment by a state regulatory agency (the “Agency”) under the terms of the Permits. Appellees challenged the terms of the Permits in district court and the court found that although the monitoring plan was allowed, the Agency could not retain jurisdiction to reduce the rates of diversion and quantities of rights to be perfected. The appellate court affirmed as to the Agency’s discontinued jurisdiction, but remanded on the issue of whether the monitoring plan was unreasonable in order for Appellees to be allowed to present evidence of its unreasonableness.

**Idaho**

*In Matter of Distrib. of Water to Various Water Rights Held By or For Benefit Of A&B Irrigation Dist.*, 155 Idaho 640, 315 P.3d 828 (Idaho 2013)

After senior surface water rights holders (“Appellants”) claimed they were suffering material injury due to groundwater pumping by junior water rights holders (“Respondents”), the state water regulatory agency (“Agency”) issued an order (the “Order”) establishing a methodology to determine the material injury caused by Respondents and ordering Respondents to provide replacement water or curtail usage. Upon judicial review, the trial court upheld the Order, but found the Agency failed to comply with the proper procedural framework for mitigation plans. The Idaho Supreme Court affirmed, holding that a baseline methodology could be used to determine material injury but that the Agency abused its discretion by failing to comply with the procedural framework applicable to mitigation plans.
Federal

10th Circuit


Five farmers (collectively “Appellants”) planted corn on newly-broken, non-irrigated land. Appellants applied for crop insurance under federal law, but were denied coverage by a federal agency (“Agency”) because the Agency determined Appellants did not follow good farming practices (“GFP”). Appellants sought judicial review of the Agency’s determination, but the trial court upheld the Agency’s decision. The appellate court affirmed, holding that since Appellants did not allow for a fallow period before planting corn on newly broken ground, the Agency’s GFP determination was not arbitrary and capricious.

State

South Dakota

*Colburn v. Hartshorn*, 2013 SD 91, 841 N.W.2d 267

A property owner (“Defendant”) leased some of his property to his daughter and son-in-law (“Plaintiffs”), agreeing also that Plaintiffs would care for Defendant’s cattle in exchange for half of the sale proceeds when the cattle were sold. Neither agreement was reduced to writing. After friendly relations between the parties deteriorated, Defendant no longer wanted Plaintiffs to lease his land or care for his cattle. Plaintiffs then filed an agister’s lien (the “Lien”) for care of the cattle and brought suit to recover amounts due for caring for the cattle and to foreclose on the Lien. The trial court found the Lien invalid, but the appellate court reversed, holding that even though Defendant retained an interest in the property, Defendant entrusted the cattle to Plaintiffs, so the Lien was valid.

Texas

*Texas Com’n on Environmental Quality v. Bosque River Coalition*, 56 Tex. Sup. J. 1225, 413 S.W.3d 403 (Tex. 2013)

A dairy operator (“Operator”) sought to amend his concentrated animal feeding operation permit (the “Permit”) through the proper regulatory agency (“Agency”). A coalition of nearby landowners (collectively “Respondent”) filed a petition for a contested-case hearing (the “Hearing”) on the amendment of the Permit. The Agency denied the request for the Hearing, and Respondent sought judicial review. The trial court upheld the Agency’s ruling, but the appellate court reversed. The Texas Supreme Court reversed the appellate court, holding that even though Respondent did not have standing to request the Hearing since there was not a significant increase in the quantity of waste discharged from Operator’s operation.

Wisconsin


A dairy farm (“ Applicant”) applied to the state regulatory agency (the “Agency”) for permits to
construct and operate a dairy facility, including a permit for two high-capacity water wells (the “Wells”). The Agency concluded no environmental impact statement was required and approved the permit for the Wells. A coalition of environmental protection groups (“Petitioners”) sought judicial review of the approval, but the trial court found the Agency had properly considered the cumulative effects of the Wells. However, the appellate court reversed, holding that the Agency improperly considered the cumulative effects of the Wells only, instead of the cumulative effects of the Wells in conjunction with all other high-capacity water wells in the region.

Wyoming

McTiernan v. Jellis, 2013 WY 151, 316 P.3d 1153

An owner of cattle (“Rancher”) and a landowner (“Landowner”) entered into an oral agreement that allowed Rancher to keep his cattle herd on Landowner’s property for a fee. However, Landowner later denied Rancher access to his herd and filed a lien statement for payments allegedly owed by Rancher. Rancher brought suit for the release of his cattle, and the jury found Landowner liable for conversion of the cattle, but also found Landowner was entitled to the lien claimed for feed and pasturage. However, the appellate court remanded for a new trial, holding that the jury’s finding of conversion proved inconsistent as a matter of law with its finding that Landowner was also entitled to a personal property lien.
Idaho


A wind farm owner (“Appellant”) sought to enter into contracts to sell electricity to a utility company (“Appellee”). Appellant decided to split its project into two separate projects in order to qualify for the standard avoided-cost rate (the “Rate”). Appellee and two other utility companies subsequently filed a petition with the regulatory agency (the “Agency”) requesting the eligibility requirement for the Rate be lowered. Appellant and Appellee then entered into contracts for purchase dated effective after the petition was approved, which the Agency would not approve because Appellant no longer qualifying for the posted rates. The appellate court upheld the Agency’s decision, holding that the Agency’s findings were not arbitrary or capricious since there was no effective agreement prior to the Agency’s change in requirements.
ARTICLES OF INTEREST

Oil and Gas


Sara Gosman, *Reflecting Risk: Chemical Disclosure and Hydraulic Fracturing*, 48 Ga. L. Rev. 83 (Fall 2013)


Water


Agriculture


For a more complete list of articles related to agricultural law, please consult the Agricultural Law Bibliography of the National Agricultural Law Center, [http://www.nationalaglawcenter.org/reporter/caseindexes/](http://www.nationalaglawcenter.org/reporter/caseindexes/). This bibliography is updated quarterly and provides a comprehensive listing of agricultural law articles.