

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: MULTIUNIT HORIZONTAL WELL

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001032-T

ORDER NO.

715548

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: WELL LOCATION EXCEPTION
(PART OF A MULTIUNIT HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001033-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: MULTIUNIT HORIZONTAL WELL

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001034-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: WELL LOCATION EXCEPTION
(PART OF A MULTIUNIT HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001035-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: MULTIUNIT HORIZONTAL WELL

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001036-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: WELL LOCATION EXCEPTION
(PART OF A MULTIUNIT HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTIONS 17 AND 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST, HUGHES
COUNTY, OKLAHOMA

CAUSE CD NO.

202001037-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: INCREASED WELL DENSITY
(PART OF A MULTIUNIT HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTION 17,
TOWNSHIP 8 NORTH, RANGE 12 EAST,
HUGHES COUNTY, OKLAHOMA

CAUSE CD NO.

202001038-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: INCREASED WELL DENSITY
(PART OF A MULTIUNIT HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTION 20,
TOWNSHIP 8 NORTH, RANGE 12 EAST,
HUGHES COUNTY, OKLAHOMA

CAUSE CD NO.

202001039-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: POOLING (PART OF A MULTIUNIT
HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTION 17,
TOWNSHIP 8 NORTH, RANGE 12 EAST,
HUGHES COUNTY, OKLAHOMA

CAUSE CD NO.

202001040-T

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: POOLING (PART OF A MULTIUNIT
HORIZONTAL WELL)

LEGAL DESCRIPTION: SECTION 20, TOWNSHIP 8
NORTH, RANGE 12 EAST, HUGHES COUNTY,
OKLAHOMA

APPLICANT: CALYX ENERGY III, LLC

RELIEF SOUGHT: EXCEPTION TO OAC 165:10-3-28
AS TO HORIZONTAL WELL SPACING
REQUIREMENTS

LEGAL DESCRIPTION: SECTION 20, TOWNSHIP 8
NORTH, RANGE 12 EAST, HUGHES COUNTY,
OKLAHOMA

CAUSE CD NO.

202001041-T

CAUSE CD NO.

202001042-T

HEARINGS: Hearing on the Merits: July 22, 2020
 440 S. Houston, Suite 114, Tulsa, Oklahoma 74127 (via videoconference)
 Before Connie Moore, Administrative Law Judge

 Hearing on Motion to Dismiss and Oral Motion to Stay: July 24, 2020,
 440 S. Houston, Suite 114, Tulsa, Oklahoma 74127 (via videoconference)
 Before Connie Moore, Administrative Law Judge

 Hearing on Exceptions: October 5, 2020, in Room 301
 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
 Before Patricia MacGuigan, Appellate Referee, with Commissioners present

APPEARANCES: Ron M. Barnes and Grayson Barnes, Attorneys *representing* Calyx
 Energy, LLC (“Calyx”)
 Anthony J. Ferrate, Assistant General Counsel *representing* Canaan
 Resources X, LLC (“Canaan”)

**ORDER DENYING PROTESTANT’S MOTION TO DISMISS FOR LACK OF
JURISDICTION AND ORAL MOTION TO STAY**

NOW, on the date set forth below, the above-captioned and number Causes come before the Oklahoma Corporation Commission (“Commission”).

PROCEDURAL HISTORY

On April 29, 2020, Calyx filed Applications CD 202001032 - CD 202001042. The Applications all concerned Sections 17 and 20 of Township 8 North, Range 12 East in Hughes County, Oklahoma. The Applications sought Multiunit Horizontal Wells (CD 202001032, CD 202001034, and CD 202001036), Well Location Exceptions (CD 202001033, CD 202001035, and CD 202001037), Increased Well Density (CD 202001038 and CD 202001039), Pooling (CD 202001040 and CD 202001041), and Exception to Spacing Requirements (CD 202001042).

On May 1, 2020, Canaan entered a protest in each Application.

On June 5, 2020, the Commission entered Order No. 712055, consolidating the above-captioned Causes for the purpose of taking evidence and reporting to the Commission and set the hearing on the merits on the Application, as amended on the July 22-24, 2020 Protest Docket.

On July 9, 2020, the U.S. Supreme Court entered an order in *McGirt v. Oklahoma*, 591 U.S. ___, 2020, No. 18-9526, 140 S.Ct. 2452, a case that raised questions about state and Muscogee Creek jurisdiction in eleven counties in Eastern Oklahoma, including Hughes County, where the wells at issue in the Applications would be located.

On July 17, 2020, Canaan filed Protestant's Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss").

On July 21, 2020, Calyx filed its Response to Protestant's Motion to Dismiss.

On July 22, 2020, the referenced Causes were set for hearing on the merits before Administrative Law Judge ("ALJ") Connie Moore. The Applications seeking Multiunit Horizontal Wells (Cause Nos. CD 202001032, CD 202001034, and CD 202001036), Well Location Exceptions (Cause Nos. CD 202001033, CD 202001035, and CD 202001037), Increased Well Density (Cause Nos. CD 202001038 and CD 202001039), and Exceptions to Spacing Requirements (Cause No. CD 202001042) were heard uncontested. In the Pooling Applications (Cause Nos. 202001040 and 202001041), no evidence or testimony in opposition was offered by Protestant, Canaan. At the conclusion of the hearing, ALJ Moore took the matter under advisement and continued the Motion to Dismiss, which affected all Applications, to July 24, 2020.

On July 24, 2020, the Motion to Dismiss was heard by ALJ Moore and the matter was taken under advisement.

On August 4, 2020, ALJ Moore filed her recommendation in the form of a Decision Sheet denying the Motion to Dismiss and denying an oral request for stay of effectiveness of any Commission order approving the Applications until appellate rights were exhausted ("Request to Stay").

On August 6, 2020, ALJ Moore filed her supplemental recommendation in the form of a Supplemental Decision Sheet to include granting the requested relief in all of the above-referenced Applications.

On August 18, 2020, Canaan filed exceptions to the recommendation of the ALJ in addition to Motions to Advance and for In-Person Oral Argument.

On August 19, 2020, Calyx filed its Response to Protestant's Motion Taking Exception to the Report of the ALJ.

On September 1, 2020, the Commission entered Order No. 714509, referring Canaan's exceptions to the Oil and Gas Appellate Referee ("Referee"), in addition to other rulings on pending motions.

On October 5, 2020, Referee Patricia MacGuigan presided over in-person oral argument with Chairman Hiatt and Commissioner Murphy in attendance. At the conclusion of the hearing, Referee MacGuigan took the matter under advisement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon a review of the entire record in this Cause, including a thorough review of the evidence, Exceptions, responses to the Exceptions, and the arguments of counsel, the Commission finds and concludes as follows:

Jurisdiction

Notice was provided as required by Commission Rules. No challenge or claim of improper notice has been raised during these proceedings.

Jurisdiction has been raised by Canaan as set forth in its Motion to Dismiss.

Calyx asserts that the case law cited by Canaan, and discussed herein, should all be viewed as *dicta* and disregarded.

Calyx further asserts that *McGirt* changed nothing for oil and gas development in Indian country.

Calyx further states that the Stigler Act, 25 U.S.C. § 355 ("Act"), requires that jurisdiction over Indian country remain with the Commission.

Canaan asserts that the allotments that are regulated under the Act are only one portion of Indian country.

Canaan further asserts that 18 U.S.C. 1151 identifies three ways land may qualify as “Indian country.” Arguing first that “[A]ll land within the limits of any Indian reservation,” is the first way that lands may be considered Indian country. As discussed below, under *McGirt*, the Muscogee Creek reservation exists and would be considered Indian country. Canaan asserts the second way that Indian country is defined is as a “dependent Indian community.” There is no claim in these Causes that a dependent Indian community is at issue. Finally, Canaan argues that Indian country can also be considered “all Indian allotments,” and that it is this final definition of Indian country that the Act likely applies to and argues that reservation land is not subject to the Act. Canaan asserts it is a separate, distinctly defined area of Indian country, and that these lands are outside of the lands that would be subject to the Act.

McGirt involved one Seminole Nation Indian who committed a crime enumerated under the Major Crimes Act, 18 U.S.C. §1151 (“MCA”), on land set aside in 1866 for the Creek Nation [Muscogee (Creek) reservation]. The Supreme Court in *McGirt* held that for purposes of the MCA, only the federal government, not the State of Oklahoma, may prosecute Indians for major crimes committed in “Indian country.” In reaching this conclusion, the Supreme Court determined that “Indian country” included lands set aside by treaty in 1866 for each of the Five Tribes; and, as such they remain reservations having never been disestablished by Congress.

Canaan now seeks to extend the findings of *McGirt* to include all civil jurisdiction, including oil and gas regulation within the original boundaries of the Creek reservation to the Creek Tribe and, by extension, for application to all the reservations of the Five Tribes.

Canaan justifies this extension of *McGirt* on several other Supreme Court and Federal Court decisions, including but not limited to: *Solem v. Bartlett*, 465 U.S. 463 (1984); *Montana v. United States*, 450 U.S. 544 (1981); *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998); *DeCoteau v. District Court*, 420 U.S. 425 (1975); *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994 (2010); *Crow Tribe of Indians v. State of Montana*, 650 F.2d 1104 (1981); *Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana v. Calvert Exploration Co.*, 223 F.Supp. 909 (1963); *Murphy v. Royal*, 875 F.3d 896 (2017); and *Sharp v. Murphy*, No. 17-1107, 591 U.S. ____ (2020). However, none of these cases support Canaan’s position of giving the Tribes jurisdiction over oil and gas regulation within the subject land or reservation land given to the Five Tribes within the State of Oklahoma. All of these cases can be distinguished. The issues in each case revolved around whether the specific incidents occurred on reservation land held in trust by the United States Government for the specific Indian Tribe; or, whether the incidents occurred on fee land owned by an Indian and whether it was part of the reservation and therefore held in trust by the United States Government. Specifically:

- 1) *Solem* involved a crime committed by an Indian on fee land located within the original Cheyenne River Sioux reservation. The holding that the reservation had not been disestablished, and that jurisdiction was in federal court under the MCA and not with the State of South Dakota.

2) In *Alaska*, the Supreme Court held that the transfer of all tribal land in Alaska to two Indian owned corporations had disestablished all reservations in Alaska except one small island. The Venetie Tribe's land therefore, was determined not to be Indian country. The Tribe therefore had no authority to tax non-members.

3) *DeCoteau* involved removal of children from an Indian mother. The Supreme Court determined that the reservation had been terminated and the State had jurisdiction, since it was no longer Indian country held in trust by the United States. The case includes footnote 3, which states that the MCA definition of Indian country generally applies as well to questions of civil jurisdiction. The extent of civil regulatory jurisdiction is more fully developed in *Montana*.

4) *Yankton Sioux Tribe* involved whether certain lands of the reservation had been diminished, rather than disestablished. In the present case, *McGirt* has established the existence of the Creek Reservation.

5) *Assiniboine and Sioux Tribes* was a federal district court case, where the tribe requested cessation of oil and gas drilling on tribal land, governed by 25 U.S.C. § 171.21. The Act states the Montana Oil and Gas Commission's order is not valid until it has obtained approval of the Secretary of the Interior.

In Oklahoma, oil and gas on land belonging to the Five Tribes falls under a different Act of Congress, discussed below.

6) *Montana* involved whether the Crow Tribe of Montana could prohibit hunting and fishing rights to non-members of the Tribe on the river bed of the Big Horn River. After a lengthy discussion on title, the Court held that the river bed belonged to the State of Montana thereby giving Montana jurisdiction over the regulation of hunting and fishing rights. The Supreme Court went on to state:

The Court recently applied these general principles in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209, rejecting a tribal claim of inherent sovereign authority to exercise criminal jurisdiction over non-Indians. Stressing that Indian tribes cannot exercise power inconsistent with their diminished status as sovereigns, the Court quoted Justice Johnson's words in his concurrence in *Fletcher v. Peck*, 6 Cranch 87, 147, 3 L.Ed. 162—the first Indian case to reach this Court—that the Indian tribes have lost any "right of governing every person within their limits except themselves." 435 U.S., at 209, 98 S.Ct., at 1021. Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil

jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. *Williams v. Lee, supra*, at 223, 79 S.Ct., at 272; *Morris v. Hitchcock*, 194 U.S. 384, 24 S.Ct. 712, 48 L.Ed. 1030; *Buster v. Wright*, 135 F. 947, 950 (CA8); see *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152-154, 100 S.Ct. 2069, 2080-2082, 65 L.Ed.2d 10. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (Cites omitted).

Montana, 450 U.S. 544, at 565, 566.

Montana is clear; unless the lands are held in trust by the United States Government, regulation is governed by the State. In the captioned Causes there is no tribal property involved, and only one restricted Indian lease is held in trust by the United States Government. This lease was properly acquired through the Hughes County District Court as required by 25 U.S. § 375 Section 3(b).

Stay

In its Request to Stay, Canaan argued the Commission should stay the effectiveness of any Commission order approving the Applications until the appellate rights were exhausted. The requested stay is not mandated, but is discretionary. See *Bray v. Cap Corp.*, 1977 OK 229, 571 P.2d 1224, at ¶ 20. In determining whether to grant the requested stay, the Commission is not swayed by the arguments of the Movants.

ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that it does have jurisdiction over the subject Applications. The Oklahoma legislature has established jurisdiction of the Commission in 52 O.S. §87.1 *et seq.* In 25 U.S.C. 355, Section 11, Congress granted jurisdiction to the State of Oklahoma over restricted lands of the Five Tribes, stating “all restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma.” The U.S. Supreme Court’s decision in *McGirt* held that the MCA applies to its listed offenses within the historical boundary of the Creek Nation, based upon its finding that the Creek reservation had never been disestablished. The Court determined that its decision did not extend beyond application of the MCA. In *Montana*, the U.S.

Supreme Court held that tribal jurisdiction to regulate affairs within a reservation does not extend to regulating the activity of non-tribal members on land that is not owned by the tribe.

IT IS FURTHER ORDERED, as determined by *Montana*, that maintaining jurisdiction of the Commission over the regulation of oil and gas interests, to the extent permitted under Oklahoma law, does not involve a consensual relationship with the tribe or the regulation of commercial dealings or other arrangements involving the tribe which might justify tribal regulation. Likewise, it does not threaten or have a direct effect on the political integrity, economic security or health and welfare of the tribe, in this case the Creek Nation. Absent such threats or effects, no tribe has the sovereign right to intervene in the regulation of oil and gas property rights by the Commission. The continued existence of the Creek Nation reservation does not in any way diminish or abolish jurisdiction of the Commission over the subject applications.

IT IS FURTHER ORDERED that Canaan's Motion to Dismiss and Request to Stay are denied.

IT IS FURTHER ORDERED that separate orders granting each of the Applications in the above-referenced Causes are being issued concurrent with this Order.

IT IS SO ORDERED.

CORPORATION COMMISSION OF OKLAHOMA



J. TODD HIETT, CHAIRMAN

BOB ANTHONY, VICE CHAIRMAN



DANA L. MURPHY, COMMISSIONER

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 25th day of November, 2020.

BY ORDER OF THE COMMISSION:





PEGGY MITCHELL, Commission Secretary