

ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 9

NUMBER 4

PUBLIC OR PRIVATE? IT DOESN'T MATTER: AN ANALYSIS OF THE COURT/AGENCY RELATIONSHIP AS TO THE ISSUE OF OPERATOR DESIGNATION

KYLE GARZA*

I. Introduction

Who oversees Oklahoma's oil and gas? With the energy sector playing a vital role in the state of Oklahoma's economy,¹ it should not come as a surprise that the Oklahoma Constitution and subsequent statutes have granted the Oklahoma Corporation Commission (the "Corporation Commission") exclusive jurisdiction over certain matters pertaining to oil and gas conservation.² Specifically, the Corporation Commission has the authority to establish spacing and drilling units and designate an operator to those units.³ Without this authority, the public would face a dog-in-the-manger scenario that would severely deter economic development.⁴ The

* I graduated from the University of Oklahoma College of Law in May 2024. I received a B.B.A. in Supply Chain Management from Texas A&M University. I would like to thank Matthew J. Allen for inspiring this Article and assisting me in developing my knowledge on the subject. I would also like to thank my friends and family who have constantly supported me throughout my academic journey.

1. Oklahoma State Profile and Energy Statistics, Environmental Impact Assessment, <https://www.eia.gov/state/analysis.php?sid=OK> (last visited Oct. 5, 2022).

2. *E.g.*, OKLA. CONST. art. 9, § 20, Okla. Stat. Ann. tit. 12, § 1657 (West 2022).

3. *See* Okla. Stat. Ann. tit. 52, § 87.1 (West 2022).

4. *See* *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, ¶ 18, 687 P.2d 1049, 1052 ("The forced-pooling order, among other things, represents the interest of consumers and mineral interests and disallows the "dog in the manger" attitude, which would deny

Corporation Commission's power to conserve oil and gas maintains economic advancement in a field of scarce resources.⁵ Of the powers listed, the operator designation presents challenges between interested parties within a unit. Once the operator has been designated, the specified party does not merely receive a title, but obtains control over the well in question. The newly named operator "calls the shots," that is, determines the allocation of the other interested parties' money. Thus, contractual operator designations and Corporation Commission operator designations present an inevitable tension. Some may question whether the Corporation Commission has the authority to override the contract's designation and choose the operator, or whether it must follow the contractual provision in question. A judiciary generally resolves matters concerning the private contractual rights of parties;⁶ however, if it has ordered a forced pooling, the Corporation Commission has exclusive authority over operator designations.⁷ Resolving the tension requires an evaluation of public versus private rights and determining the proper venue for settling such disputes. If the Corporation Commission has exclusive authority to designate an operator under a pooling order but there is a conflicting private agreement designating a different operator, a fundamental question remains: who has the jurisdictional authority to resolve the dispute? This question is the subject of *FourPoint Energy v. BCE-Mach II*.⁸

The oil and gas industry, specifically an operator's involvement in a spacing unit, is reliant on the compatibility of relationships. This evinces the necessity for clear and concise laws to promote efficiency in well production and grant participants lucidity. Oklahoma's current jurisprudence regarding the jurisdictional authority of operator designation between the Corporation Commission and the judiciary has left gaps that cause confusion for practitioners and interested parties to spacing units alike. The lack of clarity regarding where to file cases leaves practitioners

economic development. In an economy of scarcity, a body such as Oklahoma Corporation Commission serves well.").

5. *See id.* ¶ 19, 687 P.2d at 1052 ("In an economy of scarcity, a body such as Oklahoma Corporation Commission serves well.")

6. *See id.* ¶ 20, 687 P.2d at 1053 ("Respective rights and obligations of parties are to be determined by the district court.")

7. *Crest Res. & Expl. Corp. v. Corp. Comm'n*, 1980 OK 133, ¶ 5, 617 P.2d 215, 217 ("No attempted transfer of a unit operator's status is effectual unless it is done by order of the Commission and with its express sanction. Once created by the Commission, the unit operator's status cannot pass to another via private-contract arrangement.")

8. *FourPoint Energy, LLC v. BCE-Mach II, LLC*, 2021 OK CIV APP 46, 503 P.3d 435.

uncertain about the correct venue, which can harm clients by increasing adjudicative fees when the wrong venue is initially chosen. Likewise, interested parties to a spacing unit are left without clarity as to their respective rights.

This note analyzes the dichotomy of subject-matter jurisdiction between the judiciary and the Corporation Commission and the continued need for clarity in the aftermath of *FourPoint Energy*. Part II of this Note provides the background and decision of *FourPoint Energy*. Part III provides a general discussion of the Corporation Commission, its authority over conservation issues, and how the Corporation Commission establishes jurisdiction. Part IV examines the public rights doctrine and the current Supreme Court jurisprudence in contrast to how Oklahoma has treated this doctrine in its domestic law and the application of Oklahoma's treatment of the public rights doctrine to the holding in *FourPoint Energy*. Part IV then dissects the implications of conflicts created by *FourPoint Energy*. Lastly, Part V introduces the primary jurisdiction doctrine, which potentially provides much-desired clarity.

II. Statement of the Case

A. Background and Procedural History

FourPoint Energy is at its core a jurisdictional case. The issues presented before the court involved: (1) whether the trial court had the authority to determine the operator, an exclusive authority of the Corporation Commission; and (2) whether the trial court should have granted the motion to dismiss the breach of contract claim. The court, applying precedent, determined that it did not have the jurisdictional authority to designate the operator. However, it concluded that the finder of fact determines damages for a breach of contract claim, and the trial court erred in granting the motion to dismiss the claim.

EnerVest Operating, LLC (EnerVest) was the owner and designated operator of the wells that were the subject of the dispute.⁹ In the areas that were subject to pooling orders by the Corporation Commission, EnerVest applied to be the designated operator under the pooling orders, and the Corporation Commission granted these applications.¹⁰ In 2019, BCE Mach II, LLC (Appellee) purchased all of EnerVest's interests in properties,

9. *Id.* ¶ 3, 503 P.3d at 437-38.

10. *Id.*

including those that were subject to the pooling orders.¹¹ EnerVest properly transferred the operations of the wells to Appellee, and the Corporation Commission approved Appellee as bonded operator of the wells.¹² Appellee had begun the application of modifying existing pooling orders to designate it as operator and was operating the wells prior to approval by OCC.¹³ FourPoint Energy, LLC (Appellant) was the supposed successor to EnerVest under several joint operating agreements.¹⁴ Appellant filed for declaratory judgment seeking operator status over the wells, delivery of the physical operations of the wells, and damages for breach of contract.¹⁵ Appellee moved to dismiss all three claims, and the trial court sustained all three claims: the first two for lack of subject-matter jurisdiction, and the last because the claim was not yet ripe for adjudication.¹⁶ Appellant appealed the motions to the Court of Civil Appeals.¹⁷

B. Decision of the Case

The issues presented before the court were (1) whether the trial court lacked subject matter jurisdiction to declare appellant operator of force pooled wells, and (2) whether the trial court should have granted the motion to dismiss on breach of contract claims as to forced pooled wells. The court concluded that where there has been a forced pooling order, courts cannot designate rights that are inconsistent with orders that are of the exclusive jurisdiction of the Corporation Commission.¹⁸ Private contractual provisions that attempt to transfer commission-conferred power cannot alter the legal status of the individual; only an order of the Corporation Commission can change the legal status.¹⁹ The court agreed that where disputes arise concerning the private rights and obligations of the parties, the proper venue is in the district courts rather than the Corporation Commission.²⁰ However, when there is a pooled order, private agreements cannot redelegate a position that is a conferred power of the Corporation Commission.²¹ Regarding the second issue, the court concluded that

11. *Id.*

12. *Id.* ¶ 4, 503 P.3d at 438.

13. *Id.*

14. *Id.* ¶ 5, 503 P.3d at 438.

15. *Id.*

16. *Id.* ¶ 6, 503 P.3d at 438.

17. *Id.*

18. *Id.* ¶ 12, 503 P.3d at 439.

19. *Id.*

20. *Id.* ¶ 13, 503 P.3d at 440.

21. *Id.*

although it may lack subject matter jurisdiction to declare an operator, it can still award damages for breach of contract under the joint operating agreement.²² This is a question for the finder of fact, and it cannot be resolved through a motion to dismiss.²³

III. The Authority of the Corporation Commission

When resources such as oil and gas are scarce, it is vital to economic development to ensure that these resources are efficiently used and waste is avoided.²⁴ The Corporation Commission is a constitutionally created agency that possesses legislative, executive, and judicial powers.²⁵ To safeguard the public's rights, Oklahoma grants the Corporation Commission exclusive power over oil and gas conservation matters.²⁶ Through various statutes granting the Corporation Commission authority over the conservation of oil and gas, the Corporation Commission's exclusive power is to prohibit and control waste and protect correlative rights to maintain economic efficiency.²⁷ The power to establish a spacing and drilling unit, regulate production from common source of supply, and establish a pooling order are a few of the specific functions that the Corporation Commission may exercise in pursuit of this power.²⁸ These functions protect the

22. *Id.* ¶ 17, 503 P.3d at 441.

23. *Id.*

24. *See* Steven Crowley, *Commencement: The Beginning of the End of Mineral Owners' Rights Under the Majority Rule*, 45 Okla. City U. L. Rev. 189, 197 (2021) (“Waste can include economic waste caused by inefficient spending in the course of developing oil and gas resources. Waste can also include permanent damage to oil and gas resources that would render those resources incapable of being produced. Economic waste could result from prudent operators taking unnecessary measures at unnecessary expense . . .”).

25. *See* *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 1984 OK 52, ¶ 17, 687 P.2d 1049, 1052 (“We have held many times that the Commission is a constitutional body possessed of executive, legislative and judicial powers.”).

26. *See* Okla. Stat. Ann. tit. 52, § 87.1 (West 2022) (This statute establishes that the Oklahoma Corporation Commission has authority over the “conservation of oil and gas” and the Commission shall prohibit and control waste and shall protect correlative rights.); *see also* *Gulfstream Petroleum Corp. v. Layden*, 1981 OK 56, ¶ 10, 632 P.2d 376, 379 (“The purpose of the conservation statutes, of which section 87.1 is one, is to prevent waste and protect correlative rights.”).

27. *Tenneco Oil Co.*, 1984 OK 52, ¶¶ 17-19, 687 P.2d at 1052.

28. *See* Okla. Stat. Ann. Tit. 52, § 87.1 (West 2022) (“To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any wastes, or to protect or assist in protecting the correlative rights of interested parties, the Corporation Commission, upon a proper application and notice given as hereinafter provided, and after a

correlative rights of the impacted parties and also reduce and control the chance of economic waste.²⁹ The term “correlative rights,” within the confines of this statute, refers to the rights “which one owner possesses in a common source of supply in relation to those rights possessed by other owners in the same common source of supply.”³⁰ The common source of supply is not the well, but the pay dirt: the “underlying geological strata from which the oil and gas is produced, rather than the well through which the oil and gas is reduced to possession.”³¹

Oklahoma’s statutes make it clear what is within the Corporation Commission’s jurisdiction. If conflicts arise in matters falling under the express grant of power in conservation statutes, the Corporation Commission is empowered with tribunal powers and acts as a court of record to adjudicate these claims.³² However, the Corporation Commission “has no jurisdiction to adjudicate disputes between private parties in which the public interest is not involved.”³³ The Corporation Commission is a “tribunal of limited jurisdiction.”³⁴ The Corporation Commission’s jurisdiction and authority are restricted to matters that the Oklahoma Constitution and statutes expressly or implicitly confer upon it.³⁵ If the Corporation Commission were to enter an order without jurisdiction that is “expressly conferred or necessarily implied, either by the [Oklahoma]

hearing as provided in the notice, shall have the power to establish well spacing and drilling units”) (“Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on the unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit.”).

29. *See* *Xanadu Expl. Co. v. Welch*, 2015 OK CIV APP 92, ¶ 11, 362 P.3d 237, 240 (“The Commission has statutory authority to protect correlative rights by establishing well spacing and drilling units and by regulating production from a common source of supply.”).

30. *United Petroleum Expl., Inc. v. Premier Res., Ltd.*, 511 F. Supp. 127, 129 (W.D. Okla. 1980).

31. *Id.*

32. *See* *Moore Oil, Inc. v. Snakard*, 150 F. Supp. 250, 260 (W.D. Okla. 1957) (“[F]or the Commission is a court of record when proceeding to determine matters with which it has been vested with jurisdiction by statute.”).

33. *Xanadu Expl.*, 2015 OK CIV APP 92, ¶ 11, 362 P.3d at 240 (citing *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 7, 230 P.3d 853, 857).

34. *Burmah Oil & Gas Co. v. Corp. Comm’n*, 1975 OK 138, ¶ 7, 541 P.2d 834, 835.

35. *See* *Oklahoma City v. Corp. Comm’n*, 1921 OK 35, 80 Okla. 194, 195 P. 498, 499 (“The Corporation Commission has such jurisdiction and authority only as is expressly or by necessary implication conferred upon it by the [Oklahoma] Constitution.”).

constitution or by statute, its order would be void.”³⁶ Further, the Corporation Commission’s jurisdiction is restricted to disputes that concern the “rights of a public utility and the patrons thereof.”³⁷ It has no jurisdiction to “adjudicate differences between private litigants or purely private matters between a utility and a citizen.”³⁸ Oklahoma’s statutes also make it clear what is *not* within the Corporation Commission’s jurisdiction. When the conflict arises between private parties but does not affect “such rights within a common source of supply” and does not affect “the public interest in the protection of production from that source as a whole,” then the district court has jurisdiction, and the Corporation Commission does not.³⁹

Once the Corporation Commission enters an order, that order cannot be “collaterally attacked” by a court; however, the only method of reviewing the order and determining “validity, justness, reasonableness, or correctness” is to appeal the order to the Supreme Court of Oklahoma.⁴⁰ Although it cannot be “collaterally attacked,”⁴¹ an order of the Corporation Commission is not free from judicial review in a district court.⁴² While it is true that the district courts do not have the power to reverse, modify, or correct an order by the Corporation Commission,⁴³ the district courts

36. *Rogers*, 2010 OK 3, ¶ 6, 230 P.3d at 857.

37. *Smith v. Corp. Comm’n of Okl.*, 1924 OK 386, ¶ 10, 101 Okla. 254, 225 P. 708, 709.

38. *Id.*; *see also* *Gibson v. Elmore City Tel. Co.*, 1966 OK 30, ¶ 9, 411 P.2d 551, 553 (“The Corporation Commission has no jurisdiction over a controversy between two private concerns. Such controversy can be adjusted only in a suit between the parties in a court of competent jurisdiction.”) and *S. Union Prod. Co. v. Corp. Comm’n*, 1970 OK 16, ¶ 14, 465 P.2d 454, 458 (“We have held that the Corporation Commission is without authority to hear and determine disputes between two or more private persons or entities in which the public interest is not involved.”).

39. *Samson Res. Co. v. Corp. Comm’n*, 1985 OK 31, ¶ 9, 702 P.2d 19, 22; *see also* *Rogers*, 2010 OK 3, ¶ 6, 230 P.3d at 857 (“The function of the Commission is to protect the rights of the body politic; private rights and obligations of private parties lie within the purview of the district court.”).

40. Okla. Stat. Ann. Tit. 52, § 111 (West 2022).

41. *Id.*

42. *See Grayhorse Energy, LLC v. Crawley Petroleum Corp.*, 2010 OK CIV APP 145, ¶ 11, 245 P.3d 1249, 1254 (“However, a pooling order, or other OCC order, does not immunize the operator, or other parties connected to the pooling order, from lawsuits in the district courts.”).

43. *See id.*, *see also* Okla. Stat. Ann. Tit. 52, § 111 (West 2022) (“No court of this state except the Supreme Court, and it only on appeal, as herein provided, shall have jurisdiction

maintain the power to “adjudicate the legal effect of a [Corporation Commission] order when necessary to resolve a dispute over private rights.”⁴⁴

IV. Public vs. Private Rights

A. The Public Rights Doctrine

The initial inquiry for determining jurisdiction as it pertains to courts and administrative agencies is to distinguish public and private rights. While the issue in *FourPoint Energy* involves the distinction between the jurisdiction of a state agency and that of a state court,⁴⁵ discussion by the Supreme Court of the matter as it pertains to federal courts and federal agencies can prove valuable. The federally developed public rights doctrine shapes the dichotomous relationship of court and agency jurisdiction. The public rights doctrine is a “concept grounded in the historically recognized distinction between matters that may be conclusively determined by the Executive and Legislative branches and matters that are inherently judicial.”⁴⁶ The doctrine “draws upon the principle of separation of powers and a historical understanding that certain prerogatives were reserved to the political branches of government.”⁴⁷ The public rights doctrine distinguishes public rights and private rights by describing public rights as those between “the government and others”⁴⁸ that are commonly adjudicated in an administrative tribunal, and private rights as those that involve “the liability of one individual to another under the law as defined.”⁴⁹ In conducting a public rights analysis where the federal government is not a party, the

to review, reverse, annul, modify or correct any order, rule, or regulation of the Commission . . .”).

44. *Id.*, see also *Nilsen v. Ports of Call Oil Co.*, 1985 OK 104, ¶ 12, 711 P.2d 98, 101 (“The district court clearly has jurisdiction to adjudicate the legal effect (as distinguished from the continuing effectiveness) of a Commission order . . .”).

45. *FourPoint Energy, LLC v. BCE-Mach II, LLC*, 2021 OK CIV APP 46, 503 P.3d 435.

46. *Young v. Station 27, Inc.*, 2017 OK 68, ¶ 19, 404 P.3d 829, 839; see also *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 583, 105 S.Ct. 3325, 3334, 87 L. Ed. 2d 409 (1985) (“[T]he Court has long recognized that Congress is not barred from acting pursuant to its powers under Article I to vest decisionmaking [sic] authority in tribunals that lack the attributes of Article III courts.”)

47. *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 67, 102 S.Ct. 2858, 2863, 73 L.Ed.2d 598 (1982) (plurality opinion).

48. *Id.* at 69, 102 S.Ct. at 2870 (quoting *Ex parte Bakelite Corp.*, 279 U.S. 438, 452, 49 S.Ct. 411, 413, 73 L.Ed. 789 (1929)).

49. *Crowell v. Benson*, 285 U.S. 22, 51, 52 S.Ct. 285, 292, 76 L.Ed. 598 (1932).

Supreme Court determines whether Congress, acting with proper power and purpose, has created a seemingly “private” right that is “so closely integrated into a public regulatory scheme as to be a matter appropriate for agency adjudication.”⁵⁰ If the created right fails this test, then the parties must resolve the matter in an Article III court.⁵¹

B. The Public Rights Doctrine in Oklahoma

Disputes between private interests arising out of agency-regulated operator designations are perfectly fit for the public rights doctrine. Oklahoma has maintained the public versus private rights distinction within its jurisprudence. The Oklahoma Constitution states that the district courts have unlimited original jurisdiction over all justiciable matters except in cases where exclusive jurisdiction has been conferred to another court, or as otherwise provided by the Constitution.⁵² This provision of the Oklahoma Constitution highlights the need to determine which issues involve public rights and can be resolved in an administrative tribunal, and which issues involve private rights and must be adjudicated solely in the district court.

In 1984, the Oklahoma Supreme Court addressed the application of the public rights doctrine to Corporation Commission regulations in *Tenneco Oil Co. v. El Paso Natural Gas Co.* and established a test for determining whether jurisdiction lies within the district court or with the Corporation Commission.⁵³ In that case, the Corporation Commission force-pooled the interest of Tenneco and El Paso Natural Gas.⁵⁴ The pooling order designated Tenneco as the operator of the force-pooled unit with El Paso Natural Gas to pay Tenneco the pro-rata cost of drilling; however, if Tenneco did not commence operations within ninety days from the date of the order, El Paso Natural Gas would be designated as operator, and Tenneco would have fifteen days to elect whether or not to participate in the working interest of the pooled unit.⁵⁵ The pooling order further stated that if a party elected to not participate, the designated operator must pay a cash bonus plus a royalty interest to the non-participating party.⁵⁶ Tenneco did not commence operations within the ninety days, and El Paso Natural

50. *Young*, 2017 OK 68, ¶ 20, 404 P.3d at 839 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 54, 109 S.Ct. 2782, 2797, 106 L.Ed.2d 26 (1989)).

51. *Granfinanciera*, 492 U.S. at 54-55, 109 S.Ct. at 2797.

52. OKLA. CONST. art. 7, § 7.

53. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, 687 P.2d 1049.

54. *Id.* ¶ 7, 687 P.2d at 1051.

55. *Id.* ¶¶ 8, 10.

56. *Id.* ¶ 9.

Gas tendered an executed operating agreement to Tenneco, which took nearly a month to sign and return.⁵⁷ During the month that Tenneco took to sign the executed operating agreement, El Paso sent the cash bonus to Tenneco, but Tenneco sent it back.⁵⁸ Tenneco then brought a quiet title action in the district court alleging that it properly communicated its election and had the right to participate in the pooled unit.⁵⁹ The trial court granted judgment in favor of Tenneco and found that the operating agreement modified the forced-pooling order by the Corporation Commission, and Tenneco was entitled to its proportional production.⁶⁰

The Oklahoma Supreme Court structured the issue to be whether, after a forced-pooling order has been entered by the Corporation Commission, the parties named as operator may contract between themselves as to interests created, duties defined, terms of participation, and operations.⁶¹ The court found that it had jurisdiction over the dispute by employing the public rights doctrine.⁶² The court based its analysis on the distinction between public and private rights, and in doing so, cited to *Northern Pipeline Company v. Marathon Pipeline*, which held:

The distinction between public rights and private rights has not been definitively explained in our precedents. Nor is it necessary to do so in the present case, for it suffices to observe that a matter of public rights must at a minimum arise “between the government and others.” In contrast, “the liability of one individual to another under the law as defined,” is a matter of private rights. Our precedents clearly establish that only controversies in the former category may be removed from Art. III courts and delegated legislative courts or administrative agencies for their determination. Private-rights disputes, on the other hand, lie at the core of the historically recognized judicial power.⁶³

From this, the Oklahoma Supreme Court concluded that although Tenneco was seeking equitable relief, the claim was private in nature and was not an

57. *Id.* ¶¶ 11-12, 687 P.2d at 1051-52.

58. *Id.* ¶ 13, 687 P.2d at 1052.

59. *Id.* ¶ 6, 687 P.2d at 1050-51.

60. *Id.* ¶ 14, 687 P.2d at 1052.

61. *Id.* ¶ 1, 687 P.2d at 1050.

62. *Id.* ¶¶ 21-29, 687 P.2d at 1053-55.

63. *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69-70, 102 S.Ct. 2858, 2870-71, 73 L.Ed.2d 598 (1982) (plurality opinion).

attack on the public rights function of the Corporation Commission, which is to “regulate and administer the conservational laws and policies of the sovereign state”⁶⁴; thus, the claim could properly be heard by the judiciary. In other words, the court held that district courts have jurisdiction over claims between interested parties of a forced-pooling order who contract amongst themselves concerning the interests created by the order and do not implicate a public issue that is within the jurisdiction of the Corporation Commission.

C. The Designation of Operator

As discussed previously, the purpose behind the Corporation Commission’s authority over the conservation of oil and gas is to protect the rights of the body politic, specifically to prohibit and control waste and protect correlative rights.⁶⁵ Inherent in this power is the power to designate an operator when a forced-pooling order has been conferred. When a forced-pooling order is issued by the Corporation Commission, it is essential to protect the pooled unit from economic waste and ensure that the correlative rights of the parties are safeguarded. However, where there has been a voluntary pooling of interests by individual parties, it may seem as though the Corporation Commission serves little purpose in designating an operator for the protection of the correlative rights of the involved parties. The individual parties typically designate the operator themselves through a joint operating agreement and decide the working interests of the parties. Comparatively, where there is a compulsory order, the Corporation Commission certainly has an interest in the designation of an operator. By its very nature, the compulsory pooling order will have disinterested parties, and in designating an operator, the Corporation Commission has an interest in ensuring that the selected operator is responsible and suited to fit the position. This furthers the economic interest in avoiding waste and protecting the correlative rights of the parties.

The introduction of the public rights doctrine by the Oklahoma Supreme Court has shown that there is difficulty in determining whether the designation of an operator by way of agreement is one of public or private nature; consequently, the proper venue for adjudication is also the subject of dispute. Prior to the Oklahoma Supreme Court’s decision in *Tenneco Oil Co. v. El Paso Natural Gas Co.*⁶⁶ the court held in *Crest Resources and*

64. *Tenneco Oil Co.*, 1984 OK 52, ¶ 23, 687 P.2d at 1054.

65. *See id.* ¶ 17, 687 P.2d at 1052.

66. *Tenneco Oil Co.*, 1984 OK 52, 687 P.2d 1049.

*Exploration Corp. v. Corporation Commission*⁶⁷ that an attempted transfer of a unit operator's status is not effectual unless done so by the express sanction of a Corporation Commission order. In that case, Helmerich & Payne applied for an order pooling interests in a drilling and spacing unit.⁶⁸ The Corporation Commission granted the application and designated Helmerich & Payne as the operator of the unit.⁶⁹ Subsequently, Helmerich & Payne assigned all its interest in the pooling order to Woods Petroleum Corporation.⁷⁰ The original order contained no provision that authorized the transfer of operator status without approval by the Corporation Commission. Crest Resources, a lessee of the spacing unit, applied to the Corporation Commission to have the pooling order vacated or modified on the grounds that there was a "vitiating post-order development," that is, the unauthorized succession of another to the designated unit operator's status.⁷¹ The court concluded that the denial by the Corporation Commission to vacate the pooling agreement was proper because the transfer of operator status was not effectual.⁷² The court reasoned its decision by stating that no transfer of operator status is effectual unless done so with the express sanction of a Corporation Commission order.⁷³ It further stated that the "managerial responsibility of a designated unit operator in developing for, producing and selling oil or gas from the unitized pool" is a reasonable exercise of the state police power to protect the correlative rights of owners in a common source of oil and gas supply.⁷⁴

The next year, in *Samson Resources Co. v. Corporation Commission*,⁷⁵ the Oklahoma Supreme Court addressed whether the Corporation Commission had jurisdiction to change the operator of a voluntary pooling agreement, and in doing so, utilized the public/private right distinction set forth in *Tenneco*.⁷⁶ The court held that the Corporation Commission had no jurisdiction to entertain the change of operator, because the dispute was purely private in nature.⁷⁷ In *Samson Resources*, Tenneco filed an application with the Corporation Commission and sought to change the

67. *Crest Res. & Expl. Corp. v. Corp. Comm'n*, 1980 OK 133, 617 P.2d 215.

68. *Id.* ¶ 2, 617 P.2d at 216.

69. *Id.*, 617 P.2d at 216-17.

70. *Id.* ¶ 3.

71. *Id.*

72. *Id.* ¶¶ 5, 12, 617 P.2d at 217, 218.

73. *Id.* ¶ 5, 617 P.2d at 217.

74. *Id.* ¶ 6.

75. *Samson Res. Co. v. Corp. Comm'n*, 1985 OK 31, 702 P.2d 19.

76. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, 687 P.2d 1049.

77. *Samson Resources*, 1985 OK 31, ¶ 12, 702 P.2d 19, 23.

operator in a 640-acre drilling and spacing unit created by the Corporation Commission.⁷⁸ Under a voluntary agreement, the parties drilled a well on the spacing unit and designated Samson Resources as the operator of the well.⁷⁹ Tenneco alleged in its application that Samson Resources was operating the well to the detriment of the other interest holders.⁸⁰ Tenneco argued that Samson Resources' operation of the unit affected the "correlative rights" of the interest holders in the well and consequently fell within the jurisdiction of the Corporation Commission.⁸¹ In determining that the Corporation Commission does not have jurisdiction over the matter, the court, citing *Tenneco*, invoked the public/private rights distinction.⁸² The court pointed to the statement in *Tenneco* that the Corporation Commission is a "tribunal of limited jurisdiction" and that the "rights and obligations of the parties are to be determined by the district court."⁸³ From here, the court concluded that a contractual relationship arose between the two parties and the rights and obligations of that relationship was private.⁸⁴ To address Tenneco's argument that the Corporation Commission maintained jurisdiction due to the effect on the correlative rights of the parties, the court instructed:

The recognized power and responsibility of the Commission to act to protect correlative rights must be interpreted, in light of our holding in *Tenneco*, to be confined to situations in which a conflict exists which actually affects such rights within a common source of supply and thus affects the public interest in the protection of production from that source as a whole.⁸⁵

The court went on to define "correlative rights" and concluded that "the power to protect 'correlative rights' is limited by definition and by the terms of the statute under which the Corporation Commission claims jurisdiction."⁸⁶ Under 52 O.S. §87.1, the Corporation Commission exercises its power to protect correlative rights by establishing spacing units and the

78. *Id.* ¶ 2, 702 P.2d at 20.

79. *Id.*

80. *Id.*

81. *Id.* ¶ 4, 702 P.2d at 21.

82. *Id.* ¶ 6.

83. *Id.*

84. *Id.* ¶ 8, 702 P.2d at 22.

85. *Id.* ¶ 9.

86. *Id.* ¶ 10.

setting of allowable production.⁸⁷ Here, Tenneco's requested relief to change the operator was beyond the Corporation Commission's jurisdiction because the dispute was "between private parties and the public interest in correlative rights [was] not involved."⁸⁸ The court concluded that the public interest in correlative rights was not at issue since there was no disproportionate extraction of gas from a common source of supply, as Samson Resources was operating within the allowable limits established by the Corporation Commission.⁸⁹ The court reframed Tenneco's allegations as claiming that Samson Resources is not operating the well in good faith.⁹⁰ When framed this way, the issue before the court was clearly a private dispute, and jurisdiction was reserved solely for the district court and not the Corporation Commission.⁹¹

By reframing Tenneco's allegations, the court avoided the much-desired clarification on the court/agency relationship in determining an operator. In his dissent, Justice Opala pointed out that Tenneco was not a party to the voluntary agreement present in the case.⁹² Because of this, Tenneco could not enforce the private contract, leading it to seek removal of the operator with the Corporation Commission.⁹³ Justice Opala stated that the core issue was whether "the Commission has authority, stemming from its prior formation of a drilling and spacing unit, to adjudicate disputes over removal of any operator in the interest of prevention of waste and protection of correlative rights" and argued that the Corporation Commission has jurisdiction over such disputes.⁹⁴ In addition, he stressed the Corporation Commission's vital need to fulfill its regulatory authority to oversee the conservation of oil and gas without any judicial constraints.⁹⁵ He expressed that the Corporation Commission's "teeth" must not be yanked by the judiciary, meaning it must be allowed to exercise its authority without interference to "give practical effect to the statutory language and clear legislative intent."⁹⁶ Justice Opala argued that the dispute at issue in this case clearly involved correlative rights because "the purpose of spacing

87. *Id.*

88. *Id.* ¶ 12, 702 P.2d at 23.

89. *Id.*

90. *Id.* ¶ 13.

91. *Id.*

92. *Id.* ¶ 1, 702 P.2d at 24 (Opala, J., dissenting).

93. *Id.* ¶ 11, 702 P.2d at 27.

94. *Id.*

95. *Id.* ¶ 12.

96. *Id.*

units and the setting of allowables . . . is to preserve our limited resources.”⁹⁷ Although it is undisputed that the Corporation Commission holds jurisdiction over cases that involve compulsory pooling orders, Justice Opala contended that voluntary pooling orders, which achieve the same goal as compulsory orders within a spacing unit, should also fall within the Corporation Commission’s jurisdiction.⁹⁸

From the holdings in *Crest Resources* and *Samson Resources*, it is clear why there is much confusion over whether the Corporation Commission maintains jurisdiction in disputes that seek to determine the operator. Without clarity, the parties to a spacing unit are left confused regarding their rights. For this reason, Justice Opala’s dissent in *Samson Resources* seems to hold much merit. If the purpose of the Corporation Commission’s authority over the conservation of oil and gas is to protect the correlative rights of the interested parties and to prevent economic waste, why then has the current state of law left a gap in the Corporation Commission’s jurisdiction when the dispute involves a voluntary pooling agreement rather than a compulsory pooling order? The risk of a fiscally irresponsible operator is omnipresent, whether the operator was designated by way of voluntary agreement or Corporation Commission order. The public/private right distinction is necessary and fundamental to the function of both agencies and courts; however, when the legislature has expressly delegated the Corporation Commission authority to protect the correlative rights of parties and prevent economic waste, the judiciary should not restrain the constitutional and statutory authority delegated to the Corporation Commission.

D. The Public Rights Doctrine Applied to FourPoint Energy

The Court of Civil Appeals in *FourPoint Energy* strictly adheres to precedent in deciding the case. However, the decision’s application of the public rights doctrine is confusing. The issue appears to be entirely private on its face, as two parties had contracted for one party to be the successor operator of wells, but a third party had purchased interests in the property

97. *Id.* ¶ 13.

98. *See id.* ¶ 15, 702 P.2d at 28 (“If the present circumstances were duplicated in a *compulsory* pooling scenario, they would doubtless be conceded as sufficient to call for protection of “correlative rights”. The voluntary pooling order, which serves the same purpose within the spacing unit, cannot be said to transmute the character of the controversy solely on the basis of its verbal costume.”).

and was subsequently named the operator of the wells.⁹⁹ This issue could not seem more private, as it involves the rights delegated through a private agreement and whether that private agreement is binding. FourPoint Energy argued that pursuant to the Oklahoma Supreme Court's holding in *Tenneco*, "where parties have entered into private contracts regarding owner-operator interests, 'respective rights and obligations of parties are to be determined by the district court.'"¹⁰⁰ The court rejected this argument and instead applied the principle established in *Crest Resources*, holding that when interests are force-pooled, the designation of operator falls solely under the jurisdiction of the Corporation Commission.¹⁰¹ It reasoned that although private contracts such as joint operating agreements are typically used to supplement forced pooling orders that are customarily "bare-bones," private contract provisions that attempt to "transfer Commission-conferred power cannot alter a unit operator's legal status."¹⁰² The only way to change this status is through a Corporation Commission order.¹⁰³ FourPoint Energy then argued that although the Corporation Commission does have exclusive authority over matters of public interest, operator designation fell within the "plethora of rights" to be determined by the judiciary.¹⁰⁴ The court affirmed that matters involving private rights should be adjudicated in the judiciary, thereby confirming the continued existence of the public/private rights distinction in Oklahoma law.¹⁰⁵ However, the court stated that the power to designate an operator in a forced pooling order is conferred solely to the Corporation Commission and cannot be delegated to another entity.¹⁰⁶

FourPoint Energy demonstrates why there is confusion in who has the authority to hear an operator designation dispute. The situation seemed entirely private, that is, private parties contracted by way of a private agreement and sought enforcement of that agreement in the district court. Despite having the opportunity to provide more clarity, the court chose to apply the existing case law and reached a result that left a logical gap

99. See *FourPoint Energy, LLC v. BCE-Mach II, LLC*, 2021 OK CIV APP 46, ¶¶ 3, 4, 503 P.3d 435, 437-38.

100. *Id.* ¶ 11, 503 P.3d at 439 (quoting *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 1984 OK 52, ¶ 20, 687 P.2d 1049, 1053).

101. *Id.* ¶ 12.

102. *Id.*

103. *Id.*

104. *Id.* ¶ 13, 503 P.3d at 440 (citing *Tenneco Oil Co.*, 1984 OK 52, ¶ 1, 687 P.2d at 1050) (listing some rights such as "interests created, duties defined, terms of participation, operations, etc.").

105. See *id.*

106. *Id.* ¶ 14.

lingering. This is the same gap that was left between *Crest Resources* and *Samson Resources*. As it stands, in deciding who has the authority to designate the operator, the law appears to be less about distinguishing between public and private rights, and more about determining if the underlying interests were the subject of a compulsory Corporation Commission order or were merely voluntary. If the interests are subject to a forced pooling order, *FourPoint Energy* confirms that the Corporation Commission has *sole* authority. However, if the interests are voluntary, we are still left without clarity on how the court will rule. Does it rely on the legal acrobatics of lawyers to dress up the issue as public or private to obtain jurisdictional authority in the desired venue? Or does it mean that as a voluntary agreement the judiciary is automatically granted the authority to designate operator? *Samson Resources* seems to suggest the latter. If that is the case, why then is there still a need to distinguish between the public and private rights affected? At present, the law reflects that in a forced pooling of interests, the Corporation Commission has exclusive authority to designate operator, and in a voluntary pooling of interests the judiciary has the authority to designate operator by way of interpreting private agreements.

The Corporation Commission's exclusive jurisdiction over production and the conservation of oil and gas stems from the need to have regulatory oversight in an industry of scarce resources.¹⁰⁷ When there has been a forced pooling of interests, the Corporation Commission's authority over the prevention of waste and protection of correlative rights necessarily derives the authority to designate the operator of the wells.¹⁰⁸ In pursuit of ensuring economic efficiency, it makes sense that the Corporation Commission, a competent agency in the industry, has sole authority to oversee production. Yet, the law has placed a limit on the Corporation Commission's ability to properly fulfill its duty to oversee the conservation of oil and gas in *all* scenarios.¹⁰⁹ *Samson Resources* limited the Corporation Commission's authority merely because of, in the words of Justice Opala, the "verbal costume" assigned to the type of order.¹¹⁰ The risk of an irresponsible operator is just as present in a voluntary pooling order as it is

107. See *Tenneco Oil Co.*, 1984 OK 52, ¶¶ 17-19, 687 P.2d at 1052.

108. *Samson Res. Co. v. Corp. Comm'n*, 1985 OK 31, ¶ 7, 702 P.2d 19, 25 (Opala, J. dissenting) ("Involuntary pooling of mineral interests, when necessary to prevent waste and to protect the correlative rights of mineral owners, is well established as a valid exercise of state police power in conserving natural resources").

109. *Id.* ¶ 11, 702 P.2d at 27.

110. *Id.* ¶ 15, 702 P.2d at 28.

when a successor operator has been declared in a forced pooled unit, especially where an outsider who has not been within arm's length of the operation joins and is granted operatorship on the basis of formality. Nonetheless, we are left with the logical gap that the Corporation Commission doesn't have jurisdictional authority in voluntary agreements because there are somehow no public rights affected. *FourPoint Energy* confirmed this gap, and the state of the law is still left clouded as to the court/agency relationship in determining the operator. The law, operating under the guise of the public rights doctrine, grants jurisdictional authority to designate an operator to differing institutions depending on the type of pooling order that is at issue in the dispute; although, in reality, the distinction is merely that of semantics. The risk of economic waste and the need to protect correlative rights is present regardless of the name assigned to the pooling order; thus, the Corporation Commission should maintain exclusive jurisdiction in the designation of operator for both scenarios.

V. The Primary Jurisdiction Doctrine

The conflicting decisions of *Crest Resources* and *Samson Resources* illustrate the challenges of navigating the public versus private right distinction concerning operator designation. In such cases, legal acrobatics may be required to structure the operator designation as "private" to ensure a chance of being heard by a judiciary. The primary jurisdiction doctrine could potentially offer a solution to this conflict and provide the desired clarity. The primary jurisdiction doctrine "governs the allocation of cognizance between a court and an administrative agency."¹¹¹ The doctrine does not allocate power between courts and agencies; instead, the doctrine "governs only the question whether the court or agency will initially decide a particular issue—not which entity will finally decide the cause."¹¹² The doctrine is to be applied whenever "adjudication of [a] claim calls for resolution of issues which, under a regulatory scheme, are placed within the special competence of an administrative agency."¹¹³ The application of the doctrine results in the suspension of the judicial process until the issues in question are resolved by the administrative agency.¹¹⁴

In his dissent in *Tenneco*, Justice Opala contemplated invoking the primary jurisdiction doctrine, but did not do so because he found no court

111. Walker v. Grp. Health Servs., Inc., 2001 OK 2, ¶ 36, 37 P.3d 749, 761.

112. *Id.*

113. *Id.*

114. *Id.*

issues in the case.¹¹⁵ However, as we have seen in *Samson Resources*, operator designation could be a court issue if the underlying agreement was voluntary rather than compulsory. In *FourPoint Energy*, the court stated that because it was a forced-pooling order, the Corporation Commission had exclusive jurisdiction.¹¹⁶ Had this been the subject of a voluntary pooling of interests, *Samson Resources* suggests that operator designation would then become a private dispute, and the judiciary would have jurisdictional authority—even though the only difference between the two is the “verbal costume”¹¹⁷ assigned to the order. Furthermore, applying this doctrine would result in suspending the judicial process until the Corporation Commission determines which party is the operator. Only after that determination, the court would proceed with resolving other claims, which in the case of *FourPoint Energy*, would be the breach of contract claims if the Appellee was deemed operator.

By invoking the doctrine of primary jurisdiction and applying it to all cases where operator designation is in dispute, the court could provide much needed clarity over the conflict of where venue is proper to adjudicate the claim. The precedent, specifically *Tenneco*, *Crest Resources*, and *Samson Resources*, creates complex hurdles that need to be overcome to determine whether the rights at issue are public or private, or if there is a correlative rights issue when the pooled agreement is not compulsory. With the explicit acceptance of the primary jurisdiction doctrine over this issue, the Corporation Commission would assume jurisdictional authority over all disputes regarding the declaration of operatorship. The Corporation Commission has statutory authority to hear these cases and has the specialized competence in regulating the conservation of oil and gas.¹¹⁸ The Oklahoma Supreme Court has explicitly stated that the Corporation Commission has the exclusive authority to designate operator when there is a force pooling order and that the “managerial responsibility of a designated unit operator in developing for, producing and selling oil or gas from the

115. See *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 1984 OK 52, ¶ 4, 687 P.2d 1049, 1057 (Opala, J. dissenting) (“Because I find no “court issues” in this case but only matters exclusively within agency jurisdiction, there appears to be no basis for giving consideration to applying here the flexibility of institutional interplay provided by the doctrine of primary jurisdiction.”).

116. *FourPoint Energy, LLC v. BCE-Mach II, LLC*, 2021 OK CIV APP 46, ¶ 14, 503 P.3d 435, 440.

117. *Samson Res. Co. v. Corp. Comm’n*, 1985 OK 31, ¶ 15, 702 P.2d 19, 28 (Opala, J. dissenting).

118. See Okla. Stat. Ann. tit. 52, § 87.1 (West 2022).

unitized pool” is a reasonable exercise of the state police power to protect the correlative rights of owners in a common source of oil and gas supply.¹¹⁹ It makes logical sense to extend Corporation Commission authority over all situations in which the designation of operator is in dispute, because the reasons for granting exclusive authority to the Corporation Commission in compulsory orders remains the same when there is a voluntary pooling of interests.¹²⁰ It is worth noting that the court was correct in *FourPoint Energy* in determining that the breach of contract claim should remain within the confines of the judiciary’s authority.¹²¹ Clearly, this is a purely private dispute, and as the court said in that case, should be left to the fact finder to determine the damages reward.¹²² This ensures injured parties, such as FourPoint, maintain a cause of action and claim damages when a similar situation arises. This is not to say that FourPoint is barred from potentially being named operator, because it still is afforded the opportunity to adjudicate its position within the Corporation Commission. The acceptance of the primary jurisdiction doctrine would provide clarity to both interested parties of a spacing unit and their counsel alike, without restricting the ability of the parties to recover for the injuries faced, whether remedy sought is declaratory or for damages. Additionally, it would restore the ability of the Corporation Commission to exercise its statutorily conferred authority to oversee the conservation of oil and gas to the full extent intended.

VI. Conclusion

Identifying what institution has the authority to designate an operator is a confusing task in the state of Oklahoma. The Corporation Commission is a constitutionally created agency that has been delegated the authority to oversee the conservation of oil and gas.¹²³ Inherent in this authority is the declaration of an operator when there has been a forced pooling of wells, because of the effect that a forced pooling has on the correlative rights of

119. *Crest Res. & Expl. Corp. v. Corp. Comm'n*, 1980 OK 133, ¶ 6, 617 P.2d 215, 217.

120. *See Samson Resources*, 1985 OK 31, ¶ 13, 702 P.2d at 27 (Opala, J. dissenting) (“This dispute clearly presents a matter involving “correlative rights” and potential waste. The undisputed purpose of spacing units and the setting of allowables under 52 O.S. 1981 § 87.1 is to preserve our limited natural resources. Injury to the common source and taking oil or gas in undue proportions are surely matters that fall as much under the protective cognizance of the Commission as does the prohibition against drilling unnecessary wells.”).

121. *See FourPoint Energy*, 2021 OK CIV APP 46, ¶ 17, 503 P.3d at 441.

122. *Id.*

123. Okla. Stat. Ann. Tit. 52, § 111 (West 2022).

those involved.¹²⁴ However, the current law has created a logical gap where the designation of operator has shifted to the judiciary when there is a voluntary pooling of interests.¹²⁵ The courts claim that this only affects private rights and is thus solely reserved for the judiciary; however, the presence of an irresponsible operator is omnipresent no matter the “verbal costume”¹²⁶ assigned to the order. Because of this, the protection of correlative rights is necessary, as the public is affected in both forced and voluntary poolings of interests. To eliminate confusion and restore the ability of the Corporation Commission to fulfill its duties of its statutorily conferred authority in its entirety, the judiciary must recognize the Corporation Commission’s authority to designate an operator in all situations. A possible approach to this would be to invoke the primary jurisdiction doctrine as to the issue of operator designation. Without this recognition, the Corporation Commission is left having its “teeth yanked” and is unable to properly fulfill its authority to oversee the conservation of oil and gas.¹²⁷ Clear and concise law will allow for affected parties to focus on their underlying tasks rather than worrying about the intricacies of nuanced law. With clarity as to the issue of operator designation, practitioners and participants will be better equipped to focus on what truly matters: efficient production in an industry of scarce resources.

124. *See Crest Resources*, 1980 OK 133, ¶ 7, 617 P.2d at 218.

125. *See, e.g., Samson Resources*, 1985 OK 31, 702 P.2d 19.

126. *See id.* ¶ 15, 702 P.2d at 28 (Opala, J. dissenting).

127. *See id.* ¶ 12, 702 P.2d at 27 (Opala, J. dissenting) (“To fulfill the imposed duty properly to oversee the conservation of oil and gas, the Commission must be allowed to exercise its authority with teeth that will give practical effect to the statutory language and clear legislative intent. The “teeth” are yanked forcibly from the Commission when this court interferes and strips that body of powers flowing directly from its plain statutory mandate.”).