

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| PAPCO, Inc. | |) | |
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| Plaintiff, | |) | |
| | |) | |
| v. | |) | |
| | |) | Case No. |
| | |) | |
| UNITED STATES OF AMERICA | |) | |
| | |) | |
| and | |) | <i>Electronically Filed</i> |
| | |) | |
| UNITED STATES FOREST SERVICE | |) | |
| | |) | |
| Defendants. | |) | |
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COMPLAINT

PAPCO, Inc. (“PAPCO”) brings this action as Plaintiff against Defendants United States of America and United States Forest Service pursuant to 28 U.S.C. § 2409a (Quiet Title Act) and 28 U.S.C. § 1331 (Federal Question).

Parties

1. Plaintiff PAPCO is a Pennsylvania corporation with its principal place of business located at the Wair-Penn Building, Third Floor, 213 West Third Avenue, Warren, Pennsylvania 16365. PAPCO is in the business of crude oil and natural gas drilling, production, and related development activities.

2. Defendant United States of America (“United States”) is a sovereign nation established under the Constitution of the United States, and is the surface owner of real property comprising the Allegheny National Forest (“ANF”). Relief is sought from Defendant United

States under the Quiet Title Act as a result of the actions of Defendant United States Forest Service, a Federal agency.

3. Defendant United States Forest Service (“USFS”) is an agency of the United States Department of Agriculture (“USDA”), organized by the USDA under the laws of the United States, with a national office located at the Auditors Building, 1400 Independence Avenue, SW, Washington, District of Columbia 20250.

Subject Matter Jurisdiction

4. This Court has subject matter jurisdiction over the claims asserted against the Defendants as follows:

- a. This Court has subject matter jurisdiction over the claims asserted in Count I pursuant to the Quiet Title jurisdiction provision of 28 U.S.C. § 1346(f) and the Quiet Title Act, 28 U.S.C. § 2409a, having waived sovereign immunity with respect to such claims, which seek the adjudication of title to real property in which the United States has claimed or asserted an interest.
- b. This Court has subject matter jurisdiction over the claims asserted in Count II pursuant to the Federal Question provision of 28 U.S.C. § 1331 as the claims arise under the Constitution and laws of the United States. Section 702 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 702, constitutes a waiver of sovereign immunity with respect to those claims because they seek relief other than money damages and state claims that a Federal agency and employees thereof acted and failed to act in an official capacity or under color of legal authority; and Section 703 of the APA, 5 U.S.C. § 703, permits such

an action to be brought against the United States, the agency by its official title, or the appropriate officer.

5. This Court has the authority to issue declaratory judgment orders pursuant to 28 U.S.C. Chapter 151.

Venue

6. Venue lies in this district pursuant to 28 U.S.C. § 1391(e) in that: Defendant USFS is an agency of the United States with its main ANF office located in this district, a substantial part of the events or omissions giving rise to this action occurred in this district, all the property that is the subject of this action is located in this district, and Plaintiff PAPCO's main office is located in this district.

7. This action belongs on the Erie calendar of this Court pursuant to W.D. Pa. LR 3.1 because the cause of action arose in Warren County, Pennsylvania, and Plaintiff PAPCO resides in Warren County, Pennsylvania.

Background

8. This lawsuit arises as a result of a conflict between Plaintiff PAPCO, which owns certain oil, gas, and mineral ("OGM") estates within the ANF, and the Defendants as surface owner and manager of lands comprising the ANF.

9. OGM estates in the ANF and other national forests are of two general types under the Weeks Law of March 1, 1911, the General Exchange Act of March 20, 1922, applicable regulations of the Secretary of Agriculture, and the laws of the Commonwealth of Pennsylvania: "Reserved" and "Outstanding." A Reserved OGM estate refers to OGM rights retained by a grantor in a deed conveying the surface estate to the United States. An Outstanding OGM estate refers to OGM rights owned by a party other than the grantor when the surface estate was

conveyed to the United States. The exercise of Reserved OGM rights by the owner of the Reserved OGM estate is subject to the regulations of the Secretary of Agriculture as stated in the deed conveying the surface estate to the United States, while the exercise of Outstanding OGM rights by the owner is not subject to regulations of the Secretary of Agriculture. This lawsuit concerns Reserved OGM rights.

10. By deed dated March 10, 1930, the surface estate of certain real property located in Warren County, Pennsylvania, was conveyed by Emily Gray Jamieson and others to the United States (“Jamieson Deed”). The Jamieson Deed was recorded in the Warren County Recorder’s Office in Book 168, Page 433. A true and accurate copy of the Jamieson Deed is attached hereto as Exhibit A.

11. As set forth in the Jamieson Deed, the OGM rights were reserved as follows:

The parties of the first part hereby except and reserve from and out of this conveyance unto themselves, their successors, heirs and assigns, all the oil, natural gas, glass sand and minerals of every kind and description whatsoever, together with the rights of egress, ingress, and regress into, upon and from the same at all times for the purpose of exploring, operating for, producing, storing and transporting the same; also all rents and royalties, whether in cash or in kind, under any and all existing leases or similar agreements for the extraction of oil, gas, sand and other minerals from the said premises; also any and all springs of a certain kind commonly called “paint springs”, situate upon said premises, and the water, fluid, paint or paint-like material (whether mud, clay, mineral or other similar substance), springing or to be obtained or produced from said paint springs or from the immediate vicinity thereof....”

12. By deeds dated November 9, 1990, June 29, 2001, and August 24, 2001 and recorded in the Warren County Recorder’s Office at Book 329, Page 34, Book 1075, Page 206, and Book 1082, Page 61, respectively, certain of the OGM rights reserved by the Jamieson Deed were purchased by Plaintiff PAPCO (“PAPCO Deeds”). True and accurate copies of the PAPCO Deeds are attached hereto as Exhibit B.

13. The specific parcels of real property for which PAPCO purchased the OGM rights include all or part of the following: Warrant 2428, Warrant 2590, Warrant 2978, Warrant 2674, Lot 45, Tract 492, Tract 500, Lot 51, Lot 52, Lot 466, Tract 42, Tract 44, Tract 47, Tract 49, Lot 18, Lot 43, Lot 48, Lot 44, Lot 14, and Lot 17 (collectively “PAPCO Properties”).

14. In conjunction with its oil and gas development activities in the ANF, PAPCO develops oil and gas well sites and constructs roads as needed to obtain access to the well sites.

15. PAPCO and other oil and gas development companies place stone (commonly referred to as “shale” or “sandstone”) on oil and gas access roads and well sites within the ANF to stabilize these areas and provide environmentally beneficial erosion and sedimentation control. The use of stone for access road surfaces is considered a Best Management Practice of the Pennsylvania Department of Environmental Protection, Bureau of Oil and Gas Management. It is also a longstanding approved practice by the USFS within the ANF, and is routinely included by the USFS as a standard provision in notices to proceed with oil and gas development.

16. Since purchasing the OGM rights on the PAPCO Properties, PAPCO has mined stone from “pits” (*i.e.*, stone excavation sites) located on the PAPCO Properties for PAPCO’s oil and gas development activities, specifically for placement of stone on the surface of PAPCO’s access roads and well sites on the PAPCO Properties and nearby PAPCO oil and gas development sites. PAPCO is aware of seven stone pits currently located on the PAPCO Properties.

17. The subsurface stone on the PAPCO Properties used by PAPCO for oil and gas development is a “mineral” and falls within the OGM reservation of the Jamieson Deed.

18. On or about February 7, 2007, representatives of PAPCO discovered a stone pit on one of the PAPCO Properties that had not been authorized by PAPCO. As a result, by letter dated February 22, 2007, PAPCO placed the USFS on notice that PAPCO had discovered an unauthorized stone pit within the ANF. Enclosed with the letter was a copy of the Jamieson Deed. PAPCO subsequently sent a follow-up letter to the USFS dated April 2, 2007, reiterating PAPCO's concerns.

19. Defendant USFS responded to PAPCO's above-referenced letters by letter dated September 27, 2007, from Kathleen Morse, then ANF Forest Supervisor, wherein she stated that "the common variety material that was extracted from this pit is in the ownership of the Federal Government."

20. Subsequently, in an e-mail dated November 2, 2007, Defendant USFS transmitted two "Southwest Reservoir Project Area" testing maps that identified a number of test pits associated with USFS plans for stone exploration on the Jamieson Tract. PAPCO responded by letter dated November 5, 2007, advising Defendant USFS that it does not own the mineral rights or have the right to explore for minerals on the PAPCO Properties.

21. By letter dated November 23, 2007, legal counsel for PAPCO advised Defendant USFS, through its legal counsel (the USDA Office of General Counsel), that PAPCO owns the OGM rights on the PAPCO Properties by virtue of the Jamieson Deed, that the reserved mineral rights include ownership of the stone used for oil and gas development, and that Defendant USFS does not have the right to explore for, mine, or use such stone.

22. By letter dated December 18, 2007, the USDA Office of General Counsel responded that "...it is our opinion that the reservation in the Jamieson Deed did not include sandstone. This material is part of the surface estate which is owned by the United States. To

the extent that these materials would be available to persons other than the Forest Service, that disposal would be governed by 36 CFR 228 Subpart C.” The letter concluded by stating “If PAPCO wants to assert ownership of these materials, we direct your attention to 28 U.S.C. §2409a, the Quiet Title Act.”

23. PAPCO believes and therefore avers that the legal conclusion set forth in the above-referenced correspondence dated December 18, 2007 is incorrect, and that PAPCO, not the United States, owns the stone on PAPCO Properties used for oil and gas development, including but not limited to stone being mined from stone pits, stone that the USFS is currently exploring for, and stone that is suitable for use in oil and gas development and other valuable uses.

24. As evidenced by the letter from the USDA Office of General Counsel dated December 18, 2007, the position of the Defendants that the United States owns the subsurface stone on the PAPCO Properties is a final action for the purpose of judicial review. All available agency appeal procedures have been exhausted, and there are no further means to appeal the challenged actions within the agency or its procedures.

Count I

Quiet Title Action

25. The averments of paragraphs 1 through 24 of this Complaint are incorporated herein by reference.

26. Pursuant to 28 U.S.C. 2409a, PAPCO seeks to quiet title concerning ownership of the subsurface stone located on the PAPCO Properties used for oil and gas development. PAPCO requests this Honorable Court to enter an order confirming that PAPCO owns said stone as a result of, and as part of, PAPCO’s OGM rights acquisition.

WHEREFORE, for all of the foregoing reasons, Plaintiff PAPCO respectfully requests this Honorable Court to enter an order: a) holding that PAPCO, not Defendant United States, holds title to the subsurface stone, both previously mined and unexcavated, located on the PAPCO Properties by virtue of PAPCO's ownership of the reserved OGM rights on such tracts; b) declaring that PAPCO has the right to explore for, mine, and use subsurface stone located on the PAPCO Properties by virtue of PAPCO's ownership of the stone; c) compelling Defendant USFS to acknowledge PAPCO's right to explore for, mine, and use subsurface stone located on the PAPCO Properties; d) enjoining Defendant USFS from preventing PAPCO from exploring for, mining, or using subsurface stone located on the PAPCO Properties in the course of PAPCO's lawful OGM development operations in the ANF; and e) declaring that the actions of Defendant USFS to interfere with PAPCO's right to explore for, mine, and use subsurface stone on the PAPCO Properties constitute violations of the Federal statutes and directives discussed below.

Count II

Declaratory Judgment

27. The averments of paragraphs 1 through 26 of this Complaint are incorporated herein by reference.

28. Whether or not PAPCO owns the subsurface stone on the PAPCO Properties by virtue of PAPCO's acquisition of the OGM rights thereon, PAPCO has the right to explore for, mine, and use the stone as incidental to PAPCO's OGM rights, specifically PAPCO's right to the reasonable use of the surface estate to develop the OGM resources on the PAPCO Properties.

29. Notwithstanding PAPCO's right to explore for, mine, and use subsurface stone on the PAPCO Properties in conjunction with PAPCO's OGM rights, Defendant USFS has notified

PAPCO that PAPCO is not permitted to timely explore for, mine, or use subsurface stone on the PAPCO Properties in the course of PAPCO's oil and gas development operations thereon, in violation of, and in excess of the USFS's authority under, the National Forest Management Act of 1976, applicable regulations of the Secretary of Agriculture, the Weeks Law, the Energy Policy Act of 1992, the Forest Service Manual, the ANF Handbook, the common law of the Commonwealth of Pennsylvania, and other applicable legal authority.

30. The refusal of Defendant USFS to permit PAPCO to timely explore for, mine, or use subsurface stone on the PAPCO Properties has interfered with PAPCO's oil and gas development, diminished the value of PAPCO's OGM rights, and diminished PAPCO's profits by way of increasing its operational expenses and decreasing its gross revenue.

31. Upon information and belief, the above-referenced position of Defendant USFS and decisions to implement this position have as their basis a determination and strategy on the part of the USFS to unlawfully discourage the development of OGM resources in the ANF by PAPCO and others.

32. The aforementioned conduct by Defendant USFS is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "in excess of statutory jurisdiction, authority, or limitation," and constitutes agency action "unlawfully withheld or unreasonably delayed," within the meaning of the APA, 5 U.S.C. § 706.

WHEREFORE, in respect of the statutes and directives hereinabove cited and incorporated, Plaintiff PAPCO respectfully requests that the Court issue an order: a) declaring that PAPCO has the right to explore for, mine, and use subsurface stone located on the PAPCO Properties as incidental to PAPCO's ownership of the reserved OGM rights on such tracts;

b) compelling Defendant USFS to acknowledge PAPCO's right to explore for, mine, and use subsurface stone as incidental to PAPCO's use and enjoyment of its OGM rights on the PAPCO Properties; c) enjoining Defendant USFS from preventing PAPCO from exploring for, mining, or using subsurface stone located in the course of PAPCO's lawful OGM development operations in the ANF; and d) declaring that the actions of Defendant USFS to interfere with PAPCO's right to explore for, mine, and use subsurface stone as incidental to PAPCO's use and enjoyment of its OGM rights constitute violations of the Federal statutes and directives hereinabove referenced and incorporated.

Respectfully submitted,

/s/ Matthew L. Wolford

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