

# Supreme Court Decision Creates Uncertainty for Oil and Gas Interests in Eastern Oklahoma

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On July 9 the Supreme Court announced its decision in *McGirt v. Oklahoma*, finding that lands reserved for the Creek Nation in northeastern Oklahoma remain a reservation for purposes of the Major Crimes Act, which gives the federal government exclusive jurisdiction to try certain enumerated offenses committed by “any Indian . . . against the person or property of another Indian or any other person” within “Indian country”. Although the case centered on the Oklahoma state court’s conviction of a Creek tribal member for crimes committed on lands that the Supreme Court determined in *McGirt* were within the boundaries of the reservation, the Supreme Court’s confirmation of the existence of the Creek reservation has significant potential consequences for oil and gas development in eastern Oklahoma. The existence of the Creek reservation and those of the other “Five Civilized Tribes” (Cherokee, Chickasaw, Choctaw, and Seminole Nations) potentially opens the door to tribal and federal oversight of oil and gas activity within the exterior boundaries of each respective reservation.

Prior to *McGirt*, the State of Oklahoma had maintained that the reservations of the Five Tribes had been disestablished by a variety of congressional actions or Oklahoma statehood. However, the *McGirt* decision confirms the existence of the reservations of the Five Tribes, which encompasses 19 million acres and comprises the entire eastern half of Oklahoma.

Title to lands of the Five Tribes is unique given Oklahoma’s history. Most reservations are federally recognized and include lands owned by the federal government and held in trust for the benefit of tribes and individual tribal members. In contrast, the United States granted the Five Tribes fee patents to their lands and title was not vested in the United States immediately prior to Oklahoma statehood. Although each tribe was granted territory within the Indian Territory, it was unclear whether these reservations were diminished or disestablished by allotment and Oklahoma statehood. Until the *McGirt* decision, neither the federal government nor the State of Oklahoma recognized the historical territory granted to the Five Tribes as reservations.

Importantly, the *McGirt* decision will impact existing oil and gas interests in Oklahoma as it creates regulatory and jurisdictional uncertainty that likely will take years to resolve. Although the Oklahoma Corporation Commission has concurrent jurisdiction over lands of the Five Tribes for certain purposes related to oil and gas development (e.g., spacing and unitization orders), it is unclear whether the Five Tribes will exercise taxing or regulatory authority over non-tribal oil and gas interests within the exterior boundaries of their respective reservations such as private and state oil and gas leases, royalties and liens. In the coming months and years, producers, royalty owners and other stakeholders with oil and gas interests in eastern Oklahoma may encounter a patchwork of tribal, state and federal regulations, licensing and zoning requirements, and taxes. The State of Oklahoma is in discussions with the Five Tribes to address the jurisdictional questions that have been raised by the *McGirt* decision. At this stage the scope and framework of any final agreement is unclear. Even if an agreement is reached, it is difficult not to anticipate years of litigation until there is jurisdictional and regulatory clarity with respect to oil and gas interests in Oklahoma.

The *McGirt v. Oklahoma* decision can be found [here](#).