

**APPLICATION OF BRANCH PRODUCTIONS TO CONSIDER AN EXCEPTION TO STATEWIDE RULE 14, CAMPBELL LEASE, ARCHER COUNTY REGULAR FIELD, ARCHER COUNTY, TEXAS**

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**APPEARANCES:**

**FOR APPLICANT:**

Lloyd Muennink  
Brian Duncan

**APPLICANT:**

Branch Productions

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF NOTICE OF HEARING:</b>	June 27, 2008
<b>DATE OF HEARING:</b>	July 16, 2008
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE PFD CIRCULATED:</b>	September 2, 2008

**STATEMENT OF THE CASE**

This is a first of its kind case wherein Branch Productions (“Branch”) requests that the Commission grant it an exception to Statewide Rule 14(a)(1)(A) for wells on the Campbell (17683) Lease, Archer County Regular Field, Archer County, Texas. A hearing was held on July 16, 2008, and Branch appeared and presented evidence.

**APPLICABLE LAW**

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension is obtained. Pursuant to Rule 14(b)(2)(B), an operator that maintains approved financial assurance will be granted a one-year plugging extension for each of its wells that has been inactive for 12 months or more at the time its annual organization report is approved if: (1) the well and associated facilities are in compliance with all laws and Commission rules; and (2) the operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.

Rule 14(a)(1)(A) defines “active operation” as regular and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well

remains inactive for purposes of Rule 14, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.

Pursuant to Rule 14(b)(3), the operator of any well more than 25 years old that becomes inactive and subject to the provisions of Rule 14 shall plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

### **DISCUSSION OF THE EVIDENCE**

#### **Matters Officially Noticed**

The examiner has officially noticed the Form P-5 Master Inquiry, Officer/Agent Inquiry Selection, P-4 Inquiry, Oil Proration Schedule, P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry, Oil Lease Ledger Status Inquiry, Historical Oil Ledger Inquiry, H-15 Data Inquiry and Wells Subject to Rule 14B2 - Operator Summary Data databases for Branch Productions and the Campbell (17683) Lease. These official records of the Commission disclose the following facts relevant to this application.

Branch is a sole proprietorship owned by Turner Branch. At the time of the hearing, Branch's Form P-5 organization report had been delinquent since July 1, 2008. Branch renewed its Form P-5 on August 27, 2008, and now has approved financial assurance on file in the amount of \$50,000. Branch designated itself the operator of the Campbell (17683) Lease by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved May 30, 1996, effective April 1, 1996. At the time of the hearing, there were 14 wells on schedule for the Campbell (17683) Lease, 10 of which were shown to be "producing" wells and 4 of which were shown to be "shut in." Between April 1999 and September 2007, no production was reported to the Commission for the Campbell (17683) Lease. The lease was severed between October 18, 2001, and October 12, 2007, for rules violations and/or failure to pay reconnect fees to obtain re-issuance of the certificate of compliance. For the period from October 2007 to June 2008, production for the lease has been reported to the Commission as follows: 10/07 - 15 BO; 11/07 - 30 BO; 12/07 - 45 BO; 01/08 - 60 BO; 02/08 - 95 BO; 03/08 - 70 BO; 04/08 - 15 BO; 05/08 - 20 BO; and 06/08 - 20 BO.

At the time of the hearing, the only wells on the Campbell (17683) Lease shown to be subject to Rule 14(b)(2) were Well Nos. 7A, 18A, 21, and 24, and all four of these wells now have plugging extensions. The only wells on the lease subject to H-15 testing requirements (Test on an Inactive Well More than 25 Years Old) at the time of the hearing were Well Nos. 3, 4, 5, 8, and 9, all of which wells had been set to compliant H-15 status.

The examiner has also officially noticed the complaint and Stipulation, Agreed Settlement and Consent Order signed on August 12, 2008, in Oil & Gas Docket No. 09-0243921, *Enforcement Action Against Turner W. Branch DBA Branch Productions (Operator No. 088609) for Violations of Statewide Rules on the Campbell (17683) Lease, Well Nos. 3, 4, 5, 8, and 9, Archer County Regular Field, Archer County, Texas*. The complaint in this docket alleged three violations of Statewide Rule 3 involving the posting of illegible identification signs at Well Nos. 20, 23, and 24, five violations of Statewide Rule 14(b)(2) involving Well Nos. 3, 4, 5, 8, and 9 which were alleged to have been inactive since March 31, 1999, and for which plugging extensions had been canceled June 30, 2006, based on H-15 violations, two violations of Statewide Rule 8(d)(1) involving discharges of oil around Well Nos. 18 and 23, five violations of Statewide Rule

14(b)(3) involving delinquent H-15 tests for Well Nos. 3, 4, 5, 8, and 9, and two violations of Statewide Rule 16(a) involving failure to file completion reports for Well Nos. 6 and 7.

By Stipulation, Agreed Settlement and Consent Order in Oil & Gas Docket No. 09-0243921 signed August 12, 2008, which recited that to the extent possible, the violations alleged in the complaint had been placed into compliance with Statewide Rules 3, 8(d)(1), 14(b)(2), 14(b)(3), and 16(b), the Commission assessed a penalty against Branch in the amount of \$3,000, which amount Branch had already deposited with the Commission.

### **Branch Productions**

Brian Duncan, Duncan Land & Exploration, Inc., is an “independent contractor” for Branch Productions, and is responsible for day-to-day operations on the Campbell (17683) Lease. Duncan’s first connection with the lease was in September 2007 when he was engaged by Turner Branch to supervise the plugging of wells on the lease. When Duncan discovered that the wells were pressured up and would flow oil when valves were opened, a decision was made to restore some of the wells to producing wells.

Ten wells on the Campbell (17683) Lease were returned to producing status starting in October 2007. Some of the wells are produced on a 8/64ths choke and others are shut in and produced only sporadically. The wells are produced on a choke because they make a lot of water. The amount of monthly oil production has varied since October 2007, ranging from 15 to 95 BOPM, but from October 2007 through June 2008, the wells also produced 5,914 barrels of water. Branch has applications pending to permit two saltwater disposal wells on the lease. Duncan believes that if there is a cost-effective means of disposing of produced water, each of the ten producing wells on the lease will produce two barrels of oil per day, meaning that the ten wells will produce about 20 BOPD.

Wells on the Campbell (17683) Lease were inactive for many years before ten of the wells were put back into production in October 2007. Duncan believes Branch needs an exception to Statewide Rule 14(a)(1)(A) which provides that in the case of a well that has been inactive for 12 consecutive months or longer, the well remains inactive for purposes of Rule 14, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months. Under current conditions, wells on the Campbell (17683) Lease will not produce 10 barrels of oil per month without production of an excessive amount of water. Duncan believes that when Branch obtains a permit for a saltwater disposal well on the lease, the wells will produce enough oil to remove them from “inactive” status under the Rule 14(a)(1)(A) definition. In the meantime, however, Duncan thinks an exception to Rule 14(a)(1)(A) is necessary, because otherwise Branch will be required to plug the wells and/or pay “fines.” Branch would be satisfied with a temporary exception for a period of six months providing that the producing wells on the Campbell (17683) Lease are to be considered as “active” if they produce two barrels of oil per month.

There are five wells on the Campbell (17683) Lease that are more than 25 years old. If these wells are considered to be “inactive,” H-15 testing is required under Rule 14(b)(3). According to Duncan, H-15 testing of these wells is possible but would be very costly because the wells are pressured up and flowing. When this was asserted to the Field Operations Section as basis for an extension of time for H-15 testing, the five wells that are more than 25 years old were set to compliant H-15 status, meaning that the wells are not currently in violation of Rule 14(b)(3). However, Branch is concerned that without the requested exception, an H-15 test extension will need to be obtained periodically until the wells achieve production of ten barrels

of oil per month for three consecutive months.

Branch believes that Rule 14(a)(1)(A) is an antiquated rule that was adopted when the price of oil was materially lower than current oil prices. It claims that Field Operations suggested that Branch might consider filing a petition to amend the rule or seeking an exception to the rule. Because Branch considered that a petition for rulemaking would be a sizeable undertaking and not time-effective, it filed this application for an exception.

### **EXAMINER'S OPINION**

Statewide Rule 14 does not contain any provision for exceptions to the rule. Whether the Commission should start down the road of considering applications for exceptions to Statewide Rule 14 in contested case hearings is a policy decision for the Commissioners.

In the opinion of the examiner, Branch's request for an exception is not justified. This is true for the simple reason that the evidence does not establish that any such exception is needed under current or foreseeable circumstances. Branch has the mistaken interpretation that Statewide Rule 14 requires that the 10 producing wells be plugged unless they produce ten barrels of oil per month for three consecutive months. Even if these wells produce nothing, they are not necessarily required to be plugged under Statewide Rule 14, because all operators with the required financial assurance on file are granted a plugging extension for all "inactive" wells, just so long as the wells are in compliance with all laws and Commission rules and the operator has, and upon request provides evidence of, a good faith claim to a right to operate the wells. Because an "inactive" well that has a plugging extension is compliant with Rule 14(b)(2), the "inactive" status of the well, in and of itself, does not cause any exposure to liability for immediate plugging or administrative penalties.

The Stipulation, Agreed Settlement and Consent Order in Oil & Gas Docket No. 09-0243921 is no basis for Branch's claim that failure to approve an exception to Statewide Rule 14 will result in additional "fines" against Branch. The complaint in this former docket involved seven violations having nothing to do with Statewide Rule 14. While the complaint also involved five violations of Rule 14(b)(2) and five violations of Rule 14(b)(3) related to well inactivity and delinquent H-15 tests, the original complaint was filed in July 2007. This was before ten of the wells on the Campbell (17683) Lease were restored to production, and the complaint related to violations committed during a period when zero production had been reported for the wells. Plugging extensions had been canceled in June 2006 based on delinquency of H-15 tests. There is no indication that Branch had sought administrative approval of an extension of time for the H-15 tests or that any special circumstances existed at the time that would have warranted such approval. When Branch was able to demonstrate that it had restored ten wells to production starting in October 2007 and the wells involved in the complaint were set to compliant H-15 status as the result of administrative approval of extensions of time to conduct H-15 tests, the complaint which originally sought penalties in the amount of \$31,500 was settled for the amount of \$3,000 related to time out of compliance.

The subject wells were inactive for more than 8 years before production was restored in 10 of the wells in October 2007. Since that time, the 10 "producing" wells have produced a minimal amount of oil but not 10 barrels per month for three consecutive months. Thus, under Rule 14(a)(1)(A), the wells are still considered to be "inactive" for the purposes of the Rule 14(b)(2) system. However, as long as the wells are entitled to a plugging extension, the only practical consequence is that the 5 wells that are more than 25 years old are subject to the H-15 testing requirements of Rule 14(b)(3).

Branch claims that H-15 testing of the subject wells is impractical and too costly in relation to the amount of oil being produced. Apparently, this is because the wells are pressured up, have fluid at or near the surface, and fluid level testing likely would show a fluid level above the base of usable quality water. A mechanical integrity test would be an alternative means to satisfy the H-15 testing requirements of Rule 14(b)(3), but this would be more costly than a fluid level test.

Particularly in the case of an operator who is in the process of restoring inactive wells to production, there may be good reasons for granting a temporary extension of time to perform H-15 testing. The approval of such an extension may allow the operator time to achieve a level of production that removes a well or wells from “inactive” status within the meaning of Rule 14(a)(1)(A) and eliminate altogether the Rule 14(b)(3) requirement for H-15 testing, because “active” wells, regardless of their age, are not subject to Rule 14(b)(3). According to the evidence, this is something that Branch expects to achieve within about 6 months. In the meantime, Branch has requested of the Field Operations Section an extension of time to perform H-15 testing on the five wells that require such testing, and such an extension has been administratively approved by the Field Operations Section. Thus, insofar as the record shows, Branch has no wells that are non-compliant with Statewide Rule 14.

Branch claims that the Rule 14(a)(1)(A) requirement that inactive wells produce 10 barrels of oil for three consecutive months before they are removed from “inactive” status for the purposes of the Rule 14(b)(2) system is an “antiquated” rule that should be changed given current oil prices. This rule’s provision was adopted in 2000 “to alleviate the problem of operators filing ‘paper production’ or taking *de minimus* actions, not truly intended to restore the well to continuous active operation, and claiming this minimal activity relieves them from the obligation of complying with the rules for maintenance and transfer of inactive wells.” See 25 Tex.Reg. 9924, 9925 (September 29, 2000). In the absence of some such provision, an operator could avoid altogether, for example, the well plugging requirement of Rule 14(b)(2), the H-15 testing requirement of Rule 14(b)(3), and the Rule 78(g)(2) and 78(g)(3) requirement for additional financial assurance for inactive bay and offshore wells by the simple expedient of reporting production of one barrel of oil for a single month. In any event, while Branch’s claim that Rule 14(a)(1)(A) is “antiquated” might be a reason for Branch to file a petition to amend the rule by rulemaking, it is not good reason for granting exceptions to Statewide Rule 14 as a result of a contested case hearing.

For an operator like Branch who is in the process of restoring inactive wells to production and who expects, within a relatively short period of time, to achieve production of at least 10 barrels of oil per month per well, and has only a few wells that are subject to H-15 testing requirements, seeking administrative approval of an extension of time for H-15 testing is a much more practical, efficient, and time-effective means of achieving compliance with Rule 14(b)(3) than pursuing a contested case hearing for a temporary exception to Statewide Rule 14. Branch has already done this. All of Branch’s wells subject to H-15 testing requirements have been set to compliant status, and Branch does not need the requested exception.

The examiner has officially noticed that as of December 2007, there were about 55,089 wells subject to the Commission’s jurisdiction that were subject to the H-15 testing requirements of Rule 14(b)(3). Certain categories of wells are excluded from the Commission’s Form H-15 mail-out, but even so, the annual count of wells included in Form H-15 mail-outs is about 31,000 annually. Dealing with temporary extensions of time for, or exceptions to, the H-15 testing requirement by contested case hearings would be impractical, time-inefficient and unduly burdensome on the entire hearing process. It is also unnecessary, given the administrative approval process for extensions that is presently available in special circumstances.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Branch Productions (“Branch”) was provided at least ten (10) days notice of this hearing. Branch appeared at the hearing and presented evidence.
2. Branch requests that the Commission grant an exception to Statewide Rule 14 for wells on the Campbell (17683) Lease, Archer County Regular Field, Archer County, Texas. In particular, Branch requests a temporary exception of at least six months to the Statewide Rule 14(a)(1)(A) provision that in the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains inactive for purposes of Rule 14, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.
3. The Rule 14(a)(1)(A) provision to which Branch seeks an exception was adopted by the Commission effective November 1, 2000, to alleviate the problem of operators filing ‘paper production’ or taking *de minimus* actions, not truly intended to restore the well to continuous active operation, and claiming this minimal activity relieves them from the obligation of complying with the rules for maintenance and transfer of inactive wells.
4. As of the date of the hearing, Branch’s Form P-5 organization report was delinquent. However, Branch’s Form P-5 was renewed on August 27, 2008, and Branch now has approved financial assurance on file in the amount of \$50,000.
5. Branch designated itself the operator of the Campbell (17683) Lease by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved May 30, 1996, effective April 1, 1996.
6. At the time of the hearing, there were 14 wells on schedule for the Campbell (17683) Lease, 10 of which were shown to be “producing” wells and 4 of which were shown to be “shut in.”
7. Between April 1999 and September 2007, no production was reported to the Commission for the Campbell (17683) Lease. The lease was severed between October 18, 2001, and October 12, 2007, for rules violations and/or failure to pay reconnect fees to obtain re-issuance of the certificate of compliance.
8. For the period from October 2007 to June 2008, production for the lease has been reported to the Commission as follows: 10/07 - 15 BO; 11/07 - 30 BO; 12/07 - 45 BO; 01/08 - 60 BO; 02/08 - 95 BO; 03/08 - 70 BO; 04/08 - 15 BO; 05/08 - 20 BO; and 06/08 - 20 BO.
9. Branch has restored ten wells on the Campbell (17683) Lease to production, although these wells are produced on a 8/64ths choke or only sporadically to limit water production.
10. Branch intends to permit saltwater disposal wells on the Campbell (17683) Lease and has applications pending for the permits.
11. Branch expects that within about six months, each of the ten producing wells on the Campbell (17683) Lease will produce two barrels of oil per day when Campbell has a cost-effective means of disposing of produced water.

12. At the time of the hearing, the only wells on the Campbell (17683) Lease shown to be subject to Rule 14(b)(2) were Well Nos. 7A, 18A, 21, and 24, and all four of these wells now have plugging extensions. The only wells on the lease subject to H-15 testing requirements (Test on an Inactive Well More than 25 Years Old) at the time of the hearing were Well Nos. 3, 4, 5, 8, and 9, all of which wells had been given administratively approved extensions of time for H-15 tests and set to compliant H-15 status.
13. Branch contends that the requested exception is necessary to avoid immediate plugging of wells that are not producing at least ten barrels of oil per month for three consecutive months and to avoid imposition of penalties for violation of Statewide Rule 14.

### **CONCLUSIONS OF LAW**

1. Proper notice of this hearing was provided to all persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Pursuant to Statewide Rule 14(b)(2)(B), an operator that maintains approved financial assurance will be granted a plugging extension for each of its wells that has been inactive for 12 months or more at the time its annual organization report is approved if: (a) the well and associated facilities are in compliance with all laws and Commission rules; and (b) the operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.
4. Pursuant to Statewide Rule 14(b)(3), the operator of any well more than 25 years old that becomes inactive and subject to the provisions of Rule 14 shall plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.
5. Branch did not establish that any of the ten producing wells on the Campbell (17683) Lease are non-compliant with Statewide Rule 14(b)(2) and Statewide Rule 14(b)(3).
6. Branch did not establish that granting of an exception to Statewide Rule 14 for wells on the Campbell (17683) Lease is necessary or warranted.

### **RECOMMENDATION**

The examiner recommends that the application for an exception to Statewide Rule 14 be denied.

Respectfully submitted,

James M. Doherty  
Hearings Examiner