

**OIL & GAS DOCKET NOS. 05-0246085 ET AL.<sup>1</sup>**

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**APPLICATIONS OF TEXAS M.O.R., INC., FOR EXCEPTIONS TO STATEWIDE RULE 21 TO PRODUCE BY SWABBING, BAILING, OR JETTING FORTY-EIGHT WELLS ON THE MUNSEY & MUNSEY (00296) LEASE, THE GIBSON (00274) LEASE, THE KERR 1 & 2 (00284) LEASE, THE J. A. WORTHY (00295) LEASE, AND THE BENTON (00262) LEASE, CORSICANA (SHALLOW) FIELD, NAVARRO COUNTY, TEXAS**

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**APPEARANCES:**

**FOR APPLICANT:**

Burwell J. Thompson, Jr.  
Joe B. Bennett  
Sid Baker

**APPLICANT:**

Texas M.O.R., Inc.

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE APPLICATIONS FILED:</b>	January 25, 2006
<b>DATE OF NOTICE OF HEARING:</b>	October 13, 2006
<b>DATE OF HEARING:</b>	November 3, 2006
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner Thomas H. Richter, Technical Examiner
<b>DATE RECORD CLOSED:</b>	December 22, 2006
<b>DATE PFD CIRCULATED:</b>	January 5, 2007

**STATEMENT OF THE CASE**

This proceeding involves five applications of Texas M.O.R., Inc. ("MOR"), for exceptions to Statewide Rule 21 to produce by swabbing a total of 48 wells on 5 leases in the Corsicana (Shallow) Field, Navarro County, Texas. Appendix 1 to this Proposal for Decision provides a more complete identification of the affected leases and wells.

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<sup>1</sup> This proceeding embraces also Oil & Gas Docket Nos. 05-0246086, 05-0246087, 05-0246088, and 05-0246125.

The applications were consolidated for hearing, and a hearing was held on November 3, 2006. MOR appeared and presented evidence in support of the applications, and no person appeared in opposition. Because notices of hearing mailed to certain mineral owners had been returned to the Commission as undeliverable, MOR was required to publish notice in a newspaper of general circulation in Navarro County. The record was held open until December 22, 2006, the deadline for any protests responsive to the newspaper publication, and no protests were filed.

### **BACKGROUND**

Prior to October 2, 2002, Statewide Rule 21 provided that swabbing of wells was prohibited except for certain limited purposes, which did not include swabbing as a means of production. However, in the 1990's, with Commission approval, the Oil & Gas Division commenced the practice of administratively approving requests to swab particular leases as a means of production, based on review of the request and recommendations of the District Offices.

Effective October 2, 2002, the Commission adopted amendments to Statewide Rule 21 which provided that swabbing is prohibited as a production method for wells unless the Commission has, after notice and hearing, granted an exception to Statewide Rule 21.

In the preamble to the proposed amendments to Statewide Rule 21, adopted effective October 2, 2002, the Commission recognized that certain operators were then using swabbing as a production method, and provided that any such operator which filed an application for exceptions to Statewide Rule 21, as amended, within six months of the effective date of the amendments could continue swabbing existing wells that had previously been approved for swabbing by the Oil & Gas Division, pending the Commission's determination of the application for exceptions.

The previous operator of the leases and wells that are the subject of MOR's applications was Rife Oil Properties, Inc. ("Rife"). The evidence in this case and Commission records indicate that Rife began to swab the subject wells after it acquired them in 1994, and then in 2003 filed applications for exceptions to Statewide Rule 21 to continue this swabbing operation. However, Rife also filed bankruptcy in 2003, and its Form P-5 organization report became delinquent as of October 1, 2004. It appears that the Rife applications for Statewide Rule 21 exceptions were never prosecuted, and ultimately were dismissed. MOR first filed a Form P-5 organization report on March 24, 2005, and on September 30, 2005, and November 2, 2005, the Commission approved Forms P-4 (Certificate of Compliance and Transportation Authority) transferring the subject wells from Rife to MOR.

### **APPLICABLE LAW**

Statewide Rule 21 provides that an operator seeking an exception to the rule prohibiting swabbing as a production method must present evidence establishing: (1) the method of production proposed; (2) that any production will be properly accounted for pursuant to Statewide Rule 26 (relating to Separating Devices, Tanks, and Surface Commingling of Oil); (3) that the proposed

exceptions are necessary to prevent waste or protect correlative rights; (4) that wellhead control is sufficient to prevent releases from the wells; (5) that no pollution of usable quality water or safety hazard will result from either the proposed production method or the condition of the wells; and (6) that the operator possesses a continuing good faith claim of right to operate the wells.

Statewide Rule 21 provides that in addition to the above-referenced factors, the Commission may consider: (1) whether the wells for which exceptions are sought have passed a mechanical integrity test within the preceding 12 months; (2) the estimated monthly and cumulative production from the wells if the requested exceptions are granted; (3) whether production will be into an on-lease tank battery or a mobile tank; (4) the adequacy of the financial assurance provided by the operator to assure that the wells will be timely and properly plugged; (5) whether production volume, fine sands in the reservoir, or other factors render pumping of the wells impracticable; (6) whether the reservoir from which the wells produce contains hydrogen sulfide; and (7) the operator's history of compliance with Commission rules.

### **DISCUSSION OF THE EVIDENCE**

#### **Official Notice**

The examiners have officially noticed Commission records<sup>2</sup> showing that the Gibson (00274) Lease, the Kerr 1 & 2 (00284) Lease, the J. A. Worthy (00295) Lease, and the Benton (00262) Lease were transferred from Rife to MOR by Forms P-4 approved on September 30, 2005, effective September 1, 2005, and the Munsey & Munsey (00296) Lease was similarly transferred by Form P-4 approved on November 2, 2005, effective October 1, 2005. Rife had been the operator of these leases since June 1, 1994.

The examiners have also officially noticed Commission records<sup>3</sup> indicating that there are 27 wells on schedule for the Munsey & Munsey (00296) Lease, all of which have Rule 14(b)(2) extensions. There are 62 wells on schedule for the Gibson (00274) Lease, 38 of which have Rule 14(b)(2) extensions. There are 29 wells on schedule for the Kerr 1 & 2 (00284) Lease, 19 of which have Rule 14(b)(2) extensions. There are 13 wells on schedule for the J. A. Worthy (00295) Lease, 13 of which have Rule 14(b)(2) extensions. There are 6 wells on schedule for the Benton (00262) Lease, none of which have Rule 14(b)(2) extensions.

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<sup>2</sup> P-4 Inquiry database for the subject leases.

<sup>3</sup> The records noticed are the Oil Proration Schedule database for the subject leases. Of the wells on schedule for the subject leases, MOR proposes to swab 6 wells on the Munsey & Munsey Lease, 23 wells on the Gibson Lease, 11 wells on the Kerr 1 & 2 Lease, 2 wells on the J. A. Worthy Lease, and all 6 wells on the Benton Lease.

The examiners have also officially noticed the Commission's Oil Ledger Status Inquiry and Historical Oil Ledger Inquiry databases to determine production reported to the Commission for the five leases involved in these dockets during the period 2000 thru August 2006. These records show reporting of continuous production on each of the five leases during this period, except for periods ranging from 9 to 17 months during 2005 and 2006 when no production was reported. For the Munsey & Munsey (00296) Lease, total reported lease production for the 27 wells on schedule during 2000 through August 2006 was 323 BO. No production was reported for this lease during the period January 2005 through May 2006. For the Gibson (00274) Lease, total reported lease production for the 62 wells on schedule during 2000 through August 2006 was 3,230 BO. No production was reported for this lease during the period January-September 2005. For the Kerr 1 & 2 (00284) Lease, total reported lease production for the 29 wells on schedule during 2000 through August 2006 was 983 BO. No production was reported for this lease during the period January-September 2005. For the J. A. Worthy (00295) Lease, total reported lease production for the 13 wells on schedule during the period 2000 through August 2006 was 381 BO. No production was reported for this lease during the period January 2005 through May 2006. For the Benton (00262) Lease, total reported lease production for the 6 wells on schedule during the period 2000 through August 2006 was 726 BO. No production was reported for this lease during the period January-September 2005.<sup>4</sup>

The examiners have also officially noticed from the Commission's P-5 Master Inquiry database that last Form P-5 for Rife Oil Properties, Inc., was approved on September 22, 2003. From the Officer/Agent Inquiry Selection database, the examiners have officially noticed that Rife's last approved Form P-5 named Mervin O. Rife, III as President of Rife. The same database indicates that a Form P-5 approved for MOR on March 10, 2006, named Mark S. Zouvas as President and Mervin O. Rife, III, as Vice President of MOR. The examiners have also officially noticed a "Motion of the Chapter 7 Trustee for Approval of Compromise and Settlement Between and Among Trustee, Texas MOR, Inc., Certain Related Parties and the Railroad Commission of Texas" in the matter styled *Case No. 02-42745-rfn-7, In Re: Rife Oil Properties, Inc., Debtor*, in the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division, which motion was approved by Order of the Court signed November 9, 2006, which recites that M. O. Rife, III and Mark Zouvas are the two principals of Texas M.O.R., Inc. The examiners have further officially noticed, however, a Form P-5 filed for Texas M.O.R., Inc., subsequent to the hearing in these dockets on November 21, 2006, that removed

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<sup>4</sup> At the hearing, MOR attributed the lack of reported production during January-September 2005 for some of the subject leases, and during January 2005-May 2006 for others, to Commission severances based on delinquency of the Form P-5 organization report of Rife Oil Properties, Inc. The examiners have officially noticed the Commission's P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry database for the subject leases, which shows that the Munsey & Munsey (00296) Lease was severed for this reason from December 30, 2004, through November 2, 2005, and the remaining leases were severed for this reason from December 30, 2004, through September 30, 2005.

Mervin O. Rife, III as Vice President of MOR and substituted Sidney C. Baker, Jr. as Vice President.<sup>5</sup>

The examiners have also officially noticed Commission records showing that: (1) On December 22, 2004, the Commission issued a demand to Rife's surety for collection of \$250,000 that Rife had filed as financial assurance, because at the time Rife's Form P-5 was delinquent and it had unfulfilled plugging liability for 332 wellbores with an aggregate depth of 435,323 feet; (2) in July 2005, the Commission plugged with State funds 25 of Rife's wells on the Reno Billimek (11293) Lease at a cost of \$43,187.50; (3) on April 12, 2006, the Commission received the \$250,000 previously demanded of Rife's surety; (4) there are six "active" enforcement dockets naming Rife as the respondent in Oil & Gas Docket Nos. 05-0244940 [alleged violations of Rules 3, 13, and 14 on the Waterworks (00306) Lease], 05-0247167 [alleged violations of Rule 14 on the Eckleman (00270) Lease, Ellis (00271) Lease, Pat Collins (01775) Lease, and the CIF (02841) Lease], 05-0247187 [alleged violations of Rule 14 on the First National Bank of Corsicana (02212) Lease, Tucker, A. D. Jr. (02493) Lease, Barnsdale & Staley (00295) Lease, Hardy-Halbert (00277) Lease, Chewning (00223) Lease, and the Lotspeich, A. L. (01380) Lease], 05-0247300 [alleging violations of Rule 14 on the Mirus, North (00202) Lease, Harwell, R. C. (01316) Lease, Allen, Laura B. (01283) Lease, McMullen (02281) Lease, Brown #2 (00593) Lease, Wright -B- (00311) Lease, and Garvin (00273) Lease], 05-0247326 [alleging violations of Rule 14 on the Strode (00301) Lease, Edens, J. N., Jr. (01294) Lease, Baum #3 (00590) Lease, Tatum (02497) Lease, Allen, J. F. (01286) Lease, and Lotspeich -MDC- (01450) Lease], and 05-0247419 [alleging violations of Rule 14 on the West (00307) Lease, Allen, L. B. Est. Shallow -A- (00088) Lease, Mills-Garrity (00291) Lease, Hall (02159) Lease, Baum #2 (00589) Lease, Universal-Rundle (02380) Lease, and Brown #3 (00594) Lease]; and (5) As of January 4, 2007, Rife was still the designated operator of 280 wellbores having total depth of 378,680 feet.

However, the examiners have also officially noticed that MOR has no history of formal enforcement orders entered against it, and in the context of the Rife bankruptcy case, the Commission has entered into a settlement agreement with the Bankruptcy Trustee, Rife, MOR, M. O. Rife, III, and Mark Zouvas. By this settlement agreement, Texas M.O.R., Inc., has assumed liability for plugging the delinquent inactive wells of Rife Oil Properties, Inc., and has agreed to plug no less than 15 of such wells per month, subject to certain limited exceptions, according to a schedule of well priority established by the Commission. This agreement is collateralized by a \$160,000 escrow fund to be established by Texas M.O.R. for the Commission's benefit, a first in priority lien against certain assets that have a value of not less than \$255,000, the \$250,000 Texas M.O.R. letter of credit, and \$206,816.50 currently held by the Commission as the remaining portion

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<sup>5</sup> Testimony at the hearing was to the effect that Mr. Baker was a Field Supervisor and the M.O.R. in the name of Texas M.O.R., Inc., was an acronym for Mervin O. Rife.

of the \$250,000 collected by the Commission from Rife's surety in April 2006.<sup>6</sup> The examiners have also officially noticed that during the period December 2005, through April 2006, Texas M.O.R., Inc., plugged 48 Rife wells on the Waterworks (00306) Lease. In September 2006, Texas M.O.R., Inc., plugged 13 Rife wells on the J. N. Edens (01294) Lease. Also, in December 2006, 3 Rife leases and 21 Rife wells were approved for transfer from Rife to Texas M.O.R., Inc., based on Texas M.O.R.'s ability to establish a good faith claim.<sup>7</sup>

The examiners have also officially noticed Field Operations memoranda in the hearing files in these dockets. These memoranda state that the MOR applications have been reviewed, and Field Operations has no objection to consideration of the subject leases and wells for Statewide Rule 21 exceptions. The memoranda state that processing of the MOR applications was delayed by lack of legible signs on each of the subject leases. The memoranda state further that inspections of the subject leases identified no safety or pollution violations, other than the illegible signs and the limited number of exceptions described as follows. The memorandum for the Munsey & Munsey (00296) Lease indicates that while no violations were observed for the wells sought to be swabbed, four pollution violations were observed for other wells on the lease and brought to MOR's attention. The memorandum for the Kerr 1 & 2 (00284) Lease indicates that one well tentatively identified as Well No. 19 was found to have an area of oily soil measuring 20' x 10' around the well, but no active leakage was observed.

#### **MOR's Evidence**

MOR is the operator of oil and gas leases covering the subject properties. These leases were previously operated by Rife Oil Properties, Inc. At the time the leases were acquired by Rife in 1994, the subject wells had already been stripped of all downhole equipment by a previous operator. Rife acquired mobile swabbing units, later updated this equipment with more modern swabbing units, and swabbed the subject leases from 1994 through 2004 when its Form P-5 organization report became delinquent. Some wells on the leases were still equipped for production by pumping. However, all of the wells that MOR proposes to swab in these dockets are stripped of downhole equipment and not capable of being produced by pumping.

According to MOR, the Corsicana (Shallow) Field is one of the oldest fields in Texas, and much of the equipment in the field is old and worn out. MOR has plans to redevelop the Field by plugging existing wells, drilling new wells, and employing an alkaline surfactant polymer flood technology. The Field previously has been subjected to extensive water flooding, but with only

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<sup>6</sup> The amount of collateral is subject to reduction as Texas M.O.R. fulfills its obligation to plug the Rife wells. Also, the number of Rife wells that Texas M.O.R., Inc., is obligated to plug may be reduced by a transfer of Rife wells to another active operator which can establish a good faith claim of right to operate the wells.

<sup>7</sup> The settlement agreement does not expressly reference disposition of the active enforcement dockets against Rife, but assuming that Texas M.O.R., Inc., satisfies its obligations under the settlement agreement, it appears likely that the pending Rife enforcement dockets will not be further prosecuted.

limited secondary recovery. MOR believes that only 12-15% of the oil in place in the Field has thus far been extracted, and there are still millions of barrels of oil in the Field to be recovered. MOR has initiated a pilot redevelopment project on the King "A" Lease in the Field, where it has not yet started any flooding but has spent \$1.5 million in drilling 13 new wells and installation of an injection system.

MOR is the owner of 3 mobile swabbing units and intends to swab the subject wells only temporarily, while pursuing its ultimate plan to plug wells in the Field, drill new wells, and redevelop the Field with the alkaline surfactant polymer flood technology. MOR has been assured by its consulting experts that the Corsicana (Shallow) Field is an excellent candidate for use of this technology. MOR projects that it will continue to swab the subject wells, as an interim measure to maintain production and the life of existing mineral leases, for a period of about two years. The oil and gas leases covering the Field are, in some cases, more than 100 years old. MOR does not believe that perpetuation of the life of these mineral leases is dependent on continuous production, but wishes to avoid the possibility of any contention by the mineral owners that the leases have been abandoned during the interim period while MOR's redevelopment plans are being implemented. MOR believes that continuous production of the subject wells by the swabbing method, at least on a temporary basis, will serve this purpose.

Based on previous experience of Rife Oil Properties, Inc., MOR estimates that swabbing the subject wells will result in production of 7 to 15 BO per well each month. Since these wells were stripped of downhole equipment by a previous operator, it would not be practical to produce the wells by pumping. MOR investigated the cost of providing power to some of the leases acquired from Rife. Running power to the Gibson Lease alone would cost \$50,000 to \$75,000, and an additional \$100,000 to distribute power to each well on the lease. Installing the necessary power to produce the existing wells by pumping would not be economically feasible, due to the limited production that could be expected.

MOR believes that approval of its applications for exceptions to Statewide Rule 21 to swab the subject wells is necessary to prevent the waste of oil or gas. First, swabbing the subject wells should yield a recovery of 7-15 BO per well each month, and this is oil that under current conditions cannot be recovered from the existing wells by any other practical means. In addition, MOR fears that failure to produce the subject wells by some practical means might lead at least to a contention that the leases have been abandoned, thwarting MOR's plan to redevelop the Corsicana (Shallow) Field by the drilling of new wells. MOR believes that this could result in the ultimate loss of millions of barrels of oil yet to be recovered from the Field, because if existing mineral leases were declared invalid, it would be difficult, if not impossible, to put together new leases covering the Field area.

The oil that will be produced by swabbing the subject wells does not have any hydrogen sulfide component, and so this should not be a safety concern. Oil loaded into one of MOR's mobile swabbing units will be transferred into tanks on the same lease where the oil is produced and will be measured before leaving the lease. The only exception is the Benton Lease, where, according

to MOR, the Commission has previously authorized off-lease storage. In no instance will any oil produced from one of the subject leases be commingled in the same tank with oil produced from any other lease. This should satisfy any Statewide Rule 26 concern.

**EXAMINERS' OPINION**

The examiners are of the opinion that the proof made by Texas M.O.R., Inc. ("MOR"), minimally satisfies the requirements of Statewide Rule 21 and therefore recommend that the subject applications be approved, subject to conditions.

**Mandatory Statewide Rule 21 Criteria**

Swabbing is the proposed method of production. Any production by swabbing will be properly accounted for pursuant to Statewide Rule 26 because such production will be stored in tanks on the same lease where the oil is produced and will be measured before the oil leaves the lease, except in the case of the Benton Lease where the Commission previously has approved off-lease storage. No oil produced from any one of the subject leases will be commingled with oil produced on another lease.

The requested exceptions are necessary to prevent waste. The subject wells were stripped of downhole equipment by a previous operator, and thus the wells are not equipped to be produced by pumping. Equipping of the subject wells for production by pumping is cost prohibitive given the amount of oil that the wells are capable of producing. Swabbing is a cost effective means of producing the subject wells, and MOR estimates that this method of production will yield 7-15 barrels of oil per well each month. Under current circumstances, there appears to be no other practical means of recovering this oil.

MOR did not present any specific proof regarding wellhead control. However, the same wells previously were swabbed by Rife Oil Properties, Inc., and inspections of the subject leases did not disclose any pollution problems associated with failure to maintain wellhead control on the subject wells, with one possible exception. Maintenance of proper wellhead control can be required by wellhead control condition on the Commission's approval of the applications.

For the same reasons, it does not appear that pollution of usable quality water or safety hazard will result from either the proposed production method or the condition of the wells. Inspections of the subject wells by Field Operations did not disclose any pollution of usable quality water or safety hazard, other than illegible well signs, after approximately 10 years of swabbing operations by MOR's predecessor, Rife Oil Properties. The posting of appropriate well signs in compliance with Statewide Rule 3 is recommended by the examiners as a condition of approval of the applications.



MOR has made proof that minimally satisfies the requirement that MOR establish it has a good faith claim of right to operate the subject leases and wells. The mineral reservations in deeds and oil and gas leases relied upon by MOR are antiquated. These are handwritten instruments, the earliest of which is dated in 1905 and the latest of which is dated in 1916. In the early years of the 20th Century, instruments authorizing oil companies to develop land for oil and gas contained widely varying provisions, particularly as to the duration of leases. Fixed-term leases of significant duration, even 99 years, occasionally were executed. Other oil and gas leases, as written, theoretically could last forever, even if the lessee did not drill or obtain production, such leases being commonly referred to as “no term” leases. *See Smith & Weaver, Texas Law of Oil and Gas*, Vol. 1, Chapter 4, §4.1 at page 4-4 (Matthew Bender 2006).

The old oil and gas leases and mineral reservations relied upon by MOR were assigned to MOR effective September 15, 2004. As to the Benton (00262) Lease and the Gibson (00274) Lease, MOR relies on mineral reservations in deeds dated February 5, 1906, and August 26, 1905, respectively. While the duration of these mineral reservations appears to have been dependent on a certain degree of development, the properties were developed, and the mineral reservations are not otherwise clearly limited in time or clearly dependent on continuous production, without interruption.

As to the Kerr 1 & 2 (00284) Lease, MOR relies on an oil and gas lease dated June 13, 1907, and subsequent lease dated August 1, 1909. The duration of these leases was also dependent on development, which apparently occurred, and the 1907 lease provided that it would continue as long as oil and gas were “found” in paying quantities. No provision in these leases clearly provides that a temporary interruption of production will cause the leases to terminate.

As to the Munsey & Munsey (00296) Lease and the J. A. Worthy (00295) Lease, MOR relies of oil and gas leases dated May 1, 1916, and July 18, 1912, respectively. In general, these leases required that development commence by drilling of a well within 30 days, and provided for a primary term of 25 years from the date of first discovery of oil or gas, and “as much longer as oil, water or other minerals can be produced.” Leases providing that they will continue past the primary term as long as oil or gas “can be produced” are perpetuated by the existence of wells capable of production, even where there is a period of time when no actual production takes place. *Anadarko Petroleum Co. v. Thompson*, 94 S.W.3d 550 (Tex. 2002).

Continuous production has been reported for the subject leases since the year 2000, except for a period of time in 2005, and in some cases 2006, when the leases were severed due to the Form P-5 delinquency of MOR’s predecessor, Rife Oil Properties, Inc. Production on each of the leases was restored after the leases were transferred, with Commission approval, from Rife to MOR, and the leases have continued to produce since that time. While the temporary cessation of production due to the lease severances while Rife was still the operator may raise some question about the continued validity of the old oil and gas leases and mineral reservations relied upon by MOR, these oil and gas leases and mineral reservations contain no express provisions that provide a sufficient basis for determining that the leases and mineral reservations have terminated or that MOR does not

have at least a good faith claim of right to operate the subject wells. Notice of the MOR applications was provided to mineral owners under the subject properties, and no such owner has come forward to make any claim that MOR does not have a currently effective mineral lease. In the circumstances, MOR has met its burden to establish that it has a good faith claim.

**Discretionary Statewide Rule 21 Considerations**

There is no evidence that the subject wells have been tested for mechanical integrity during the last 12 months. With only limited exceptions, Field Operations found no safety or pollution violations respecting these wells when they were inspected in connection with Field Operations review of MOR's applications.

Based on previous experience of Rife Oil Properties, Inc., MOR has furnished an estimate of average monthly production of the subject wells by swabbing. MOR's estimate is that by swabbing the subject wells it can produce from each well 7-15 barrels of oil per month. There is no direct evidence to the contrary, but this estimate appears high based on the production reported to the Commission for these leases during the period 2000 through August 2006.

Production will be into a mobile swabbing unit, but the oil so produced will be transferred from the mobile swabbing unit into an on-lease tank battery in all cases, except with respect to the Benton Lease, where MOR represented that the Commission previously has approved off-lease storage. All oil produced by swabbing will be measured before it leaves the lease where it is produced, and no oil produced from any of the subject leases will be commingled with oil produced on any other lease.

MOR currently has on file with the Commission approved financial assurance in the amount of \$250,000. It is the operator of 518 wellbores with total depth of 522,163 feet. Thus, MOR has financial assurance of \$482.63 per well and \$0.48 per foot of wellbore depth. By settlement agreement in the context of the Rife bankruptcy case, MOR has assumed the plugging liability for several hundred more wells of which Rife is still the designated operator, although this settlement agreement obligation is collateralized by other forms of financial assurance. MOR did not propose to establish any internal plugging account or reserve fund for plugging of the subject wells. Nonetheless, MOR has the financial assurance required by law, has commenced to satisfy its obligation under the aforementioned settlement agreement by plugging a number of the Rife wells, and disposition of MOR's applications to swab the subject wells is unlikely to affect, one way or the other, the sufficiency of MOR's financial assurance to assure that these wells will be timely and properly plugged. Approval of the MOR applications will not increase the amount of MOR's current well plugging liability. Because the subject wells were already stripped of downhole equipment at the time MOR acquired them, swabbing appears to be the only practical means of producing the wells, and requiring the wells to remain inactive, and covered by 14(b)(2) plugging extensions, is not more attractive than permitting them to be swabbed from the perspective of assuring that the wells will be timely and properly plugged.

As to the remaining discretionary considerations under Statewide Rule 21, pumping of the subject wells as a means of production is no longer practical, for the reasons already stated. Oil produced from the Corsicana (Shallow) Field does not have any hydrogen sulfide component. MOR has no history of non-compliance with Commission rules that has been formalized by any final enforcement order. The possibility that Mervin O. Rife, III is a principal of MOR, and a person in a position of ownership or control of Rife Oil Properties, Inc., is a concern, considering Rife's compliance history and the pending enforcement actions against Rife. However, in the context of the Rife bankruptcy case, the Commission has entered into a settlement agreement with Rife, MOR, and the Bankruptcy Trustee which contemplates that MOR will bring the Rife wells into compliance. This settlement agreement was approved by the Bankruptcy Court only as of November 9, 2006, MOR has proceeded to plug a number of Rife's wells, and there is no evidence that MOR is not currently in compliance with the terms of the settlement agreement.

It is the opinion of the examiners that, on balance, the discretionary considerations prescribed by Statewide Rule 21 do not weigh strongly in favor of, or strongly against, approval of MOR's applications for Statewide Rule 21 exceptions. Because MOR has satisfied the mandatory criteria of Statewide Rule 21, the examiners recommend approval of the requested exceptions.

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

#### **FINDINGS OF FACT**

1. At least ten (10) days notice of the hearing in these dockets was sent to all parties entitled to notice, and notice was published in the Corsicana Daily Sun, a daily newspaper having general circulation in Navarro County, Texas.
2. Texas M.O.R., Inc. ("MOR"), requests that the Commission grant exceptions to Statewide Rule 21 to permit MOR to produce 48 wells ("subject wells") on 5 leases ("subject leases") by swabbing as a method of production. Appendix 1 to the Proposal for Decision identifies the MOR applications by docket number, lease name, and well number, and is adopted and incorporated into this finding by reference.
3. MOR was first organized with the Commission on March 24, 2005. Currently, MOR is the designated operator of record of 518 wellbores with total depth of 522,163 feet. MOR has approved financial assurance on file with the Commission in the amount of \$250,000.
4. MOR became the operator of record of the subject leases and wells by filing Forms P-4 (Certificate of Compliance and Transportation Authority) which were approved on September 30, 2005, and November 2, 2005. These leases and wells were transferred to MOR from Rife Oil Properties, Inc., which had operated them since 1994.

5. The subject wells had been stripped of downhole equipment by a previous operator prior to acquisition of the wells by Rife Oil Properties, Inc., in 1994. Rife produced the subject wells by the swabbing method from 1994 until 2004 when Rife's Form P-5 organization report became delinquent.
6. Rife reported to the Commission continuous production for the subject leases during the period 2000-2004. No production was reported to the Commission for these leases during various periods in 2005, and in some cases 2006. However, MOR has reported continuous production for the Gibson (00274) Lease, the Kerr 1 & 2 (00284) Lease, and the Benton (00262) Lease since October 2005, and for the Munsey & Munsey (00296) Lease and the J. A. Worthy (00295) Lease since June 2006.
7. The proposed method of production is production by swabbing, and MOR owns and operates three mobile swabbing units suitable for this purpose.
8. Oil produced by the swabbing method will be accounted for properly pursuant to Statewide Rule 26. Oil produced into tanks on MOR's mobile swabbing units will be transferred into tank batteries located on the same lease where the oil is produced, with the exception of oil produced on the Benton Lease where MOR has received Commission approval for off-lease storage. All oil produced by the swabbing method will be measured before it leaves the lease. No oil produced from the subject leases will be commingled with oil produced from any other lease.
9. Approval of the requested exceptions to Statewide Rule 21 will prevent the waste of oil.
  - a. Because the subject wells were stripped of downhole equipment prior to their acquisition by MOR, the wells are not currently equipped for production by pumping.
  - b. Providing power to the subject leases and otherwise equipping the subject wells for production by pumping would be cost-prohibitive in relation to the amount of oil production that could be anticipated.
  - c. Swabbing is a cost effective means of producing the subject wells.
  - d. MOR estimates that its proposed swabbing operations will result in production of 7-15 barrels of oil per month for each of the subject wells, which is oil that under current conditions cannot be produced by any other practical method.
10. With proper conditions imposed on the Commission's approval of these applications, the subject wells will be equipped with proper wellhead control sufficient to prevent releases from the wells. Inspections of the subject leases did not disclose any pollution or safety hazard resulting from lack of proper wellhead control, with only a single exception subject to remediation.

11. With proper conditions imposed on the Commission's approval of these applications, no pollution of usable quality water or safety hazard will result from either the proposed method of production or the condition of the wells. The Commission's Field Operations Section performed an inspection of the subject leases and wells in connection with its review of MOR's applications and has no objection to consideration of the applications for exceptions to permit the wells to be swabbed.
12. MOR has a good faith claim of right to operate the subject leases and wells. Oil and gas leases and possessory mineral interests evidenced by mineral reservations in deeds covering the subject properties were assigned to MOR effective September 15, 2004.

**CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.
3. Texas M.O.R., Inc., has submitted proof sufficient to meet the mandatory standards in Statewide Rule 21 [16 TEX. ADMIN. CODE §3.21] for approval of exceptions to permit the swabbing of the subject wells.
4. Approval of the exceptions to Statewide Rule 21 requested by Texas M.O.R. is necessary to prevent the waste of oil.

**RECOMMENDATION**

The examiners recommend that the applications of Texas M.O.R., Inc., for exceptions to Statewide Rule 21 be approved, subject to the conditions set forth in the proposed final orders attached.

Respectfully submitted,

James M. Doherty  
Hearings Examiner

Thomas H. Richter  
Technical Examiner