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* KEY ISSUES: Binding effect of a waiver on a    *
*             subsequent purchaser of an         *
*             offset tract                       *
*                                                *
* FINAL ORDER: R37 EXCEPTION - DOCKET DISMISSED  *
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RULE 37 CASE NO. 0205972

COMPLAINT OF LAMAR OIL AND GAS, INC. REGARDING THE RULE 37 EXCEPTION IN CASE NO. 0205972 FOR THE MACO STEWART WELL NO. 31, HITCHCOCK FIELD, GALVESTON COUNTY, TEXAS

APPEARANCES:

FOR COMPLAINANT:	**COMPLAINANT:**
George C. Neale, attorney	Lamar Oil and Gas, Inc.
FOR RESPONDENTS:	**RESPONDENTS:**
John Camp, attorney Bruce Gary J. David Hall Clay Joffrion	Henron Oil, Inc. Clay Resources, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

NOTICE OF HEARING:	12/06/94
DATE(S) OF HEARING:	02/03/95 and 02/23/95
HEARD BY:	Larry Borella, Hearings Examiner Meredith Kawaguchi, Legal Examiner Doug Johnson, Technical Examiner
PFD CIRCULATION DATE:	May 31, 1995
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

The facts are not in dispute. Gary Oil and Gas, Inc. as agent for Henron Oil, Inc. and Clay Resources, Inc. (hereinafter referred to collectively as "Henron") filed a Form W-1 (Application for Permit to Drill, Deepen, Plug Back, or Re-Enter) to plug back Well No. 31 on the Maco Stewart Lease in Galveston County. The Form W-1 reflects that Well No. 31 is 132 feet from the boundary of a riverbed tract owned by the state of Texas. Statewide Rule 37 requires a distance of 467 feet from property lines; hence, an exception to Rule 37 was required to plug back Well No. 31.

On June 3, 1994, the Texas General Land Office ("GLO") agreed to withdraw its protest of Henron's contemplated Rule 37 application, upon Henron's fulfillment of certain conditions specified by the GLO. It was not until July 13, 1994, that Henron actually filed its application for a Rule 37 exception. Between the time of the execution of the June 3, 1994 agreement and the filing of the Rule 37 application on July 13, 1994, the state of Texas leased the riverbed tract to Lamar Oil and Gas, Inc. ("Lamar").

On July 13, 1994, the Commission, not knowing of Lamar's interest in the riverbed tract, administratively approved a permit to plug back Well No. 31. Lamar contends that it was entitled to notice and opportunity to protest the permitting of a well 132 feet off its lease line. Lamar argues that the GLO's waiver issued June 3, 1994, before the Rule 37 application was filed, and while the GLO was still the owner of the riverbed tract, could not bind Lamar; therefore, the application was granted upon improper procedure, contrary to the requirements of Rule 37, and Henron's permit should be revoked. Henron produced Well No. 31 with an allowable from May 1994 to September 1994. Cumulative production was 32,403 mcf.

The issue before the Commission is whether the GLO's waiver of protest bound a subsequent owner, Lamar. If it did not bind Lamar, the permit for Well No. 31 was issued in contradiction of the Commission's Rule 37. Permits granted in violation of Commission rules may be revoked. Gillespie & Sons Co. v. Railroad Commission of Texas, 161 S.W.2d 159 (Tex. Civ. App.--Austin 1942 ref'd want merit).

EXAMINER'S OPINION

Lamar was not bound by the GLO's waiver because, in the examiner's opinion, the GLO gave a conditional waiver not sufficient for purposes of Rule 37. Rather than waiving a protest to Henron's application, the GLO agreed to waive protest if multiple conditions were met in the future. If those conditions were not met, presumably, the waiver was nullified. The Commission must be assured, before issuing a permit pursuant to Rule 37(h)(2)(B), that the waiver is an accomplished fact. In this instance, Lamar has not met yet all of the conditions stated in the June 3 agreement. Therefore, the waiver by its own terms never became operable.

Even if the waiver were unconditional, it would not bind Lamar. For a person to be bound a waiver, it is essential that he have actual or constructive knowledge of the right or privilege involved, and that he intend to relinquish the right. Houston Fire and Casualty Insurance Co. v. Pritchard & Abbott, 155 Tex. 120, 283 S.W.2d 728 (1955); Carolina Insurance Co. v. Christopher, 130 Tex. 245, 106 S.W.2d 138 (1937). Lamar may have been aware of the agreement between the GLO and Henron, but Lamar was not a party to the agreement and relinquished no right. Lamar cannot be bound by a waiver when it had no opportunity to choose between a relinquishment and the enforcement of the right in question. Faubian v. Busch, 240 S.W.2d 361, 366 (Tex. Civ. App.--Amarillo 1951, writ ref'd n.r.e.).

In conclusion, the waiver never took effect. Even if it were an operable waiver, it could not bind one who did not intend to relinquish his rights. Therefore, there is no need to address the respondents' arguments concerning parole evidence to show the GLO/Henron intent to bind a third party. Irrespective of their intent, they had no power to waive between themselves the legal rights of a third party. Henron asserts that "Lamar, as purchaser of the GLO's lease, assumed the rights and restrictions of the GLO with respect to its leasehold estate. The restrictions imposed on Lamar's ownership of the GLO lease include any restrictions of which it had notice." Respondents' Reply to Complainant's Brief, p. 2. As support for this proposition, Henron cites Westland Oil Development Corp. v. Gulf Oil Corp., 637 S.W.2d 903 (Tex. 1982). In Westland the court considered the effect of a letter agreement. The court did not consider the waiver of a right, but the effect of a reference made in a document appearing in a chain of title. Since the letter agreement was referenced in an essential document in the chain of title, the court concluded that purchasers of the mineral interest were charged with notice of the letter agreement and could not enjoy the status of innocent purchasers. The waiver agreement executed by the GLO and Henron was not an instrument that formed any link in Lamar's chain of title. The Westland case is inapplicable to the facts herein.

The Commission issued a permit for Well No. 31 to Henron pursuant to Rule 37(h)(2)(b), when unbeknown to the Commission, a waiver from an offset lessee, Lamar, had not been obtained. The permit should, therefore, be rescinded. Production from the well from May 1994 through August 1994 in the amount of 32,403 mcf, is illegal production subject to makeup if Henron does obtain a valid permit for the Maco Stewart Well No. 31.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this matter was given to Lamar Oil and Gas, Inc., Gary Oil and Gas, Inc., Henron Oil, Inc., and the General Land Office.

2. The state of Texas was the mineral interest lessor of a riverbed tract adjacent to the Maco Stewart Lease in Galveston County.

3. On June 3, 1994, the GLO and Henron entered into an agreement whereby the GLO agreed to withdraw its protest of Henron's contemplated Rule 37 application for the Maco Stewart Well No. 31, if Henron met certain conditions stated in the agreement.

4. On July 5, 1994, Lamar leased the subject riverbed tract adjacent to the Maco Stewart Lease from the state of Texas.

5. On July 13, 1994, Henron filed, and the Commission administratively approved, Henron's application for a Rule 37 permit for the Maco Stewart Well No. 31, pursuant to Rule 37(h)(2)(B).

6. Lamar did not waive protest of Henron's application to re-enter the Maco Stewart Well No. 31, Hitchcock Field Area, Galveston County, Texas.

7. Henron produced 32,403 mcf from the Maco Stewart No. 31, Hitchcock (4530) Field, Galveston County, Texas.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to appropriate persons legally entitled to notice.

2. All things have been done or have occurred to give the Railroad Commission jurisdiction to decide this matter.

3. Lamar is not bound by an agreement executed by the GLO and Henron, whereby the GLO agreed to a conditional withdrawal of its protest of Henron's Rule 37 application.

4. The application filed by Henron for a Rule 37 exception for the Maco Stewart Well No. 31 did not meet the requirements of Rule 37(h)(2)(B) for administrative approval.

RECOMMENDATION

The examiner recommends that the Rule 37 permit for the Maco Stewart Well No. 31 be revoked and production from said well be deemed illegal production subject to makeup.

Respectfully submitted,

Meredith Kawaguchi
Legal Examiner

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