

Commission called hearing to determine the Proper Operator of the Coleman, Lucy M. -A- (26402) Lease, Coleman Ranch Field Coleman (26238) Lease, Coleman Ranch Field Coleman (25826) Lease, Coleman Ranch, N. (Clear Fork) Field, Mitchell County, Texas.

APPEARANCES:

FOR RESPONDENT WEST TEXAS RECOVERY, INC:

John Soule	Attorney
Michael McGuire	President
David B. Scott	Ranch Manager - Coleman Ranch
Preston Burchard	Lessor

FOR RESPONDENT ATLAS ENERGY CORPORATION:

Robert Westbrook	Attorney
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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

NOTICE OF HEARING:	March 29, 1994
HEARING HELD:	April 19, 1994
TRANSCRIPT DATE:	N/A
PFD CIRCULATION DATE:	May 9, 1994
STATUS:	Protested
HEARD BY:	David Clarkson, Hearings Examiner James M. Irwin, Technical Examiner

STATEMENT OF THE CASE

This is a Commission-called hearing to determine the proper operator of the Coleman, Lucy M. -A- (26402) Lease, and the Coleman (26238) Lease, Coleman Ranch Field and the Coleman (25826) Lease, Coleman Ranch, N. (Clear Fork) Field, Mitchell County, Texas. West Texas Recovery, Inc. applied to have a single signature P-4 (Producer's Transportation Authority and Certificate of Compliance) approved. Atlas objected. West Texas Recovery, Inc. requested a proper operator hearing when the staff refused to approve the P-4 transfer administratively. Atlas Energy, Inc. presented no direct case at the hearing.

DISCUSSION OF THE EVIDENCE

Atlas Energy Corporation ("Atlas") is the current P-4 operator of the Coleman, Lucy M. -A- (26402) Lease, the Coleman (26238) Lease, and the Coleman (25826) Lease ("subject leases"). Mr. Robert Westbrook appeared at the hearing representing Atlas. Mr. Michael McGuire appeared for West Texas Recovery, Inc. ("WTR"). McGuire is the president of WTR. Prior to his employment with WTR, McGuire worked for Atlas on the subject leases from the summer of 1993 until November 1993. McGuire testified that he remained officially employed by Atlas until December 29, 1993.

WTR believes the previous Oil, Gas, and Mineral Leases, under which Atlas makes its claim to title for the subject tracts, have expired and WTR has taken lease assignments from the new lessee on all the subject leases. The assignments, dated January 14, 1994, are from the Lindsay-Christensen Company which negotiated new leases with the lessor effective December 30, 1993. Two of the partners in the Lindsay-Christensen Company are also officers in WTR. Atlas maintains that their leases have been maintained in full force and effect due to repudiation of the lease by the lessor via a letter dated May 5, 1993. Atlas cites Kothmann v. Boley, 308 S.W. 2d 1 (Tex. 1958) in support of this claim. The Court stated in Kothman that if a lessor wrongfully repudiates the lessee's title by notice that the leases have terminated, the lessor cannot complain if the lessee suspends operations under the lease pending a determination of the status of the leases. WTR argued that since Atlas continued to work on the lease after May 5, 1993, that it could not rely on repudiation to maintain the lease. Atlas also cited later repudiation of the lease in a letter from Preston Burchard, the lessor, to Atlas dated March 30, 1994. WTR contends that the lease had already terminated on that date. Atlas filed a declaratory judgement action to determine the validity of its leases in Mitchell County on April 18, 1994, the day before the hearing.

P-1 Reports (Producers' Monthly Report of Oil Wells) filed by Atlas for the production months of November, December, 1993, and January, 1994, were admitted into the record as WTR exhibit No. 8. These reports show 1709 BO "On hand, end of month" at the end of November, plus production of 294 barrels of oil in December and 284 barrels of oil in January for a total of 2,287 barrels of oil "On hand, end of month" on the three leases reported at the end of January.

WTR presented a summary of eight days of gauge reports showing 1,681 barrels of oil on hand on the (26238) and (26402) leases at the end of November. This, plus the 16 barrels reported on lease (25826), shows 1,697 barrels of oil on hand on the subject leases at the end of November,

1993. This volume corresponds to the 1,693 barrels of oil shown to be on hand at the end of November, 1993 on the P-1 production reports. WTR contends that no further production occurred on the subject leases. WTR filed, as late-filed exhibit No. 12, a gauge report run on the subject leases by Railroad Commission field personnel on April 20 and 21, 1994, as part of a lease inspection requested by Legal Enforcement. The totals for exhibit 12 show 1,685 barrels of oil presently on the subject leases. WTR feels that this 1,685 barrels of oil is the same volume that was on hand at the end of November. If there had been production, the latest gauge report should correlate more closely with the 2,287 barrels as reported by Atlas on the P-1 Reports. No evidence of transfers of oil off the lease was presented by Atlas. The district inspection reports submitted as WTR exhibits 15 and 16 indicate that the subject leases were shut-in by district personnel for pollution abatement in early January.

WTR also presented evidence that no production occurred on the subject leases during W-10 (Oil Well Status Report) tests reported for December, January, and February. A three page W-10 report covering the subject leases was entered as WTR Exhibit No. 13. Atlas showed 10 wells pumping on lease (26238), 16 wells pumping on Lease (26402) and 2 wells pumping on Lease (25826). All 3 leases showed various test dates throughout January. WTR presented pictures of 6 of the wells on (26238) and 1 well on (26402) showing the pumping units in varying states of disrepair. The pumping units were missing belts (Well No. 9 and 16), motors (Well No. 10), bridles (Well No. 22 and 23), and a walking beam (Well No. 18). Well No. 16 also had a broken saddle bearing. A picture of Well No. 90 on (26402) showed the pumping unit to be missing pitman arms. Michael McGuire testified that this is the same condition that the wells were in November, 1993. While not all wells on all three leases were identified as being inactive, the evidence presented does bring into question the reliability of the Commission reports filed by Atlas. David B. Scott, the Coleman Ranch foreman also testified that no work was done on the wells during November, December, or January. Atlas presented no evidence to show how the wells may have been pumped with inoperable pumping equipment. WTR also presented Commission District inspections done in January showing all wells on the "Coleman" Lease as shut in.

Copies of the four Oil, Gas and Mineral Leases under which Atlas claims its rights to the subject leases were also admitted into evidence. It was noted that three of the leases have no savings clause and remain in full force and effect only as long as there is production on the leases. The fourth lease, covering the N/2 of the NW/4 of the SW/4 of Section 77, has a savings clause which maintains the lease during 60 days of non-production if "bonafide drilling or reworking operations" are commenced within the 60 days. It cannot be determined from the record if this lease corresponds to a specific Commission lease or if it covers portions of several Commission designated leases. No evidence of rework operations during 1994 was presented by Atlas.

EXAMINER'S OPINION

An operator shall secure from the Commission a certificate (P-4) showing compliance with the oil and gas conservation laws and rules of the state and the commission before connecting with any oil or gas pipeline. TEX. NAT. RES. CODE ANN. §85.161 (Vernon 1993). When an operator applies to be the P-4 operator of a lease, it is essentially applying for a permit to move hydrocarbons off of the lease. A P-4 (Producer's Transportation Authority and Certificate of

Compliance) is not an instrument of title to either real or personal property. It is well established that the Railroad Commission duties do "not encompass the power or authority of deciding ownership of the title of land". Trapp v. Shell Oil Co., 198 S.W. 2d 424, 437 (Tex. 1946). The Commission does have the "same power to appraise objections made to the issuance of a permit as it has to appraise the title upon which an application for a permit is based." Cheesman v. Amerada Petroleum Corp., 227 S.W. 2d 829, 832 (Tex. Civ. App. - Austin, 1950, no writ). Thus, while the Commission may not determine title, it may evaluate the underlying documents on which a claim is based.

"The Commission should deny a permit if it does not appear to it that the applicant has a good-faith claim in the property." Magnolia Petroleum Co. v. Railroad Commission, 170 S.W. 2d 189, 191 (Tex. 1943). The court goes on to state that if an applicant "makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit." Id. (emphasis added). This is not the case here. Atlas has failed to make a reasonably satisfactory showing of a continuing valid claim to title in the subject leases. The weight of the evidence presented shows that WTR has a good-faith claim to title to the subject leases and that Atlas no longer has a good-faith claim to title to the subject leases due to cessation of production in the months of December, 1993 and January and February, 1994.

Atlas contends that, under Kothman, the May 5, 1993 letter from Preston Burchard, the lessor, was a wrongful repudiation which relieves the lessee of any responsibility to maintain operations on the lease until a determination of the controversy has been made. The court in Muller v. Leyendecker, 697 S.W.2d 668 (Tex. App.-- San Antonio 1985, writ ref'd n.r.e.) noted that in a wrongful repudiation of a lease "requires as a matter of law an extension of the lease for the time the lessee suspends operations". Muller, at 674. Thus, for any period immediately after May 5, 1993 that Atlas suspended operations on the subject leases, the time accruing to non-operations was tolled. Once operations were resumed by Atlas, the time was simply no longer tolled. If a lessee resumes operations after a lessor's repudiation, the Kothman case does not stand for the proposition that the time used to calculate a cessation of production is tolled in all future suspensions of operations. Thus, the cessation of production in December, January and February can not be related back to the May 5, 1993 repudiation once Atlas resumed operations in the summer of 1993.

FINDINGS OF FACT

1. Atlas Energy Corporation and West Texas Recovery, Inc. were given at least 10 days' notice of this proceeding by regular mail and by certified mail. Both parties appeared at the hearing.
2. Atlas Energy Corporation is the presently designated Form P-4 (Producer's Transportation Authority and Certificate of Compliance) operator for the subject leases.
3. Three of the Oil, Gas and Mineral Leases under which Atlas Energy Corporation claims its right to operate the subject leases will remain in effect only as long as there is production on the leases. The fourth lease, covering the N/2 of the NW/4 of the SW/4 and the N/2 of the SW/4 of

the SW/4 of Section 77, has a savings clause which maintains the lease during 60 days of non-production if "bonafide drilling or reworking operations" are commenced within the 60 days.

4. No rework operations have been conducted on the subject leases since November, 1993.

5. The Coleman, Lucy M. -A- (26402) Lease, the Coleman (26238) Lease, and the Coleman (25826) Lease have not produced since December 1, 1993.

7. West Texas Recovery, Inc. has an assignment of an oil and gas lease from the Lindsay-Christensen Company. Lindsay-Christensen Company's claim arises from oil and gas leases covering the subject tracts dated January 4, 1994.

CONCLUSIONS OF LAW

1. Proper notice was 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. Atlas Energy Corporation does not have a good-faith claim to remain designated as the operator of the subject leases.

4. West Texas Recovery, Inc. has a good-faith claim to be designated as operator of the subject leases.

RECOMMENDATION

The examiners recommend that the above findings and conclusions be adopted and the attached Final Order removing Atlas Energy Corporation and naming West Texas Recovery, Inc. as the P-4 operator of the subject leases be adopted.

Respectfully submitted,

David Clarkson
Hearings Examiner

James M. Irwin
Technical Examiner