

COMMISSION CALLED HEARING TO DETERMINE THE PROPER OPERATOR OF THE
LOCKETT (13100) LEASE, BRANCH, SOUTH (TANNEHILL) FIELD, CONCHO COUNTY,
TEXAS

APPEARANCES:

FOR THE DESIGNATED OPERATOR:

G. Jay Hester

DESIGNATED OPERATOR:

Winco Oil, Inc.

FOR PROTESTANT:

Lloyd A. Muennink

PROTESTANT:

Best Petroleum Explorations, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

March 8, 1994

DATE OF HEARING:

March 31, 1994

HEARD BY:

Jim McDougal, Hearings Examiner

REVIEWED BY:

Meredith Kawaguchi, Legal Examiner

PFD CIRCULATION DATE:

October 21, 1994

CURRENT STATUS:

Protested

STATEMENT OF THE CASE

Winco Oil, Inc. ("Winco") has asked the Railroad Commission to determine the proper operator of Well No. 1, Lockett (13100) Lease, Branch, South (Tannehill) Field, Concho County, Texas.

Winco completed the drilling of the subject well on November 22, 1990. The well was a dry hole. Winco maintains that Best Petroleum Explorations, Inc. ("Best") took over the well and lease in July 1991. Best contends that it took over the lease but not Well No. 1 (which was the only well on the lease). Best drilled another well on the Lockett Lease that was also a dry hole.

G. Jay Hester, the owner of Winco, appeared pro se and testified on behalf of Winco. Best appeared through its attorney but presented no witnesses.

DISCUSSION OF THE EVIDENCE AND EXAMINER'S OPINION

In the examiner's opinion, the operator of the Lockett Lease and the Lockett (or Hester, as it is sometimes called) Well No. 1 is Best Petroleum Explorations, Inc.

By check dated July 11, 1991, Best paid J & H Drilling (owned by G. Jay Hester) \$5,500. The memorandum attached to the check states: "The attached check is in payment of items described below. Description: Concho County Lease, Lockett No. 1."

On July 18, 1991, the parties entered into a letter agreement. According to Best's attorney the letter agreement modified the existing deal that the parties had struck. The letter agreement, signed by both parties, refers to the assignment of the Lockett Lease to Best and states in pertinent part: "Whereas, said assignment states that Best Petroleum Explorations, Inc. shall accept the Hester No. 1, it is agreed that Best Petroleum Explorations, Inc. may accept said well, however only after Jay Hester and/or Gerald Holden have complied fully with all of Texas Railroad Commission and landowner requirements in regards to the said Hester No. 1 drilled by Jay Hester and Gerald Holden doing business as J & H Drilling."

The effect of this letter agreement is doubtful. An offer had been made and accepted; payment had occurred. The agreement after the fact merely invited Jay Hester and his partner to make another offer after they had complied with all Commission and landowner requirements, an offer that Best was free to reject under the terms of the letter agreement.

Mr. Hester testified that Best told him it wanted the well as an injection well because an injection well is necessary in this area for successful production. He testified that the Commission requirements referred to in the letter agreement were the filing of completion papers for the well. After the agreement was signed, Mr. Hester filed with the Commission Form W-2 on July 29, 1991. The examiner takes official notice of this date in this report.

Mr. Hester testified that Best did not record the assignment, although Best came on the lease and drilled a dry hole. He stated that at the time the well and lease were assigned, Best assured him it would file the completed form P-4 with the Commission to effect a change of operators. No such Form P-4 was filed.

Best relies on the fact that Winco filed a Form W-1X for the well subsequent to the sale. Mr. Hester testified that he thought he had no choice. He discovered that the well was still in his name, and he was uncertain of the consequences if he failed to address the Commission's directives concerning the well. Before renewing the Form W-1X, Mr. Hester wrote to the Commission stating that Best was the operator of the well and should be reflected as such on Commission records. The legal staff then suggested that since Best had not responded to the Commission's inquiry concerning this matter, Mr. Hester should request a "Proper Operator" hearing. Mr. Hester asked for the hearing which is the present docket.

Apparently, Best lost interest in Well No. 1 after it drilled the dry hole on the Lockett Lease. In attempting to elicit a characterization of the meaning of the letter agreement from Mr. Hester, Best's attorney asked him on cross examination: "May want the well if they (Best) make a well on their other well -- isn't that what the agreement says?" That is not what the letter agreement says, of course. If Best's purpose was to take over Well No. 1 only if its own well proved productive, it failed. When Best took an assignment of the lease and paid for the lease and well, they passed from the control of Mr. Hester to the control of Best. Even if effect is given to the letter agreement, the result is the same. At the time of the transfer to Best, the well was not yet in violation of Rule 14(b)(2). The well was not abandoned nor did operations cease for purposes of Rule 14(b)(2) liability until Best was responsible for its physical operation and control.

Best asserts that it bought only the lease, not the well. First, Well No. 1 was the only well on the lease at the time of the transfer and was explicitly referred to as the subject of a \$5,500 check. Second, Form P-4 states that operating responsibility for wells on a lease is transferred when a new operator assumes control of the lease. The Form P-4 requires the new operator to acknowledge responsibility for the regulatory compliance of the lease, including plugging of wells if required under Statewide Rule 14. Best failed to file the executed Form P-4, but the rules still apply. Under *Railroad Comm'n v. American Petrofina Co.*, 576 S.W. 2d 658 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.), Best is the operator of the well. Although Best did not touch the well, it had the intent to do so, knew the well was on the lease, and took over the well before the prior operator had abandoned the well.

The examiner recommends that Best be designated as the proper operator of the Lockett Lease and Well No. 1 on the Lockett Lease.

FINDINGS OF FACT

1. At least 10 days' notice was given to all persons legally entitled to notice of this hearing.
2. Best Petroleum Explorations, Inc. took an assignment of the Lockett (13100) Lease.
3. Best Petroleum Explorations, Inc. paid for the assignment and the only well on the lease with a \$5,500 check; the check's memorandum explicitly referred to the lease and Well No. 1 on the lease as the property purchased. The transfer of the Lockett Lease and Well No. 1 to Best Petroleum Explorations, Inc. occurred on or about July 11, 1991, the date of the check in payment for the well and lease.
4. Drilling operations on the subject well were completed on November 22, 1990. The well was a dry hole. Completion papers for the well were filed with the Commission by G. Jay Hester on July 29, 1991.
5. The letter agreement executed by the parties did not extinguish the prior agreement to transfer operatorship of the Lockett Lease and Well No. 1; the agreement had already been consummated by payment for the lease and well and by Best's entry on the lease to drill a well.

6. Best failed to file the Form P-4 executed by the parties to transfer operatorship of the Lockett Lease and Well No. 1 on the lease.

7. Best intended to use Well No. 1 as an injection well if its newly drilled well proved to be productive; however, its well was a dry hole.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to all 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. The Texas Railroad Commission is authorized pursuant to TEX. NAT. RES. ANN. Chapters 81, 85, and 89 (Vernon 1993) to determine which party should be recognized as operator of an oil and gas lease and wells on the lease for Commission purposes.

4. At the time of the transfer of the Lockett (13100) Lease, the Locket Well No. 1 was in compliance with Statewide Rule 14(b)(2).

5. Best Petroleum Explorations, Inc. is the operator of the Lockett Lease and Well No. 1 on the Lockett Lease formerly operated by Winco Oil, Inc.

RECOMMENDATION

It is recommended that Best Petroleum Explorations, Inc. be designated as the proper operator of the Lockett (13100) Lease and the Locket Well No. 1, Branch, South (Tannehill) Field, Concho County, Texas.

Respectfully submitted,

Meredith Kawaguchi
Legal Examine