



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0295288

COMMISSION-CALLED HEARING ON THE REQUEST OF D.N.I. THAT VARIOUS WELLS SHOULD NOT BE PLUGGED BY THE COMMISSION AND THE OPERATOR SHOULD NOT BE HELD LIABLE FOR THE ASSOCIATED PLUGGING COSTS UNDER AUTHORITY OF TEX. NAT. RES. CODE §§89.043, 89.083, AND 89.085, IN ADDITION TO OTHER PENALTIES THAT MAY BE ASSESSED.

HEARD BY: LAURA E. MILES-VALDEZ
RICHARD EYSTER
PFD WRITTEN BY: LAURA E. MILES-VALDEZ
PFD AMENDED BY: MARSHALL ENQUIST

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE REQUEST FOR HEARING FILED: January 20, 2015
DATE OF NOTICE OF HEARING: March 16, 2015
DATE OF HEARING: April 6, 2015
DATE PFD CIRCULATED: January 25, 2016
DATE AMENDED PFD CIRCULATED: September 19, 2016

APPEARANCES:

FOR RESPONDENT: Dwight Northcutt
REPRESENTING: D.N.I.

FOR COMMISSION STAFF: Kristi Reeve, Atty.
Clay Woodul
Sheila Weigand
REPRESENTING: Enforcement Division
Railroad Commission of Texas
Railroad Commission of Texas

STATEMENT OF THE CASE

This proceeding was called in response to the January 20, 2015 request of D.N.I. (Operator No. 221589) for a hearing wherein D.N.I contests that ten (10) wells on seven (7) different leases should be plugged due to violations of Commission rules and Statewide Rule 14(b)(2).¹ D.N.I. further argues that it is not liable for reimbursement of costs associated with plugging the subject wells in the event the Commission plugs the wells.

The subject wells and subject leases at issue in the call of this hearing are all in District 7B and are as follows:

1. J.W. Phillips (142428) Lease, Well No. 2;
2. J.W. Phillips (142429) Lease, Well No. 3;
3. J.W. Phillips (11893) Lease, Well No. 4;
4. J.L. Kelsey (198814) Lease, Well No. 1;
5. H.A. Shaw (00994) Lease, Well Nos. 2, 3, & 5;
6. Amalene Isaacks (16731) Lease, Well Nos. 1 & 2; and
7. Reeves "A" (Drilling Permit No. 721565), Well No. 3.

A hearing was held on April 6, 2015, at which time Mr. Dwight Northcutt appeared on behalf of D.N.I. and presented evidence. Commission Enforcement Attorney Kristi Reeve and Commission Staff appeared and presented testimony and evidence. Based on the record evidence, the Examiner has determined that each of the subject wells should be plugged and that D.N.I. is the record operator liable for the plugging. The Examiner recommends that the subject wells be plugged by D.N.I. In the event that D.N.I. does not plug the wells and the Commission is compelled to plug the wells, all costs for plugging should be reimbursed to the Railroad Commission by D.N.I., the record operator.

APPLICABLE LAW

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension is filed. To be entitled to a plugging extension for a well, the operator must have on file a current Form P-5 Organization Report and the required amount of financial assurance, the well and its associated facilities must be in compliance with all laws and Commission rules, and upon request, the operator must demonstrate that it has a good faith claim of a continuing right to operate the well.

¹ In many ways, the present docket is an extension of issues addressed in Oil & Gas Docket No. 7B-0277312, *Complaint of Carolyn Kelly seeking to have her name removed from the Form P-5 organizationa reports of D.N.I. (Operator No. 221589) and from certain Form P-4 Certificates of Compliance for D.N.I.* In that docket, the Commission found Dwight Northcutt and Carolyn Kelly owned and operated D.N.I. The Commission further refused to rescind or revoke the administrative approvals of the Forms P-4 filed by D.N.I.

Texas Natural Resources Code §§89.011 and 89.022 authorize the Commission to direct operators to plug wells that are out of compliance with the Texas Natural Resources Code and the Commission's Statewide Rules. Texas Natural Resources Code §89.043 authorizes the Commission to plug or replug wells if the operator directed to plug the well or wells fails to do so. Sections 89.083 and 89.085 also authorize the Commission, or the Attorney General, acting on behalf of the Commission, to collect reimbursement for costs associated with the plugging of wells when an operator fails to do so. Specifically, Section 89.083 grants the State a first lien on equipment and grants authority to the State to bring a cause of action for recovery of its costs in the event the Commission plugs a well, removes well-site equipment from the well or incurs expenses in the transporting, storing and disposing of well-site equipment. Texas Natural Resources Code §89.085 authorizes the possession and sale of equipment associated with the plugged well to cover plugging costs.

DISCUSSION OF THE EVIDENCE

The subject wells and subject leases at issue in the call of this hearing are as follows:

1. J.W. Phillips (142428) Lease, Well No. 2;
2. J.W. Phillips (142429) Lease, Well No. 3;
3. J.W. Phillips (11893) Lease, Well No. 4;
4. J.L. Kelsey (198814) Lease, Well No. 1;
5. H.A. Shaw (00994) Lease, Well Nos, 2, 3, & 5;
6. Amalene Isaacks (16731) Lease, Well Nos. 1 & 2; and
7. Reeves "A" (Drilling Permit No. 721565), Well No. 3.

Mr. Dwight Northcutt, Representing D.N.I.

Mr. Northcutt presented limited testimony in support of D.N.I.'s assertion that the subject wells do not need to be plugged and that D.N.I. should not be held liable for plugging the wells. Mr. Northcutt acknowledged that all of the subject wells are out of compliance.² He stated that he had no valid contractual lease for each of the subject leases³, with the exception of the Reeves "A" Lease. Although he stated that he has a lease for the Reeves "A" Lease, he was unable to provide a copy of the lease in support of his assertion.⁴

Mr. Northcutt asserts that the subject wells merely have a bonding issue, that is, D.N.I. no longer has a valid bond in place as financial assurance for the wells. Mr. Northcutt stated that his alternative to plugging the subject wells is to allow the transfer of the subject wells and leases to his

² Tr., Vol. I, pg. 8, Ins. 13-17.

³ See Tr., Vol. I, pg. 9, Ins. 8-9; pg. 9. In. 12; pgs. 10, 11, & 13.

⁴ Tr., Vol. I, pg. 16, Ins. 15-18.

son, who, at the time of the hearing, did not have a Form P-5 Organization Report providing him authority to operate oil and/or gas wells.

Enforcement Staff

Mr. Clay Woodul, a Program Specialist with the Commission, testified on behalf of Commission Staff as to the necessity for the plugging of the subject wells. Mr. Woodul stated that each of the subject wells should be plugged because they have not produced in over one year and do not have valid Statewide Rule 14(b)(2) extensions. Mr. Woodul testified that a General Production Query for D.N.I. demonstrated that the last production by D.N.I. was in March, 2013, with no reported production since. The subject wells in this docket have been inactive for over a year. At the time of the hearing, on April 6, 2015, the wells had been inactive for a period of approximately two years.

On December 16, 2014, District Office 7B issued letters to D.N.I. for each of the subject leases and wells in this docket, directing the operator to plug the wells. The letters stated that, in the event the operator failed to plug the wells and did not request a hearing on the subject, the Commission would enter into a contract to plug the wells on or after the 31st day from the date of the notice. The letters also warned that all well-site equipment and hydrocarbons would be presumed to be abandoned and subject to being disposed of by the Commission pursuant to Texas Natural Resources Code §89.085. The letters also warned that the operator would be subject to reimbursement claims by the Commission, as well as administrative penalties.

A "14(b)(2) Well Inquiry By Operator" for D.N.I. from the Commission Mainframe shows that the extension status for all D.N.I. wells, that is, all the wells subject to this docket, is "Denied". Mr. Woodul testified that each of the wells should be plugged under the State-funded plugging operations program, because each of the wells is in violation of Statewide Rule 14(b)(2). Mr. Woodul further testified as to the subject wells compliance issues regarding fluid level tests and lease severances. A passing fluid level test demonstrates 250 feet of separation between the base of usable quality water and the top of fluid in a well.

A District office Inspection Report dated June 25, 2014 for the J.W. Phillips (142428) Lease, Well No. 2, demonstrates that the top of fluid in the well was at 68.10 feet and the base of usable quality water is at 100 feet. This is a failed fluid level test. This test indicates the well is a possible source of contamination of usable quality water.

A District Office Inspection Report dated June 25, 2014 for the J.W. Phillips (142429) Lease, Well No. 3, demonstrates that the top of fluid in the well was at 45.40 feet and the base of usable quality water is at 100 feet. This is a failed fluid level test. This test indicates the well is a possible source of contamination of usable quality water.

A District Office Inspection Report dated June 19, 2014 for the J.L. Kelsey (198814) Lease, Well No. 1, demonstrates that the top of fluid in the well was at 68.10 feet and the base of usable

quality water is at 100 feet. This is a failed fluid level test. This test indicates the well is a possible source of contamination of usable quality water.

A District Office Inspection Report dated June 19, 2014 for the H.A. Shaw (00994) Lease, Well Nos. 5, 3, and 2, measured the top of fluid in the wells. The base of usable quality water is at 100 feet. The top of fluid in Well No. 2 was at 363 feet, which is a passing fluid level test. The top of fluid in Well No. 3 was at 363 feet, which is a passing fluid level test. The top of fluid in Well No. 5 was at 90.8 feet. This is a failed fluid level test. This test indicates that Well No. 5 is a possible source of contamination of usable quality water.

A District Office Inspection Report dated June 25, 2014 for the J.W. Phillips (11893) Lease, Well No. 4, demonstrates the top of fluid in the well was at 90.8 feet. The base of usable quality water is at 100 feet. This is a failed fluid level test. This test indicates the well is a possible source of contamination of usable quality water.

A District Office Inspection Report dated June 25, 2014 for the Amalene Isaacks (16731) Lease, Well Nos. 1 and 2, demonstrates the top of fluid in Well No. 1 was at 45.4 feet. The top of fluid in Well No. 2 was at 90.8 feet. The base of usable quality water is at 100 feet. These are failed fluid level tests. The tests indicate Well Nos. 1 and 2 are a possible source of contamination of usable quality water.

A District Office Inspection Report made on December 10, 2014 for the Reeves "A" (Drilling Permit No. 721565) Well No. 3, demonstrated the top of fluid was at 227 feet. The base of usable quality water is at 100 feet. This is a failed fluid level test. The test indicates Well No. 3 is a possible source of contamination of usable quality water.

Mr. Woodul additionally testified as to the "Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry" Screen of the Commission's Mainframe, which will be referred to here as the "Compliance Screen", for several D.N.I. leases. Those screens provide the date of severance of the subject leases, as well as other accumulated violations.

The Compliance Screen for the J.W. Phillips (142428) Lease, Well No. 2, shows the lease was severed on August 1, 2007 for a delinquent Form H-15, which remains unresolved. The lease was also severed on May 2, 2012 for a delinquent P-5, which remains unresolved.

The Compliance Screen for the J.W. Phillips (142429) Lease, Well No. 3, shows the lease was severed for a delinquent Form P-5 on May 2, 2012, which remains unresolved.

The Compliance Screen for the J.L. Kelsey (198814) Lease, Well No. 1, shows the lease was severed for a delinquent Form P-5 on May 2, 2012, which remains unresolved.

The Compliance Screen for the H.A. Shaw (00994) Lease, which is an oil lease with multiple wells, shows the lease was severed for a delinquent Form P-5 on March 30, 2012, which remains

unresolved.

The Compliance Screen for the J.W. Phillips (11893) Lease, Well No. 4, shows the lease was severed for a delinquent P-5 on May 2, 2012, which remains unresolved.

The Compliance Screen for the Amalene Isaacks (16731) Lease, an oil lease with multiple wells, shows the lease was severed on May 2, 2012 for a delinquent Form P-5, which remains unresolved.

The Drilling Permit Operator Screen from the Commission's Mainframe shows that D.N.I. is the Operator of Well No. 3 on the Reeves "A" Lease. This well does not have a lease ID number because completion papers were never filed for the well. It is carried on Commission records by its Permit Number, which is 721565. There is no severance against this well because the well could not be assigned a lease number absent filing of completion papers. It is not an "on schedule" well. Without a lease ID number, this well can not be legally produced.

D.N.I. was first set up with a Form P-5 Organization Report on May 17, 2004. The Officer Screen for D.N.I. shows two officers, Carolyn Kelly and Dwight Northcutt, both titled as "owners". In Oil & Gas Docket No. 7B-0277312, Carolyn Kelly sought to have her name removed as an officer in D.N.I. By Final Order signed August 6, 2013, the Commissioners unanimously denied her attempt to be removed from the Officer Screen for D.N.I.

D.N.I. became the record operator of the subject wells [with the exception of the Reeves "A" Lease, Well No. 3 (Drilling Permit 721565)] by filing Forms P-4 to become the Commission-recognized operator of the wells. D.N.I. became the record operator of the Reeves "A" Lease, Well No. 3 (Drilling Permit 721565) by filing a Form W-1 (Application for Permit to Drill, Recomplete or Re-Enter), filed August 3, 2011, issued August 5, 2011.

D.N.I. is the operator of all the subject wells in this docket (see Attachment I), plus the Reeves "A" Lease, Well No. 3 (Drilling Permit 721565), a well that has been drilled, but for which completion papers have never been filed.

In Oil & Gas Docket No. 7B-0236046, a Dwight Northcutt Form P-5 entity, Northcutt Production (Operator No. 613774), was found responsible for the plugging liability for the McClatchey (110695) Lease, Well No. 2C. Northcutt Production was ordered to plug the well and pay an administrative penalty of \$2,000.

In Oil & Gas Docket No. 7B-0236047, a Dwight Northcutt entity, Northcutt Production (Operator No. 613774), was found responsible for the plugging liability for the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4 and 7. Northcutt Production was ordered to plug the wells and pay an administrative penalty of \$11,000.

In Oil and Gas Docket No. 7B-0230361, a Dwight Northcutt entity, Northcutt Production

(Operator No. 613774), was found responsible for the plugging liability for the McClatchey (110893) Lease, Well No. 5. Northcutt Production was ordered to plug or otherwise place the lease in compliance and was assessed an administrative penalty of \$2,000.

On August 13, 2009, the Attorney General's Office obtained a Default Judgment against Dwight Odell Northcutt, d/b/a Northcutt Production, in the amount of (1) administrative penalties of \$4,000.00; (2) civil penalties in the amount of \$21,100.00, and; (3) \$16,582.50 in "reasonable plugging expenses incurred by plaintiff as a result of Defendant's violation of a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution with prejudgment interest in the amount of \$620.16 from the date of plugging to the date of this judgment, for a total plugging reimbursement of \$17,202.66." There is no indication in the Commission Mainframe that Dwight Northcutt has ever paid the Default Judgment amount to the State. Consequently, Dwight Northcutt has been made subject to the restrictions of Senate Bill 639 and may not conduct oil and gas operations in the State of Texas.

Commission records indicate that D.N.I. is the record P-5 operator for each of the subject wells and subject leases. Commission records also indicate the P-5 organization report for D.N.I. is Delinquent. The Form P-5 Organization Report for D.N.I. lists Carolyn Kelly and Dwight Northcutt as owners/officers of D.N.I.⁵ Commission records also demonstrate that all of the subject wells have not produced oil and/or gas in more than 12 months, and none of the subject wells have active/valid 14(b)(2) extensions. Further, Commission inspection reports document numerous violations of Commission rules occurring on each of the subject leases.

EXAMINER'S OPINION

Mr. Northcutt concedes that the subject wells are out of compliance and failed to present evidence of a single active lease. The record evidence clearly demonstrates that each of the subject wells should be plugged and that D.N.I. is the Commission-recognized operator liable for plugging each of the subject wells. Therefore, the Examiner recommends each of the subject wells be plugged by D.N.I. In the event that D.N.I. fails to plug the wells and the Commission is forced to plug the wells, D.N.I. will be responsible for the reimbursement of all plugging expenses to the State pursuant to Texas Natural Resources Code §89.083. Pursuant to Texas Natural Resources Code §89.085, the Commission may take possession of and sell any equipment on the abandoned leases, as well as any hydrocarbons stored on the abandoned leases.

⁵ *But see* Oil & Gas Docket 7B-0277312, Proposal for Decision, *Complaint of Carolyn Kelly seeking to have her name removed from the Form P-5 organization reports of D.N.I. (Operator No. 221589) and from certain Form P-4 Certificates of Compliance for D.N.I.*, in which the Commission issued Proposal For Decision outlining Ms. Kelly's allegation of fraud perpetrated against her by Mr. Northcutt and seeking removal of Ms. Kelly's name from the Form P-5 organizational report and Form P-4 for D.N.I. Because Mr. Northcutt is barred from holding a Form P-5, (pursuant to Tex. Nat. Res. Code §91.114), Mr. Northcutt and Ms. Kelly remained listed as owners on the D.N.I. Form P-5.

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. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice.
2. D.N.I. is a Commission-recognized Form P-5 entity, owned and operated by Dwight Northcutt and Carolyn Kelly, under Operator Number 221589.
 - a. D.N.I. was set up as a Commission-recognized Form P-5 entity on May 17, 2004.
 - b. D.N.I. has two officers, Carolyn Kelly and Dwight Northcutt, both using the title "owners".
 - c. D.N.I.'s financial assurance for its wells, a bond in the amount of \$25,000, expired June 30, 2012.
 - d. D.N.I.'s Form P-5 Organization Report is in "delinquent" status.
3. D.N.I. is the Commission-recognized operator of all the wells that are the subject of this docket (see Attachment I), plus the Reeves "A" Lease, Well No. 3 (Drilling Permit No. 721565), a well that has never had completion papers filed and is, therefore, not an "on-schedule" well.
4. The Commission, pursuant to Texas Natural Resources Code §89.043(c), by letters dated December 16, 2014 from District Office 7B, provided notice to D.N.I that each of the subject wells was in violation of Commission rules, ordering D.N.I. to plug the wells, and giving D.N.I. an opportunity to request a hearing to contest the determination that plugging was required and that D.N.I. was responsible for the plugging of the subject wells.
5. This hearing was called at the request of D.N.I., represented by Mr. Dwight Northcutt, to contest a Commission determination that D.N.I. is legally required to plug the following wells (herein referred to as "subject wells") in District 7B due to violations of Commission rules:
 - a. J.W. Phillips (142428) Lease, Well No. 2;
 - b. J.W. Phillips (142429) Lease, Well No. 3;
 - c. J.W. Phillips (11893) Lease, Well No. 4;

- d. J.L. Kelsey (198814) Lease, Well No. 1;
 - e. H.A. Shaw (00994) Lease, Well Nos, 2, 3, & 5;
 - f. Amalene Isaacks (16731) Lease, Well Nos. 1 & 2; and
 - g. Reeves "A" (Drilling Permit No. 721565), Well No. 3.
6. D.N.I. became the Commission-recognized operator of the subject wells by filing a Form P-4 (Certificate of Compliance and Transportation Authority) for each of the subject wells listed in Finding of Fact Nos. 5(a) through 5(f). D.N.I became the Commission-recognized operator of the well listed in Finding of Fact No. 5(g) by filing a Form W-1 (Application for Permit to Drill, Recomplete, or Re-Enter) for the well.
7. The subject leases and wells, the J.W. Phillips (142428) Lease, Well No. 2; the J.W. Phillips (142429) Lease, Well No. 3; the J.W. Phillips (11893) Lease, Well No. 4; the J.L. Kelsey (198814) Lease, Well No. 1; the H.A. Shaw (00994) Lease, Well Nos, 2, 3, & 5; the Amalene Isaacks (16731) Lease, Well Nos. 1 & 2; and the Reeves "A" (Drilling Permit No. 721565), Well No. 3, last reported production in March 2013 and have not reported any production since.
- a. The subject leases and wells are inactive and have been inactive for a period in excess of 12 months.
 - b. The subject wells have not been plugged.
8. D.N.I. drilled the Reeves "A" (Drilling Permit No. 721565), Well No. 3, but has never filed completion papers on the well.
- a. The well is carried on Commission records by its Drilling Permit Number, 721565.
 - b. D.N.I. is the operator of that well and is responsible for the plugging liability for that well.
9. The J.W. Phillips (142428) Lease, Well No. 2; the J.W. Phillips (142429) Lease, Well No. 3; the J.L. Kelsey (198814) Lease, Well No. 1; 4; the H.A. Shaw (00994) Lease, Well No. 5; the J.W. Phillips (11893) Lease, Well No. 4 ; the Amalene Isaacks (16731) Lease, Well Nos. 1 & 2; and the Reeves "A" (Drilling Permit No. 721565), Well No. 3, all have failed fluid level tests. These wells are a possible source of contamination of usable quality water.
10. None of the subject wells have active Statewide Rule 14(b)(2) extentions.


CONCLUSIONS OF LAW


1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. The subject wells have not been operated or produced for a period in excess of one year and are inactive. The subject wells have not been plugged and, and therefore, pursuant to Tex. Nat. Res. Code §§89.011 and 89.022, the subject wells should be plugged by the operator of those wells, D.N.I. (Operator No. 221589).
4. Mr. Dwight Northcutt and Ms. Carolyn Kelly were persons in a position of ownership or control of D.N.I., as defined by Texas Natural Resource Code §91.114, during the time period of the violations of Commission rules committed by respondent.

RECOMMENDATION

The A.L.J. recommends that the wells subject to this docket be plugged by D.N.I. (Operator No. 221589).

Respectfully submitted,


Marshall Enquist
Administrative Law Judge


Richard Eyster
Technical Examiner

*** OIL AND GAS DIVISION ***
 ON-SCHEDULE LEASES, WELLS, WELLBORES BY OPERATOR
 AS OF 09/12/2016 22:36

OPERATOR -> 221589 D.N.I.

PAGE: 1 OF 1

| API | LEASE | #WELLS | MULTI ZONE | DEPTH | API LOCATION |
|-----------|-------------|--------|---------------|-------|--------------|
| 049 30087 | G 7B 142429 | 1 | | 2,540 | LAND |
| 049 30088 | G 7B 142428 | 1 | | 2,550 | LAND |
| 049 30095 | O 7B 11893 | 1 | | 2,745 | LAND |
| 049 32447 | O 7B 16731 | 1 | | 2,618 | LAND |
| 049 32858 | O 7B 16731 | 1 | | 1,995 | LAND |
| 083 33056 | G 7B 198814 | 1 | | 3,616 | LAND |
| 083 80670 | O 7B 00994 | 1 | | 3,340 | LAND |
| 083 80671 | O 7B 00994 | 1 | | 3,340 | LAND |
| 083 80673 | O 7B 00994 | 1 | | 1,198 | LAND |

| | | | |
|---------------------------|---|--------------------------|--------|
| TOTAL WELLBORES: | 9 | TOTAL LEASES: | 6 |
| LAND: | 9 | TOTAL WELLS: | 9 |
| OFFSHORE: | 0 | TOTAL WELLBORE(S) DEPTH: | 23,942 |
| BAY-ESTUARY/INLAND WTRWY: | 0 | TOTAL MULTI-ZONED BORES: | 0 |

PF2=EXOP PF3=WBOP PF6=P5FA PF7=API SELECT PF8=LSE SELECT PF9=OGPM