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WAYNE CHRISTIAN, *COMMISSIONER*



RANDALL D. COLLINS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 03-0303318

THE COMPLAINT OF LONA HILLS RANCH, LLC THAT CREATIVE OIL & GAS OPERATING, LLC, (187005) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE LONNIE MAY (14106) LEASE, GIDDINGS (AUSTIN CHALK-3) FIELD, LEE COUNTY, TEXAS

APPEARANCES

LONA HILLS RANCH, LLC

C.V. Sheffield, III

CREATIVE OIL & GAS OPERATING, LLC:

Mark P. Gainey, Attorney at Law
David Pawelek

PROCEDURAL HISTORY:

Notice of Hearing:

March 7, 2017

Hearing on the Merits:

April 10, 2017

Proposal for Decision:

May 2, 2017

Heard by:

Clayton J. Hoover,

Administrative Law Judge

Richard Eyster, P.G.

Technical Examiner

SUMMARY

In Docket No. 03-0303318, Lona Hills Ranch, LLC through its member, C.V. Sheffield, III ("Sheffield") filed with the Commission a complaint letter challenging Creative Oil & Gas Operating, LLC's ("Creative") "good faith claim" to a continued right to operate the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas ("Lease"). Specifically, Sheffield alleges that the Lease has expired by its own terms for lack of production. In response, Creative submitted various recorded title instruments, production information and operating history. Creative requested a hearing on the merits.

The sole issue before the Commission is whether Creative has a "good faith claim" to operate the Lease, as that term is defined in Statewide Rule 15. At the hearing on the merits, Creative presented testimony of David Pawelek, an executed and recorded Assignment into Creative, prior conveyances and other title documents.

The record evidence demonstrates that Creative did present a "good faith claim" to operate the Lease. It is recommended that the Commission dismiss the Complaint.

EVIDENCE PRESENTED

CREATIVE

In support of its argument that it has a "good faith claim" to operate the Lease, Creative asserts that it holds a currently valid producing lease. Testifying on behalf of Creative were Mr. John Korb, a contractor for Creative, and David Pawelek, a representative of Creative. Mr. Korb offered a recorded copy of a Lease dated October 1, 2004.¹ He also testified that Creative has continuously produced or maintained continuous operations in compliance with the terms of the lease. He described in detail the hot-oil and other operations on or about October 7, 2016, intended to restore production, and the workover with a rig on January 4, 2017, which in fact restored production. Creative also presented evidence showing the P-4 by which Creative became the operator.²

Further, Mr. Pawelek testified that Creative Oil and Gas, LLC owned the leasehold interest pursuant to an Assignment dated June 23, 2016,³ and that Creative and its predecessor operator, pursuant to a Joint Operating Agreement, had been continuously producing the well, or conducting continuous operations in compliance with the terms of the lease.

SHEFFIELD

Sheffield testified about activities on the surface by Creative and the conversations and communications between him and Creative, its predecessor and its contractors, including

¹ Respondent's Ex. 5, Tr. p. 50 Ins. 22-25

² See Respondent's Ex. 3,4

³ Tr. p. 53 Ins. 17-23

Jason Korb, the pumper. He contends that there was no production during the hot oil operations on October 7, 2017, and that such operation was not calculated to restore production as contemplated by the 90-day continuous operation language of the lease. He further contends that the lease has expired because there was no production from August 23, 2017, the date on which the well ceased to produce, and the January 4, 2017, workover. He contends that the October 7, 2016, hot oil operations failed to extend the term of the lease. Mr. Sheffield presented a copy of numerous photographs, documents and a Timeline he prepared in support of his contentions.⁴

None of the evidence refuted the fact that operations had never ceased for more than 90 days until production was restored and that Creative claimed the continuing validity of the lease in good faith.

OPINION

The sole issue before the Commission is whether Creative holds a “good faith claim” to a continuing right to operate the Lease. Statewide Rule 15(a)(5) defines “Good Faith Claim” as:

A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

The Commission's authority to determine a “good faith claim” arises from the *Magnolia* case. In discussing the Commission's authority to grant a drilling permit, the Texas Supreme Court stated, “The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.”⁵ The Court concluded, “Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in *good faith*.”⁶

In the context of the right to continue operation of a lease, the Commission looks to the operator's lease or assignment and the production history from the lease.

In the instant Docket, Creative contends that the well has been producing or has had continuous operations, that it holds assignments of the Lease and that Creative therefor maintains a “good faith claim” to a continuing right to operate the Lease.

⁴ See Sheffield Ex. 1-14

⁵ *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W. 2d 189,191(Tex. 1943)

⁶ *Id.* At 191 (emphasis added).

First, it should be noted that there was no reported production from the Lease since from August 23, 2016, until the workover operation on January 4, 2017, unless there was oil produced during the hot oil operation on October 7, 2016, an issue which is in dispute. The hot oil operation was conducted within 90 days of the cessation of production, and the January 4 workover was conducted within 90 days thereafter. This is prima facie evidence that the lease has been extended by operations under the 90-continuous operations language of the lease, although the final determination of this issue as to the validity of the lease is outside the jurisdiction of the Commission.

Second, the record evidence demonstrates Creative claims title under an Assignment dated June 23, 2016, and filed for record in Lee County. Commission files and the evidence demonstrate that Creative became the operator of record for the Lease in January, 2017, and that Creative holds a valid P-5.

For these reasons, the Examiners conclude that Creative presented a "good faith claim" to operate the Lease and recommend dismissal of the Complaint.

CONCLUSION

The Examiners conclude that Creative did present a "good faith claim" to operate the Lease and make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about January 24, 2017, Lona Hills Ranch, LLC, through its member, C.V. Sheffield III, filed with the Commission a written complaint alleging that Creative O&G, LLC did not hold a "good faith claim" to operate the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas.
2. Lona Hills Ranch, LLC is the owner of the subject property.
3. By letter mailed January 25, 2017, Creative was notified of the complaint.
4. The notice established a deadline of February 24, 2017, by which Creative could either (A) request a hearing on the merits of the complaint; or, (B) submit written evidence that it held a good faith claim to operate the subject property, pursuant to Tex. Gov't Code §§ 2001.056 and 2001.062(e).
5. Creative submitted evidence and requested a hearing on the merits.
6. A Notice of Hearing was issued March 7, 2017.
7. A Hearing on the merits was held on April 10, 2017.
8. Creative Oil & Gas Operating, LLC is the Form P-4 Record Operator of the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas.

9. Creative Oil & Gas Operating, LLC presented a recorded lease and testimony of an Assignment dated June 23, 2017, for the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas, along with other documents.
10. Creative Oil & Gas Operating, LLC has an active Form P-5 and has financial assurance in place in the form of a \$50,000 bond.
11. The Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas, ceased to produce on August 23, 2016, and did not produce again until the January 4, 2017, workover. However, the hot oil operation on October 7, 2017, appear adequate to extend the term of the lease.
12. A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) as "a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate." [16 TEX. ADMIN. CODE § 3.15(a)(5)].
13. Creative Oil & Gas, LLC presented evidence sufficient to demonstrate that it has a "good faith claim" to operate the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas. It claims title under a recorded Lease and an Assignment.

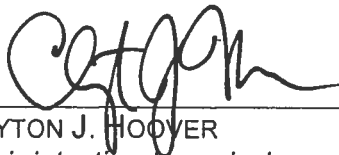
CONCLUSIONS OF LAW

1. Proper notice was timely issued to all persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Creative O&G, LLC has a "good faith claim" to operate the Lonnie May (14106) Lease, Giddings (Austin Chalk-3) Field, Lee County, Texas.
4. Lona Hills Ranch, LLC's Complaint should be dismissed.

RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission dismiss the Complaint brought by Lona Hills Ranch, LLC against Creative Oil & Gas Operating, LLC.

RESPECTFULLY SUBMITTED,



CLAYTON J. HOOVER
Administrative Law Judge



RICHARD EYSTER, P.G.
Technical Examiner