



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

**OIL AND GAS DOCKET NO. 10-0301002**

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**COMPLAINT OF GAIL MAYFIELD WYATT ALLEGING THAT ESCO OIL OPERATING COMPANY LLC (OPERATOR NO. 254263) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE MAYFIELD, G. (08097) LEASE, WELL NOS. 1 AND 1R, SILVERTON (CANYON) FIELD, BRISCOE COUNTY, TEXAS**

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### APPEARANCES

#### **FOR COMPLAINANT GAIL MAYFIELD WYATT:**

Gail Mayfield Wyatt

#### **FOR RESPONDENT ESCO OPERATING COMPANY LLC:**

Roland Baker, Geologist

#### **PROCEDURAL HISTORY:**

Notice of Hearing:	December 8, 2016
Hearing on the Merits:	January 13, 2017
Record Closed:	February 9, 2017
Proposal for Decision:	February 16, 2017
Heard by:	Ryan M. Lammert, Administrative Law Judge Karl Caldwell, Technical Examiner

### SUMMARY

In Docket No. 10-0301002, Gail Mayfield Wyatt ("Complainant") filed with the Commission a complaint letter challenging Esco Oil Operating Company LLC's ("Esco") "good faith claim" to a continued right to operate the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, located in Briscoe County, Texas ("Lease"). Specifically, Complainant alleges that the contractual oil, gas and mineral lease covering the subject

property has expired by its own terms for lack of production from the Lease. Esco stipulates that the contractual oil, gas and mineral lease expired by its own terms, but, nonetheless, requested a hearing on the matter to petition the Commission for additional time to fulfill its plugging obligations.

The sole issue before the Commission is whether Esco has a "good faith claim" to operate the Lease, as that term is defined in Statewide Rule 15.<sup>5</sup> The record evidence demonstrates that Esco did not present a "good faith claim" to operate the Lease. As a result, the subject wells are no longer eligible for plugging extensions and are required to be plugged. The Administrative Law Judge and Technical Examiner (collectively, "Examiners") recommend that the Commission order Esco to plug the subject wells and cancel the plugging extensions for same.

### **APPLICABLE LAW**

Statewide Rule 15(a)(6):

Inactive well—An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.<sup>6</sup>

Statewide Rule 14(b)(2):

Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed unless the Commission or its delegate approves a plugging extension under § 3.15 of this title (relating to Surface Equipment Removal Requirements and Inactive Wells).<sup>7</sup>

Statewide Rule 15(e):

Extension of deadline for plugging an inactive land well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive land well if:

- (1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);

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<sup>5</sup> 16 TEX. ADMIN. CODE § 3.15.

<sup>6</sup> 16 TEX. ADMIN. CODE § 3.15(a)(6).

<sup>7</sup> 16 TEX. ADMIN. CODE § 3.14(b)(2).

- (2) the operator has a current organization report;
- (3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;
- (4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and
- (5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.<sup>8</sup>

Statewide Rule 15(a)(5):

Good faith claim—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.<sup>9</sup>

Statewide Rule 15(h):

Revocation of extension. The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and opportunity for a hearing, that the applicant is ineligible for the extension under the Commission's rule or orders.<sup>10</sup>

### **EVIDENCE PRESENTED**

#### **COMPLAINANT**

Complainant is an owner of the surface estate and mineral estate underlying the subject property—more precisely identified as Section 199, Denison and Southeastern Railroad Company Survey, located in Briscoe County, Texas.<sup>11</sup> Complainant alleges that on April 3, 2012 she entered into an oil, gas, and mineral lease with Escopeta Oil & Gas Corporation covering the subject property.<sup>12</sup> The oil, gas and mineral lease provided for a three year primary term and also stipulated that the lease would continue “for as long thereafter as oil,

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<sup>8</sup> 16 TEX. ADMIN. CODE § 3.15(e).

<sup>9</sup> 16 TEX. ADMIN. CODE § 3.15(a)(5).

<sup>10</sup> 16 TEX. ADMIN. CODE § 3.15(h).

<sup>11</sup> See Complainant's letter dated June 24, 2016, filed with the Commission on July 5, 2016.

<sup>12</sup> *Id.*

gas, or other minerals are produced from the lands, or land with which the lands are pooled, or as long as [the] lease is continued in effect as otherwise provided by the terms of [the] lease.”<sup>13</sup> Complainant alleges that the Lease did not produce oil or gas during the provided-for primary term or at any time thereafter.<sup>14</sup> Complainant also maintains that, “The pump jack has been disconnected from the wellhead since at least September 2012 and was removed from location at least by October 2015.”<sup>15</sup> Complainant concludes that, “The location was abandoned by the operator by October 2015,” and requests that the Commission order Esco to properly plug the subject wells.<sup>16</sup>

### ESCO

Esco did not present a direct case. Rather, Esco elected to stipulate that the subject oil, gas and mineral lease expired by its own terms, confirming that it does not have a “good faith claim” to operate the Lease.<sup>17</sup> However, Esco requested more time to fulfill its plugging obligations.<sup>18</sup>

### EXAMINERS’ OPINION

The sole issue before the Commission is whether Esco 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.”<sup>19</sup> 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*.”<sup>20</sup>

In the context of the right to continue operation of a lease, the Commission looks to the operator’s lease and the production history from the lease. If the lease contains a “cessation

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Tr., 1:02.

<sup>18</sup> Tr., 1:06.

<sup>19</sup> *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

<sup>20</sup> *Id.* at 191 (emphasis added).

of production” clause with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—for example 12 months—the contractual lease will generally not be considered a “good faith claim” to operate the property. If the lease contains a “continuous operations clause” with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—again, for example 12 months—the operator would be required to provide some evidence that operations had continued in an effort to restore production with no lapse in operations greater than 60 or 90 days, as the case may be.

However, in the instant Docket, it is undisputed that the subject oil, gas and mineral lease terminated—no party contests that assertion. But, to substantiate that point, the evidence demonstrates that the subject wells have not been capable of production since at least September 2012, with no further evidence of operations or production having taken place thereafter. The Examiners are therefore not burdened with an examination of production records, or other evidence of lease perpetuation, and conclude that the subject wells have been inactive for a period of time in excess of twelve (12) months and are no longer eligible for extensions of the plugging deadline.

To be sure, without a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, Esco does not have a “good faith claim” to a continuing right to operate the Lease. Without a “good faith claim” to operate the Lease, the subject wells are no longer eligible for extensions of deadline for plugging, and Esco is obligated to plug the subject wells.

For these reasons, the Examiners conclude that Esco did not present a “good faith claim” to operate the Lease and recommend that the Commission order Esco to plug the subject wells, and cancel the plugging extensions for same.

### **CONCLUSION**

The Examiners conclude that Esco did not present a “good faith claim” to operate the Lease and make the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACTS**

1. On or about July 5, 2016, Gail Mayfield Wyatt filed with the Commission a written complaint alleging that Esco Oil Operating Company LLC does not have a “good faith claim” to operate the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, located in Briscoe County, Texas.
2. On or about December 5, 2016, Esco Oil Operating Company LLC filed with the Commission a request for a hearing on the merits.

3. Notice of Hearing was issued to Gail Mayfield Wyatt and Esco Oil Operating Company LLC on December 8, 2016.
4. At least ten days' notice of hearing was given to Gail Mayfield Wyatt and Esco Oil Operating Company LLC.
5. A hearing on the merits was conducted on January 13, 2017.
6. Gail Mayfield Wyatt is an owner of the surface estate and the mineral estate underlying the subject property.
7. Esco Oil Operating Company LLC is the current Form P-4 *Certificate of Compliance and Transportation Authority* operator of record for the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.
5. Esco Oil Operating Company LLC holds Operator No. 254263.
6. The Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas, have not been capable of production or injection since September 2012.
7. Since September 2012, no further operations, or production from/injection into the wells, have occurred at the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.
8. The Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas, are each an "inactive well", as that term is defined in 16 TEX. ADMIN. CODE § 3.15(a)(6).
9. Esco Oil Operating Company LLC failed to present evidence sufficient to demonstrate that it has a "good faith claim" to operate the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.
10. 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)].
11. Absent a "good faith claim" to operate, the subject wells are not eligible for extensions to the plugging requirements of 16 TEX. ADMIN. CODE § 3.15(e)(3).
12. Absent eligibility for extensions of deadline for plugging, the plugging extensions for the subject wells should be cancelled pursuant to 16 TEX. ADMIN. CODE § 3.15(h).

13. Esco Oil Operating Company LLC should be ordered to plug the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.
14. Esco Oil Operating Company LLC has an active Form P-5 *Organization Report* and has financial assurance in place in the form of a Commission approved \$50,000.00 cash deposit, which expires on November 30, 2017.

**CONCLUSIONS OF LAW**


1. Proper notice of an opportunity for a hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Esco Oil Operating Company LLC does not have a “good faith claim” to operate the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.
4. The Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas, are not eligible for extensions to the plugging requirements of 16 TEX. ADMIN. CODE § 3.15(e)(3).
5. The plugging extensions for the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas, should be cancelled pursuant to 16 TEX. ADMIN. CODE § 3.15(h).
6. The Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas, should be ordered plugged.

RECOMMENDATIONS


The Administrative Law Judge and Technical Examiner recommend that the Commission enter an order cancelling the plugging extensions for the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.

The Administrative Law Judge and Technical Examiner also recommend that the Commission enter an order directing Esco Oil Operating Company LLC to plug the Mayfield, G. (08097) Lease, Well Nos. 1 and 1R, Silverton (Canyon) Field, Briscoe County, Texas.

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT  
Administrative Law Judge



KARL D. CALDWELL  
Technical Examiner