



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 03-0304663

COMPLAINT BY BLAIR FANNIN ON BEHALF OF ADF-BLF DEVELOPMENT L.P. THAT REDWOOD ENERGY PRODUCTION, L.P. (OP. NO.697134) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE ANGELA FARRIS-FANNIN (GAS ID NO. 206524) LEASE, WELL NO. 1, MADISONVILLE (RODESSA) FIELD, MADISON COUNTY, TEXAS

APPEARANCES

COMPLAINANT:

Blair Fannin, self
Jerry Fannin
Angela Farris-Fannin

REDWOOD:

Stuart Doshi

PROCEDURAL HISTORY:

Notice of Hearing:	July 5, 2017; cont August 24, 2017
Hearing on the Merits:	September 11, 2017
Proposal for Decision:	October 18, 2017
Heard by:	Clayton J. Hoover <i>Administrative Law Judge</i> Peggy Laird <i>Technical Examiner</i>

SUMMARY

In Docket No. 03-0304663, Blair Fannin ("Complainant") filed with the Commission a complaint letter challenging Redwood Energy Production, L.P.'s ("Redwood") "good faith claim" to a continued right to operate the Angela Farris-Fannin (Gas ID No. 206524) Lease, Well No. 1, Madisonville (Rodessa) Field, Madison County, Texas ("Lease"). Specifically, Blair Fannin alleges that the Lease has expired by its own terms for lack of

production. In response, Redwood submitted various recorded title instruments, production information and operating history. Redwood requested a hearing on the merits.

The sole issue before the Commission is whether Redwood has a "good faith claim" to operate the Lease, as that term is defined in Statewide Rule 15. At the hearing on the merits, The Complainant presented oral testimony of Blair Fannin and Jerry Fannin to show that the well has not produced since April 2012, that shut-in royalty payments were made in 2012 and 2013 and that there have been no operations intended to restore production since 2014.

Redwood presented testimony of Stuart Doshi and various exhibits establishing roughly the same dates for production, shut-in royalty payments and operations. However, Redwood also submitted evidence of an alleged repudiation in 2014 to show its good faith claim.

The record evidence demonstrates that Redwood did not present a "good faith claim" to operate the Lease because there has been no production since April 2012, and no operations since 2014. The claimed repudiation was not established by the evidence. It is recommended that the Commission order that Redwood does not have a good faith claim to continue operating the lease.

EVIDENCE PRESENTED

COMPLAINANT

Blair Fannin, one of the mineral owners, testified about production up until April 2012, payment of shut-in royalties in June 2012 and June 2013, and operational activities on the surface by Redwood in March of 2014. He and Jerry Fannin also presented documentary evidence showing lack of maintenance and unsafe conditions at the wellsite. Based on lack of production, lack of operations to restore production and the exhaustion of the shut-in royalty extensions, Blair Fannin testified that the relevant oil and gas leases had expired by their own terms.

REDWOOD

In support of its argument that it has a "good faith claim" to operate the Lease, Redwood asserts that it holds a currently valid producing lease. Testifying on behalf of Redwood was Mr. Stuart Doshi. Mr. Doshi offered into evidence copies of the relevant leases, plus amendments and extensions thereof.¹ He testified and presented documentary evidence that (1) Redwood continuously produced the lease until April 2012; (2) Redwood paid shut-in royalties in 2012 and 2013; and (3) Redwood conducted flaring operations to confirm the productivity of the well and shot fluid levels in 2014.² Mr. Doshi also

¹ Redwood Ex. 1

² Redwood Ex. 2-4

referenced several AFE's (cost estimates), engineering reports and pending financial transactions which would enable Redwood to restore production.

Further, Mr. Doshi testified that a *Full Release of Oil and Gas Lease*, signed and filed in the county records by the lessors, constituted a repudiation of the leases and that by virtue of such repudiation, Redwood was relieved of any further obligations or duties to restore production.³

The doctrine of repudiation operates to relieve leasees of obligations under an existing lease under certain circumstances. However, in this case, such doctrine does not overcome the fact that the leases expired by their own terms after expiration of the second shut-in royalty extension as set out below.

OPINION

The sole issue before the Commission is whether Redwood 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."⁴ 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*."⁵

In the context of the right to continue operation of a lease, the Commission looks to Redwood's lease or assignment, the production and operational history from the lease and other relevant factors.

In the instant Docket, Redwood contends that the well was producing until 2012, that it has paid 2 years of shut-in royalties and that the repudiation of the lease extends the lease indefinitely without further production or operations.

³ Redwood Ex. 8

⁴ *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

⁵ *Id.* at 191 (emphasis added).

First, it should be noted that there has been no reported production from the lease since April 2012, and no operations other than flaring the well to the atmosphere and shooting fluid levels since 2014. The well tested at over 5,000 mcf/day, which indicated that the well was capable of producing in commercial quantities. Because the well was obviously capable of production and because the operations by Redwood in 2014 were not the type of operations necessary to restore the well to being capable of producing to sales, such operations, in and of themselves, were not effective in maintaining the lease.

However, Redwood claims that the *Full Release of Oil and Gas Lease* signed and filed by the lessors constitutes a repudiation of the lease and essentially extends the term of the lease indefinitely without any production, operations or shut-in payments. This is not the law in the State of Texas, as explained below. Although the well was clearly capable of production, and remains so to this day, the impediment to restoring it to production was the lack of financial resources of Redwood. This is made clear from the testimony of Stuart Doshi and documents in the record indicating that Redwood hopes to close a transaction to provide the money necessary to restore the well to production. Redwood's reliance on the doctrine of repudiation is disingenuous and misplaced. Redwood cites the case of **Coastal Oil & Gas Corp. v. Garza Energy Trust**, 268 S.W.3d, (Tex. Sup.Ct. 2008), in which the court discussed, but ultimately made no ruling on, the doctrine of repudiation and whether such doctrine can relieve a lessee from the implied covenants to reasonably develop. Those are not the facts of the instant case. The well was, and is, capable of production. Redwood failed to restore production due to a lack of financial resources, before and after the claimed repudiation. Furthermore, the *Full Release of Oil and Gas Lease* signed and filed by the lessors may or may not amount to a repudiation since the shut-in royalty period was expiring at essentially the same time as the filing by lessors. Such issue may be more fully litigated in the District Court lawsuit between the parties, but for Commission purposes under SWR 15, such doctrine cannot be invoked to indefinitely extend leases on an inactive well with no production or operations to restore production.

For these reasons, the Administrative Law Judge and Technical Examiner conclude that Redwood did not present a "good faith claim" to operate the Lease and, therefore, recommend that Redwood be ordered to plug and abandon the well or to turn operations over to the lessors or their successors.

CONCLUSION

The Examiners conclude that Redwood did not 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 April 24, 2017, Blair Fannin filed with the Commission a written complaint alleging that Redwood did not hold a "good faith claim" to operate the

Angela Farris-Fannin (Gas ID No. 206524) Lease, Well No. 1, Madisonville (Rodessa) Field, Madison County, Texas. A hearing was requested and all parties received notice and appeared at the hearing.

2. Blair Fannin is a mineral owner of the subject property.
3. A Hearing on the merits was held on September 11, 2017.
4. Redwood is the Form P-4 Record Operator of the Angela Farris-Fannin (Gas ID No. 206524) Lease, Well No. 1, Madisonville (Rodessa) Field, Madison County, Texas. Redwood has an active Form P-5 and has financial assurance in place in the form of a \$25,000 bond.
5. Redwood provided documentary evidence and testimony that the well produced until April 2012, and has not produced to sales since then. At various times during the calendar year of 2014, Redwood flared gas produced from the well to the atmosphere and shot fluid levels.
6. In June of 2012 and again in June 2013, Redwood made shut-in royalty payments which extended the leases until 2014.
7. In March 2014, lessors executed and filed documents in the Madison County records indicating that such lessors fully released such leases and that such leases had therefore expired by their own terms. Redwood claims such documents constitute a repudiation and relies on the doctrine of repudiation to show extension of the leases beyond 2014 without production or continuous operations.
8. 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)].

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. It is undisputed that there has been no production since 2012. The operations conducted in 2014 are not operations to restore production. The well has been inactive for over 5 years and 5 months. For purposes of establishing a "good faith claim" with the Commission, the doctrine of repudiation cannot be used to extend leases on an inactive well for an indefinite period of time without production or operations to restore production.

4. Therefore, Redwood Energy Production, LP does not have a "good faith claim" to operate the Angela Farris-Fannin Lease, Well No. 1 (Gas ID No. 206524), Madisonville (Rodessa) Field, Madison County, Texas.
5. The Angela Farris-Fannin Lease, Well No. 1 (Gas ID No. 206524), Madisonville (Rodessa) Field, Madison County, Texas is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).
6. Any plugging extensions for the Angela Farris-Fannin Lease, Well No. 1 (Gas ID No. 206524), Madisonville (Rodessa) Field, Madison County, Texas, should be cancelled pursuant to Statewide Rule 15(h).

RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission find that Redwood does not have a "good faith claim" to operate the Angela Farris-Fannin Lease, Well No. 1 (Gas ID No. 206524), Madisonville (Rodessa) Field, Madison County, Texas and cancel any plugging extensions for such well.

RESPECTFULLY SUBMITTED,


CLAYTON J. HOOVER

Administrative Law Judge


PEGGY LAIRD

Technical Examiner