



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

February ____, 2016

OIL AND GAS DOCKET No. 7B-0299562

**GOOD FAITH CLAIM REVIEW OF BRG LONE STAR LTD. (OPERATOR No. 090870)
FOR THE WARREN, JAMES L. LEASE (LEASE No. 29627), WELL No. 1, CADDO
(3440) FIELD, PARKER COUNTY, TEXAS**

PREPARED BY: Ryan M. Lammert, Administrative Law Judge

CONFERENCE DATE: March 29, 2016

APPLICANT: Brandon Sloan, Regulatory Analyst, BRG Lone Star Ltd.

ALJ'S REPORT AND RECOMMENDATION

STATEMENT OF THE CASE

In Docket No. 7B-0299562, BRG Lone Star Ltd. (Operator No. 090870), (BRG), submitted to the Commission a "two-signature" Form P-4 Certificate of Compliance and Transportation Authority (Form P-4) requesting transfer of the Warren, James L. Lease (Lease No. 29627), (Lease), Well No. 1 (Well), Caddo (3440) Field, located in Parker County, Texas, from Primexx Operating Corporation (Operator No. 677852), (Primexx), to BRG.

Commission Staff (Staff) was unable to administratively approve the Form P-4 because a "good faith claim hold" had been placed on the subject Lease. Accordingly, the matter was referred to the Administrative Law Judge (ALJ) for further review.

The ALJ recommends that the Commission find that BRG has a "good faith claim" to a continuing right to operate the subject Well. Additionally, the ALJ recommends that any "good faith claim hold" relating to the subject Lease—as reflected by Commission records—be removed. Lastly, the ALJ recommends that the "two-signature" Form P-4 requesting transfer of the Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas, from Primexx to BRG, be approved.

DISCUSSION OF EVIDENCE

FACTS

On February 1, 2016, BRG submitted to the Commission a “two-signature” Form P-4 requesting transfer of the subject Well from Primexx to BRG. As required by Commission rule, the Form P-4 was executed by authorized employees of each of the operators.¹

On that same date, BRG also submitted to the Commission the following as evidence of its “good faith claim” to a continuing right to operate the subject Well:

1. An Oil and Gas Lease dated July 8, 1973, from Billy W. Hickman and wife, Oleen Hickman, Lessors, to Herbert L. Johnson, Lessee, purporting to cover 129 acres, including the subject Well, for a primary term of 5 years;
2. An Oil and Gas Lease dated July 8, 1973, from James L. Warren and wife, Martha Warren, Lessors, to Herbert L. Johnson, Lessee, purporting to cover 129 acres, including the subject Well, for a primary term of 5 years;
3. An Oil and Gas Lease dated January 28, 1977, from Boyd Massey and wife, Sue Massey, Lessors, to Diamond Shamrock Corporation, Lessee, purporting to cover 129 acres, including the subject Well, for a primary term of 5 years; and
4. An Assignment and Bill of Sale dated effective October 2, 2015, from Primexx Energy Partners, Ltd., Assignor, to BRG Lone Star Ltd., Assignee, assigning numerous leases and wells, including the subject Lease and subject Well.

Although both operators duly executed the Form P-4, Commission staff was unable to administratively approve the Form P-4 because a “good faith claim hold” had been placed on the subject Lease. The matter was referred to the ALJ for further review.

The ALJ took Official Notice of Commission records to determine the history of the subject Lease and Well. The following is a brief recitation of those records:

1. According to a Form W-1 Application for Permit to Drill, Recomplete, or Re-Enter issued to Diamond Chemicals Company, the subject Well was spud on August 9, 1979, and completed (vertical gas) to a total depth of 6,100’, on August 31, 1979. At that time, the subject Well was associated with Lease Id No. 084931.

¹ 16 TEX. ADMIN. CODE § 3.58(a)(1).

- a. Lease Id No. 084931 had continuous production from January 1993 through June 2005.
2. Effective October 1, 2005, Fagadau Energy Corporation became the operator of record for the subject Lease.
3. According to a Form W-1 Application for Permit to Drill, Recomplete, or Re-Enter issued to Fagadau Energy Corporation, the subject Well was recompleted (vertical oil) on July 19, 2005, at a total depth of 6,030'. At that time, the subject Well was associated with Lease Id No. 29627.
 - a. Lease Id No. 29627 had continuous production from July 2005 through October 2015.
 - b. Lease Id No. 29627 has had no reported production since October 2015.
 - c. Fagadau Energy Corporation has an inactive Form P-5 Organization Report, becoming inactive on March 31, 2008.
4. Effective May 1, 2006, Primexx Operating Corporation became the operator of record for the subject Lease.
5. Primexx does not have any past, current, or pending dockets relating to a “good faith claim” challenge.
6. BRG does not have any past, current, or pending dockets relating to a “good faith claim” challenge.
7. BRG currently operates 206 oil or gas wells, of which 18 are 14(b)(2) wells (plugging operations on dry or inactive wells).¹

A diligent search of Commission files and records did not reveal the genesis of the “good faith claim hold” placed on the subject Lease. As far as Commission records reveal, the ALJ is unable to detect any patent deficiencies associated with the subject Lease or subject Well necessitating a “good faith claim hold” – including evidence of lack of production or landowner complaint.

APPLICABLE LAW

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.”²

¹ 16 TEX. ADMIN. CODE § 3.14(b)(2).

² 16 TEX. ADMIN. CODE § 3.15(a)(5).

Further, the Texas Supreme Court has recognized that in good faith claim challenges brought before the Commission applicant need only make a “reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit. . .”¹

Additionally, the Third Court of Appeals in relying on *Magnolia* noted “. . .while a permit applicant is not required to prove title or right of possession in the property affected by the permit, and the [C]ommission has no power to decide that question, the applicant nonetheless must make "a reasonably satisfactory showing of a good-faith claim of ownership" in the property.”²

Unlike *Magnolia*, a “complainant” does not exist in the instant matter. However, the Commission unilaterally (presumably) placed a “good faith claim hold” on the subject Lease – thereby challenging its validity, in some fashion.

However, pursuant to the Texas Natural Resources Code, “the commission shall include rules and orders to prevent waste . . . of oil and gas in drilling and producing operations . . .” and “to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission’s rules or orders for the prevention of waste.”³

CONCLUSION

Evidence produced by BRG (paired with information obtained from Commission records) demonstrated a reasonably satisfactory showing of its “good faith claim” to a continuing right to operate the subject Well. Specifically, BRG submitted to the Commission three oil and gas leases purporting to cover the subject Well, and an assignment thereof into BRG. Commission records reveal continuous production from the subject Lease since at least January 1993 – supporting the validity of the three oil and gas leases. Evidence of a landowner complaint or challenge was also lacking. Lastly, and of particular significance, evidence in support of the Commission’s “good faith claim hold” could not be located.

Moreover, BRG *desires* to operate the subject Well (presumably because it seeks to produce oil or gas); and Primexx is *agreeable* to assign its regulatory responsibility in the subject Well (presumably because it does not wish to produce oil or gas). It stands to reason that BRG’s want to operate the subject Well is in harmony with the prevention of waste, and that Commission approval of its application facilitates that policy – particularly when a lack of evidence fails to support the Commission’s “good faith claim hold”.

¹ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

² *Rosenthal v. R.R. Comm'n of Tex.*, No. 03-09-00015-CV, 2009 WL 2567941 (Tex. App.—Austin, Aug. 20, 2009, pet. denied) (mem. op.).

³ TEX. NAT. RES. CODE § 85.202(a).

As a result, the ALJ recommends that the Commission find that BRG has a “good faith claim” to a continuing right to operate the subject Well. Additionally, the ALJ recommends that any “good faith claim hold” relating to the subject Lease—as reflected by Commission records—be removed. Lastly, the ALJ recommends that the “two-signature” Form P-4 requesting transfer of the Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas, from Primexx to BRG, be approved.

FINDINGS OF FACT

1. Primexx Operating Corporation holds Operator No. 677852.
2. BRG Lone Star Ltd. holds Operator No. 090870.
3. Primexx Operating Corporation is the P-4 Record Operator of the Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas.
4. Primexx Operating Corporation has a current Form P-5 with sufficient financial assurance for its wells.
5. BRG Lone Star Ltd. has a current Form P-5 with sufficient financial assurance to acquire the subject Lease and subject Well.
6. BRG Lone Star Ltd. currently operates 206 oil or gas wells, of which 18 are 14(b)(2) wells.
7. 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).
8. BRG Lone Star Ltd. elected for the above captioned Docket to be set for informal disposition pursuant to TEX. GOV’T. CODE §§ 2001.056 and 2001.062(e).
9. BRG Lone Star Ltd. presented as its “good faith claim” to operate the captioned lease, to wit:
 - a. An Oil and Gas Lease dated July 8, 1973, from Billy W. Hickman and wife, Oleen Hickman, Lessors, to Herbert L. Johnson, Lessee, purporting to cover 129 acres, including the subject Well, for a primary term of 5 years;
 - b. An Oil and Gas Lease dated July 8, 1973, from James L. Warren and wife, Martha Warren, Lessors, to Herbert L. Johnson, Lessee,

purporting to cover 129 acres, including the subject Well, for a primary term of 5 years;

- c. An Oil and Gas Lease dated January 28, 1977, from Boyd Massey and wife, Sue Massey, Lessors, to Diamond Shamrock Corporation, Lessee, purporting to cover 129 acres, including the subject Well, for a primary term of 5 years; and
 - d. An Assignment and Bill of Sale dated effective October 2, 2015, from Primexx Energy Partners, Ltd., Assignor, to BRG Lone Star Ltd., Assignee, assigning numerous leases and wells, including the subject Lease and subject Well.
10. The subject Well was spud on August 9, 1979, and completed (vertical gas) to a total depth of 6,100', on August 31, 1979. At that time, the subject Well was associated with Lease Id No. 084931.
 - a. Lease Id No. 084931 had continuous production from January 1993 through June 2005.
 11. Effective October 1, 2005, Fagadau Energy Corporation became the operator of record for the subject Lease.
 12. The subject Well was recompleted (vertical oil) on July 19, 2005, at a total depth of 6,030'. At that time, the subject Well was associated with Lease Id No. 29627.
 - a. Lease Id No. 29627 had continuous production from July 2005 through October 2015.
 - b. Lease Id No. 29627 has had no reported production since October 2015.
 - c. Fagadau Energy Corporation has an inactive Form P-5 Organization Report, becoming inactive on March 31, 2008.
 13. Effective May 1, 2006, Primexx Operating Corporation became the operator of record for the subject Lease.
 14. Primexx Operating Corporation does not have any past, current, or pending dockets relating to a "good faith claim" challenge.
 15. BRG Lone Star Ltd. does not have any past, current, or pending dockets relating to a "good faith claim" challenge.
 16. Commission records do not reveal any patent deficiencies associated with the subject Lease or subject Well necessitating a "good faith claim hold".

17. BRG Lone Star Ltd. demonstrated a “good faith claim” to a continuing right to operate the referenced property.
18. Evidence in support of the Commission’s “good faith claim hold” could not be located during a review of Commission records.
19. The Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas, should be transferred to BRG Lone Star Ltd. as operator of record.

CONCLUSIONS OF LAW

1. All things necessary to the Commission attaining jurisdiction have occurred.
2. Resolution of this docket is a matter committed to the jurisdiction of the Commission. TEX. NAT. CODE § 81.051.
3. BRG Lone Star Ltd. demonstrated a “good faith claim” to operate the Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas.
4. All “good faith claim holds” relating to the subject Lease — as reflected by Commission records — should be removed.

RECOMMENDATIONS

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Commission find that BRG has a “good faith claim” to a continuing right to operate the subject Well.

Additionally, the ALJ recommends that any “good faith claim hold” relating to the subject Lease—as reflected by Commission records—be removed.

Lastly, the ALJ recommends that the “two-signature” Form P-4 requesting transfer of the Warren, James L. Lease (Lease No. 29627), Well No. 1, Caddo (3440) Field, located in Parker County, Texas, from Primexx to BRG, be approved.

Respectfully submitted,



RYAN M. LAMMERT
ADMINISTRATIVE LAW JUDGE