



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 6E-0308648

COMPLAINT OF LEWIS WRIGHT THAT KROG PARTNERS, LLC (OPERATOR NO. 478189) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE WILLIS, LILLIE LEASE (LEASE NO. 07765), WELL NOS. 1, 2, 3, 4 AND 5, EAST TEXAS FIELD, GREGG COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge
Richard Eyster, P.G. – Technical Examiner

PROCEDURAL HISTORY:

Complaint Filed -	January 9, 2018
Notice of Hearing -	March 27, 2018
Hearing Date -	May 7, 2018
Transcript Received -	June 4, 2018
Record Close -	July 2, 2018
Proposal for Decision Issued -	July 12, 2018

APPEARANCES:

For Complainant Lewis Wright -
Michael Choate
McElroy, Sullivan, Miller & Weber, L.L.P.

For Respondent Krog Partners, LLC -
Robert Doviak, President

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I. Statement of the Case

Lewis Wright (“Complainant”) filed a complaint (“Complaint”) claiming Krog Partners, LLC (“Respondent”) does not have a good faith claim to operate the Willis, Lillie Lease (Lease No. 07765) (“Lease”), Well Nos. 1, 2, 3, 4 and 5 (“Wells”), in the East Texas Field in Gregg County, Texas. Complainant requests the Commission find Respondent does not have a good faith claim and order Respondent to plug the Wells.

Complainant asserts Respondent does not have a good faith claim because the contractual lease relied on by Respondent has terminated for lack of production. The Wells have not been productive since October 2006. Complainant further asserts, whether or not Respondent has a good faith claim the Wells should be ordered plugged because they are not in compliance with Commission inactive well rules.

Respondent contends the tract where the Wells are located is also part of a pooled gas unit, which has a productive well. Respondent maintains because the gas unit well is productive, and the tract at issue is part of the gas unit, the contractual lease has not terminated for lack of production. Additionally, Respondent provided ten notarized ratifications of the contractual lease executed in April 2018 by mineral interest owners of the tract.

Regarding compliance with inactive well rules, a Commission enforcement order issued June 5, 2018 addresses the Wells’ noncompliance with Commission inactive well rules and orders Respondent to bring the Wells back into compliance within three days of the enforcement order becoming final.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Railroad Commission (“Commission” or “RRC”) deny Complainant’s request. The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells and Complainant failed to provide sufficient evidence to defeat Respondent’s good faith claim. Additionally, the Examiners recommend the Commission deny Complainant’s request for an order requiring the Wells be plugged since that issue is already addressed in the enforcement order.

II. Jurisdiction and Notice¹

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas, and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

On March 27, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to Complainant and Respondent setting a hearing date of May 7,

¹ The hearing transcript in this case is referred to as “Tr. at [page(s)].” Complainant’s exhibits are referred to as “Complainant Ex. [exhibit no].” Respondent’s exhibits are referred to as “Respondent Ex. [exhibit no].”

2018.² Consequently, all parties received more than 10 days' notice. The Notice contains (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.³ The hearing was held on May 7, 2018, as noticed. Complainant and Respondent appeared at the hearing.

III. Applicable Legal Authority

Complainant alleges the Commission's current operator of record, Respondent, does not have a good faith claim to operate the well. A "good faith claim" is defined in the Texas Natural Resources Code and in Commission rule 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.⁴

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁵ An inactive well is defined as:

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.⁶

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(d) states:

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

- (A) restore the well to active status as defined by Commission rule;
 - (B) plug the well in compliance with a Commission rule or order;
- or

² Complainant Ex. 1.

³ See TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.42, 1.45.

⁴ TEX. NAT. RES. CODE § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁵ Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

⁶ 16 TEX. ADMIN. CODE § 3.15(a)(6).

- (C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.⁷

So for an inactive well, an operator must plug it, obtain a plugging extension, or restore it to active status.

Rule 15(e) allows plugging extensions only if five specified criteria are met as follows:

- (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);
- (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.⁸**

Thus, absent a good faith claim to operate, wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15 according to Statewide Rule 15(e).

In sum, if the Wells are inactive, they must be plugged or have plugging extensions. If Respondent does not have a good faith claim to operate the Wells, then it is not eligible for plugging extensions. In that case, an order to plug the Wells is warranted. Additionally, for wells over 25 years old, they are required to pass a fluid level or hydraulic pressure test to be eligible for plugging extensions. The Wells are over 25 years old.

IV. Discussion of Evidence

Complainant provided no witnesses and approximately seven exhibits. Respondent provided the testimony of two witnesses and approximately five exhibits.

⁷ 16 TEX. ADMIN. CODE § 3.15(d).

⁸ Emphasis added.

A. Summary of Complainant's Evidence and Argument

Complainant asserts Respondent does not have a good faith claim to operate the Wells and the Wells should be ordered plugged. Complainant further asserts, whether or not Respondent has a good faith claim the Wells should be ordered plugged because they are not in compliance with Commission inactive well rules.

Complainant provided Commission records showing the Commission ordered the prior operator, Glade Operating Co. ("Glade"), to plug Wells in Oil & Gas Docket No. 6E-0277265 ("Prior Plugging Order"). The Wells were transferred to Respondent as Commission record operator on June 1, 2016. On June 22, 2016, the Commission issued an order superseding the Prior Plugging Order in Oil & Gas Docket No. 6E-0298355, finding Respondent has a good faith claim to operate the Wells, finding the Wells should not be plugged, and transferring the Wells to Respondent as the operator of record ("Superseding Order").⁹

On November 2, 2017, Commission staff, in response to Complainant's request for information, sent Complainant a copy of the oil and gas lease ("1931 Contractual Lease") Respondent provided to the Commission to support its good faith claim to operate the Wells.¹⁰ This contractual lease is dated January 20, 1931 and has a primary term of ten years and thereafter as long as the leased premises continues to be produced. The Complainant notes the following language in the lease:

It is specifically agreed that in the event that oil or gas is produced from said premises and said production shall for any reason cease or termination, lessee shall have the right at any time within ninety (90) days from the cessation of such production to resume drilling operations in the effort to make said leased premises again produce oil or gas, in which event the lease shall remain in force . . .

Complainant asserts there has been no production for longer than the 90 days provided for in the lease, such that the 1931 Contractual Lease has terminated.¹¹ Complainant provided Commission production reports showing there has been no production from the Lease since October 2006.¹² Complainant provided a Commission Inactive Well Aging Report for the Wells showing the Wells have been inactive over 11 years.¹³ Complainant also provided Commission severance records showing the Lease has been severed due to violations of Commission rules, including violation of Statewide Rule 14(b)(2)¹⁴—the Commission rule requiring inactive wells to be plugged.¹⁵

⁹ Complainant Ex. 2; Tr. at 14-16.

¹⁰ Complainant Ex. 3; Tr. at 16.

¹¹ Tr. at 16-17.

¹² Complainant Ex. 5; Tr. at 18-19.

¹³ Complainant Ex. 6; Tr. at 19-20.

¹⁴ 16 TEX. ADMIN. CODE § 3.14(b)(2).

¹⁵ Complainant Ex. 7; Tr. at 20-23.

B. Summary of Respondent's Evidence and Argument

Respondent maintains the Superseding Order gives it the authority to operate the Wells.

Respondent asserts the tract where the Wells are located is also part of a pooled gas unit, which has a productive well. Respondent contends because the gas unit well is productive, and the tract at issue is part of the gas unit, the contractual lease has not terminated for lack of production.

Respondent has a current annual Commission Form P-5 *Organization Report* ("Form P-5") and its status at the Commission is active.¹⁶

Respondent's first witness was Melvin Reams, a landman that works with Respondent. Respondent provided a GIS map showing the five Wells, a GIS Identify Results for a gas well near the Wells (identifying the Commission lease name as the Anderson-Christian Gas Unit and the operator as Breitburn Operating L.P.), and a plat purporting to show a pooled unit including the tract where the Wells are located. Respondent contends the production of this gas well holds production for the contractual lease.¹⁷ Respondent provided a description of individual tracts in an unit. One of the listed leases is referred to as "Willis."¹⁸

Respondent agrees Complainant is the surface owner of the land where the Wells are located.¹⁹

Respondent provided 10 ratifications of the 1931 Contractual Lease. Respondent asserts the ratifications act as a renewal of the original contractual lease.²⁰

During cross examination, Mr. Reams acknowledged he did not have the pooling agreement or documentation showing the gas unit contains the tract where the wells are located.²¹ Mr. Reams does not know when the last time Wells produced in paying quantities.²²

Respondent's second witness was Robert Doviak, President of Respondent.²³ Mr. Doviak acknowledged there has been no production on the Lease since approximately 2006.²⁴

¹⁶ Complainant Ex. 4.

¹⁷ Tr. at 32-34; Respondent Ex. 2.

¹⁸ Respondent Ex. 4.

¹⁹ Tr. at 29; Respondent Ex. 2.

²⁰ Respondent Ex. 3; Tr. at 30-32.

²¹ Tr. at 36

²² Tr. at 42.

²³ Tr. at 46; Complainant Ex. 4.

²⁴ Tr. at 46-47.

Mr. Doviak said he had performed a fluid level test on three of the Wells, but the wells did not pass the test. He has not performed any mechanical integrity tests on the Wells. Thus, the Wells are not in compliance with testing requirements for wellbores over 25 years old and inactive 10 or more years, referred to as Form H-15 requirements.²⁵ Commission records state the Wells are ineligible for plugging extensions because of H-15 failures.²⁶

Mr. Doviak believes the production from the gas unit counts as production in the paragraph relied on by Complainant in the 1931 Contractual Lease.²⁷

At the end of the hearing, the Examiners gave Respondent the opportunity to file additional evidence in support of its good faith claim, such as (1) a pooling agreement for the gas unit and (2) production records showing the gas unit has been productive.

After the hearing, Respondent provided a Certificate of Pooling Authority filed with the Commission identifying the Anderson-Christian Gas Unit, Well No. 1 with an attached plat of the unit which includes the tract where the Wells are located. Respondent also provided production records for the gas unit well showing the well has been productive since at least January 2016.²⁸

In response, Complainant asserts Respondent did not provide sufficient evidence of production to show a good faith claim. Complainant also provided a Commission enforcement order (Docket No. 6E-0306711) ("Enforcement Order") dated June 5, 2018 ordering Respondent to bring the Wells into compliance with Commission rules, including Commission rules regarding inactive wells, within three days of the order becoming final.²⁹

V. Examiners' Analysis

The Examiners recommend the Complainant's request for relief be denied. The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim. Additionally, the Examiners recommend the Commission deny Complainant's request for an order requiring the Wells be plugged since that issue is already addressed in the Enforcement Order.

Complainant alleges Respondent does not have a good faith claim to operate the Wells. A good faith claim is defined in Commission rule 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

²⁵ Tr. at 48-49.

²⁶ Complainant Ex. 6 at 2-6; Tr. at 49.

²⁷ Tr. at 53.

²⁸ See Post-hearing submittal by Respondent filed May 18, 2018.

²⁹ See Post-hearing submittal by Complainant filed July 2, 2018.

currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.³⁰

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.³¹ A showing of a good faith claim does not require an applicant to prove title or a right of possession. It is sufficient for an applicant to make a reasonably satisfactory showing of a good faith claim.³²

Complainant contends the Wells have not been productive for many years and asserts the contractual oil and gas lease Respondent relies upon, i.e. the 1931 Contractual Lease, has terminated for lack of production.

Respondent provided a Certificate of Pooling Authority showing the tract where the Wells are located is included in the pooled unit. Respondent provided Commission records showing the well for that unit is productive. Respondent also provided ratifications of the 1931 Contractual Lease by mineral interest owners.

Complainant contends Respondent's records of the gas well's production are insufficient because they only go back to 2016. It is Complainant who asserts there is no good faith claim. Complainant relies on the lack of production from the Wells to establish the 1931 Contractual Lease terminated. Complainant failed to provide evidence addressing the gas well. Notably, at the hearing Complainant's attorney acknowledged ratifications by mineral interest owners can indicate the contractual lease is still active if the tract where the mineral leases are located is producing near the time of the ratifications.³³ The Examiners find Respondent provided a reasonably satisfactory showing of a good faith claim and Complainant failed to provide sufficient evidence to defeat it.

Complainant also contends regardless of whether Respondent has a good faith claim or not, the Wells should be ordered plugged according to Commission rules. The Wells are inactive and are required to be plugged if there are no plugging extensions. Commission records show the Wells have not produced since 2006, so they are inactive. They were completed in 1984.³⁴ Because they are over 25 years old, the Wells must successfully pass a fluid level or hydraulic pressure test.³⁵ According to the evidence, none of the Wells have passed either test and consequently are not eligible for plugging extensions. Even though the Wells are not in compliance, the Examiners do not recommend the Commission order the Wells plugged in this case because the compliance of the Wells is already addressed in the Enforcement Order. In the Enforcement Order, Respondent is ordered to bring the Wells into compliance with

³⁰ 16 TEX. ADMIN. CODE 3.15(a)(5).

³¹ *Magnolia Petroleum Co. v. R.R. Comm'n*, 170 S.W.2d 189, 191 (Tex. 1943); see also *Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied) (mem. op.); 56 Tex. Jur. 3d *Oil and Gas* § 737, *Adjudication of title to property and contract rights* (June 2016 Update).

³² *Id.*

³³ Tr. at 66.

³⁴ Complainant Ex. 6.

³⁵ 16 TEX. ADMIN. CODE § 3.15(e)(5).

Commission inactive well rules—namely, Respondent must return the Wells to active status, plug the Wells or obtain plugging extensions. Any ordering provision in this case regarding the Wells' compliance with inactive well rules would be duplicative.

For these reasons, the Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim. Additionally, the Examiners recommend the Commission deny Complainant's request for an order requiring the Wells to be plugged since that issue is already addressed in the Enforcement Order.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record and evidence presented, the Examiners recommend Complainant's requested relief be denied, the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells, and the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Lewis Wright ("Complainant") filed a complaint that Krog Partners, LLC ("Respondent") does not have a good faith claim to operate the Willis, Lillie Lease (Lease No. 07765) ("Lease"), Well Nos. 1, 2, 3, 4 and 5 ("Wells"), in the East Texas Field in Gregg County, Texas. Complainant requests the Commission find Respondent does not have a good faith claim and the Wells be ordered plugged.
2. Complainant is the surface owner of the land where the Wells are located. Complainant asserts Respondent does not have a good faith claim because the contractual lease regarding the mineral interests under Complainant's tract is invalid.
3. Respondent is the Commission operator of record for the Wells.
4. On March 27, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent setting a hearing date of May 7, 2018. Consequently, all parties received more than 10 days' notice. The Notice contains (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted. The hearing was held on May 7, 2018, as noticed. Complainant and Respondent appeared at the hearing.
5. Respondent has an active Commission Form P-5 *Organization Report*.

6. Respondent relies on a contractual oil and gas lease dated January 20, 1931 ("1931 Contractual Lease") covering the tract where the Wells are located to establish its good faith claim to operate the Wells.
7. Complainant asserts the 1931 Contractual Lease has terminated for lack of production. The lease has a primary term of ten years and then there after as long as the leased premises continues to be produced. A provision in the 1931 Contractual Lease states:

It is specifically agreed that in the event that oil or gas is produced from said premises and said production shall for any reason cease or termination, lessee shall have the right at any time within ninety (90) days from the cessation of such production to resume drilling operations in the effort to make said leased premises again produce oil or gas, in which event the lease shall remain in force . . .

Complainant asserts according to this provision, the 1931 Contractual Lease has terminated because the Wells have not produced well over the 90 days provided for.

8. There has been no production from the Wells since October 2006.
9. The tract where the Wells are located is also part of a pooled unit, the Anderson-Christian Gas Unit, which has a productive well, Well No. 1 ("Gas Unit Well").
10. According to Respondent, because the Gas Unit Well is productive, and the tract at issue subject to the 1931 Contractual Lease is part of the gas unit, the 1931 Contractual Lease has not terminated for lack of production.
11. Respondent provided ten notarized ratifications of the 1931 Contractual Lease by mineral interest owners of the tract, executed in April 2018.
12. Respondent has demonstrated a reasonably satisfactory showing of a good faith claim to a continuing right to operate the Wells.
13. Complainant contends the Wells should be ordered plugged because they are not in compliance with Commission inactive well rules.
14. A Commission enforcement order issued June 5, 2018 (Docket No. 6E-0306711) ("Enforcement Order") addresses the Wells' noncompliance with Commission inactive well rules and orders Respondent to bring the Wells back into compliance within three days of the Enforcement Order becoming final.

Conclusions of Law

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. *See, e.g.,* TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.42, 1.45.
2. The Commission has jurisdiction in this case. *See, e.g.,* TEX. NAT. RES. CODE § 81.051.
3. At the hearing in this matter, Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells.
4. Because the Enforcement Order addresses the Wells non-compliance with Commission inactive well rules, the Commission should not include ordering provisions regarding the non-compliance in this case since such would be duplicative and unnecessary.
5. Complainant's request for relief should be denied.

Recommendations

The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim. Additionally, the Examiners recommend the Commission deny Complainant's request for an order requiring the Wells to be plugged since that issue is already addressed in the Enforcement Order (Docket No. 6E-0306711).

Respectfully,



Jennifer Cook
Administrative Law Judge



Richard Eyster, P.G.
Technical Examiner