



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

Oil & Gas Docket No. 03-0308529

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Shelton, Charles H. Fee Lease (Lease No. 11146), Well Nos. 1, 2 and 4, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308540

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Shelton, Busch "D" Lease (Lease No. 17912), Well No. 1, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308541

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Enderli, Busch Lease (Lease No. 17378), Well Nos. 1 and 2, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308545

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the CRH Corp Lease (Lease No. 16107), Well No. 1, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308547

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Busch-Shelton Lease (Lease No. 16363), Well No. 1A, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308549

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Shelton, Busch "E" Lease (Lease No. 18095), Well No. 1, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308550

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Jones, W.L. Lease (Lease No. 23994), Well No. 1, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

Oil & Gas Docket No. 03-0308552

Single Signature P-4 Filing of American Patriot Operating Corp. (Operator No. 018883) for the Busch Shelton "B" Lease (Lease No. 16865), Well No. 2, Goose Creek Field, Harris County, Texas, to Change the Operator of Record from OTeX Resources, LLC (Operator No. 628135) to American Patriot Operating Corp.

HEARD BY:

Jennifer Cook – Administrative Law Judge
Robert Musick, P.G. – Technical Examiner

PROCEDURAL HISTORY:

Hearing Date -	February 26, 2018
Close of Record -	May 3, 2018
Proposal for Decision Issued -	June 12, 2018

APPEARANCES:

For American Patriot Oil & Gas -
Clayton D. Nance and Bennett J. Roberts
Rash Chapman Schreiber Leaverton & Morrison, LLP

For OTeX Resources, LLC and Tri City Oil Co., LLC -
Roland R. Baker, Consultant

For Mineral Traders, LLC -
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I. Statement of the Case

American Patriot Operating Corp. (“Applicant” or “American Patriot”), filed eight¹ single-signature Form P-4s *Certificate of Compliance and Transportation Authority* (“Form P-4s”) requesting it be designated the Commission operator of record for the wells referenced in the captions above (“Wells”). The Form P-4s did not contain the signature of the current Commission operator of record for the Wells.

OTeX Resources, LLC (“OTeX”), RRC Operator No. 628135, is the current Commission operator of record for the Wells. OTeX filed a protest claiming Applicant does not have a good faith claim to operate the Wells.

Prior to the hearing, Mineral Traders, LLC (“Mineral Traders”) filed a motion to be a protestant/intervenor in these cases and opposes Applicant’s requests to be transferred the Wells. Mineral Traders contends American Patriot does not have a good faith claim and Mineral Traders does.

Tri City Oil Co., LLC (“Tri City”) appeared at the hearing in protest of Applicant’s requests to be transferred the Wells. Tri City contends American Patriot does not have a good faith claim and Tri City does.

To demonstrate its good faith claim to operate the Wells, American Patriot submitted a filed and notarized deed transferring contractual leases for the property where the Wells are located from OTeX to American Patriot, giving American Patriot the right to operate the Wells.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Railroad Commission (“Commission” or “RRC”) dismiss Mineral Traders and Tri City from this case for lack of standing. The Examiners recommend the Commission find American Patriot provided a reasonably satisfactory showing it has a good faith claim to operate the Wells and approve the applications of American Patriot to transfer the Wells to American Patriot as the Commission operator of record.

II. Jurisdiction and Notice²

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.

¹ American Patriot originally filed nine Form P-4s but withdrew one post hearing. The case regarding that Form P-4 was dismissed.

² The hearing transcript in this case is referred to as “Tr. at [pages].” American Patriot’s exhibits are referred to as “American Patriot Ex. [exhibit nos.]” OTeX’s exhibits are referred to as “OTeX Ex. [exhibit nos.]” Mineral Traders’ exhibits are referred to as “Mineral Traders Ex. [exhibit nos.]”

On February 12, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to American Patriot and OTeX, as the current operator,³ setting a hearing date of February 26, 2018.⁴ 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.⁵ The hearing was held on February 26, 2018. Consequently, the parties received more than 10 days’ notice. After the Notice and prior to the hearing, Mineral Traders filed a motion to be considered a party, as either a protestant or intervenor. American Patriot, OTeX and Mineral Traders appeared and participated at the hearing. Tri City also appeared at the hearing to intervene and protest American Patriot’s requests for the Wells to be transferred.

III. Applicable Legal Authority

American Patriot filed eight Form P-4s without the signature of the current Commission operator of record and requests to be the Commission operator of record for the Wells.

In order to operate a well in Texas, an operator is required to file a Form P-4. In the Form P-4, the operator certifies that for each property on which the wells at issue are located, the operator is in compliance with Commission statutes, rules, orders and regulations. The Form P-4 establishes the operator of a lease or well and certifies responsibility for regulatory compliance of that operator.⁶

If an applicant wants to assume operator status for a well but is unable to obtain the signature of the previous operator on the Form P-4, the applicant can file a completed form P-4 signed by a representative of the applicant, along with an explanatory letter and legal documentation of the applicant's right to operate the property. Commission rules give the current operator an opportunity to protest. In this case, OTeX has protested, thereby necessitating a hearing. Specifically, Statewide Rule 58(a) provides in pertinent part:

(1) Each operator who seeks to operate any well subject to the jurisdiction of the Commission shall file with the commission's Austin office a commission form P-4 (certificate of compliance and transportation authority) for each property on which the wells are located certifying that the operator has complied with Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; and Texas Water Code, Chapter 27, and orders, rules, and regulations of the commission pursuant to Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; and Texas Water Code, Chapter 27, in respect to the property. The Commission form P-4 establishes the operator of an oil lease, gas well, or other well; certifies

³ See 16 TEX. ADMIN. CODE § 3.58(a)(4).

⁴ See Notice of Hearing issued February 12, 2018.

⁵ See TEX. GOV'T CODE §§ 2001.051, .052; 16 TEX. ADMIN. CODE §§ 1.42, 1.45.

⁶ 16 TEX. ADMIN. CODE § 3.58(a)(1).

responsibility for regulatory compliance, including plugging wells in accordance with §3.14 of this title (relating to plugging); and identifies gatherers, purchasers, and purchasers' commission-assigned system codes authorized for each well or lease. Operators shall file form P-4 for new oil leases, gas wells, or other wells; recompletions; reclassifications of wells from oil to gas or gas to oil; consolidation, unitization or subdivision of oil leases; or change of gatherer, gas purchaser, gas purchaser system code, operator, field name or lease name. When an operator files a form P-4, the oil and gas division shall review the form for completeness and accuracy. The Commission may require an operator who files a form P-4 for the purpose of changing the designation of an operator for a lease or well to provide to the Commission evidence that the transferee has the right to operate the lease or well. Except as otherwise authorized by the Commission, a transporter (whether the operator or someone else) shall not transport the oil, gas, or geothermal resources from such property until the Commission has approved the certificate of compliance and transportation authority. No certificate of compliance designating or changing the designation of an operator will be approved that is signed, either as transferor or transferee, by a non-employee agent of the organization unless the organization has filed with the commission, on its organization report, the name of the non-employee agent it has authorized to sign such certificates of compliance on its behalf.

(2) An approved certificate of compliance and transportation authority shall bind the operator until another operator files a subsequent certificate and the Commission has approved the subsequent certificate and transferred the property on commission records to the subsequent operator.

...

(4) If an applicant wishes to assume operator status for a property, but is unable to obtain the signature of the previous operator on the certificate of compliance and transportation authority, the applicant shall file with the oil and gas division in Austin a completed form P-4 signed by a designated officer or agent of the applicant, along with an explanatory letter and legal documentation of the applicant's right to operate the property. Prior to approval of such an application, the office of the general counsel will notify the last known operator of record, if such operator's address is available, affording such operator an opportunity to protest.

In evaluating the proposed operator's documentation of a right to operate the property at issue, the Commission determines whether the documentation is sufficient to establish a "good faith claim" to operate the property at issue.⁷ According to Commission statutes and rules, the definition of a good faith claim is:

⁷ See, e.g., TEX. NAT. RES. CODE § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5); *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

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.⁸

IV. Discussion of Evidence

American Patriot had one witness and sixteen exhibits. OTeX had one witness and eight exhibits. Mineral Traders had one witness and nineteen exhibits. Tri City had one witness and no exhibits.

A. Summary of American Patriot's Evidence and Argument

American Patriot filed single-signature Form P-4s requesting it be designated the Commission operator of record for the following eight leases in the Goose Creek Field in Harris County:

1. The Shelton, Charles H. Fee Lease (Lease No. 11146), Well Nos. 1, 2 and 4;
2. The Shelton, Busch "D" Lease (Lease No. 17912), Well No. 1;
3. The Enderli, Busch Lease (Lease No. 17378), Well Nos. 1 and 2;
4. The CRH Corp Lease (Lease No. 16107), Well No. 1;
5. The Busch-Shelton Lease (Lease No. 16363), Well No. 1A;
6. The Shelton, Busch "E" Lease (Lease No. 18095), Well No. 1;
7. The Jones, W.L. Lease (Lease No. 23994), Well No. 1; and
8. The Busch Shelton "B" Lease (Lease No. 16865), Well No. 2.

American Patriot asserts it acquired the right to operate the Wells in OTeX's bankruptcy and the assignment of the wells to American Patriot gives American Patriot a good faith claim.

American Patriot's only witness was Mr. Nicholas Melosi. Mr. Melosi is the Chief Operating Officer of American Patriot.⁹ He testified American Patriot researched the Wells and did approximately a dozen trips in the area where the Wells are located, and Mr. Fereday, OTeX's principal, was present on some of them.¹⁰

American Patriot has an active Commission Form P-5 *Organization Report* ("Form P-5") with \$50,000 bond as financial assurance.¹¹

American Patriot provided public records showing OTeX filed for bankruptcy on January 31, 2017.¹² American Patriot provided court records, a deed of trust with an

⁸ TEX. NAT. RES. CODE § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁹ Tr. at 116-117.

¹⁰ Tr. at 117-118.

¹¹ American Patriot Ex. 2; Tr. at 118-119.

¹² American Patriot Ex. 3; Tr. at 120-121.

assignment showing that during the bankruptcy American Patriot purchased OTeX's interests, including contractual leases covering the Wells and OTeX's right to operate the Wells. The deed of trust warrants that all contractual leases conveyed are "in full force and effect."¹³ The final document, an assignment, is dated October 31, 2017.¹⁴ The bankruptcy case closed on December 26, 2017.¹⁵

Mr. Melosi testified American Patriot hired Mr. Fereday as a consultant during the transition of transferring the Wells to American Patriot. American Patriot last paid Mr. Fereday on January 18, 2018. Mr. Melosi asserts Mr. Fereday was consulting with American Patriot during the same time period he was assigning the leases OTeX presented at the hearing in this case, all while going through personal bankruptcy.¹⁶

American Patriot provided the underlying quit claim deed and oil and gas leases covering the Wells that American Patriot obtained in OTeX's bankruptcy.¹⁷

Mr. Melosi testified the reason he is not operating the Wells as of the date of the hearing is because no representative of OTeX, including Mr. Fereday, will sign the Form P-4 to transfer the Wells to American Patriot, allowing American Patriot to be the Commission operator of record. Consequently, OTeX's actions are preventing American Patriot from becoming authorized to operate the Wells. He stated he has tried but Mr. Fereday has not signed. He thought it was because Mr. Fereday did not want to sign anything due to both his personal and OTeX's bankruptcy. He contends OTeX's failure to sign the Form P-4s is beyond American Patriot's control. He stated the tanks for the Wells have oil in them and all American Patriot needs to do is turn the motors of the pump jacks on. He stated American Patriot is prepared to do that if it can get the transfers accomplished as requested in this proceeding.¹⁸

There has been no production from the Wells since February 2017. American Patriot asserts savings clauses in the underlying contractual leases prevent termination for lack of production while the bankruptcy was pending. Mr. Melosi testified that after the sale and assignment of the assets, American Patriot started working to get the Wells transferred and has paid the bills to, for example, keep the water and lights on at the Well facilities to keep them operational. Mr. Melosi stated he sought legal advice on this issue from a bankruptcy attorney and was advised American Patriot had the right to operate the Wells.¹⁹

American Patriot contends the contractual leases it relies on have not terminated. It further claims savings clauses in the underlying contractual leases—such as force majeure clauses, clauses requiring notice of a default before termination—prevent

¹³ American Patriot Ex. 5 at 5.

¹⁴ American Patriot Ex. 4-9; Tr. at 121-134.

¹⁵ American Patriot Ex. 10; Tr. at 134.

¹⁶ Tr. at 135-136.

¹⁷ American Patriot Ex. 11-15; Tr. at 136-143.

¹⁸ Tr. at 143-145.

¹⁹ Tr. at 146-154.

termination of the leases for lack of production.²⁰ American Patriot further asserts the temporary cessation of production doctrine prevents termination of the leases.²¹

After the hearing in this case, American Patriot provided a new notarized oil and gas lease—which was admitted without objection—dated April 9, 2018 and filed with the appropriate county. This new lease grants American Patriot the right to produce minerals from five of the leases at issue. It has a primary term of three years, and as long thereafter as hydrocarbons are produced in commercial quantities.²²

B. Summary of OTeX's Evidence and Argument

OTeX's witness was Tom Fereday, the founder and owner of OTeX. He has operated and produced the leases at issue since 1998, first as a partner in another operating company and eventually as the sole owner of OTeX.

OTeX went through a Chapter 7 bankruptcy, which was finalized and ended in December 2017. During the bankruptcy, Mr. Fereday testified that most attorneys agreed the leases at issue were held by force majeure during the bankruptcy.

As part of the bankruptcy, American Patriot purchased OTeX's rights in contractual leases ("Contractual Leases"). The Contractual Leases, which cover the Wells, were sold on September 5, 2017. Mr. Fereday opines the Contractual Leases terminated 90 days after September 5 for lack of production.

Mr. Fereday claims to own mineral rights covered under some of the leases at issue.

Mr. Fereday asserts American Patriot has not submitted Form P-4s for all the wells purchased in the Contractual Leases. He accuses American Patriot of picking and choosing which wells it wants to become the Commission operator of record for. For the wells American Patriot has not submitted Form P-4s for, OTeX remains the operator of record and responsible for regulatory compliance until a subsequent operator files a Form P-4 and it is approved. He maintains if someone wants to take over the Wells, that person should become responsible for all wells covered in the Contractual Leases. He testified that, for example, there are two depleted gas wells American Patriot has not submitted Form P-4s for and which are covered by the assets purchased by American Patriot in the bankruptcy.²³

OTeX provided a contractual oil and gas lease between Thomas E. Fereday, as lessor, and Tri City, as lessee. It was notarized and filed with the county. It is signed by Mr. Fereday, but it is not signed by the lessee. Section 10 of the lease is crossed out, which is the provision warranting title to the interest covered by the lease. Mr. Fereday asserts he has ownership of approximately 80% of the mineral interests of the tract

²⁰ Tr. at 189-190.

²¹ *Applicant, American Patriot Operating Corp.'s Closing Statement* filed April 4, 2018.

²² American Patriot Ex. 16.

²³ Tr. at 27-36.

covered by the lease and 100% of the executive rights. No documentation of his mineral right interests was provided.²⁴

OTeX provided a Form P-4 to transfer the Shelton, Charles H Fee Lease (11146) from OTeX to Tri City, which was filed with the Commission's Oil & Gas Well Compliance Section on February 26, 2018—the same day as the hearing. It has a proposed effective date of December 1, 2018. It is signed by both OTeX and Tri City.²⁵

OTeX provided a Form P-4 to transfer the Jones, W.L. Lease (23994) from OTeX to Tri City, which was filed with the Commission's Oil & Gas Well Compliance Section on February 26, 2018—the same day as the hearing. It has a proposed effective date of December 1, 2018.²⁶

Mr. Fereday testified Tri City is a registered operator in Texas with an active Form P-5.²⁷

OTeX provided two oil and gas contractual leases dated February 20, 2018, one between Hira Capital Group, LLC, as lessor, and Tri City, as lessee and the other between WY-VEW Corporation, as lessor and Tri City as lessee.²⁸ Both are notarized and filed with the county. They are signed by the lessor, but not signed by the lessee.²⁹ Mr. Fereday testified the leases cover two-thirds of the mineral rights. He testified he assisted Tri City in obtaining the leases. He provided the leases to the parties via email. The lessors sent them to him when they were signed, and he filed them with the county on February 23, 2018, three days before the hearing. He said thus far he has assisted Tri City for no money and states, "So far it's a friendship."³⁰ He does have an expectation of future dealings with Tri City; for example, he intends to use former OTeX employees or contractors and equipment OTeX used—but does not own—to operate the Wells.³¹ He states:

Q Why do you hold that expectation then if you haven't talked to Tri City about it?

A I have employees that previously worked for OTeX Resources and certain equipment that I may be able to provide as a service contractor.

Q When you say "provide" do you mean to provide in the operation of the wells?

A Yes.

²⁴ OTeX Ex. 1; Tr. at 66-70.

²⁵ OTeX Ex. 2.

²⁶ OTeX Ex. 2.

²⁷ Tr. at 39.

²⁸ Tr. at 74-76.

²⁹ OTeX Ex. 4, 5.

³⁰ Tr. at 43.

³¹ Tr. at 44-45.

Q And so do you intend to use former representatives of OTeX and equipment that may or may not belong to OTeX to operate these wells?

A It doesn't belong to OTeX. Yes.

Q My question was, do you intend to use former representatives of OTeX and equipment formally belonging to OTeX to operate these wells and when I say "you" I mean Tri City?

A Former employees -- or former contractors of OTeX.

Q And what will be your role in the future if Tri City operates these leases and wells?

A I have no idea what the future may hold.

Q But you have some idea. Right? I mean, you have an idea that some –

A We all have a dream.³²

He further testified he assisted Tri City because Tri City's representative provided him venison and sausage the second time they met.³³

OTeX provided a contractual oil and gas lease between Thomas E. Fereday, as lessor, and Texan Oil Leasing Operations LLC, as lessee dated February 23, 2018. It is not notarized. It is signed by Mr. Fereday, but is not signed by the lessee. Mr. Fereday stated he is in the process of filing it with the county. He acknowledged he granted the right to operate on this lease to Texan Oil Leasing Operations LLC, who was not present at the hearing, and consequently, he has no right to operate on the property covered by the lease. Mr. Fereday testified the lease represents 5% of the mineral interests of the leased tract.³⁴

On cross examination, Mr. Fereday acknowledged he was a consultant for American Patriot to assist with the transition of transferring OTeX's assets to American Patriot. He was offered \$5,000 per month for his consulting services. As part of his services, he provided copies of documents. He did various field trips to assist other American Patriot consultants. He was paid two or three times. He provided consulting services for American Patriot until sometime in early 2018.³⁵

³² Tr. at 44:24 to 45:22.

³³ Tr. at 83.

³⁴ OTeX Ex. 8; Tr. at 54-58, 76-77.

³⁵ Tr. at 60-64.

OTeX's Form P-5 status is delinquent. Mr. Fereday is listed as an officer on the Form P-5. Mr. Fereday stated it is his belief that if an operator goes bankrupt then the Commission will pursue the operator's officers personally to be held responsible for plugging inactive wells.³⁶

Mr. Fereday acknowledged OTeX defaulted on loans such that OTeX's leases and wells were sold to American Patriot in OTeX's bankruptcy.³⁷

Mr. Fereday acknowledged he has filed for personal bankruptcy and that case is currently pending. He testified the trustee has signed off on all assets except a house. He did not provide documentation that the trustee has signed off on any permission for him to conduct dealings regarding his mineral interests. He further clarified he has not sought permission or approval from the trustee to execute leases regarding his mineral rights.³⁸

Mr. Fereday testified he granted Texas Oil Leasing his mineral interests via lease without receiving compensation because he has a "friend" at Texas Oil Leasing, similar to the friendship he described he has with Tri City.³⁹

Mr. Fereday acknowledged OTeX received a severance order preventing it from producing or selling minerals regarding all the Wells.⁴⁰ Mr. Fereday is unaware of any operations of the Wells conducted for the purpose of obtaining oil or gas production since at least January 2017.⁴¹

OTeX does not assert it has a good faith claim to operate any of the Wells. It does not want to be held liable for straggler wells due to American Patriot's failure to apply to become the Commission record operator for some of the wells American Patriot purchased in the bankruptcy. It asserts American Patriot does not have a good faith claim to operate the Wells because the leases American Patriot obtained from OTeX during OTeX's bankruptcy proceeding are invalid.⁴²

C. Summary of Tri City's Evidence and Argument

Tri City's only witness was Michael Young. He is a principal at Tri City. He testified he has twenty-five years of experience in the downstream sector of the oil and gas industry. He has no experience operating oil and gas wells and Tri City is currently not operating any wells. He is not aware of a bonus being paid for any of the leases with Tri City as lessee provided in this case. He testified Mr. Fereday has been a mentor and assisted in obtaining these leases.⁴³

³⁶ American Patriot Ex. 1; Tr. 64-66.

³⁷ Tr. at 71-72.

³⁸ Tr. at 77-79.

³⁹ Tr. at 79-80.

⁴⁰ Mineral Traders Ex. 2, Tr. at 85-89.

⁴¹ Tr. at 89-108; Mineral Traders Ex. 3-6.

⁴² Tr. at 225-226.

⁴³ Tr. at 110-116.

Tri City represented it is a registered operator with the Commission. However, it has never operated a well as of the date of the hearing.⁴⁴

D. Summary of Mineral Traders' Evidence and Argument

Mineral Traders asserts it wants the transfer applications for some of the leases at issue to be denied. Mineral Traders contends it has a good faith claim regarding those leases and American Patriot does not.

Mineral Traders' witness was Mr. David Swantner. He owns Mineral Traders. Mineral Traders is in the business of buying and selling mineral interests and leases. It merely buys and sells leases; it does not operate wells.⁴⁵

Mineral Traders provided contractual leases granting Mineral Traders the right to produce hydrocarbons on some of the leases at issue in this case.⁴⁶

Mr. Swantner testified Mineral Traders does not obtain title opinions. Mineral Traders relies on Drillinginfo information and Commission records. After obtaining information from Drillinginfo, such as division orders used to pay royalties, he contacts the person and asks if he/she owns mineral interests.⁴⁷

Mineral Traders is not an operator registered with the Commission, as required to operate oil and gas wells in Texas. Instead, it contracts with registered operators who actually operate the wells.⁴⁸

V. Examiners' Analysis

The Examiners recommend the Commission dismiss the protests of Tri City and Mineral Traders for lack of standing and approve the applications of American Patriot to transfer the Wells to American Patriot as the Commission operator of record.

A. The Examiners recommend the protests of Tri City and Mineral Traders be dismissed for lack of standing.

Tri City and Mineral Traders both claim a right to participate in this proceeding because each asserts it has a good faith claim to operate at least some of the Wells.

The issue in this case is whether the Wells should be transferred to American Patriot even though OTeX, as the current operator of record, has not signed the Form P-4s.

⁴⁴ Tr. at 224.

⁴⁵ Tr. at 193, 216.

⁴⁶ Mineral Traders Ex. 7-19; Tr. at 194-214.

⁴⁷ Tr. at 197-198, 216.

⁴⁸ Tr. at 224.

According to Statewide Rule 58, if an applicant wishes to assume operator status but is unable to obtain the signature of the previous operator, the applicant shall file a completed Form P-4 signed by the applicant, along with an explanatory letter and legal documentation of the applicant's right to operate the property.⁴⁹ If the required information is provided without protest, it will be approved administratively without need of a hearing.

Statewide Rule 58 does require notice to be given to “the last known operator of record” to afford that operator an opportunity to protest. The reason there was a hearing in this case is because OTeX, the current operator, filed a protest. Additionally, the Commission’s procedural rules allow a party to intervene if the party has a “justiciable or administratively cognizable interest” in the proceeding.⁵⁰

Neither Mineral Traders nor Tri City has ever operated the Wells. Each merely asserts it has a good faith claim to operate some of the Wells. Commission rules do not provide any operator asserting a good faith claim an opportunity to protest a transfer.

Moreover, neither Mineral Traders nor Tri City is a party to any of the contractual leases relied on by American Patriot to demonstrate its good faith claim. It is unclear whether Mineral Traders or Tri City would have standing in a district court to assert these contractual leases have terminated, which is the claim both are making in this case.

Mineral Traders has not filed a Form P-4 regarding any of the Wells, asserting it should be the operator. Mineral Traders is not an operator and is not registered with the Commission, as required to operate wells in Texas. Consequently, Mineral Traders could not become the operator of record for the Wells no matter what the outcome of this case is. Mineral Traders does not operators asserting a good faith claim, other than the current operator of record assert OTeX has a good faith claim to operate any of the Wells. Mineral Traders offered no evidence of any other operator becoming the Commission record operator of any of the Wells in reliance on Mineral Traders’ contractual leases. Mineral Traders offered no evidence as to how American Patriot becoming the record operator of the Wells—instead of OTeX—impacts Mineral Traders.

While Tri City did attempt to file Form P-4s on the day of the hearing, they were post-dated to December 2018. Tri City does not assert OTeX has a good faith claim to operate any of the Wells. Tri City offered no evidence as to how American Patriot becoming the record operator of the Wells—instead of OTeX—impacts Tri City. The fact that Tri City’s Form P-4s were signed by OTeX, who acknowledges no good faith claim to operate any of the Wells, is not compelling.

Moreover, there was insufficient evidence Tri City has a good faith claim to operate any of the Wells. The Examiners do not find the contractual leases provided reliable. While Mr. Fereday, OTeX’s principal, testified that the lessors on Tri City’s leases actually had mineral rights to convey, no other evidence and no documentation was provided on this issue. As for Mr. Fereday’s testimony on this point, the Examiners found it

⁴⁹ 16 TEX. ADMIN. CODE § 3.58(a)(4).

⁵⁰ 16 TEX. ADMIN. CODE § 1.37(a).

unpersuasive, particularly given the evidence that (1) there was no compensation given for the exchange of mineral rights in Tri City's leases, (2) it was unclear Mr. Fereday had the right to transfer mineral interests he owned due to his pending personal bankruptcy, (3) the testimony that the conveyances Mr. Fereday assisted with and the mineral interests he conveyed were based on some claimed friendship was not convincing and (4) he was providing consulting services for compensation to American Patriot to assist with transferring the Wells to American Patriot around the same time period he was taking actions to work against those very transfers.

There appears to be no cognizable or justiciable interest by Tri City or Mineral Traders in whether OTeX remains the operator of the Wells or American Patriot becomes the operator of the Wells. That is the only issue in this case.

For these reasons, the Examiners recommend the Commission dismiss both Mineral Traders and Tri City's requests to be a protestant and/or intervenor.

B. The Examiners recommend the requested relief by American Patriot be granted and the Form P-4s be approved.

The Examiners recommend American Patriot's requested relief be granted and the Commission find American Patriot provided a reasonably satisfactory showing of a good faith claim to operate the Wells and the Wells should be transferred to American Patriot.

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 currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.⁵¹

The origin of the "good-faith claim" requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.⁵² In discussing the Commission's authority to grant a drilling permit, the 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."⁵³ 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."⁵⁴ **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"**

⁵¹ 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁵² *Id.*; see *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 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); *Pan Am. Petroleum Corp. v. R.R. Comm'n of Tex.*, 318 S.W.2d 17 (Tex. Civ. App.—Austin 1958, no writ).

⁵³ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

⁵⁴ *Id.* at 191 (emphasis added).

and another's good faith dispute of title or possessory interest will not alone defeat an applicant.⁵⁵

OTeX, Mineral Traders and Tri City allege American Patriot does not have a good faith claim to operate the Wells.

American Patriot provided documentation it obtained the right to operate the Wells in OTeX's bankruptcy. Regarding any assertion that the underlying contractual leases have terminated, American Patriot contends savings clauses in the underlying contractual leases—such as force majeure clauses, clauses requiring notice of a default before termination—prevent termination of the leases for lack of production.⁵⁶ American Patriot further asserts the temporary cessation of production doctrine prevents termination of the leases.⁵⁷ For example, American Patriot asserts OTeX's refusal to agree to transfer the Wells and OTeX's bankruptcy are outside American Patriot's control. Even OTeX acknowledged the attorneys involved with the bankruptcy acted as if the force majeure clause had been triggered. Additionally, American Patriot obtained a new contractual lease covering many of the Wells in 2018.

The Examiners find American Patriot has provided a reasonably satisfactory showing of a good faith claim. Even if a bona fide lease dispute exists, it does not defeat American Patriot's good faith claim. The Examiners recommend the Commission approve American Patriot's request to transfer the Wells.

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

The Examiners recommend Mineral Traders and Tri City be dismissed from this case for lack of standing. The Examiners recommend the Commission find American Patriot provided a reasonably satisfactory showing it has a good faith claim to operate the Wells and approve the applications of American Patriot to transfer the Wells to American Patriot as the Commission operator of record. The Examiners recommend the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. American Patriot Operating Corp. ("American Patriot"), RRC Operator No. 018883, filed eight single-signature Form P-4s *Certificate of Compliance and Transportation Authority* ("Form P-4s") requesting it be designated the Commission operator of record for the following leases and wells ("Wells") in the Goose Creek Field in Harris County:
 - a. The Shelton, Charles H. Fee Lease (Lease No. 11146), Well Nos. 1, 2 and 4;

⁵⁵ *Id.* (emphasis added).

⁵⁶ Tr. at 189-190.

⁵⁷ *Applicant, American Patriot Operating Corp.'s Closing Statement* filed April 4, 2018.

- b. The Shelton, Busch “D” Lease (Lease No. 17912), Well No. 1;
- c. The Enderli, Busch Lease (Lease No. 17378), Well Nos. 1 and 2;
- d. The CRH Corp Lease (Lease No. 16107), Well No. 1;
- e. The Busch-Shelton Lease (Lease No. 16363), Well No. 1A;
- f. The Shelton, Busch “E” Lease (Lease No. 18095), Well No. 1;
- g. The Jones, W.L. Lease (Lease No. 23994), Well No. 1; and
- h. The Busch Shelton “B” Lease (Lease No. 16865), Well No. 2.

The Form P-4s did not contain the signature of the current Commission operator of record for the Wells.

2. OTeX Resources, LLC (“OTeX”), RRC Operator No. 628135, is the current Commission operator of record for the Wells.
3. Notice of American Patriot’s applications to transfer the Wells was given to OTeX. OTeX protested the transfers and requested a hearing.
4. On February 12, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) via first-class mail to American Patriot and OTeX, as the current operator, setting a hearing date of February 26, 2018. 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 February 26, 2018. Consequently, both OTeX and American Patriot received more than 10 days’ notice. After the Notice and prior to the hearing, Mineral Traders, LLC (“Mineral Traders”) filed a motion to be considered a party, as either a protestant or intervenor. American Patriot, OTeX and Mineral Traders appeared and participated at the hearing. Tri City Oil Co., LLC (“Tri City”) also appeared at the hearing to intervene and protest American Patriot’s requests for the Wells to be transferred.
5. OTeX, Mineral Traders and Tri City assert American Patriot does not have a good faith claim to operate the Wells.
6. 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).
7. To demonstrate its good faith claim to operate the Wells, American Patriot submitted a filed and notarized deed and assignment transferring contractual leases for the property where the Wells are located from OTeX to American Patriot and giving American Patriot the right to operate the Wells.

8. American Patriot has an active Commission Form P-5 *Organization Report* (“Form P-5”) with a \$50,000 bond as its financial assurance on file with the Commission.
9. OTeX is delinquent in filing the annual Form P-5.
10. OTeX does not have a good faith claim to operate any of the Wells. OTeX acknowledges it does not have a good faith claim.
11. Mineral Traders asserts it has a good faith claim to operate some of the Wells.
12. Tri City asserts it has a good faith claim to operate some of the Wells.
13. Neither Mineral Traders nor Tri City has ever operated the Wells and neither has ever been the Commission operator of record for any of the Wells. . Each merely asserts it has a good faith claim to operate some of the Wells.
14. Statewide Rule 58 require notice to be given to “the last known operator of record” to afford that operator an opportunity to protest. Commission rules do not provide that operators asserting a good faith claim, other than the current operator of record, can protest a Form P-4 transfer.
15. Neither Mineral Traders nor Tri City is a party to any of the contractual leases relied on by American Patriot to demonstrate its good faith claim. It is unclear whether Mineral Traders or Tri City would have standing in a district court to assert these contractual leases have terminated, which is the claim both are making in this case.
16. Mineral Traders has not filed a Form P-4 regarding any of the Wells, asserting it should be the operator. Mineral Traders is not an operator and is not registered with the Commission, as required to operate wells in Texas. Consequently, Mineral Traders could not become the operator of record for the Wells no matter what the outcome of this case is. Mineral Traders does not assert OTeX has a good faith claim to operate any of the Wells. Mineral Traders offered no evidence of any other operator becoming the Commission record operator of any of the Wells, in reliance on Mineral Traders’ contractual leases. Mineral Traders offered no evidence as to how American Patriot becoming the record operator of the Wells—instead of OTeX—impacts Mineral Traders.
17. While Tri City did attempt to file Form P-4s on the day of the hearing, they were post-dated to December 2018. Tri City does not assert OTeX has a good faith claim to operate any of the Wells. Tri City offered insufficient evidence as to how American Patriot becoming the record operator of the Wells—instead of OTeX—impacts Tri City.
18. There was insufficient evidence Tri City has a good faith claim to operate any of the Wells. While Mr. Fereday, OTeX’s principal, testified that the lessors on Tri

City's leases actually had mineral rights to convey, no other evidence and no documentation was provided on this issue. As for Mr. Fereday's testimony on this point, it was unpersuasive, particularly given the evidence that (1) there was no compensation given for the exchange of mineral rights in Tri City's leases, (2) it was unclear Mr. Fereday had the right to transfer mineral interests he owned due to his pending personal bankruptcy, (3) the testimony that the conveyances Mr. Fereday assisted with and the mineral interests he conveyed were based on some claimed friendship was not convincing and (4) he was providing consulting services for compensation to American Patriot to assist with transferring the Wells to American Patriot around the same time period he was taking actions to work against those very transfers.

19. There is no cognizable or justiciable interest by Tri City or Mineral Traders in whether OTeX remains the operator of the Wells or American Patriot becomes the operator of the Wells. That is the only issue in this case.
20. American Patriot has demonstrated a reasonably satisfactory showing of a good faith claim to a continuing right to operate the Wells.
21. The Wells should be transferred to American Patriot as operator of record.

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. American Patriot does have a good faith claim to operate the Wells.
4. Mineral Traders' motion to protest and/or intervene in this case should be denied and Mineral Traders should be dismissed from this case.
5. Tri City's motion to protest and/or intervene in this case should be denied and Tri City should be dismissed from this case.
6. The Wells should be transferred to American Patriot as operator of record.

Recommendations

The Examiners recommend Mineral Traders and Tri City be dismissed from this case. The Examiners recommend the Commission find American Patriot provided a reasonably satisfactory showing it has a good faith claim to operate the Wells and approve the applications of American Patriot to transfer the Wells to American Patriot as the Commission operator of record.

Respectfully,

A handwritten signature in black ink, appearing to be 'Jennifer Cook', written over a horizontal line.

Jennifer Cook
Administrative Law Judge

A handwritten signature in black ink, appearing to be 'Robert Musick', written over a horizontal line.

Robert Musick, P.G.
Technical Examiner