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RANDALL D. COLLINS, *DIRECTOR*

# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL AND GAS DOCKET NO. 02-0308825**

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**COMPLAINT OF MRS. LOMA DELL FOSTER REGARDING THE ISSUANCE OF A PERMIT TO INJECT FLUID INTO A RESERVOIR PRODUCTIVE OF OIL OR GAS FOR THE BETA OIL CORPORATION (068314), FOSTER LEASE, WELL NO. 1 (GAS ID NO. 153420), TULETA-WILCOX, SOUTH (LULING) FIELD, BEE COUNTY, TEXAS (UIC PERMIT NO. 114802, ISSUED JANUARY 12, 2017)**

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### PROPOSAL FOR DECISION

#### HEARD BY:

Kristi M. Reeve, Administrative Law Judge  
Karl Caldwell, Technical Examiner

#### APPEARANCES:

For Complainant Mrs. Loma Dell Foster –  
Mr. Robert E. Johnson, Attorney-in-Fact  
Mr. George C. Neale, Attorney

For Respondent Beta Oil Corporation –  
No one appeared on behalf of Beta

#### PROCEDURAL HISTORY:

Complaint Filed – January 23, 2018  
Notice of Hearing – May 23, 2018  
Hearing on the Merits – June 27, 2018  
Proposal for Decision Issued – August 20, 2018

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## Summary

Mrs. Loma Dell Foster (“Foster” or “Complainant”), filed with the Commission a complaint letter regarding the issuance of a permit to inject fluid into a reservoir productive of oil or gas for the Beta Oil Corporation (068314), Foster Lease, Well No. 1 (Gas ID No. 153420), Tuleta-Wilcox, South (Luling) Field, Bee County, Texas (“Lease”) (UIC Permit No. 114802, issued January 12, 2017) (“Permit”). In her complaint letter Foster states, she did not received notice of the permit application, nor did she approve the use of her land for such activities.<sup>1</sup> In response to the Complaint, Beta Oil Corporation (“Beta” or “Respondent”) requested a hearing on the merits.<sup>2</sup>

Prior to the hearing on the merits, Beta filed several letters with the Commission’s Hearings Division. In a letter filed June 20, 2018, Beta states that it would like to cancel the hearing, is agreeable to cancellation of the permit, and will plug and abandon the Foster No. 1 well prior to the expiration of its existing plugging extension which expires on January 1, 2019.<sup>3</sup> As Beta was not the Complainant, the hearing was not cancelled. In a letter filed June 25, 2018, Beta requests the drilling permit be cancelled, as the “landowner is so adamantly opposed to the project that Beta Oil Corporation has abandoned any hopes of moving forward.”<sup>4</sup>

The original issue before the Commission was whether Beta’s Permit was valid given the possible failure to notify the surface owner and if not valid, should Beta’s Permit be cancelled. As Beta requested the cancellation of the Permit and stated it would plug the Well, no issues remain.

At the hearing on the merits, George C. Neale introduced the testimony of Robert E. Johnson, Attorney-in-Fact for Foster (“Johnson” or “Complainant”). Johnson stated that Foster wanted the well to be plugged, the permit cancelled, everything cleaned up and Beta off her property.<sup>5</sup> Complainant also stated the desire to have a Commission order ordering the plugging and abandonment of the Well and cleanup of the Lease in accordance with Statewide Rule 14.<sup>6</sup>

No one appeared at the hearing on the merits on behalf of Beta.

Following the hearing on the merits, the Administrative Law Judge forwarded a copy of Beta’s June 25, 2018 letter requesting cancellation of its Permit to Sean Avitt, Manager of Injection-Storage Permits in the Commission’s Oil and Gas Division for processing. UIC Permit No. 114802 was subsequently cancelled.

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<sup>1</sup> Complaint Letter.

<sup>2</sup> Beta Letter, Filed March 26, 2018.

<sup>3</sup> Beta Letter, Filed June 20, 2018.

<sup>4</sup> Beta Letter, Filed June 25, 2018.

<sup>5</sup> Hearing Audio, 10:28 to 10:31.

<sup>6</sup> Hearing Audio, 19:45 to 20:10.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Railroad Commission ("Commission" or "RRC") enter an order ordering the plugging and abandoning of the Well and cleanup of the Lease in accordance with Statewide Rule 14, and cancellation of the existing plugging extension.

## **Jurisdiction and Notice**

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 May 23, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent setting a hearing date of June 27, 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.<sup>7</sup> The hearing was held on June 27, 2018, as noticed. Complainant appeared at the hearing. Respondent did not appear.

## **Applicable Legal Authority**

Complainant alleges the Commission's current operator of record, Respondent, failed to provide notice to her, the land owner, of the permit application as required by Statewide Rule 46.<sup>8</sup> Statewide Rule 46(c)(1) provides in part:

The applicant shall give notice by mailing or delivering a copy of the application to affected persons who included the owner of record of the surface tract on which the well is located.<sup>9</sup>

Statewide Rule 46 provides the framework of subsequent Commission actions following the issuance of a permit. Statewide Rule 46(d)(1)(C) and (D) state:

- (1) An injection well permit may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing if:
  - (C) there are substantial violations of terms and provisions of the permit issuance process;

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<sup>7</sup> See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

<sup>8</sup> Statewide Rule 46 refers to 16 Tex. Admin. Code § 3.46.

<sup>9</sup> 16 Tex. Admin. Code § 3.46(c)(1).

(D) the applicant has misrepresented any material fact during the permit issuance process;<sup>10</sup>

Beta stated in its letter filed June 20, 2018, that the well has a plugging extension via a Commission Form W-3X. To require a plugging extension, a well must have been inactive for more than 12 months.<sup>11</sup>

Statewide Rule 14 provides the requirements for plugging wells.<sup>12</sup> Statewide Rule 14(b)(2) states:

Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed unless the Commission or its delegate approves a plugging extension under §3.15 of this title (related to Surface Equipment Removal Requirements and Inactive Wells).<sup>13</sup>

Statewide Rule 15 provides the requirements for inactive wells.<sup>14</sup> 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.<sup>15</sup>

Statewide 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

<sup>10</sup> 16 Tex. Admin. Code § 3.46(d)(1)(C) and (D).

<sup>11</sup> 16 Tex. Admin. Code § 3.14(b)(2).

<sup>12</sup> Statewide Rule 14 refers to 16 Tex. Admin. Code § 3.14.

<sup>13</sup> 16 Tex. Admin. Code § 3.14(b)(2).

<sup>14</sup> Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

<sup>15</sup> 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.<sup>16</sup>

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

Statewide 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.<sup>17</sup>

Statewide Rule 15(b) provides the Commission or its delegate the ability to revoke a plugging extension. Statewide Rule 15(h) Revocation of extension states:

The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and opportunity for hearing, that the applicant is ineligible for the extension under the Commission's rules or orders.<sup>18</sup>

The effect of a Commission order, ordering wells to be plugged, is that any plugging extension will be cancelled, as failure to do so would create conflict with a Commission order.

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<sup>16</sup> 16 Tex. Admin. Code § 3.15(d).

<sup>17</sup> 16 TEX. ADMIN. CODE § 3.15(e).

<sup>18</sup> 16 Tex. Admin. Code § 3.15(h).

## Discussion of Evidence

Complainant had one witness, her attorney-in-fact, Robert E. Johnson, appearing on her behalf and offered seven exhibits. Respondent did not appear.

### Summary of Complainant's Evidence and Argument

Complainant asserts she did not received notice of the UIC Permit application for a commercial disposal well, nor did she agree to the use of her land for such purpose.

Complainant appeared through her attorney-in-fact, Robert E. Johnson. Johnson presented a durable general power of attorney to show his authority to appear on behalf of Complainant. He provided a Commission filed H-1 *Application to Inject Fluid into a Reservoir Productive of Oil or Gas* filed October 27, 2106. Johnson testified that Complainant had not lived at the address where notice was listed to have been sent for a number of years.<sup>19</sup> Johnson testified regarding his exhibits which included a copy of the Permit, one of Complainant's complaint letters, two Beta letters filed with the Hearings Division, and photos of the lease site he had taken showing identification signs of Beta, an inactive well, old equipment, vegetation overgrowth and various Commission Statewide Rule violations and safety concerns.<sup>20</sup> Mr. Neale completed his presentation by requesting that the Beta letter requesting cancellation of the Permit be referred to UIC and that Beta be ordered to plug and abandon the Well and cleanup the Lease in accordance with Statewide Rule 14.<sup>21</sup>

## Examiners' Analysis

The original issue before the Commission was whether Beta's Permit was valid given the possible failure to notify the surface owner of the Permit application and if not valid, should Beta's Permit be cancelled. As Beta requested the cancellation of the Permit and stated it would plug the well, no issues remain.

A plugging extension existing for a well for which there is a Commission order ordering the plugging would create conflict between the extension and the order. Thus, by issuing an order plugging the well, the Commission is in effect cancelling the plugging extension.

Thus, the Examiners find the plugging extension on the Well should be cancelled, and the Well ordered plugged and abandoned and the Lease cleaned up in accordance with Statewide Rule 14.

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<sup>19</sup> Audio Record, 5:45 to 7:15.

<sup>20</sup> Complainant Exhibits 1 through 7.

<sup>21</sup> Audio Record, 19:40 to 20:08.

## **Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law**

Based on the record in this case, applicable Statewide Rules, and evidence presented, the Examiners recommend the Commission find that Beta Oil Corporation's plugging extension on the Well should be cancelled, and the Well ordered plugged and abandoned and the Lease cleaned up in accordance with Statewide Rule 14. The Examiners recommend the Commission adopt the following Findings of Fact and Conclusions of Law.

### **Findings of Fact**

1. On January 23, 2018, Mrs. Loma Dell Foster filed with the Commission a written complaint alleging that Beta Oil Corporation (Operator No. 068314) did not provide her notice of the application for its permit to injection fluid into a reservoir production of oil or gas, nor had she given them permission to use her land for such purpose, on the Foster Lease, Well No. 1 (Gas ID No. 153420), Tuleta-Wilcox, South (Luling) Field, Bee County, Texas (UIC Permit No. 114802, issued January 12, 2017).
2. Mrs. Loma Dell Foster is a surface owner.
3. By letter mailed January 25, 2018, Beta Oil Corporation was notified of the Complaint.
4. Beta Oil Corporation requested a hearing on the merits.
5. On May 23, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") via first-class mail to Mrs. Loma Dell Foster and Beta Oil Corporation setting a hearing date of June 27, 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 June 27, 2018. Consequently, all parties received more than 10 days' notice. Complainant appeared at the hearing. Respondent did not appear.
6. Beta Oil Corporation has an active Commission Form P-5 *Organization Report* with a letter of credit of \$50,000.00 as its financial assurance on file with the Commission.
7. Beta Oil Corporation designated itself to the Commission as the operator of the Foster Lease, Well No. 1 (Gas ID No. 153420), Tuleta-Wilcox, South (Luling) Field, Bee County, Texas, effective November 1, 2006, approved November 12, 2006. Respondent remains the operator of record for the Lease and Well.



8. There has been no reported production from the Lease since February 2006.
9. There has been no reported injection from the Lease.
10. Beta Oil Corporation was issued UIC Permit No. 114802 on January 12, 2017.
11. Beta agrees to the cancellation of UIC Permit No. 114802 and the plugging of the Well.
12. UIC Permit No. 114802 was cancelled on August 13, 2018, per the request of Beta Oil Corporation.
13. Operator is defined as a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. [TEX. NAT. RES. CODE § 89.002(a)(2).]

#### **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. It is undisputed that the Well should be plugged and abandoned.
4. Beta Oil Corporation, as the regulatory operator of the Foster Lease, Well No. 1 (Gas ID No. 153420), Tuleta-Wilcox, South (Luling) Field, Bee County, Texas, has the plugging obligation.

## Recommendations

The Administrative Law Judge and Technical Examiner recommend the Commission Order Beta Oil Corporation's plugging extension on the Foster Lease, Well No. 1 (Gas ID No. 153420), Tuleta-Wilcox, South (Luling) Field, Bee County, Texas be cancelled and Order Beta Oil Corporation to plug and abandon the Well and cleanup the Lease in accordance with Statewide Rule 14.

Respectfully Submitted,



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Kristi M. Reeve  
Administrative Law Judge



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Karl Caldwell  
Technical Examiner