



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

Oil & Gas Docket No. 09-0308694

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**COMPLAINT OF ANNETTE FERRELL THAT GANNETT OPERATING LLC (293813) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE HOLCOMB "A" (23361) LEASE, KARRAN, NORTH (MARBLE FALLS) FIELD, YOUNG COUNTY, TEXAS**

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### PROPOSAL FOR DECISION

**HEARD BY:**

Jennifer Cook, Administrative Law Judge  
Petar Buva, Technical Examiner

**PROCEDURAL HISTORY:**

Complaint Filed -	February 22, 2018
Response Filed -	March 27, 2018
Notice of Hearing Issued -	May 3, 2018
Hearing Date -	July 10, 2018
Transcript Received and Close of Record -	August 2, 2018
Proposal for Decision Issued -	September 27, 2018

**APPEARANCES:**

For Complainant Annette Ferrell -  
John Ferrell and Annette Ferrell

For Respondent Gannett Operating, LLC -  
Raegen Rogers  
*Rogers Legal, P.L.L.C.*

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## **I. Statement of the Case**

Annette Ferrell (“Complainant”) filed a complaint (“Complaint”) claiming Gannett Operating, LLC (“Respondent”) does not have a good faith claim to operate the Holcomb “A” Lease (Lease No. 23361) (“Lease”) in the Karran, North (Marble Falls) Field in Young County. Complainant is the surface owner of part of the tract comprising the Lease and requests the Commission order Respondent to plug the two disposal wells on Complainant’s property.

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 Lease has not been productive since June 2017. Complainant further asserts Respondent caused contamination on Complainant’s property and has been an unreasonable operator. There have been and currently are a variety of disputes between Complainant’s family, mainly Complainant’s son, and Respondent.

Respondent contends the contractual lease has not terminated. Respondent maintains Complainant’s son, who is the prior surface owner and lives on the property, has interfered with Respondent’s operations preventing Respondent from operating. Respondent provided a final judgment and findings of fact issued by a judge in a district court of Young County in 2017. The judgment contains a permanent injunction against Complainant’s son preventing him from interfering in Respondent’s operations and assesses him over \$15,000 in economic damages. In the findings of fact, the court finds Respondent at all times reasonably used the Complainant’s property and Complainant’s son interfered with Respondent’s operations, including denying access to the Lease and damaging Respondent’s property. Respondent intends to do secondary recovery operations on the Lease.

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 Lease and Complainant failed to provide sufficient evidence to defeat Respondent’s good faith claim.

## **II. Jurisdiction and Notice<sup>1</sup>**

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 3, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to Complainant and Respondent setting a hearing date of July 10, 2018.

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<sup>1</sup> 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].”

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>2</sup> The hearing was held on July 10, 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 Lease. 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.<sup>3</sup>

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.<sup>4</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>5</sup>

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

(C) obtain approval of the Commission or its delegate of an

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<sup>2</sup> See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

<sup>3</sup> Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

<sup>4</sup> Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

<sup>5</sup> 16 Tex. Admin. Code § 3.15(a)(6).

extension of the deadline for plugging an inactive well.<sup>6</sup>

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.<sup>7</sup>

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).

#### **IV. Discussion of Evidence**

Complainant provided one witness and thirteen exhibits. Respondent provided one witness and nine exhibits.

##### **A. Summary of Complainant's Evidence and Argument**

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 Lease has not been productive since June 2017. Complainant further asserts Respondent caused contamination on Complainant's property and has been an unreasonable operator.

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<sup>6</sup> 16 Tex. Admin. Code § 3.15(d).

<sup>7</sup> Emphasis added.

Complainant is a surface owner of approximately 50 acres of the 67-acre Lease. Two injection wells are on Complainant's property and Complainant wants the Commission to order the wells plugged.<sup>8</sup>

Complainant provided Commission production reports showing the last production was in June 2017.<sup>9</sup> Both parties provided copies of the contractual lease ("Contractual Lease") relied on by Respondent. It is dated August 24, 1981. It has a primary term of three years and continues thereafter for as long as there is production from the leased tract.<sup>10</sup>

Complainant's only witness was Mr. Larry Locklear, Complainant's son. Mr. Locklear owned the property prior to Complainant and has lived on the property for years. Mr. Locklear detailed various complaints he has against Respondent and stated Respondent is an unreasonable and unethical operator.

Mr. Locklear testified Respondent caused contamination on the property. He provided pictures of what he claimed the property looked like two weeks after the contamination. The pictures are somewhat fuzzy and whether there is contamination is unclear. He, as well as Respondent's witness, testified Mr. Locklear complained numerous times to the Commission, the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Federal Bureau of Investigations (FBI) and the Texas Rangers; the witnesses for both parties testified that Railroad Commission staff inspected the property many times. Yet, Complainant did not provide any report by Commission staff, or any of the entities complained to, that there was any contamination.

Complainant also provided testimony and exhibits regarding other disputes Complainant and Mr. Locklear have with Respondent. Such disputes include, among other things, alleging Respondent falsely accused Mr. Locklear of arson and Respondent stopped paying for Mr. Locklear's power despite agreeing to do so. Because the other disputes discussed are not relevant to this case, a discussion of the allegations and the evidence relating to them is not included in this PFD.<sup>11</sup>

## **B. Summary of Respondent's Evidence and Argument**

Respondent contends the Contractual Lease has not terminated. Respondent maintains Complainant's son, who is the prior surface owner and lives on the property, has interfered with Respondent's operations preventing Respondent from operating.

Respondent's only witness was Lee Boyd, a principal of Respondent. In 2013, the Contractual Lease was amended to allow for pooling and the Lease was pooled with what

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<sup>8</sup> See Tr. at 44-46.

<sup>9</sup> Complainant Ex. 5.

<sup>10</sup> Complainant Ex. 9; Respondent Ex. A.

<sup>11</sup> See Complainant Ex. 1, 4-7, 10; Tr. at 74.

Respondent refers to as the “Holcomb ‘F’ leases into a 250-acre pooled unit (“Unit”).<sup>12</sup> The Unit produced hydrocarbons until around June 2017 when the wells were shut in.<sup>13</sup>

After the wells were shut in, Respondent obtained ratifications from the owners of the mineral interests covered by the Contractual Lease. Respondent provided 21 ratifications covering 84 percent of the mineral estate.<sup>14</sup> Complainant does not have an interest in the mineral estate. The ratifications were executed in 2018 and state:

The undersigned does hereby grant, lease and let to [Respondent] the land covered, thereby ratifying and confirming that the [Contractual Lease is] in full force and affect.<sup>15</sup>

Respondent provided a *Final Judgment and Permanent Injunction* issued after a trial by a Young County district court judge on January 27, 2017. It contains a permanent injunction against Mr. Locklear preventing him from interfering in Respondent’s operations and assesses him over \$15,000 in economic damages.<sup>16</sup> Pursuant to a request by Mr. Locklear, the judge also issued a *Findings of Fact and Conclusions of Law* on April 21, 2017. In the Findings of Fact, it states Respondent is the rightful operator and at all times reasonably used the surface of Complainant’s property. The court further finds, among other things, that Mr. Locklear interfered with Respondent’s operations—including denying access, damaging Respondent’s property, threatening bodily harm and threatening to further deny access and damage property. The Findings of Fact also list instances in which Mr. Locklear violated the temporary injunction in place while the case was pending. The Findings of Fact state Mr. Locklear intentionally “harassed,” “interfered,” “trespassed,” “locked,” “vandalized” and “sabotaged” Respondent’s operations; they state Mr. Locklear’s conduct was “willful and malicious” and caused Respondent harm.<sup>17</sup>

Mr. Boyd testified Mr. Locklear has repeatedly harassed Respondent and that the facts identified in the Findings of Fact are true. He testified Mr. Locklear’s conduct made Respondent unable to operate such that Respondent had to shut in the wells on Complainant’s property.<sup>18</sup>

Mr. Boyd testified Respondent plans to initiate secondary recovery operations on the Unit. He stated the reservoir has produced approximately 400,000 barrels, which he estimates is about 15 percent of the hydrocarbons. He opines “there’s a large potential there for secondary recovery with effective waterflood.”<sup>19</sup>

Regarding contamination, Mr. Boyd testified Commission staff has inspected the site of the Lease on multiple occasions—approximately 20 or 30 times. Soil and water

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<sup>12</sup> Respondent Ex. B, C; Tr. at 74-75.

<sup>13</sup> Tr. at 75.

<sup>14</sup> Complainant Ex. D; Tr. at 75-80.

<sup>15</sup> See Respondent Ex. D at 1.

<sup>16</sup> Respondent Ex. H.

<sup>17</sup> Respondent Ex. I.

<sup>18</sup> Respondent Ex. I; Tr. at 84-91.

<sup>19</sup> Tr. at 95-96

samples have been taken. He stated the EPA has inspected the property twice. He testified no contamination has been documented and the Lease is in compliance with all regulations.<sup>20</sup>

## 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 on the Lease and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim.

Complainant alleges Respondent does not have a good faith claim to operate the Lease. 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.<sup>21</sup>

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.<sup>22</sup> 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.<sup>23</sup>

The Examiners find Respondent provided sufficient evidence of a reasonably satisfactory showing of a good faith claim. The ratifications executed in 2018 indicate the parties to the Contractual Lease believe it to be in full force. The ratifications themselves state Respondent has a right to operate. There is evidence to support Respondent's claim that it was forced to stop operating due to the improper conduct of Complainant's son. Mr. Locklear's conduct was beyond Respondent's control and Respondent made efforts to stop Mr. Locklear's interference by obtaining injunctions.

Complainant's assertion that the Contractual Lease has terminated because there has been no production since June 2017 and Complainant's other allegations do not defeat Respondent's good faith claim.

For these reasons, the Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the wells on the Lease and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim.

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<sup>20</sup> Tr. at 91.

<sup>21</sup> 16 Tex. Admin. Code § 3.15(a)(5).

<sup>22</sup> *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*.

<sup>23</sup> *Id.*



## **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 Lease, and the Commission adopt the following findings of fact and conclusions of law.

### **Findings of Fact**

1. Annette Ferrell ("Complainant") filed a complaint that Gannett Operating, LLC ("Respondent") does not have a good faith claim to operate the Holcomb "A" Lease (Lease No. 23361) ("Lease") in the Karran, North (Marble Falls) Field in Young County. Complainant is a surface owner of approximately 50 acres of the 67-acre Lease.
2. Two injection wells are on Complainant's property and Complainant wants the Commission to order the wells plugged.
3. Respondent is the Commission operator of record for the Lease.
4. On May 3, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent setting a hearing date of July 10, 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 July 10, 2018, as noticed. Complainant and Respondent appeared at the hearing.
5. Respondent relies on a contractual oil and gas lease dated August 24, 1981 ("Contractual Lease") for a good faith claim to operate the Lease.
6. Complainant asserts the Contractual Lease has terminated for lack of production. The lease has a primary term of three years and then there after as long as the leased premises continues to be produced.
7. According to Commission records, there has been no production from the Lease since June 2017.
8. In 2013, the Contractual Lease was amended to allow for pooling and the Lease was pooled with what Respondent refers to as the "Holcomb 'F' Leases" into a 250-acre pooled unit ("Unit").
9. The Unit produced hydrocarbons until around June 2017 when the wells were shut in.

10. After the wells were shut in, Respondent obtained ratifications from the owners of the mineral interests covered by the Contractual Lease. Respondent provided 21 ratifications covering 84 percent of the mineral estate. Complainant does not have an interest in the mineral estate. The ratifications were executed in 2018 and state:

The undersigned does hereby grant, lease and let to [Respondent] the land covered, thereby ratifying and confirming that the [Contractual Lease is] in full force and affect.

11. A *Final Judgment and Permanent Injunction* issued after a trial by a Young County district court judge on January 27, 2017 contains a permanent injunction against Complainant's son, Larry Locklear, from interfering in Respondent's operations and assesses him over \$15,000 in economic damages.
12. The judge also issued a *Findings of Fact and Conclusions of Law* on April 21, 2017. In the Findings of Fact it states Respondent is the rightful operator and at all times reasonably used the surface of Complainant's property. The court further finds, among other things, that Mr. Locklear interfered with Respondent's operations—including denying access, damaging Respondent's property, threatening bodily harm, and threatening to further deny access and damage property. The Findings of Fact also list instances in which Mr. Locklear violated the temporary injunction in place while the case was pending. The Findings of Fact state Mr. Locklear intentionally "harassed," "interfered," "trespassed," "locked," "vandalized" and "sabotaged" Respondent's operations; they state Mr. Locklear's conduct was "willful and malicious" and caused Respondent harm.
13. Respondent's representative testified Mr. Locklear has repeatedly harassed Respondent and that the facts identified in the Findings of Fact are true. He testified Mr. Locklear's conduct made Respondent unable to operate such that Respondent had to shut in the wells on Complainant's property.
14. Respondent plans to initiate secondary recovery operations on the Unit. According to Respondent, the reservoir has produced approximately 400,000 barrels, which he estimates is about 15 percent of the hydrocarbons. Respondent expects the operations to be successful.
15. Respondent has demonstrated a reasonably satisfactory showing of a good faith claim to a continuing right to operate the Lease.

### **Conclusions of Law**

1. Proper notice of hearing was timely issued to 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 Lease. 16 Tex. Admin. Code § 3.15(a)(5).
4. Complainant's disputes with Respondent do not defeat Respondent's reasonably satisfactory showing of a good faith claim.
5. There is insufficient evidence that the wells on Complainant's property should be plugged.
6. 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 Lease and Complainant failed to provide sufficient evidence to defeat Respondent's good faith claim.

Respectfully,



Jennifer Cook  
Administrative Law Judge



Petar Buva  
Technical Examiner