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DANA AVANT LEWIS
INTERIM DIRECTOR

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

Oil & Gas Docket No. 7B-0309783

SINGLE SIGNATURE P-4 FILING OF CHOLLA PETROLEUM, INC. (150683) FOR THE YOUNG 82 (25833) LEASE, WELL NO. 3, ROSCOE, SOUTH (PENN LIME) FIELD, NOLAN COUNTY, TEXAS, TO CHANGE THE OPERATOR FROM MOKAN CAPITAL, LLC (574035) TO CHOLLA PETROLEUM, INC.

PROPOSAL FOR DECISION

HEARD BY:

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

PROCEDURAL HISTORY:

Hearing -	July 24, 2018
Transcript Received and Close of Record -	August 10, 2018
Proposal for Decision Issued -	October 9, 2018

APPEARANCES:

For Cholla Petroleum, Inc. -
Richard Booth
Lynch Chappell & Alsup

Jamie Nielson
Attorney at Law

For Mokan Capital, LLC -
Matt Kenny, President

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I. Statement of the Case

Cholla Petroleum, Inc. (“Applicant” or “Cholla”) filed a single-signature Form P-4 *Certificate of Compliance and Transportation Authority* (“Form P-4”) requesting it be designated the Commission operator of record for Well No. 3 (“Well”) on the Young 82 Lease, Lease No. 25833, in the Roscoe, South (Penn Lime) Field in Nolan County. The Form P-4 did not contain the signature of the current Commission operator of record for the Well.

Mokan Capital, LLC (“Mokan”) is the current Commission operator of record for the Well. Mokan asserts its underlying contractual lease has not terminated such that it still has a good faith claim, and the Well should not be transferred to Cholla.

Cholla’s position is that Mokan’s contractual lease has terminated. The contractual lease has a primary term of one and one-half years and so long thereafter as there is production. Cholla maintains Mokan’s lease terminates if there is more than 60 days without production. Cholla’s basis for this claim is because the lease also states it does not terminate if reworking or drilling operations commence within 60 days of the cessation in production. Mokan has reported zero production over 60 consecutive days four times, each being between approximately 92-123 days.

Mokan asserts its contractual lease has not terminated. Mokan provided testimony and documentation that when the Well ceased producing, Mokan promptly commenced reworking operations. There was production after each of the four lapses in production.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Railroad Commission (“Commission” or “RRC”) find Mokan provided a reasonably satisfactory showing it still has a good faith claim to operate the Well, and deny Cholla’s application to transfer the Well to Cholla as the Commission operator of record.

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 July 6, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to Cholla and Mokan, as the current operator,² setting a hearing date of July 24, 2018.³ 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;

¹ The hearing transcript in this case is referred to as “Tr. at [pages].” Cholla’s exhibits are referred to as “Cholla Ex. [exhibit nos.].” Mokan’s exhibits are referred to as “Mokan Ex. [exhibit nos.].”

² See 16 Tex. Admin. Code § 3.58(a)(4).

³ See Notice of Hearing issued July 6, 2018.

and (4) a short and plain statement of the matters asserted.⁴ Consequently, the parties received more than 10 days' notice. The hearing was held on July 24, 2018. Both Cholla and Moka appeared and participated at the hearing.

III. Applicable Legal Authority

Cholla filed a Form P-4 without the signature of the current Commission operator of record and requests to be the Commission operator of record for the Well.

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 the property on which the well at issue is located, the operator is in compliance with Commission statutes, rules, orders and regulations. The Form P-4 establishes the operator of a well and certifies responsibility for regulatory compliance of that operator.⁵

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, Moka 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 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

⁴ See Tex. Gov't Code §§ 2001.051, .052; 16 Tex. Admin. Code §§ 1.42, 1.45.

⁵ 16 Tex. Admin. Code § 3.58(a)(1).

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.

(3) ...

(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 an 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.⁶ According to Commission statutes and rules, the definition of a good faith claim is:

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.⁷

IV. Discussion of Evidence

At the hearing, Cholla had one witness and approximately six exhibits. Moka had one witness and one exhibit.

⁶ 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).

⁷ Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

A. Summary of Cholla's Evidence and Argument

Cholla asserts Moka's contractual lease has expired for lack of production and that Cholla has a valid contractual lease giving it the right to operate the Well. Cholla asserts Moka's contractual lease expires when there is no production for more than 60 consecutive days. Cholla asserts on four occasions, there was a cessation of production for more than 60 days.

Mr. William Lawson was Cholla's only witness. He is Cholla's Vice President of Land.⁸ He testified there is a dispute between Cholla and Moka regarding the Well. Cholla provided an Oil and Gas Lease dated September 18, 2017 ("2017 Cholla Lease") in which lessors lease their mineral interests in the tract where the Well is located to Cholla to operate.⁹ Cholla also provided an Oil, Gas and Mineral Lease dated October 11, 1983 ("1983 Moka Lease") that also leases mineral interests; Moka relies on this lease for its right to operate the Well. Mr. Lawson does not dispute and testified that Moka is "controlled"¹⁰ by the 1983 Moka Lease.¹¹

Mr. Lawson testified and it is Cholla's position that the 1983 Moka Lease has a primary term of one and one-half years and so long thereafter as there is production. Cholla maintains the 1983 Moka Lease terminates if there is more than 60 days without production. The language in the 1983 Moka Lease Cholla relies on is:

If...the production thereof should cease from any cause, this lease shall not terminate if lessee commences reworking or additional drilling operations within sixty (60) days¹²

Mr. Lawson claims the 1983 Moka Lease expires after the primary term if production ceases for more than 60 days.

Cholla provided Commission production records for the Well. According to the production records, Moka reported zero production over 60 consecutive days four times:

1. November 2015 through January 2016, for approximately 92 days;
2. March 2016 through May 2016, for approximately 92 days;
3. September 2016 through December 2016, for approximately 122 days; and
4. July 2017 through October 2017, for approximately 123 days.¹³

According to Cholla, any one of these periods of more than 60 consecutive days without production terminated the 1983 Moka Lease. Mr. Lawson testified he has done a search

⁸ Cholla Ex. 1.

⁹ Cholla Ex. 2, Attachment A; Cholla Ex. 2, Attachment B is a copy of the Memorandum of Oil and Gas Lease filed with Nolan County.

¹⁰ Tr. at 27.

¹¹ Tr. at 17-35; Cholla Ex. 2, Attachment E; see also Cholla Ex. 2A, 2B (enlarged excerpts of portions of the 1983 Moka Lease).

¹² Cholla Ex. 2A.

¹³ Cholla Ex. 3, 4.

of Commission records and there have been no filings about drilling operations for the Commission lease at issue. Mr. Lawson testified it is his opinion that the 1983 Mokan Lease has terminated such that Mokan has no right to operate the Well. He further opined the Well should be transferred to Cholla because the 2017 Cholla Lease demonstrates Cholla has the right to operate the Well.¹⁴

Mr. Lawson further testified the mineral interests leased in the 2017 Cholla Lease are the same mineral interests leased in the 1983 Mokan Lease. He acknowledged if the 1983 Mokan Lease is still in effect, the 2017 Cholla Lease would not be because the lessors would not have had the right to lease to Cholla.¹⁵

B. Summary of Mokan's Evidence and Argument

Mokan argues it should remain the operator of record for the Well. It claims its contractual lease has not terminated. Mokan asserts the halts in production were for workovers which are allowed and prevent the contractual lease from terminating. Mokan also claims Cholla's contractual leases are not valid because the lessors' mineral interests are still bound by Mokan's lease such that the lessors did not have the right to execute a subsequent lease with Cholla.

Mr. Matt Kenny was Mokan's only witness. He testified Mokan has done many reworks on the Well. He testified he has kept the electricity on the entire time. He maintains Cholla does not have a valid lease because Mokan's lease has not terminated. He said the production records show that after the Well was down, once the well was put back online there was significant production compared to what the Well would normally produce. He provided this information as evidence that the intermittent gaps in production were due to workovers and that the Well was continually produced.¹⁶

Mr. Kenny argues his position that a 60-day lapse in production does not terminate a lease is supported by case law. He provided a copy of a case, *Anadarko Petroleum Corp. v. Thompson*,¹⁷ which he maintains supports his assertion that a 60-day lapse does not terminate a lease.¹⁸ In *Anadarko*, the Texas Supreme Court did find a 60-day lapse did not terminate the lease at issue. However, the language in the lease at issue was that the lease lasts as long as gas "is or can be produced." The Court held that according to the plain language of the lease, the parties intended that the well actually produce or be capable of producing.¹⁹ Yet Mr. Kenny did not point to similar language in the 1983 Mokan Lease, other than the language in that lease which states there is no termination if "the lessee commences reworking or additional drilling operations within sixty (60) days thereafter."²⁰

¹⁴ See Tr. at 35-42

¹⁵ *Id.* at 42-43.

¹⁶ *Id.* at 47-52; see also Cholla Ex. 6 (attachments include Mokan's documentation of operation costs and workover costs).

¹⁷ 94 S.W.3d 550 (Tex. 2002).

¹⁸ Tr. at 13-15, 64; Mokan Ex. 1.

¹⁹ 94 S.W.3d at 555-556.

²⁰ Cholla Ex. 2A.

Mr. Kenny testified the Well had problems and he tried to get the Well productive as cost effectively as possible due to low oil prices. The Well had gas locking problems so Moka tried putting different valves on it. Moka also tried hitting the pump at the bottom of the hole to loosen it because sometimes that can get it to start working again. When a well goes down, Mr. Kenny usually calls a pumper initially to try to get it working again. He would rather send someone to do work on the surface of the Well to see if it can be fixed that way before spending thousands of dollars for a workover rig. So, his practice is to pay a pumper to check on the well and if a well stops working, he would see if the pumper could fix it before paying for a workover rig.²¹ He testified:

I would say in good faith to try to produce an oil well when it's down, I would try to do the cheapest thing possible to make it produce, yes, and I would ask a pumper that I'm paying every month to check on it, I would ask him to fix it before I send a workover rig out that costs thousands of dollars.²²

C. Summary of Post-Hearing Filings

At the conclusion of the hearing, both parties discussed case law. Moka maintained case law supports finding the 1983 Moka Lease has not terminated. Cholla maintained case law demonstrates the 1983 Moka Lease has terminated due to any one of the four intermittent halts in production longer than 60 days. The Examiners gave each party the opportunity to file references to specific cases in support of its position after the hearing. Both parties filed submissions. Case law is discussed in the Examiners' Analysis section below.

V. Examiners' Analysis

The Examiners recommend Cholla's application to become the record operator of the Well be denied. The Examiners recommend the Commission find Moka provided a reasonably satisfactory showing of a good faith claim to operate the Well, and Cholla failed to provide sufficient evidence to defeat Moka's good faith claim.

Cholla filed a Form P-4 without Moka's signature and claims Moka does not have a good faith claim. 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.²³ If the required information is provided without protest, it will be approved administratively without need of a hearing. The reason there was a hearing in this case is because Moka, the current operator, filed a protest.

A good faith claim is defined in Commission rule as:

²¹ Tr. at 71-77.

²² *Id.* at 76:23 to 77:3.

²³ 16 Tex. Admin. Code § 3.58(a)(4).

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.²⁴

The origin of the “good-faith claim” requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.²⁵ 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.”²⁶ 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.”²⁷ 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” and another’s good faith dispute of title or possessory interest will not alone defeat an applicant.²⁸

Mokan relies on the 1983 Mokan Lease for its right to still be the operator for the Well. Cholla asserts the 1983 Mokan Lease has terminated due to four halts in production lasting over 60 days. The 1983 Mokan Lease provides that there is no termination if the operator starts reworking operations within 60 days from cessation of production.

Mokan claims the 1983 Mokan Lease does not automatically terminate if there is no production for 60 days; Mokan asserts termination is more complicated than that. Mokan provided testimony and some documentation that reworking operations began within 60 days every time production halted. Mokan provided testimony that every time the Well went down it worked to get it producing again, including paying a pumper monthly—even during the lapses in production—to produce the well and get it producing if it was not. Mokan maintains the fact the Well began producing after the reworking operations is evidence that there were reworking operations. Mokan claims there may be a lease dispute in this case, but a lease dispute is outside the Commission’s jurisdiction.

Cholla states Mokan’s activities during the lapses in production do not amount to reworking operations according to case law. Cholla provided five examples of instances Cholla claims “suggests that there must be manual work on the well itself with the intent to restore the well to production.”²⁹ The fact Cholla claims the case law “suggests” what is required indicates there is not settled law conclusively demonstrating Mokan does not have a good faith claim. Moreover, Mokan claims (and provided evidence) there was manual work on the Well with the intent to restore production. The fact the Well produced

²⁴ 16 Tex. Admin. Code § 3.15(a)(5).

²⁵ *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).

²⁶ *Magnolia Petroleum Co. v. R.R. Comm’n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

²⁷ *Id.* at 191 (emphasis added).

²⁸ *Id.* (emphasis added).

²⁹ Cholla post-hearing letter at 3 (filed July 26, 2018).

after each of the four lapses in production also supports Mokaan's claim that there were reworking operations.

Mokaan asserts Cholla does not have a good faith claim because the 2017 Cholla Lease is invalid. The parties do not dispute that if the 1983 Mokaan Lease is still in effect, the 2017 Cholla Lease is invalid. Regardless of whether Cholla has a good faith claim, the Examiners find Mokaan, the current operator, has provided a reasonably satisfactory showing of a good faith claim sufficient to remain the operator of record. Even if a bona fide lease dispute exists, it does not defeat Mokaan's good faith claim.

The Examiners recommend the Commission deny Cholla's request to transfer the Well to Cholla as the Commission operator of record.

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

The Examiners recommend the Commission (1) find Mokaan has provided a reasonably satisfactory showing of a good faith claim sufficient to remain the operator of record, (2) deny Cholla's application to transfer the Well to Cholla and (3) adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Cholla Petroleum, Inc. ("Applicant" or "Cholla"), RRC Operator No. 150683, a single-signature Form P-4 *Certificate of Compliance and Transportation Authority* ("Form P-4") requesting it be designated the Commission operator of record for Well No. 3 ("Well") on the Young 82 Lease, Lease No. 25833, in the Roscoe, South (Penn Lime) Field in Nolan County. The Form P-4 did not contain the signature of the current Commission operator of record Well.
2. Mokaan Capital, LLC ("Mokaan"), RRC Operator No. 574035, is the current Commission operator of record for the Well.
3. To demonstrate its good faith claim to operate the Well, Cholla provided an Oil and Gas Lease dated September 18, 2017 ("2017 Cholla Lease") in which lessors lease their mineral interests in the tract where the Well is located to Cholla to operate.
4. Notice of Cholla's application to transfer the Well was given to Mokaan.
5. Mokaan filed a protest of the application to transfer the Well and requested a hearing. Mokaan asserts its underlying contractual lease has not terminated such that it still has a good faith claim, and the Well should not be transferred to Cholla.
6. On July 6, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Cholla and Mokaan, as the current operator, setting a hearing date of

July 24, 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. Consequently, the parties received more than 10 days' notice. The hearing was held on July 24, 2018. Both Cholla and Mokaan appeared and participated at the hearing.

7. Cholla asserts Mokaan does not have a good faith claim to operate the Well such that the Well should be transferred to Cholla.
8. 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).
9. To demonstrate its good faith claim to operate the Well, Mokaan provided an Oil, Gas and Mineral Lease dated October 11, 1983 ("1983 Mokaan Lease") in which lessors lease their mineral interests in the tract where the Well is located to Mokaan to operate.
10. Cholla's position is that the 1983 Mokaan Lease has terminated.
11. The 1983 Mokaan Lease has a primary term of one and one-half years and so long thereafter as there is production. Cholla maintains the 1983 Mokaan Lease terminates if there is more than 60 days without production. The language in the 1983 Mokaan Lease Cholla relies on is:

If...the production thereof should cease from any cause, this lease shall not terminate if lessee commences reworking or additional drilling operations within sixty (60) days
12. According to Commission production records, Mokaan reported zero production over 60 consecutive days four times:
 - a. November 2015 through January 2016, for approximately 92 days;
 - b. March 2016 through May 2016, for approximately 92 days;
 - c. September 2016 through December 2016, for approximately 122 days; and
 - d. July 2017 through October 2017, for approximately 123 days.

According to the production records, after each of the four lapses in production, production resumed.
13. Mokaan provided testimony and documentation that every time the Well ceased producing, it commenced reworking operations.

14. Mokan has demonstrated a reasonably satisfactory showing of a good faith claim to a continuing right to operate the Well.
15. While a bona fide lease dispute may exist between Mokan and Cholla, it does not defeat Mokan's good faith claim.
16. Mokan should remain the operator of record for the Well.
17. The Well should not be transferred to Cholla as operator of record.

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. Mokan has a good faith claim to operate the Well.
4. Mokan should remain the operator of record for the Well.
5. The Well should not be transferred to Cholla as operator of record.

Recommendations

The Examiners recommend the Commission find Mokan has provided a reasonably satisfactory showing of a good faith claim sufficient to remain the operator of record. The Examiners recommend the Commission deny Cholla's application to transfer the Well to Cholla.

Respectfully,



Jennifer Cook
Administrative Law Judge



Robert Musick, P.G.
Technical Examiner