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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7C-0316622

COMPLAINT OF HENRY STOKES THAT INSPIRE OIL & GAS INC. (424758) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE LYNN, HARRY ESTATE (07444) LEASE, BALLINGER (PALO PINTO, N.) FIELD, RUNNELS COUNTY, TEXAS

PROPOSAL FOR DECISION

EXAMINERS:

Jennifer Cook
Administrative Law Judge
Petar Buva
Technical Examiner

PROCEDURAL HISTORY:

Hearing Date -	April 5, 2019
Close of Record -	May 14, 2019
Proposal for Decision Issued -	July 9, 2019

APPEARANCES:

For Complainant Henry Stokes -

Henry Stokes
Diana Hood

For Respondent Inspire Oil & Gas, Inc. -

Bill Kerrigan, Respondent's Representative
Glenda Bianchi, Agent for Respondent

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I. Statement of the Case

Henry Stokes (“Complainant”) filed a complaint (“Complaint”) claiming Inspire Oil & Gas, Inc. (“Respondent” or “Inspire”) does not have a good faith claim to operate the wells (“Wells”) on the Lynn, Harry Estate Lease (“Lease”), Lease No. 07444, in the Ballinger (Palo Pinto, N.) Field, in Runnels County, Texas.

Complainant asserts Respondent does not have a good faith claim because the tracts where the Wells are located are unleased and any contractual lease relied on by Respondent has terminated for lack of production. Complainant requests the Commission order the Wells to be plugged and that the Lease be brought into compliance with Commission rules.

Respondent claims the underlying contractual lease is still in effect and has not terminated. Respondent acknowledges the Lease is in violation of Commission rules and there is contamination at 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”) grant Complainant’s request. The Examiners recommend the Commission find Respondent failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells and order Respondent to plug the Wells, remediate the contamination and bring the Lease into compliance with Commission rules.

II. Jurisdiction and Notice¹

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

On March 14, 2019, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to Complainant and Respondent, setting a hearing date of April 5, 2019. Consequently, the 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.² The hearing was held on April 5, 2019, as noticed. Complainant and Respondent appeared and participated at the hearing.

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

² See Tex. Gov’t Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

III. Applicable Legal Authority

Complainant alleges the Commission's current operator of record, Respondent, does not have a good faith claim to operate the Wells. 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.³

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

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(b)(1) 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 extension of the deadline for plugging an inactive well.⁶

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:

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

⁴ Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

⁵ 16 Tex. Admin. Code § 3.15(a)(6).

⁶ 16 Tex. Admin. Code § 3.15(d)(1).

- (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.⁷

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

Tex. Nat. Res. Code § 91.101 provides in pertinent part:

RULES AND ORDERS.

- (a) To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:
 - (1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;
 - (2) the production of oil and gas, including:
 - (A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;
 - (B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;
 - (C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;
 - (D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

⁷ Emphasis added.

- (E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and
 - (F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;
- (3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and
- (4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this subsection.

Tex. Nat. Res. Code § 91.113 provides in pertinent part:

INVESTIGATION, ASSESSMENT, OR CLEANUP BY COMMISSION.

- (a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:
- (1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;
 - (2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or
 - (3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.
- (b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

Tex. Water Code § 26.131(a)(1) provides:

DUTIES OF RAILROAD COMMISSION.

(a) The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, including:

- (A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;
- (B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Railroad Commission of Texas;
- (C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;
- (D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;
- (E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and
- (F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

16 Tex. Admin. Code § 3.8(b) ("Statewide Rule 8(b)") states:

No pollution. No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.

16 Tex. Admin. Code § 3.91 ("Statewide Rule 91") states in pertinent part:

Cleanup of Soil Contaminated by a Crude Oil Spill

(a) Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Free oil--The crude oil that has not been absorbed by the soil and is accessible for removal.
- (2) Sensitive areas--These areas are defined by the presence of factors, whether one or more, that make an area vulnerable to pollution from crude oil spills. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or

pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas.

(3) Hydrocarbon condensate--The light hydrocarbon liquids produced in association with natural gas.

(b) Scope. These cleanup standards and procedures apply to the cleanup of soil in non-sensitive areas contaminated by crude oil spills from activities associated with the exploration, development, and production, including transportation, of oil or gas or geothermal resources as defined in § 3.8(a)(30) of this title (relating to Water Protection). For the purposes of this section, crude oil does not include hydrocarbon condensate. These standards and procedures do not apply to hydrocarbon condensate spills, crude oil spills in sensitive areas, or crude oil spills that occurred prior to the effective date of this section. Cleanup requirements for hydrocarbon condensate spills and crude oil spills in sensitive areas will be determined on a case-by-case basis. Cleanup requirements for crude oil contamination that occurred wholly or partially prior to the effective date of this section will also be determined on a case-by-case basis. Where cleanup requirements are to be determined on a case-by-case basis, the operator must consult with the appropriate district office on proper cleanup standards and methods, reporting requirements, or other special procedures.

(c) Requirements for cleanup.

- (1) Removal of free oil. To minimize the depth of oil penetration, all free oil must be removed immediately for reclamation or disposal.
- (2) Delineation. Once all free oil has been removed, the area of contamination must be immediately delineated, both vertically and horizontally. For purposes of this paragraph, the area of contamination means the affected area with more than 1.0% by weight total petroleum hydrocarbons.
- (3) Excavation. At a minimum, all soil containing over 1.0% by weight total petroleum hydrocarbons must be brought to the surface for disposal or remediation.
- (4) Prevention of stormwater contamination. To prevent stormwater contamination, soil excavated from the spill site containing over 5.0% by weight total petroleum hydrocarbons must immediately be:
 - (A) mixed in place to 5.0% by weight or less total petroleum hydrocarbons; or
 - (B) removed to an approved disposal site; or
 - (C) removed to a secure interim storage location for future remediation or disposal. The secure interim storage location may be on site or off site. The storage location must be designed to

prevent pollution from contaminated stormwater runoff. Placing oily soil on plastic and covering it with plastic is one acceptable means to prevent stormwater contamination; however, other methods may be used if adequate to prevent pollution from stormwater runoff.

(d) Remediation of soil.

- (1) Final cleanup level. A final cleanup level of 1.0% by weight total petroleum hydrocarbons must be achieved as soon as technically feasible, but not later than one year after the spill incident. The operator may select any technically sound method that achieves the final result.
- (2) Requirements for bioremediation. If on-site bioremediation or enhanced bioremediation is chosen as the remediation method, the soil to be bioremediated must be mixed with ambient or other soil to achieve a uniform mixture that is no more than 18 inches in depth and that contains no more than 5.0% by weight total petroleum hydrocarbons.

Generally, operators are required to prevent pollution and delineate and remediate contamination.

IV. Discussion of Evidence

Complainant provided two witnesses and five exhibits. Respondent provided one witness and two 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. Complainant requests the Commission order the Wells to be plugged and the Lease remediated and otherwise brought into compliance with Commission rules. Complainant is a surface owner and mineral interest owner of the tracts where the Wells are located.⁸

Complainant's first witness was Diana Hood, Complainant's daughter. Complainant provided a copy of the underlying contractual lease ("Contractual Lease") relied on by Respondent to operate the Wells.⁹ It is dated October 10, 1973. The primary term of the lease is 10 years "and as long thereafter as oil, gas or other mineral is produced from said land or land with which said land is pooled hereunder."¹⁰ The Contractual Lease further provides that after the primary term, the lease remains in force so long as there is no cessation of more than 60 consecutive days.¹¹ Complainant

⁸ See, e.g. Tr. at 57.

⁹ Complainant Ex. 1.

¹⁰ *Id.* at ¶ 1.

¹¹ *Id.* at ¶ 6; Tr. at 16-18.

provided the last production statement he has received with the last royalty check received, which shows no production beyond March 2017.¹²

Complainant testified second. Complainant testified that in about February 2017, he noticed one of the Wells was leaking “pretty good.”¹³ He contacted the Commission and the Lease was investigated. Complainant said he told a representative of Respondent, who stated that he knew about the leak, but Respondent did not have the money to fix it.¹⁴

Complainant provided certified copies of Commission records.¹⁵ Complainant provided Commission production reports showing no reported production from the Lease since November 2018. The production reports show production for the months of September and October 2018 to be 6 barrels per month.¹⁶ Complainant provided Commission inspection reports dated March 6, 2018, October 5, 2018, November 20, 2018, December 4, 2018, December 28, 2018, January 4, 2019 and February 26, 2019. The March 6, 2018 inspection report identifies seven wells on the Lease. A summary of the findings follows:

Well No.	Status	Description	Violations
A1	Inactive	Shut in well, no rods or pumping unit	Wrong operator identified
A2	Inactive	Everything removed from well; surface casing has a dry hole cap screwed into it	Old dry fenced pit that needs backfilled; No sign posted
B1	Inactive	Well shut in, no rods or pumping unit	Wrong operator identified
B2	Inactive	No motor to drive the unit	Bradenhead is leaking produced water; wrong operator identified
C1	Inactive	Shut in well	Wrong operator identified
C2	Inactive	Power is off, flowline valves are closed, well shut in	Wrong operator identified
C3	Inactive	Shut in well	Wrong operator identified

On March 19, 2018, the Commission sent Respondent a letter notifying it of the violations and giving Respondent until April 23, 2018, to remedy the violations.¹⁷

On October 4, 2018, Complainant contacted the Commission about a leaking well and leaking tank batteries. At the October 5, 2018 inspection, Commission staff (“Staff”) noted that all wells were inactive. Four separate leaks were found at the tank battery. It

¹² Complainant Ex. 2; Tr. at 18.

¹³ Tr. at 21:2.

¹⁴ Tr. at 20-22.

¹⁵ Complainant Ex. 3; Tr. at 25-34.

¹⁶ Complainant Ex. 3 at 3.

¹⁷ *Id.*

was noted that the tank battery is 200 feet from a spring fed lake. The following well violations were documented.

Well No.	Status	Violations
A1	Inactive	Water flow was noted on the surface casing with low pressure
A2	Inactive	
B1	Inactive	
B2	Inactive	Bradenhead is leaking produced water (same as March 2018); it is located within 100 feet of spring fed lake; area of saturated soil is a 40-foot diameter; flow line leak was noted
C1	Inactive	
C2	Inactive	
C3	Inactive	

Respondent was notified of the violation in a letter from Staff dated October 11, 2018. On November 27, 2018, The Commission issued a pipeline severance because the violations had not been remedied.¹⁸

At the November 20, 2018 inspection, Well No. B2 was not leaking at the time of the inspection. The tank battery was still leaking. None of the spills had been remediated.¹⁹

At the December 4, 2018 inspection, Well No. B2 was observed to be leaking at the time of the inspection. The tank battery was still leaking. The spill at a flow line had worsened and there was standing oil. None of the spills had been remediated. It was also noted the terrain runs downhill to the pond.²⁰

At the December 28, 2018 inspection, Well No. B2 had a leak around the surface casing, there was pressure on the bradenhead and there was still soil saturation. It was noted that instead of remediating the area around the tank battery, the operator had placed new dirt over the spill instead of cleaning it up.²¹

In response to a call by Complainant, Staff conducted an inspection on January 4, 2019. At the January 4, 2019 inspection, the tank battery area had not been remediated. Complainant was at the inspection and had reported that he saw Respondent's representatives draining the water tanks in ditches dug through the firewall. Staff noted water standing in a low spot behind the tank battery. Staff checked the tanks and all water and oil tanks were empty. It was noted that no repairs or remediation had been done at Well No. 2.²² Complainant testified that prior to January 4, he saw Respondent's

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

representatives drain the water tanks by dumping the produced water on the ground near the tank battery.²³

On January 29, 2019, the Commission issued another pipeline severance on the Lease because Commission violations had not been remedied. In the severance letter, Commission staff noted the following:

SWR 8/91. Oil spills at the tank battery from a leaking flowline, seeps from the production tanks, and a leaky valve on the water tank or all causing oil and water contamination. There has been no proper remediation of the spills.

SWR 13. A leak at the well head from well B 2 with a chloride concentration of 88,900 PPM has not been contained, and continues to leak. A fresh water stock tank is in danger of being contaminated from the leak.

Due to the severances, Respondent is not authorized to produce hydrocarbons from the Lease.²⁴

At the February 26, 2019 inspection, it was observed that the tank battery had been cleaned up and a new firewall built. Neither the leak around the wellhead allowing water to escape nor the leak to the flowline allowing oil to escape had been repaired. There had been no remediation.²⁵

Complainant and Complainant's daughter testified that leaks continue, and no remediation has been done. The cows will not drink from the area of the pond downhill from the Well No. B2 and the tank battery, which is where they used to drink. There are no longer bass or minnows in the area.²⁶ Complainant provided pictures showing the contamination and abandoned wells on the Lease.²⁷ There were also pictures included with the Commission inspection reports.²⁸

Ms. Hood testified that when she saw the production reports showing production in 2018, she did not understand how the Wells, which appeared inactive to her and Complainant, had production. To gather more information, she did a query on the Commission website and provided a Commission production report showing that Respondent had reported that 301 barrels—out of an alleged total of 318 barrels—were “inadvertently pumped into a disposal well.”²⁹

²³ Tr. at 30-31.

²⁴ Complainant Ex. 3.

²⁵ *Id.*

²⁶ Tr. at 32-49, 64-66.

²⁷ Complainant Ex. 4; Tr. at 34-49.

²⁸ Complainant Ex. 3.

²⁹ Tr. at 49-53; Complainant Ex. 5.

B. Summary of Respondent's Evidence and Argument

Respondent's position is that the Contractual Lease has a provision that a breach is not a termination and requires notification to the lessor and an opportunity to remedy.³⁰

Respondent's only witness was Mr. Bill Kerrigan who is an employee of Respondent. He testified he believes the cows do not drink from the area downhill from the contamination because it is more difficult to get to that area because it is lower and swampy and a challenge to maneuver down to it.³¹ He testified that he disagreed that there is any evidence of contamination to Complainant's stock pond. He testified that the water tanks are empty down to the load line, and he does not believe that the tanks are leaking from below the load line.³²

Mr. Kerrigan testified that he does not know if Respondent is responsible for the contamination on the Lease. He testified he does not know if Inspire caused any of the contamination or if the contamination was even caused by oilfield activities. He testified that if anyone used a pit or caused contamination, they did so without his authority.³³

Mr. Kerrigan testified that damage to valves near the tank battery and cracks were caused by cattle stepping on them. He testified that a fence was built in December 2018 to prevent the cattle from causing more damage.³⁴ However, as of March 14, 2019—the date of pictures provided by Complainant—there is no fence.³⁵

Mr. Kerrigan testified that efforts have been made to repair leaks. He testified that Well No. A1 had a leaking pipe and a clamp was put on each side of the hole in the pipe to stop the leak. He also testified that there is contaminated soil in the area of Well. No. A1, which has not been remediated. He acknowledged that wells on the Lease are inactive. He testified there is an abandoned pit near Well No. C3. He testified that because the wells were drilled in 1978-1979 there is inevitably going to be contamination.³⁶ He testified that based on the age of the Wells, they look "amazingly good to me."³⁷ Generally, he acknowledged the contamination alleged by Complainant. He did state Respondent plans to fix things.³⁸

Mr. Kerrigan testified and provided documentation that there was above average rainfall at the Lease in August through December 2018, which prevented Inspire from getting a workover rig to Well No. B2 and fixing it.³⁹

³⁰ Tr. at 67-70; Complainant Ex. 1, ¶ 9.

³¹ Tr. at 77.

³² Tr. at 76-80.

³³ Tr. at 80-83.

³⁴ Tr. at 84-87.

³⁵ Complainant Ex. 4 at 13.

³⁶ The Examiners do not agree with this statement and Commission rules require contamination to be remediated. See, e.g., 16 Tex. Admin. Code § 3.91.

³⁷ Tr. at 94:6.

³⁸ Tr. at 87-97.

³⁹ Tr. at 97-104.

Mr. Kerrigan testified he believes there remains value to be gained on this Lease.⁴⁰

Mr. Kerrigan testified that all the oil that was produced over a two-year period, approximately 300 barrels, was inadvertently sent to a disposal well. While he provided no documentation and could not be specific, he stated that the only wells that could have had production are Well Nos. A2, C1, C2 and C3.⁴¹ Mr. Kerrigan's closing statement in its entirety was as follows:

MR. KERRIGAN: This lease has been operated this same way for at least three operators and Mr. Stokes, to my knowledge, hasn't made any complaints. The only time we ever had a problem, it developed after I didn't pay him for the two cows that he said I killed. So that's all I'm going to say about that.⁴²

V. Examiners' Analysis

The Examiners recommend Complainant's request for relief be granted. The Examiners recommend the Commission find there was not a reasonably satisfactory showing of a good faith claim to operate the Wells and the Wells should be ordered plugged.

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

A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.⁴³

The origin of the "good-faith claim" requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.⁴⁴ 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.⁴⁵

The Court went on to state:

⁴⁰ Tr. at 107-112.

⁴¹ Tr. at 128-129.

⁴² Tr. at 132:2-132:7.

⁴³ 16 Tex. Admin. Code § 3.15(a)(5).

⁴⁴ *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).

⁴⁵ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

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. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy.⁴⁶

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.⁴⁷ 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.⁴⁸

The parties do not dispute that Respondent has not produced hydrocarbons from the Lease since at least October 2018 and there have been no operations since. By the terms of the Contractual Lease, it terminated 60 days after production ceased. It is questionable as to whether there was any production in 2018. Due to violations of Commission rules, there is a Commission severance precluding Respondent from operating on the Lease. While there is reported production prior to November 2018, according to Commission inspection reports, pictures and Complainant's testimony during this timeframe, none of the wells were active. The Examiners did not find Respondent's explanation of production and the disposal of nearly all production compelling. Mr. Kerrigan testified that the only wells that could have had production are Well Nos. A2, C1, C2 and C3. Even if those Wells have only been non-productive since November 2018, the Contractual Lease has terminated, and those Wells should be plugged by November 2019.

To the extent Respondent claims that Respondent's failure to produce is a breach of the Contractual Lease triggering the provision requiring notice and an opportunity to cure, according to the plain language of the Contractual Lease and case law, there is no duty to produce and thus no breach of a duty for failing to produce; the consequence of failing to produce is that the Contractual Lease terminates.⁴⁹ Respondent provides no legal authority that failure to produce amounts to a breach of the Contractual Lease. The Examiners find that to the extent Respondent is claiming this is a breach and the contractual breach provisions apply, such claim is without merit.

There was also evidence, which Respondent did not dispute, of contamination and violations of Commission rules at the Lease.

⁴⁶ *Id.* at 191 (emphasis added).

⁴⁷ *Id.*; 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*.

⁴⁸ *Id.*

⁴⁹ *Waggoner & Zeller*, 508 S.W.2d 163 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.).

For these reasons, the Examiners recommend the Commission find Respondent failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells, order Respondent to plug Well Nos. A2, C1, C2 and C3 within 12 months of October 2018, to plug the remaining wells within 30 days, to remediate the Lease and to otherwise bring it into compliance with Commission rules.

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

Based on the record and evidence presented, the Examiners recommend the Commission find Respondent failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells, grant Complainant's request to have the Wells ordered plugged and Lease brought into compliance with Commission rules, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Henry Stokes ("Complainant") filed a complaint ("Complaint") claiming Inspire Oil & Gas, Inc. ("Respondent" or "Inspire") does not have a good faith claim to operate the wells ("Wells") on the Lynn, Harry Estate Lease ("Lease"), Lease No. 07444, in the Ballinger (Palo Pinto, N.) Field, in Runnels County, Texas.
2. Complainant is a surface owner and mineral interest owner of the tracts where the Wells are located.
3. Respondent is the Commission operator of record for the Wells.
4. On March 14, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent, setting a hearing date of April 5, 2019. Consequently, the 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 April 5, 2019, as noticed. Complainant and Respondent appeared and participated at the hearing.
5. The underlying contractual lease ("Contractual Lease") relied on by Respondent to operate the Wells is dated October 10, 1973. The primary term of the lease is 10 years "and as long thereafter as oil, gas or other mineral is produced from said land or land with which said land is pooled hereunder." The Contractual Lease further provides that after the primary term, the lease remains in force so long as there is no cessation of more than 60 consecutive days.

6. There has been no reported production from the Wells since October 2018. The production reports show production for the months of September and October 2018 to be 6 barrels per month.
7. According to the last production statement Complainant has received with the last royalty check received shows no production beyond March 2017.
8. According to Commission inspection reports from March 2018 to February 26, 2019, the Wells on the Lease were inactive.
9. Complainant has not observed any production of the Wells during 2018 to present, and pictures show the Wells and area to be in a dilapidated state.
10. Respondent's representative that the only wells that could have had production are Well Nos. A2, C1, C2 and C3.
11. Violations of Commission rules and contamination due to oilfield activities have been ongoing at the Lease from at least March 2018 to present.
 - a. There were Commission inspections on March 6, 2018, October 5, 2018, November 20, 2018, December 4, 2018, December 28, 2018, January 4, 2019 and February 26, 2019.
 - b. The March 6, 2018 inspection report identifies seven wells on the Lease. summary of the findings follows:

Well No.	Status	Description	Violations
A1	Inactive	Shut in well, no rods or pumping unit	Wrong operator identified
A2	Inactive	Everything removed from well; surface casing has a dry hole cap screwed into it	Old dry fenced pit that needs backfilled; No sign posted
B1	Inactive	Well shut in, no rods or pumping unit	Wrong operator identified
B2	Inactive	No motor to drive the unit	Bradenhead is leaking produced water; wrong operator identified
C1	Inactive	Shut in well	Wrong operator identified
C2	Inactive	Power is off, flowlines valves are closed, well shut in	Wrong operator identified
C3	Inactive	Shut in well	Wrong operator identified

- c. On March 19, 2018, the Commission sent Respondent a letter notifying it of the violations and giving Respondent until April 23, 2018, to remedy the violations.

- d. On October 4, 2018, Complainant contacted the Commission about a leaking well and leaking tank batteries. At the October 5, 2018 inspection, Commission staff ("Staff") noted that all wells were inactive. Four separate leaks were found at the tank battery. It was noted that the tank battery is 200 feet from a spring fed lake. The following well violations were documented.

Well No.	Status	Violations
A1	Inactive	Water flow was noted on the surface casing with low pressure
A2	Inactive	
B1	Inactive	
B2	Inactive	Bradenhead is leaking produced water (same as March 2018); it is located within 100 feet of spring fed lake; area of saturated soil is a 40-foot diameter; flowline leak was noted
C1	Inactive	
C2	Inactive	
C3	Inactive	

Respondent was notified of the violations in a letter from Staff dated October 11, 2018.

- e. At the November 20, 2018 inspection, Well No. B2 was not leaking at the time of the inspection. The tank battery was still leaking. None of the spills had been remediated.
- f. At the December 4, 2018 inspection, Well No. B2 was observed to be leaking at the time of the inspection. The tank battery was still leaking. The spill at a flow line had worsened and there was standing oil. None of the spills had been remediated. It was also noted the terrain runs downhill to the pond.
- g. At the December 28, 2018 inspection, Well No. B2 had a leak around the surface casing, there was pressure on the bradenhead and there was still soil saturation. It was noted that instead of remediating the area around the tank battery, the operator had placed new dirt over the spill instead of cleaning it up.
- h. In response to a call by Complainant, Staff conducted an inspection on January 4, 2019. At the January 4, 2019 inspection, the tank battery area had not been remediated. Complainant was at the inspection and had reported that he saw Respondent's representatives draining the water tanks in ditches dug through the firewall. Staff noted water standing in a low spot behind the tank battery. Staff checked the tanks and all water and oil tanks were empty. It was noted that no repairs or remediation had been done at Well No. 2. Complainant testified that prior to January 4, he saw Respondent's representatives drain the water tanks by dumping the produced water on the ground near the tank battery.

- i. At the February 26, 2019 inspection, it was observed that the tank battery had been cleaned up and a new firewall built. Neither the leak around the wellhead allowing water to escape nor the leak to the flowline allowing oil to escape had been repaired. There had been no remediation.
 - j. According to pictures of the Lease, there are still leaks and contamination on the Lease.
 - k. Respondent's representative at the hearing, Bill Kerrigan, acknowledged there is currently contamination and leaks on the Lease.
 - l. Respondent's representative testified that Well No. A1 had a leaking pipe and a clamp was put on each side of the hole in the pipe to stop the leak. He also testified that there is contaminated soil in the area of Well. No. A1, which has not been remediated.
 - m. Respondent's representative testified there is an abandoned pit near Well No. C3.
12. Complainant owns a stock pond and has cattle on the tracts where the Wells are located. There is contamination in proximity and uphill from the pond. Complainant testified that Complainant's cows no longer drink from the area of the pond downhill from the contamination.
13. Respondent has not delineated the scope of contamination on the Lease.
14. On November 27, 2018, the Commission issued a pipeline severance on the Lease because Commission violations had not been remedied.
15. On January 29, 2019, the Commission issued another pipeline severance on the Lease because Commission violations had not been remedied. In the severance letter, Commission staff noted the following:
- SWR 8/91. Oil spills at the tank battery from a leaking flowline, seeps from the production tanks, and a leaky valve on the water tank or all causing oil and water contamination. There has been no proper remediation of the spills.
- SWR 13. A leak at the well head from well B 2 with a chloride concentration of 88,900 PPM has not been contained, and continues to leak. A fresh water stock tank is in danger of being contaminated from the leak.
16. Due to the severances, Respondent is not authorized to produce hydrocarbons from the Lease.

17. There is insufficient evidence that Respondent has a good faith claim to a continuing right to operate the Wells.
18. Absent a "good faith claim" to operate, the Wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15.
19. Any plugging extensions for the Wells should be canceled and Well Nos. A1, B1 and B2 should be plugged immediately and Well Nos. A2, C1, C2 and C3 should be plugged within 12 months of October 2018.

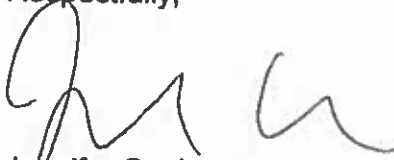
Conclusions of Law

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. Well Nos. A1, B1 and B2 are "inactive wells" as that term is defined in Commission rule. 16 Tex. Admin. Code § 3.15(a)(6).
4. Well Nos. A2, C1, C2 and C3 will be "inactive wells" as that term is defined in Commission rule no later than November 1, 2019. 16 Tex. Admin. Code § 3.15(a)(6).
5. There was not a reasonably satisfactory showing that Respondent has a good faith claim of a continuing right to operate the Wells. 16 Tex. Admin. Code § 3.15(a)(5).
6. The Wells are not eligible for plugging extensions. 16 Tex. Admin. Code § 3.15(c).
7. Commission rules require that the Wells be plugged, and associated equipment should be removed.
8. The Lease is required to be placed in compliance with all Commission rules, included Statewide Rules 8, 13, 14, 15 and 91. 16 Tex. Admin. Code §§ 3.8, 3.13, 3.14, 3.15 and 3.91.
9. Commission rules require that the contamination at the Lease be delineated and remediated.
10. Inspire is responsible for plugging the Wells and bringing the Lease into compliance with Commission rules. See, e.g., 16 Tex. Admin. Code § 3.58(a)(1), (a)(2).

Recommendations

The Examiners recommend the Commission find there was no reasonably satisfactory showing that Respondent has a good faith claim to operate the Wells, and grant Complainant's request to have the Wells ordered plugged and the Lease brought into compliance with Commission rules.

Respectfully,

A handwritten signature in black ink, appearing to be 'Jennifer Cook', written in a cursive style.

Jennifer Cook
Administrative Law Judge

A handwritten signature in black ink, appearing to be 'Petar Buva', written in a cursive style.

Petar Buva
Technical Examiner