



RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL & GAS DOCKET NO. 10-0319617

Complaint by Ralph Reser that W.B.D. Oil and Gas Inc. (Operator No. 888033) Does Not Have a Good Faith Claim to Operate the Smith, T. G. (096133) Lease, Well No. 1 R, Panhandle, West Field, Moore County, Texas

OIL & GAS DOCKET NO. 10-0319618

Complaint by Ralph Reser that W.B.D. Oil and Gas Inc. (Operator No. 888033) Does Not Have a Good Faith Claim to Operate the Morton (07016) Lease, Panhandle Moore County Field, Moore County, Texas

OIL & GAS DOCKET NO. 10-0319619

Complaint by Ralph Reser that W.B.D. Oil and Gas Inc. (Operator No. 888033) Does Not Have a Good Faith Claim to Operate the Guleke (02220) Lease, Panhandle Moore County Field, Moore County, Texas

OIL & GAS DOCKET NO. 10-0319620

Complaint by Ralph Reser that W.B.D. Oil and Gas Inc. (Operator No. 888033) Does Not Have a Good Faith Claim to Operate the Ware (02362) Lease, Panhandle Moore County Field, Moore County, Texas

PROPOSAL FOR DECISION

EXAMINERS:

Jennifer Cook, Administrative Law Judge
Ashley Correll, P.G., Technical Examiner

PROCEDURAL HISTORY:

Hearing Date -	September 30, 2019
Close of Record -	October 16, 2019
Proposal for Decision Issued -	January 6, 2019

APPEARANCES:

For Complainant Ralph G. Reser -
Ralph G. Reser

For Respondent W.B.D. Oil & Gas Inc. -
Caitlyn Bates and Brian Sullivan
McElroy, Sullivan, Miller & Weber, LLP

Table of Contents

I.	Statement of the Case	3
II.	Jurisdiction and Notice	3
III.	Applicable Legal Authority.....	4
IV.	Discussion of Evidence	5
V.	Examiners' Analysis	7
VI.	Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law	8

I. Statement of the Case¹

Ralph G. Reser ("Complainant") filed a complaint ("Complaint") claiming W.B.D. Oil & Gas Inc. ("Respondent" or "WBD") does not have a good faith claim to operate the following leases ("Leases") and wells ("Wells") in Moore County:

- The Smith, T. G. Lease, Well No. 1 R, (Gas ID No. 096133) in the Panhandle, West Field;
- The Morton (07016) Lease, in the Panhandle Moore County Field;
- The Guleke (02220) Lease, in the Panhandle Moore County Field; and
- The Ware (02362) Lease, Panhandle Moore County Field.

Complainant is a mineral interest owner of tracts where the Wells are located. Complainant claims WBD has no good faith claim to operate the Wells, so the Wells should be ordered plugged. Complainant asserts that there has been insufficient production on the Leases.

WBD claims it has a good faith claim to operate the Wells. WBD provided a contractual oil and gas lease covering an entire section of land which is broken into several Commission leases. While there are some Commission leases that are not currently productive, there has been continuous production on the section covered by the contractual 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") find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells, and deny Complainant's request for an order requiring Respondent to plug the Wells.

II. Jurisdiction and Notice

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

On August 28, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent, setting a hearing date of September 30, 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

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)]."

statement of the matters asserted.² The hearing was held on September 30, 2019, as noticed. Complainant and Respondent appeared and participated 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 subject leases and 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

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

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).

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.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.

IV. Discussion of Evidence

Ralph G. Reser ("Complainant") filed a complaint ("Complaint") claiming W.B.D. Oil & Gas Inc. ("Respondent" or "WBD") does not have a good faith claim to operate the following leases ("Leases") and wells ("Wells") in Moore County:

- The Smith, T. G. Lease, Well No. 1 R, (Gas ID No. 096133) in the Panhandle, West Field;
- The Morton (07016) Lease, in the Panhandle Moore County Field;
- The Guleke (02220) Lease, in the Panhandle Moore County Field; and
- The Ware (02362) Lease, Panhandle Moore County Field.

At the beginning of the hearing, the parties stipulated that all the wells on the Morton Lease, the Guleke Lease, and the Ware Lease have not been productive and were plugged in the 1990s, with the exception of a saltwater disposal well on the Morton Lease.⁸

⁷ Emphasis added.

⁸ Tr. at 17-21; see *a/so* Complainant Ex. 1-2.

Complainant testified that he is a one percent mineral interest owner of the tracts where the subject wells are located.⁹ Complainant acknowledged that he is being paid on production through his working interest in Section 132.¹⁰

Stacey Ladd, Vice President of WBD, testified on behalf of WBD. She directly supervised WBD's operations on Section 132. She testified that Complainant does receive payments on the production on Section 132.¹¹

WBD provided a 1939 oil and gas lease ("Contractual Lease") covering all of Section 132 with a land description as follows:

An undivided one-fourth (1/4th) interest in and to all of Section Number One Hundred Thirty-two (132) in Block 3-T, T. & X. O. YR. Co. Survey, and containing 640 acres, more or less.¹²

While the Contractual Lease covers all of Section 132, Section 132 is divided into several Commission leases, including the Leases and Wells at issue in this case.¹³ The Contractual Lease has a 10-year primary term and continues "as long thereafter as oil or gas is or can be produced from any well on said lease," which is the entire Section 132.¹⁴

WBD provided Commission Form P-4s *Certificates of Compliance and Transportation Authority* ("Form P-4s") showing WBD is the Commission operator of record for the Leases. The Form P-4s provided are all dated in the 1990s as WBD has been the operator of the Leases since 1977. WBD also provided Form P-4s for two other Commission leases in Section 132 of which WBD is the operator of record. One is the Dolly Lease, Lease No. 07168, in the Panhandle Moore County Field. The other is an oil lease identified as the Smith, T. G. Lease, Lease No. 02003 ("Smith Oil Lease").¹⁵

WBD provided a proration schedule of four WBD Commission leases with 16 wells on Section 132. Ms. Bates testified that 13 of the wells are still producing.¹⁶

WBD provided Commission records showing there has been continual production on Section 132 as required by the Contractual Lease. WBD provided a production report from the Smith Oil Lease showing continual production since 1993, which is as far back as Commission records are available online.¹⁷

⁹ Tr. at 23-25; 28-30.

¹⁰ Tr. at 35-36.

¹¹ Tr. at 36-37.

¹² Tr. at 38; Respondent Ex. 1 at 1.

¹³ Tr. at 39-47; Respondent Ex. 2.

¹⁴ Respondent Ex. 1 at 1.

¹⁵ Tr. at 47-49, 54-55; Respondent Ex. 3.

¹⁶ Tr. at 50-51; Respondent Ex. 4.

¹⁷ Tr. at 51-52; Respondent Ex. 5.

Complainant provided Commission production records for the Dolly Lease, which is on Section 132 and is operated by WBD. According to these records, the Dolly Lease has been productive from January 1997 through January 2019.¹⁸

Ms. Ladd testified that in early 2019, the purchaser of the gas had a line blowout and WBD was unable to sell the gas. WBD was waiting for the line to be repaired.¹⁹

V. Examiners' Analysis

The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells, and deny Complainant's request for an order requiring Respondent to plug the Wells.

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.²⁰

The origin of the "good-faith claim" requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.²¹ 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.²²

The Court went on to state:

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

¹⁸ Complainant Ex. 5.

¹⁹ Tr. at 52-53; Complainant Ex. 4.

²⁰ 16 Tex. Admin. Code § 3.15(a)(5).

²¹ *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).

²² *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

of the title controversy.²³

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.²⁴ 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.²⁵

In this case, WBD provided a lease covering an entire section of land. WBD also provided production records showing continual production on that section. Complainant did not dispute that the Dolly Lease, which is within the section, is productive. Complainant acknowledged he gets royalties from WBD. Complainant suggested he wanted WBD to release part of the section that WBD is not currently operating on but acknowledged that is not within the Commission's jurisdiction.

For these reasons and based on the record, the Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Wells, and deny Complainant's request for an order requiring Respondent to plug the Wells.

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 provided a reasonably satisfactory showing of a good faith claim to operate the Wells, deny Complainant's request for an order requiring Respondent to plug the Wells, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Ralph G. Reser ("Complainant") filed a complaint ("Complaint") claiming W.B.D. Oil & Gas Inc. ("Respondent" or "WBD") does not have a good faith claim to operate the following leases ("Leases") and wells ("Wells") in Moore County:
 - The Smith, T. G. Lease, Well No. 1 R, (Gas ID No. 096133) in the Panhandle, West Field;
 - The Morton (07016) Lease, in the Panhandle Moore County Field;
 - The Guleke (02220) Lease, in the Panhandle Moore County Field; and
 - The Ware (02362) Lease, Panhandle Moore County Field.
2. Complainant is a mineral interest owner of tracts where the Wells are located. Complainant claims WBD has no good faith claim to operate the wells, so the

²³ *Id.* at 191 (emphasis added).

²⁴ *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*.

²⁵ *Id.*

Wells should be ordered plugged. Complainant asserts that there has been insufficient production on the Leases.

3. WBD is the Commission operator of record for the Wells. WBD became the operator of the Wells and Leases in 1977.
4. On August 28, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent, setting a hearing date of September 30, 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 September 30, 2019, as noticed. Complainant and Respondent appeared and participated at the hearing.
5. All the wells on the Morton Lease, the Guleke Lease, and the Ware Lease have not been productive and were plugged in the 1990s, with the exception of a saltwater disposal well on the Morton Lease.
6. WBD provided a 1939 oil and gas lease ("Contractual Lease") covering all of Section 132 with a land description as follows:

An undivided one-fourth (1/4th) interest in and to all of Section Number One Hundred Thirty-two (132) in Block 3-T, T. & X. O. YR. Co. Survey, and containing 640 acres, more or less.
7. While the Contractual Lease covers all of Section 132, Section 132 is divided into several Commission leases, including the Leases and Wells at issue in this case.
8. The Contractual Lease has a 10-year primary term and continues "as long thereafter as oil or gas is or can be produced from any well on said lease," which is the entire Section 132.
9. According to Commission proration schedules WBD has four Commission leases with 16 wells on Section 132;
10. Thirteen wells in Section 132 are still producing.
11. WBD provided Commission records showing there has been continual production on Section 132 as required by the Contractual Lease.
 - a. WBD also is the operator of record of two other Commission leases in Section 132. One is the Dolly Lease, Lease No. 07168, in the Panhandle Moore County Field. The other is an oil lease identified as the Smith, T. G. Lease, Lease No. 02003 ("Smith Oil Lease")

- b. Commission production reports from WBD's Smith Lease, which is located within Section 132, show continual production since 1993, which is as far back as Commission records are available online.
 - c. Commission production records for WBD's Dolly Lease, which is located within Section 132, show production from January 1997 through January 2019.
 - d. Regarding the Smith, T. G. Lease, Well No. 1 R, (Gas ID No. 096133), which is one of the Wells, there are some periods of no production. There is continuous monthly production from August 2009 through the end of 2018. In early 2019, the purchaser of the gas had a line blowout and WBD was unable to sell the gas. WBD waited for the line to be repaired.
12. There is sufficient evidence that Respondent has a good faith claim to a continuing right to operate the Leases and Wells.

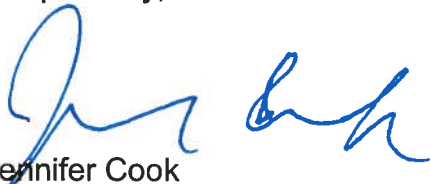
Conclusions of Law

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. There was 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).
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.

Recommendation

The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Leases and Wells, and deny Complainant's request for an order requiring Respondent to plug the Wells.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jennifer Cook".

Jennifer Cook
Administrative Law Judge

A handwritten signature in blue ink, appearing to read "Ashley Correll".

Ashley Correll, P.G.
Technical Examiner