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CHRISTI CRADDICK, *COMMISSIONER*  
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DANA AVANT LEWIS, *DIRECTOR*

# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO. 7B-0321224**

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**COMPLAINT BY TERRY AND BARBARA ALEXANDER THAT ROYAL TEXAN RESOURCES (732111) AND DRILLOGIX EXPLORATION LLC (228368) DO NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE FLACHE (19470) LEASE, COTTONWOOD (BLUFF CREEK SD.) FIELD, JONES COUNTY , TEXAS**

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### PROPOSAL FOR DECISION

**HEARD BY:**

Ezra A. Johnson, Administrative Law Judge  
Austin A. Gaskamp, Technical Examiner

**PROCEDURAL HISTORY:**

Complaint Filed -	June 27, 2019
Amended Complaint Filed -	October 30, 2019
Amended Notice of Hearing Issued -	November 1, 2019
Hearing Date -	November 15, 2019
Transcript Received -	January 6, 2020
Final Written Submissions and	
Close of Record -	January 21, 2020
Proposal for Decision Issued -	January 23, 2020

**APPEARANCES:**

For Complainants Terry and Barbara Alexander -  
Ms. Barbara Alexander  
Mr. Terry Alexander

For Respondents Royal Texan Resources and Drillogix Exploration LLC -  
Mr. Patrick Forbis  
Ms. Brook Hatchett

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## I. Statement of the Case

Terry and Barbara Alexander ("Complainants") filed a complaint ("Complaint") claiming Royal Texan Resources ("Royal Texan") does not have a good faith claim to operate two wells on the Flache Lease ("Lease"), Lease No. 19470, in the Cottonwood (Bluff Creek SD.) Field, Jones County, Texas. Complainants own the surface of 80.08 acres of land ("Lands") out of the Northeast 1/4 of Section 3, Block 2, T. & N. O. RR Co. Survey, Abstract 358, Jones County, Texas, on which the two wells ("Wells") subject to the Complaint are located.

The Complaint originally asserted that Royal Texan did not have a good faith claim to operate the Wells because the contractual lease applicable to the Wells terminated for lack of production. Royal Texan did not submit additional evidence in response to the Complaint. Instead, Royal Texan argued that the pooling clause in the contractual lease was sufficient to show a good faith claim right to operate the Wells and therefore, the pooling authority granted in the contractual lease allowed the Lands to be pooled with adjacent producing acreage. The Administrative Law Judge ("ALJ") asked the parties to set a hearing in this matter to provide additional evidence and information before making a determination on the Complaint. Complainants requested a hearing.

In September 2019, Royal Texan submitted to the Commission a Form P-4 *Certificate of Transportation Authority* transferring the right to operate the Lease to Drillogix Exploration, LLC ("Drillogix"). Drillogix is the present operator of record of the Lease. Thereafter, Complainants amended the Complaint to include Drillogix, alleging that the operator of record does not have a good faith claim to operate the Lease.

The amended Complaint asserts that Drillogix does not have a good faith claim to operate the Wells because the applicable contractual lease has terminated for lack of production since August 2016. The Complaint requests the Commission order the Wells to be plugged and the associated equipment removed.

At the hearing, Drillogix stated that it was not relying upon the contractual lease submitted by Complainants to show a good faith claim to operate the Lease. Instead, Drillogix provided copies of two recently executed contractual oil and gas leases covering that portion of the Lands where the Wells are located as evidence of a good faith claim. The primary term of each of these contractual leases will expire in September 2020. Additional evidence submitted at the hearing demonstrated that the lessors named in the new contractual leases had an undivided possessory right to the mineral estate around the Wells as of the date of execution.

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 and find that Drillogix provided a reasonably satisfactory showing of a good faith claim to operate the Lease.

## **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 October 22, 2019, the Hearings Division of the Commission sent a Notice of Hearing to Complainants and Royal Texan setting a hearing date of November 15, 2019. Thereafter, Complainants alerted the Hearings Division to the fact that Royal Texan was no longer the operator of record of the Lease following the submittal of a dual-signature Form P-4 executed by Drillogix. On October 30, 2019, Complainants amended the Complaint to include Drillogix. An amended Notice of Hearing ("Notice") was sent by the Hearings Division to Complainants and Drillogix on November 1, 2019, confirming the hearing date of November 15, 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.<sup>2</sup> The hearing was held on November 15, 2019, as noticed. Complainants, Royal Texan, and Drillogix appeared at the hearing.

## **III. Applicable Legal Authority**

Complainants alleges the Commission's current operator of record, Drillogix, 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>

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<sup>1</sup> The hearing transcript in this case is referred to as "Tr. at [page(s):line(s)]." Complainants' exhibits are referred to as "Complainant Ex. [exhibit no(s)]." Drillogix's exhibits are referred to as "Drillogix Ex. [exhibit no(s)]."

<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).

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 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>

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

<sup>7</sup> Emphasis added.

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**

Complainants provided six exhibits, and each provided testimony as part of the submittal of the Complaint. Respondent provided witness testimony and 18 exhibits, including late filed exhibits, as part of submitting the response to the Complaint.

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

Complainants assert that Drillogix does not have a good faith claim to operate the subject property due to the expiration of that certain Oil, Gas and Mineral Lease ("1982 OGL") dated November 20, 1982, from Mitchell Flache and wife, Gladys Flache, as Lessor, to Jack Leonard, as Lessee, recorded in Volume 661, page 163, Deed Records, Jones County, Texas.<sup>8</sup> The 1982 OGL covers the Northeast 1/4 of Section 3, Block 2, T. & N. O. RR Co. Survey, Abstract 358, Jones County, Texas ("NE/4").<sup>9</sup> There is no dispute that Mitchell Flache and wife, Gladys Flache owned rights in the mineral estate underlying the NE/4 at the time the 1982 OGL was executed.<sup>10</sup> The Complaint includes copies of amendments to the 1982 OGL executed by Gwendolyn J. Scharp and Robert Ame Flache, among others, recorded in 2005. Also attached to the Complaint are title documents showing that Complainants own the surface of the Lands, which appear to be the northernmost 80.08 acres out of the NE/4.<sup>11</sup> The Wells are located on the Lands.<sup>12</sup>

The Wells have been stripped of the equipment necessary to obtain production, and the tank battery is disconnected.<sup>13</sup> Copies of Commission Records attached to the Complaint show that no production of oil or gas has been reported from the Lease since July 2016.<sup>14</sup> At the hearing, Complainants provided copies of a Commission field inspection report for the Wells dated May 13, 2019. The inspectors deemed the Wells to be inactive at that time.<sup>15</sup> Accordingly, Complainants believe that the 1982 OGL has terminated for lack of production. Complainants want the Wells located on the Lands to be plugged and the surface cleaned.<sup>16</sup>

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

At the hearing, Drillogix stated it was not relying upon the 1982 OGL in support of its good faith claim to operate the Wells. Instead it presented the following contractual oil and gas leases ("New OGLs") in support of its claim:

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<sup>8</sup> This lease is attached to the Complaint and was also provided by Royal Texan in response to the Complaint.

<sup>9</sup> Complainant Ex. 1.

<sup>10</sup> Tr. at 23:23-25.

<sup>11</sup> Complainant Ex. 1.

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 2-6.

<sup>14</sup> Complainant Ex. 1.

<sup>15</sup> *Id.* The inspectors found the wells to be out of compliance with the signage requirements of Statewide Rule 3, but otherwise in compliance with the inactive, unplugged well requirements of Statewide Rule 14(b)(2).

<sup>16</sup> Tr. at 10:11-15.

1. Paid Up Oil and Gas Lease dated September 19, 2019, from the City Bank d/b/a City Bank Trust, Successor Trustee of the Robert Ame Flache Testamentary Trust, as Lessor, to Royal Texan Resources Co., as Lessee, recorded as Document No. 192748, Official Records, Jones County Texas.<sup>17</sup>
2. Paid Up Oil and Gas Lease dated September 19, 2019, from Gwendolyn Flache Scharp, dealing in her sole and separate property, as Lessor, to Royal Texan Resources Co., as Lessee, recorded as Document No. 192749, Official Records, Jones County Texas.<sup>18</sup>

The New OGLs cover the west half ("W/2") of the NE/4.<sup>19</sup> There are four wells located on the W/2 of the NE/4, being all of the wells ascribed to the Lease and including both Wells.<sup>20</sup> The primary term of each of the New OGLs expires on September 19, 2020.<sup>21</sup>

Drillogix next provided documents tracing ownership of the mineral estate under the NE/4 from Mitchell Flache and wife, Gladys Flache. The first of these documents is that certain Mineral Deed and Assignment dated October 24, 1990, from Gladys Newsom Flache, individually and as surviving widow of Mitchell Flache, to the First National Bank at Lubbock and Gladys Newsom Flache, Co-Trustees of the Mitchell and Gladys Flache Trust, recorded in Volume 746, page 162, Deed Records, Jones County, Texas.<sup>22</sup> This instrument purports to convey all of the mineral interest of Gladys Flache in the NE/4 to the co-trustees of the Mitchell and Gladys Flache Trust.

Thereafter, by Mineral Distribution Deed dated October 7, 2003, Wells Fargo Bank Texas, N.A., Robert Ame Flache and Gwendolyn Flache Scharp, as Co-Trustees of the A. Mitchell Flache Marital Trust and the Mitchell and Gladys Flache Trust, and also as Co-Executors of the Estate of Gladys Flache, Deceased, conveyed all of the collective mineral and royalty rights of the respective trusts and estate in equal shares to Gwendolyn Flache Scharp and the co-trustees of the Robert Ame Flache Trust (Robert Ame Flache and Wells Fargo Bank, N.A.).<sup>23</sup> Wells Fargo Bank, N.A., later resigned as Co-Trustee of the Robert Ame Flache Trust and suit was had in Cause No. 2006-536,384, in the 237th District Court of Lubbock County, Texas, styled *In re Robert Ame Flache Trust*, to appoint a successor co-trustee. By final judgment in this suit dated September 28, 2005, Security State Bank of Littlefield Texas was appointed successor co-trustee of the Robert Ame Flache Trust.<sup>24</sup> This trust was renamed the Robert A. Flache Testamentary Trust by Security State Bank on October 31, 2006.<sup>25</sup>

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<sup>17</sup> Drillogix Ex. 1.

<sup>18</sup> Drillogix Ex. 2.

<sup>19</sup> Drillogix Ex. 1-2.

<sup>20</sup> Drillogix Ex. 12.

<sup>21</sup> Drillogix Ex. 1-2.

<sup>22</sup> Drillogix Ex. 4.

<sup>23</sup> Drillogix Ex. 6.

<sup>24</sup> Drillogix Ex. 7.

<sup>25</sup> *Id.*

Brook Hatchett testified at the hearing that she and her husband own Royal Texan, Sandstone and Drillogix.<sup>26</sup> All leases taken in the name of Royal Texan are assigned to Sandstone, and Drillogix is the contract operator for the leases held by Sandstone. By Assignment, Conveyance and Bill of Sale dated effective October 1, 2019, Royal Texan transferred all of its right, title and interest in the lease executed by the trustee of the Robert A. Flache Testamentary Trust to Sandstone Operating, LLC ("Sandstone").<sup>27</sup> Based upon the testimony of Ms. Hatchett, the lease recording information in Drillogix Exhibit 8 left off the document number for the oil and gas lease executed by Gwendolyn Flache Scharp due to an apparent scrivener's error.<sup>28</sup> In a late filed exhibit submitted on November 19, 2019, Drillogix submitted a corrected copy of that certain "Operating Agreement: Flache Lease" dated effective October 1, between Sandstone and Drillogix, wherein Drillogix agreed to be the contract operator of record for the New OGLs.<sup>29</sup>

## V. Examiners' Analysis

The issue before the Commission is whether Drillogix holds a "good faith claim" to a continuing right to operate the Lease, as that term is defined in Statewide Rule 15. 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>30</sup>

The Commission's authority to determine a good faith claim comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.<sup>31</sup> 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.<sup>32</sup>

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

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<sup>26</sup> Tr. at 16:25 – 17:1 and 35:23 – 36:4.

<sup>27</sup> Drillogix Ex. 9.

<sup>28</sup> Tr. at 56:5-22.

<sup>29</sup> Drillogix Ex. 17. The document reference to the lease executed by Gwendolyn Flache Scharp is incorrectly stated due to scrivener or typographical error.

<sup>30</sup> 16 Tex. Admin. Code § 3.15(a)(5).

<sup>31</sup> *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).

<sup>32</sup> *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).



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.<sup>33</sup>

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.<sup>34</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>35</sup> In the context of the right to continue operation of a lease, the Commission looks to the applicable contractual instruments and conveyances, reported production from the relevant oil or gas wells, the operational history of those wells, and other relevant factors.

There is no dispute that Mitchell Flache and wife, Gladys Flache, owned rights in the mineral estate underlying the Lease (and the Lands) at the time the 1982 OGL was executed.<sup>36</sup> Evidence submitted by Complainants shows that Gwendolyn Flache Scharp and Robert Ame Flache signed documents in 2005 claiming the right to execute oil and gas leases. Drillogix made a reasonably satisfactory showing of a substantially regular chain of conveyances from Gladys Flache to Gwendolyn Flache Scharp.<sup>37</sup> This evidence also showed a substantial connection between Gladys Flache's prior ownership of an undivided interest in the NE/4 and the rights now claimed by the Robert Ame Flache Testamentary Trust.

In response, Complainants argue that the documents attached to the Complaint and admitted into the record show that there are parties claiming mineral and royalty rights to the NE/4 other than Gwendolyn Flache Scharp and the Robert Ame Flache Testamentary Trust.<sup>38</sup> Evidence admitted into the record does not foreclose the possibility of unleased mineral rights in the NE/4. To establish a good faith claim right to operate the Wells, however, Drillogix is entitled to rely upon any legal theory recognized in Texas reasonably showing a continuing possessory right in the mineral estate underlying the disputed property.

Texas law allows cotenants to lease their mineral rights without the effective consent of any other cotenant.<sup>39</sup> A contractual lease signed by a single cotenant grants the right to produce all of the minerals under the leased tract, including the share of

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<sup>33</sup> *Id.* at 191 (emphasis added).

<sup>34</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.).

<sup>35</sup> *Id.*

<sup>36</sup> Tr. at 23:23-25.

<sup>37</sup> See *Comment* to Texas Title Examination Standard 9.10. Powers of Trustee.

<sup>38</sup> Tr. at 51:23 – 55:24.

<sup>39</sup> *Willson v. Superior Oil Co.*, 274 S.W.2d 947, 950 (Tex. Civ. App. Texarkana 1954), writ refused n.r.e.

production owned by the non-leasing cotenants.<sup>40</sup> Accordingly, Drillogix may provide evidence of a valid contractual lease from any mineral cotenant in the NE/4 to make a reasonably satisfactory showing of a good faith claim as defined by Statewide Rule 15.

Evidence provided by Drillogix and Complainants established that Gwendolyn Flache Scharp claimed a cotenant's continuing possessory right to an undivided share of the mineral estate underlying the NE/4 prior to the effective date of the New OGLs. Gwendolyn Flache Scharp then executed one of the New OGLs upon which Drillogix now relies in support of its good faith claim right to operate the Wells. This contractual lease remains valid pursuant to its express terms until the stated primary term expires or oil and gas is no longer being produced from the leased premises, whichever is later.<sup>41</sup> Because the primary term of this contractual lease has not expired, Drillogix is not obligated to show that the Wells are presently capable of producing oil and gas to establish a good faith claim right to operate.

It further appears that the Robert Ame Flache Testamentary Trust also claimed a cotenant's continuing possessory right to an undivided share of the mineral estate underlying the NE/4 prior to the effective date of the New OGLs. A party purporting to be the successor trustee of this trust executed the second New OGL covering the Wells that is also within its primary term. Accordingly, Drillogix made a reasonably satisfactory showing of at least one (and likely two) valid contractual oil and gas lease(s) presently covering an undivided mineral interest in that part of the Lands upon which the Wells are located. Drillogix also provided evidence that it has the consent of the owners of the working interest in the New OGLs to operate the Wells. For these reasons, the Examiners recommend the Commission find that Drillogix made a reasonably satisfactory showing of a good faith claim to operate 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 Drillogix provided a reasonably satisfactory showing of a good faith claim to operate the Wells and adopt the following findings of fact and conclusions of law.

### **Findings of Fact**

1. Terry and Barbara Alexander ("Complainants") filed a complaint ("Complaint") claiming Royal Texan Resources Co. ("Royal Texan") does not have a good faith claim to operate the two wells on the Flache Lease ("Lease"), Lease No. 19470, in the Cottonwood (Bluff Creek SD.) Field, Jones County, Texas. At the time the Complaint was filed, Royal Texan was the operator of record for the Lease.

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<sup>40</sup> *Id.*

<sup>41</sup> Drillogix Ex. 1-2.

2. Complainants assert that the Oil, Gas and Mineral Lease ("1982 OGL") dated November 20, 1982, from Mitchell Flache and wife, Gladys Flache, as Lessor, to Jack Leonard, as Lessee, recorded in Volume 661, page 163, Deed Records, Jones County, Texas, expired for lack of production since August 2016. The 1982 OGL covers the Northeast 1/4 of Section 3, Block 2, T. & N. O. RR Co. Survey, Abstract 358, Jones County, Texas ("NE/4").
3. Complainants own the surface of 80.08 acres of land, more or less ("Lands") out of the NE/4, on which the two wells ("Wells") subject to the Complaint are located.
4. On October 22, 2019, the Hearings Division sent a Notice of Hearing to Complainants and Royal Texas setting a hearing date of November 15, 2019. Thereafter, Complainants informed the Hearings Division that Royal Texan was no longer the operator of record of the Lease following the submittal of a dual-signature Form P-4 executed by Drillogix Exploration, LLC ("Drillogix").
5. Drillogix is now the Commission operator of record for the Lease.
6. On October 30, 2019, Complainants amended the Complaint to include Drillogix. An amended Notice of Hearing ("Notice") was sent by the Hearings Division to Complainants and Drillogix on November 1, 2019, confirming the hearing date of November 15, 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 July 23, 2018, as noticed. Complainant and Drillogix appeared at the hearing.
7. 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).
8. At the hearing, Drillogix presented the following contractual oil and gas leases ("New OGLs") in support of its good faith claim right to operate the Wells:
  - a. Paid Up Oil and Gas Lease dated September 19, 2019, from the City Bank d/b/a City Bank Trust, Successor Trustee of the Robert Ame Flache Testamentary Trust, as Lessor, to Royal Texan Resources Co., as Lessee, recorded as Document No. 192748, Official Records, Jones County Texas.
  - b. Paid Up Oil and Gas Lease dated September 19, 2019, from Gwendolyn Flache Scharp, dealing in her sole and separate property, as Lessor, to Royal Texan Resources Co., as Lessee, recorded as Document No. 192749, Official Records, Jones County Texas.

9. Evidence submitted by Complainants and Drillogix shows that Mitchell Flache and wife, Gladys Flache owned rights in the mineral estate underlying the NE/4 at the time the 1982 OGL was executed.
10. By Mineral Deed and Assignment dated October 24, 1990, recorded in Volume 746, page 162, Deed Records, Jones County, Texas, Gladys Newsom Flache, individually and as surviving widow of Mitchell Flache, purported to convey all of the mineral interest of Gladys Flache in the NE/4 to the First National Bank at Lubbock and Gladys Newsom Flache, Co-Trustees of the Mitchell and Gladys Flache Trust.
11. Thereafter, by Mineral Distribution Deed dated October 7, 2003, Wells Fargo Bank Texas, N.A., Robert Ame Flache and Gwendolyn Flache Scharp, as Co-Trustees of the A. Mitchell Flache Marital Trust and the Mitchell and Gladys Flache Trust, and also as Co-Executors of the Estate of Gladys Flache, Deceased, purported to convey all of the collective mineral and royalty rights of the respective trusts and estate in equal shares to Gwendolyn Flache Scharp and the co-trustees of the Robert Ame Flache Trust, being Robert Ame Flache and Wells Fargo Bank, N.A.
12. Wells Fargo Bank, N.A., later resigned as co-trustee of the Robert Ame Flache Trust and suit was had in Cause No. 2006-536,384, in the 237th District Court of Lubbock County, Texas, styled *In re Robert Ame Flache Trust*, to appoint a successor co-trustee.
13. By final judgment in Cause No. 2006-536,384, dated September 28, 2006, Security State Bank of Littlefield Texas was appointed successor co-trustee of the Robert Ame Flache Trust. This trust was renamed the Robert A. Flache Testamentary Trust by Security State Bank on October 31, 2006.
14. Texas law recognizes the right of cotenants to lease their mineral rights without the effective consent of any other cotenant. Texas law also holds that a contractual lease signed by a single cotenant grants the right to produce all of the minerals under the leased tract, including the share of production owned by the non-leasing cotenants.
15. Evidence provided by both parties shows that Gwendolyn Flache Scharp claims a cotenant's continuing possessory right to an undivided share in the mineral estate underlying the NE/4.
16. Gwendolyn Flache Scharp executed one of the New OGLs. The primary term of this contractual lease has not yet expired.
17. The Robert Ame Flache Testamentary Trust also claims a cotenant's continuing possessory right to an undivided share in the mineral estate underlying the NE/4.

A party purporting to be the successor trustee of this trust executed one of the New OGLs. The primary term of this contractual lease has not yet expired.

18. By Assignment, Conveyance and Bill of Sale dated effective October 1, 2019, Royal Texan transferred all of its right, title and interest in the lease executed by the successor trustee of the Robert A. Flache Testamentary Trust to Sandstone Operating, LLC ("Sandstone").
19. Drillogix made a reasonably satisfactory showing that it has the effective consent of Royal Texan and Sandstone to operate the New OGLs.
20. The Wells are inactive wells as that term is defined in Commission rule. 16 Tex. Admin. Code § 3.15(a)(6).
21. Drillogix is in compliance with 16 Tex. Admin. Code § 3.14(b)(2) inactive well requirements as to the 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. Drillogix provided a reasonably satisfactory showing of a good faith claim to operate the Wells. 16 Tex. Admin. Code § 3.15(a)(5).

#### **Recommendations**

The Examiners recommend the Commission find Drillogix provided a reasonably satisfactory showing of a good faith claim to operate the Wells, and deny Complainants' request to have the Wells ordered plugged.

Respectfully,

  
Ezra A. Johnson  
Administrative Law Judge

  
Austin A. Gaskamp  
Technical Examiner