

May 26, 2005

OIL & GAS DOCKET NO. 20-0241862

COMMISSION CALLED HEARING TO GIVE CENTRAL BASIN OIL INV. CO. THE OPPORTUNITY TO SHOW CAUSE WHY ITS P-5 ORGANIZATION REPORT AND OTHER PERMITS SHOULD NOT BE CANCELED.

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Lowell Williams, Staff Attorney

FOR RESPONDENT CENTRAL BASIN OIL INV. CO.

Jason Halek, President

FOR LANDOWNER:

Harry Witherspoon

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

NOTICE OF HEARING:	February 22, 2005
DATE CASE HEARD:	March 15, 2005
HEARD BY:	Mark Helmueller, Hearings Examiner Donna K. Chandler, Technical Examiner
PFD CIRCULATION DATE:	May 26, 2005
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the request of Central Basin Oil Inv. Co. to determine the following:

1. Whether Central Basin Oil Inv. Co. is required to submit additional acceptable financial assurance as a permit condition for operating Well No. 1 on the P.H. Barnes (25394) Lease established by the Commission Final Order issued on April 10, 1989 in Oil & Gas Docket No. 7B-92985 and reaffirmed by the Commission Final Order issued on December 21, 2004 in Oil & Gas Docket No. 7B-0240010; and
2. Whether Central Basin Oil Inv. Co.'s Commission Form P-5 (Organization Report) and all other permits should be canceled pursuant to Texas Natural Resources Code Section 91.142(f) for its failure to comply with the permit condition requiring the submission of additional acceptable financial assurance for Well No. 1 on the P. H. Barnes (25934) Lease.

Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas. Central Basin Oil Inv. Co. ("Central Basin") also appeared and presented evidence at the hearing. The landowner, Harry Witherspoon also appeared.

MATTERS OFFICIALLY NOTICED

Central Basin Organization Records

Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Central Basin was filed on December 6, 2004. Jason Halek is identified as the President. Central Basin is currently identified as the operator of 12 wells, including Well No. 1 on the P.H. Barnes (25394) Lease, (hereinafter "subject oil mine"), with a total vertical depth of 1391 feet. Central Basin has posted a \$2,782 cash deposit with the Commission as its financial assurance.

Permit and Completion Records

The examiners have officially noticed the March 16, 1989 proposal for decision and April 10, 1989 Final Order entered in Oil & Gas Docket Nos. 105,400 and 7B-92985; *Application of Coral Petrofenix, Inc., for Exceptions to Statewide Rules 37 and 38 for the Well No. 1, P. H. Barnes Lease, Brown County Regular Field, Brown County, Texas and Also for Oil Mining Authority and A Maximum Efficient Rate for the Above Mentioned Well.*

Findings of Fact No. 7 adopted by the Commission in the April 10, 1989, Final Order, stated that Coral Petrofenix proposed to conduct an oil mining operation by augering a 9.5' diameter bore hole to a depth of approximately 130', with 15 radials, or drainholes, drilled out horizontally into the target oil zone. The 15 radials were proposed at three different levels in the reservoir, each level consisting of five radials extending out from the central shaft a distance of 400' to 1,000'.

The Commission's Final Order approved the Coral Petrofenix application, subject to the following condition:

"Prior to the commencement of any operations on this well, the operator Coral Petrofenix, Inc., shall file a surety bond or other form of financial security in the amount of \$15,000, to ensure that the Commission will not have to plug the well with state funds."

The examiners have also officially noticed the Form W-2 (Oil Well Potential Test, Completion or Recompletion Report and Log) filed by Coral Petrofenix for the subject oil mine on March 2, 1990. The subject oil mine was completed on September 1, 1989. Total depth of the main shaft was reported to be 125'. Surface casing 9.5' in outside diameter was set from the surface to a depth of 62'. Intermediate casing 8.5' in outside diameter was set from 60' to 125'. The completion report indicates that the entire length of the casing was "grouted with cement" and a 3' thick slab was placed in the bottom of the main shaft as a seal. Ultrasonic waves are applied to oil molecules in the reservoir, with the expectation that this will cause oil to flow from the laterals into the mine shaft where it can be pumped to the surface.

The examiners have officially noticed Commission Form P-4 records which establish that Coral Petrofenix was the designated operator of the subject oil mine until May 1, 1997, when the operator was changed to Arben Oil, Inc. Effective December 1, 2000, Arben transferred the subject oil mine to Central Basin, the current operator on Commission records.

The examiners have also officially noticed production records for the P. H. Barnes (25934) Lease from December 1, 2000 to the present. Commission production records show that during that 52 month time period Central Basin reported 181 barrels of production. However, no sales of oil were attributed to the subject oil mine.

The examiners have also officially notice the Proposal for Decision and Final Order in *Oil & Gas Docket No. 7B-0240010: Commission Called Hearing on the Application of ID, Inc. to Consider a Superceding Order to Eliminate the Financial Assurance Requirement Established in the Final Order Issued on April 10, 1989 in Oil & Gas Docket Nos. 105400 and 7B-92985 which Granted the Permit to Drill Well No. 1 on the P. H. Barnes (25934) Lease, Brown County Regular Field, Brown County, Texas*. In that docket, the Commission made the following findings of fact with respect to the additional financial assurance required for Well No. 1 on the P.H. Barnes Lease.

3. By Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985, the Commission granted a Rule 37/38 exception permit to drill the subject oil mine, subject to a condition that the operator file financial security for the oil mine in the amount of \$15,000 to ensure that the Commission would not be required to plug the well with state funds.

4. The financial security requirement in the Commission's Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985 is a requirement related to prevention of pollution of surface and subsurface water. Inactive and unplugged wellbores present a cognizable threat to the health and safety of the public in that they present a risk of pollution of surface and subsurface water through migration or discharge of saltwater or other oil and gas wastes.

The Commission also adopted the following Conclusion of Law:

7. In the event ID, Inc., becomes the designated operator of the P. H. Barnes (25394) Lease, Well No. 1, it will be subject to the financial security requirement for the said well contained in the Commission's Final Order signed April 10, 1989, in Oil & Gas Docket No. 105400 and 7B-92985.

The findings of fact in Oil & Gas Docket No. 7B-0240010 also observed that: 1) the subject oil mine penetrates the base of a usable quality water zone; 2) the subject oil mine will require a plug at the base of the usable quality water zone as well as a surface plug; and 3) if approved API oil well cement is used, the estimated cost to plug the subject oil mine is \$42,000.

The Commission denied the application for a superceding order to eliminate the \$15,000 financial assurance requirement in a Final Order signed December 21, 2004.

STAFF POSITION

Staff contends that Central Basin is the proper operator of the P. H. Barnes (25394) Lease, Well No. 1 as reflected by Commission records. Staff further argues that Central Basin is required to comply with the \$15,000 financial assurance permit condition set forth in the Final Order entered in Oil & Gas Docket Nos. 105400 and 7B-92985, and reaffirmed by the Final Order entered in Oil & Gas Docket No. 7B-0240010 as the Commission recognized operator of the subject oil mine.

Staff urges that Central Basin has failed to post the \$15,000 in financial assurance for the subject oil mine in violation of the permit condition. Staff argues that this failure provides the basis for cancellation of Central Basin's current Organization Report, and all other permits issued to it by the Commission under Texas Natural Resources Code Section 91.142(f).

CENTRAL BASIN'S POSITION

Central Basin acknowledges that it is the operator of the subject oil mine, but claims that it was unaware of the additional financial assurance requirement. In its request for hearing, Central Basin contended that it was unaware of the additional financial assurance requirement until it was notified of the Final Order in Oil & Gas Docket No. 7B-0240010 by the Commission on January 20, 2005.

Central Basin does not dispute the validity and applicability of the additional financial

assurance requirement for the subject oil mine. It requested 60 days to obtain the required financing to post the additional financial assurance.

WITHERSPOON'S POSITION

Harry Witherspoon purchased the tract on which the subject oil mine is located in 2000. He is the owner of the surface and 25% of the minerals. Mr. Witherspoon testified that he had experienced constant problems with the manner in which Central Basin has operated the property, some related to failure to adhere to lease terms and some related to violations of Commission rules.

Mr. Witherspoon sees no real distinction between Central Basin and ID, Inc. He believes that these companies, or an affiliated entity, have been operating the subject lease without a valid Organization Report for about two years. He objects to any modification of the \$15,000 financial security requirement for the subject oil mine based on what he believes is a lack of credibility of the principals of Central Basin and ID, Inc.

EXAMINERS' OPINION

Texas Natural Resources Code Section 91.142(f) provides:

If an entity described by Subsection (a) of this section does not maintain on file with the commission an organization report and financial security as required by this chapter:

- (1) the entity may not perform operations under the jurisdiction of the commission except as necessary to remedy a violation of law or commission rules and as authorized by the commission; and
- (2) the commission, on written notice, may suspend:
 - (A) any permits held by the entity; or
 - (B) any certificates of compliance approved under Chapter 85 of this code.

Central Basin did not contest that it is the operator of the subject oil mine. It also did not contest the applicability or validity of the \$15,000 financial assurance requirement established as a permit condition for the subject oil mine by the Final Order entered in Oil & Gas Docket Nos. 105400 and 7B-92985, and reaffirmed by the Final Order entered in Oil & Gas Docket No. 7B-0240010. Central Basin claimed that it would file additional financial assurance in the required amount within 60 days of the hearing held in this matter. No additional financial assurance was filed within that 60 day period.

Accordingly, the examiners recommend pursuant to Texas Natural Resources Code Section 91.142(f), that Central Basin's Organization Report be canceled and all permits issued to Central Basin be canceled. If it is in compliance with all other statutory and regulatory requirements, Central Basin can cure this default by filing the required financial assurance for the subject oil mine or properly plugging the subject oil mine.

Based on the record in this docket, the examiners recommend adoption of the following

Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Central Basin Oil Inv. Inc. (“Central Basin”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Central Basin appeared and presented evidence at the hearing.
2. The most recent approved Organization Report for Central Basin was filed on December 6, 2004. Jason Halek is identified as the President. Central Basin is currently identified as the operator of 12 wells with a total vertical depth of 1391 feet. Central Basin has posted a \$2,782 cash deposit with the Commission as its financial assurance
3. Central Basin was recognized as the operator of the P. H. Barnes (25394) Lease, Well No. 1 (hereinafter “subject oil mine”), upon Commission approval of the Form P-4 (Certificate of Compliance and Transportation Authority) on January 5, 2001.
4. Production reports for the subject oil mine filed with the Commission from December 1, 2000 to the present show that during that 52 month time period Central Basin reported 181 barrels of production, but no sales of oil.
5. By Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985, the Commission granted a Rule 37/38 exception permit to drill the subject oil mine, subject to a condition that the operator file financial security for the oil mine in the amount of \$15,000 to ensure that the Commission would not be required to plug the well with state funds. The Commission reaffirmed this permit condition by the Final Order signed December 21, 2004 in Oil & Gas Docket No. 7B-0240010.
6. The permit condition for the subject oil mine set forth in the Commission’s Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985 and reaffirmed by the Final Order signed December 21, 2004 in Oil & Gas Docket No. 7B-0240010, is a requirement related to prevention of pollution of surface and subsurface water. Inactive and unplugged wellbores present a cognizable threat to the health and safety of the public in that they present a risk of pollution of surface and subsurface water through migration or discharge of saltwater or other oil and gas wastes.
7. The subject oil mine was drilled by augering a 8.5’ to 9.5’ mine shaft to a depth of 125’ and by drilling 15 radial drainholes off the mine shaft at three different depth levels between 110’ and 125’. Some radials were originally proposed to be 400’ in length and others 1,000’ in length. Surface casing 9.5’ in outside diameter was set from the surface to a depth of 62’. Intermediate casing 8.5’ in diameter was set from 60’ to 125’. A 3’ slab was placed in the bottom of the main shaft as a seal. Ultrasonic waves are applied to oil molecules in the reservoir, with the expectation that this will cause oil to flow from the laterals into the mine shaft where it can be pumped to the surface.

8. The subject oil mine was drilled by a previous operator and was completed on September 1, 1989.
9. The subject oil mine penetrates the base of a usable quality water zone. When plugged, the subject oil mine will require a plug at the base of the usable quality water zone as well as a surface plug.
10. If approved API oil well cement is used, the estimated cost to plug the subject oil mine is \$42,000.
11. Central Basin has not posted financial assurance in the amount of \$15,000 for the subject oil mine pursuant to permit conditions for the subject oil well set forth in the Final Order entered in Oil & Gas Docket Nos. 105400 and 7B-92985, and reaffirmed by the Final Order entered in Oil & Gas Docket No. 7B-0240010.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have been performed or have occurred.
3. Central Basin is the operator of Well No. 1 on the P. H. Barnes (25934) Lease as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Central Basin has the primary responsibility for complying with all permit conditions established for Well No. 1 on the P. H. Barnes (25394) Lease in the Commission's Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985 and reaffirmed by the Final Order signed December 21, 2004 in Oil & Gas Docket No. 7B-0240010, as well as all other applicable statutes and Commission rules.
5. As the current operator of Well No. 1 on the P. H. Barnes (25934) Lease, Central Basin is required to comply with the \$15,000 financial security requirement established as a permit condition for operating Well No. 1 on the P. H. Barnes (25394) Lease in the Commission's Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985 and reaffirmed by the Final Order signed December 21, 2004 in Oil & Gas Docket No. 7B-0240010.
6. Central Basin is not in compliance with the permit condition established for Well No. 1 on the P. H. Barnes (25394) Lease in the Commission's Final Order signed April 10, 1989, in Oil & Gas Docket Nos. 105400 and 7B-92985 and reaffirmed by the Final Order signed December 21, 2004 in Oil & Gas Docket No. 7B-0240010 requiring that the operator submit \$15,000 in acceptable financial security.

7. Pursuant to Texas Natural Resources Code §91.142, the Organization Report and all permits issued to Central Basin, should be canceled.

RECOMMENDATION

The examiners recommend that the attached Final Order be entered which cancels the Organization Report for Central Basin Oil Inv. Co. and all permits issued to Central Basin Oil Inv. Co.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Donna Chandler
Technical Examiner