
A COMMISSION-CALLED HEARING TO SUPERCEDE A FINAL ORDER ISSUED JUNE 23, 2000, IN OIL & GAS DOCKET NO. 03-0212051, REQUIRING THE PLUGGING OF THE BLACK STONE MINERALS (08750) LEASE, WELL NOS. 5, 6, 7, 8, 9, AND 10, BATSON NEW FIELD, IN HARDING COUNTY, TEXAS, AND TO ALLOW DELTON DRUM TO BECOME THE OPERATOR OF RECORD FOR THE BLACK STONE MINERALS LEASE

APPEARANCES:

FOR APPLICANT:

Gene Day, Consultant

APPLICANT:

Delton Drum

PROCEDURAL HISTORY

Date of Request for Action:	March 10, 2003
Notice of Hearing:	March 26, 2003
Hearing Held:	April 9, 2003
Record Closed:	April 30, 2003
Heard By:	Scott Petry, Hearings Examiner Margaret Allen, Technical Examiner
PFD Circulation Date:	May 22, 2003

STATEMENT OF THE CASE

This was a Commission-called hearing to consider the request of Delton Drum (hereinafter "applicant" or "Drum") to supercede the Final Order in Oil & Gas Docket No. 03-0212051, entered on June 23, 2000, which required the last operator of record, Green Mountain Oil & Gas Company (hereinafter "Green Mountain") to plug Well Nos. 5, 6, 7, 8, 9, and 10 ("subject wells") on the Black Stone Minerals (08750) Lease, Batson New Field, in Hardin County, Texas (hereinafter "subject lease"). Applicant claims that it can restore the subject wells to production and requests that the prior order be superceded in order to prevent waste.

STATUTORY AUTHORITY

Unplugged and unused well bores constitute a potential danger to the public's health and safety

and must be plugged when mandated by the Commission's rules. Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted.

The Commission has a duty to prevent the waste of hydrocarbons in the State of Texas. According to §85.049 of the Texas Natural Resources Code, the Commission, after proper notice has been issued, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent, and whether any rule or order should be adopted or any other action taken to correct, prevent or lessen the waste of hydrocarbons.

Texas Natural Resources Code §91.107 also requires that an operator have on file with the Commission financial assurance in the form of a bond, letter of credit or cash deposit in the amount necessary for both existing wells operated and any wells being transferred, prior to Commission approval of the transfer.

DISCUSSION OF THE EVIDENCE

There are seven unplugged wellbores on the Black Stone Minerals Lease, all of which initially became inactive in 1994 or earlier. In Docket No. 03-0212051, the last operator of record, Green Mountain, was ordered to plug Well Nos. 5, 6, 7, 8, 9 and 10 on the subject lease. The seventh well, the Black Stone Minerals Lease Well No. 1, was not part of this prior docket. Well No. 1 is currently operated by the applicant as a gas well in the Batson New Field and is productive. A fluid test for Well No. 1, which was drilled in 1971, was required because the well was more than 25 years old. Dalton Drum filed a Form H-15 for the well on March 27, 2003, which showed a fluid level at 3000 feet, and the seal orders for this well were rescinded. A Form P-4 certificate of compliance was issued to the applicant in April 2003, and the most recent reported deliverability of Well No. 1 is 32 mcf per day.

Given its experiences with the field, the applicant believes that the six subject wells are also productive and is seeking to assume the Forms P-4 to operate these wells. A two-signature Form P-4 attempting to transfer Well Nos. 5, 6, 7, 8, 9 and 10 from Green Mountain to Delton Drum was filed on March 4, 2003. Applicant maintains that prior incidents, including a flood that placed the subject wells under approximately ten feet of water, contributed to the inactive status of the subject wells after 1994.

In its case-in-chief, the applicant provided multiple exhibits to show: 1) that Drum has a good faith claim to operate the subject wells, 2) that it has proper bonding in place, and 3) that the transfer

of the subject wells would prevent the waste of hydrocarbons in the Batson New Field underlying the subject lease. Additionally, the applicant indicated at hearing that it is amenable to performing mechanical integrity tests on the subject wells as a condition of transferral of Form P-4 responsibility.

I. Good Faith Claim

As part of the applicant's case-in-chief, it argued that it has established a good faith claim of a right to operate the subject wells. First, the applicant submitted a two-signature Form P-4 for the subject wells which was received by the Commission on March 5, 2003. This Form P-4 would have transferred the wells from the prior operator, Green Mountain, to Delton Drum, but there was a hold on the transfer resulting from the prior order directing Green Mountain to plug the subject wells.

The applicant also submitted at the hearing two documents entitled "Memorandum of Oil and Gas Lease". One of these documents, dated August 12, 2002, and signed by the lessors, Black Stone Minerals Company, LP, and Sugarberry Kirby, J.V., designated IAT, Inc. as the lessee. The other, dated August 6, 2002, and signed by the lessors, Finbank (as trustee for the benefit of the Hosford/Hamilton Trusts), also designated IAT, Inc. as the lessee. These documents purport to establish new and current leases. In establishing the line of authority, the applicant submitted additional documents, including a Model Form Operating Agreement and a joint operating agreement which designated Delton Drum as the operator. The Joint Operations document was dated January 19, 2003.

As further evidence of its good faith claim, the applicant referenced a letter that was sent to the Commission's Enforcement Section and that is incorporated into the record. In this letter, Mr. Michael Ellis, on behalf of Black Stone Minerals Company, LP, states that Black Stone Minerals "...owns an undivided 86.875% of [the] 7/8ths fee mineral interest in the lands on which the...wells are situated." Black Stone asserts that it has entered into a lease with IAT and that IAT has subsequently contracted with Delton Drum to re-enter the subject wells. Black Stone Minerals further asserts that it believes the wells to be commercially viable and that rescinding the plugging order "...would be beneficial to all parties involved."

II. Proper Bonding in Place

A Form P-5 Organization Report for Delton Drum was filed with the Commission on November 19, 2002, and the applicant's current status is "active". Official notice of Commission records indicates that the applicant has filed a bond under Option 2 in the amount of \$50,000.00. The applicant currently has five wells with a total depth of 12,391 feet, and appears to have adequate financial assurance to

assume the requested six wells from the Black Stones Mineral Lease.

III. Prevention of Waste

The applicant argues that plugging the subjects wells will result in waste. Specifically, it states: 1) that the subject wells have remaining reserves available from the currently perforated zones, and, 2) that, should the zones be depleted, there are also other zones that the applicant would consider perforating in the wellbores.

Currently Perforated Zones

The applicant argues that there are reserves in this subject field, but that non-technical problems contributed to their failure to produce in the last eight years. The last production tests performed by Green Mountain on April 21, 1994, showed that Well Nos. 5 and 6 were capable of producing. The tests reported that Well No. 6 had a capability of 27.5 barrels of oil, 8 mcf of gas, and 87 barrels of water per day, and that Well No. 5 had a daily capability of 33.4 barrels of oil, 10 mcf of gas, and 273 barrels of water per day. As evidence of these wells' potential productivity, the applicant also points to the oil production reported from January, 1994, through August, 1994. The monthly oil production on the subject lease during 1994 went from 450 barrels in January to a peak of 1,167 barrels in April, and to 179 barrels in August. The casinghead gas reported for these two wells from January through August was 4,252 mcf.¹ Additionally, the Form W-10 also indicates that Well Nos. 7, 9, and 10 had plugging exceptions to Statewide Rule 14(b)(2) at that time.

According to the applicant, when it initially sought to take over operations in 2002, there were approximately 1050 barrels of oil left in the tanks. At the request of the Commission, the new operator filed production reports from September 1994 through the present. He assumed the lease produced 100 barrels of oil per month from November 1994 through September 1995, but was unable to verify this production amount. This oil on hand, the applicant contends, is further evidence that the wells are productive.

The applicant also submitted a fax from Tom Kent of Green Mountain to Black Stone Minerals, the mineral interest owner, on April 20, 1996. In this fax, Mr. Kent stated that the subject lease had been dormant for over a year, and that production had "ceased when the worst flood in 100 years submerged

¹ Commission records indicate sales of 385 barrels of oil in September 1994, and 160 barrels of oil in November 1994.

the entire lease under ten feet of water.” Mr. Kent also claimed that another contributing factor to the cessation of production was the sudden death of the long-time pumper, and the subsequent theft of the disposal pump and other equipment by unknown parties. This fax also requested a new lease between Black Stone Minerals and Green Mountain because Green Mountain thought the wells still capable of production.

Potential New Perforations

The second part of Drum’s waste argument was that it believed other productive zones could be encountered in the subject wells. To support its premise, the applicant submitted technical data, including log sections for Well Nos. 2, 5, 6, 9 and 10. Well No. 2, which is not a subject well in this docket, has already been plugged and abandoned, but the applicant considers it to be a viable re-entry prospect. According to the applicant, all of the wells on the Black Stone Minerals Lease were completed in the Batson New Field, which is classified as a piercement-type salt dome.² The perforated depths of the subject wells range from 3,015 to 7,742 feet.

The electric logs of Well Nos. 5, 6 and 10 show the currently perforated intervals and several hydrocarbon-bearing sands that have not yet been perforated in the subject wells. Additionally, core reports for Well Nos. 5 and 6 indicate oil staining in these prospective intervals. Well No. 5, which was drilled in 1983 and completed from 6,490 to 6,500 feet, has several potential recompletion targets. According to the logs and core reports showing oil-staining, there may be productive intervals at depths of 6,500 to 6,545 feet, 6,586 to 6,606 feet, 6,926 to 6,934 feet, and 7,140 to 7,150 feet. Well No. 6, which was drilled in 1983 and completed from 7,444 to 7,454 feet, was reworked in April and May 1994. The tests taken at that time indicated the well was capable of 36 barrels of oil per day, 48 mcf per day, with one barrel of water, and a fluid level of 3,658 feet. The current perforations for Well No. 6 are from 7,444 to 7,454 feet, but the log indicates that the zone from 7,412 to 7,422 feet may also be productive. Well No. 10, which was drilled in 1984 and completed from 7,450 to 7,480 feet, also has several prospective targets. According to the logs, Well No. 10 may contain productive sands at depths of 4,707 to 4,711 feet, 5,984 to 5,994 feet, 6,045 to 6,050 feet, 6,062 to 6,069 feet, and 6,828 to 6,843 feet.

While there is no electric log available for Well No. 7, the core report for this well indicates that there are several prospective intervals which have good oil-staining and which could be perforated in the future. The No. 7 Well, which was also drilled in 1983, had initial perforations at approximately

² A piercement-type salt dome field has no minimum spacing and density rules. Perforations may be at any depth.

3,015 feet, but the core report shows several feet of oil staining between 7,100 and 7,400 feet.

Well No. 9, which was drilled in 1983 and completed from 7,714 to 7,742 feet, also has several prospective intervals that could be perforated. While the applicant was unable to submit an electric log or core report for Well No. 9, it did submit a cased-hole (gamma ray-neutron) log, which indicates that there are several intervals that are not perforated, but have good porosity. The gamma ray-neutron log indicates that these intervals are at depths of 6,580 to 6,586 feet, 7,200 to 7,210 feet, 7,230 to 7,250 feet, and 7,376 to 7,406 feet.

Finally, Well No. 8, which was initially drilled in 1983, was recompleted as a disposal well in 1986. On March 1, 1994, a packer leakage test was performed which indicated that there was no pressure leak-off in the subject well at that time. Since 1994, however, no subsequent Forms H-5 tests were submitted and a severance was issued for failure to file an H-5 and for violations of Statewide Rule 8.³ According to a Commission District inspection report made on October 29, 1998, the areas affected by these violations of Statewide Rule 8 have been naturally remediated.

EXAMINERS' OPINION

The applicant has successfully demonstrated: 1) that it has proper financial assurance on file with the Commission, 2) that it has a good faith claim to a right to operate the subject wells, and 3) that the requested transfer will aid in preventing the waste of hydrocarbons. The applicant has also argued that, tangentially, this transfer from Green Mountain will result in a cost savings to the State, which will no longer have to expend funds to plug the subject wells of an inactive organization.

The prior final order against Green Mountain explicitly states that the violations regarding the subject wells were serious, a hazard to the public health, and demonstrative of Green Mountain's lack of good faith. The violations were considered environmental threats which were severe enough for the Commission to order the wells plugged without the possibility of bringing them into compliance through alternative means. A collateral attack on an order of the Commission that is final and unappealable is not allowed. Therefore, an applicant must actively show that circumstances have changed in such a way that the superceding order would further the "...[C]ommission's goals of

³The violation in the prior docket related to an unpermitted discharge in violation of Statewide Rule 8. This discharge resulted in approximately five to ten barrels of oil saturating the ground at the separator and affecting an area measuring approximately 30' x 75' x 1". Additionally, the salt water tank had overflowed its rim, affecting an area behind the tank with salt crystals and oil saturated soil.

promoting oil and gas development and controlling pollution”⁴

The requested superceding order in this matter will work to accommodate both goals, and the examiners recommend that the Commission approve the transfer of the subject wells from Green Mountain to Delton Drum. First, as a condition of the final order, the applicant will be required to perform mechanical integrity tests of the subject wells within 90 days of the date of the final order to insure that the subject wells will not pollute subsurface waters. The operator, who is properly bonded, is to have these mechanical integrity tests witnessed by Commission personnel to further ensure that the tests are properly performed.

Second, the circumstances of the subject wells have indeed changed. Extensive documentation, including a letter written by the representative of the mineral interest owner, indicates that the leases are current, that a joint operating agreement designating Delton Drum has been agreed upon, that the mineral interest owners support these wells being brought back to production, and that these wells are not necessarily at the end of their natural lives. Rather, the evidence indicates that non-technical factors such as flooding, the death of the main pumper, the loss of a prior lease, stolen equipment, and financial difficulties of the prior operator, all led to the wells’ premature cessation of production.

Further, it appears that the requested superceding order is not only supported by evidence showing that waste would occur if the wells were to be plugged, but that the requested superceding order is also not an attempt to circumvent Commission rules regarding proper plugging. The examiners took official notice of Commission records regarding Form P-5 Organization Reports for both Green Mountain and Delton Drum. The Form P-5 for Delton Drum indicates that Reba D. Drum is its resident agent and that Delton Cobert Drum is its only owner/officer. The Form P-5 for Green Mountain, however, indicates that Thomas Warren Kent was its president and vice-president and Janet Reed Kent was its secretary. The Organization Reports indicate that these two entities are indeed distinct and that Delton Drum is not engaged in subterfuge in this docket to circumvent prior Commission plugging orders.

Finally, approval of the superceding order is consistent with the Commission’s duty as outlined in §85.201 of the Texas Natural Resources Code, and would promote conservation of resources and prevent the waste of hydrocarbons. The prior Final Order in Oil & Gas Docket No. 03-0212051, which was entered against Green Mountain, has already been referred to the Office of Attorney General for enforcement, and the examiners recommend that a copy of this Proposal for Decision and Final

⁴ ERNEST E. SMITH ET AL., TEXAS LAW OF OIL AND GAS, §14.1 (8th ed. 1997).

Order, if approved by the Commission, be forwarded to the Office of Attorney General, advising that enforcement of the order, *with respect to plugging only*, should be superceded by the current order. The order proposed in this docket has *no effect on any administrative penalties* ordered against Green Mountain.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The applicant, Delton Drum, was given at least 10 days notice of this proceeding.
2. On June 23, 2000, the Commission entered a Final Order in Oil & Gas Docket No. 03-0212051. In that docket, the Commission found that Green Mountain Oil & Gas Company was the proper operator of the Black Stone Minerals (08750) Lease, Well Nos. 5, 6, 7, 8, 9, and 10 ("subject wells"), Batson New Field, in Hardin County, Texas. The Commission ordered that Green Mountain plug the subject wells and that it be assessed a total administrative penalty in the amount of \$14,000.00.
3. Delton Drum filed a two-signature Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) to transfer the subject wells from Green Mountain to Delton Drum on March 5, 2003.
4. Delton Drum is the designated operator of the leaseholder, IAT, Inc., which has obtained current oil, gas and mineral leases for the subject wells.
5. The owner of an undivided 86.875% of the 7/8ths fee mineral interest, Black Stone Minerals Company, LP, states that it believes the wells to be commercially viable and wishes for the superceding order to be approved.
6. Delton Drum has an active Form P-5 (Organization Report) on file with the Commission and has no outstanding final orders or violations of Commission rules. The Form P-5 indicates that Reba D. Drum is its resident agent, and that Delton Cobert Drum is its owner.
7. Green Mountain has a delinquent Form P-5 (Organization Report) on file with the Commission that was last filed on June 2, 1994. The Form P-5 indicates that Thomas Warren Kent was its president and vice-president and Janet Reed Kent was its secretary.

8. There are no officers listed with Delton Drum that are associated with the last operator of record, Green Mountain.
9. Delton Drum operates a total of five wells with a total depth of 12,391 feet. The applicant has on file with the Commission a bond in the amount of \$50,000.00.
10. The total estimated cost to plug the subject wells is \$65,377.50.
11. The last production tests on the subject wells were performed by Green Mountain on April 21, 1994, and indicated that Well Nos. 5 and 6 were capable of producing.
 - A. Well No. 5 had a daily capability of 33.4 barrels of oil, 10 mcf of gas, and 273 barrels of water per day.
 - B. Well No. 6 had a reported capability of 27.5 barrels of oil, 8 mcf of gas, and 87 barrels of water per day.
 - C. Production of oil for these two wells for the period of January 1994, through August 1994, ranged from 450 barrels in January to a peak of 1,167 barrels in April, to 179 barrels in August.
 - D. Production of casinghead gas for these two wells from January 1994, through August 1994, was 4,252 mcf.
12. Well No. 8 was recompleted as a disposal well in 1986. The most recent packer leakage test was performed on March 1, 1994, and indicated at the time that there was no pressure leak-off in the subject well.
13. When the applicant initially sought to take over the subject lease in 2002, there were 1050 barrels of oil present in the tank battery.
14. There may be additional productive zones which could be encountered in the subject wells.
 - A. The electric log of Well No. 5 indicates several potential recompletion targets at depths of 6,500 to 6,545 feet, 6,586 to 6,606 feet, 6,926 to 6,934 feet, and 7,140 to 7,150 feet.
 - B. The electric log of Well No. 6 indicates at least one potential recompletion target at depths of 7,412 to 7,422 feet.
 - C. The electric log of Well No. 10 indicates several potential recompletion targets at depths of 4,707 to 4,711 feet, 5,984 to 5,994 feet, 6,045 to 6,050 feet, 6,062 to 6,069 feet, and 6,828 to 6,843 feet.
 - D. The core report for Well No. 7 indicates several potential intervals at depths between

7,100 and 7,400 feet.

- E. The gamma ray-neutron log for Well No. 9 indicates several potential intervals at depths of 6,580 to 6,586 feet, 7,200 to 7,210 feet, 7,230 to 7,250 feet, and 7,376 to 7,406 feet.
15. In October 1994, the Governor of Texas declared 37 counties as disaster areas due to intense flooding. Hardin County was one of these 37 counties.
16. The last reported production for the subject lease occurred on or before August 31, 1994.

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 in this hearing have been performed or have occurred.
3. Delton Drum has a good faith claim to operate the subject lease.
4. Delton Drum has sufficient financial assurance on file with the Commission pursuant to Texas Natural Resources Code §91.104, §91.1042, and §91.107.
5. The facts concerning the operation of the subject wells have changed in material respects since the entry of the June 23, 2000 Final Order in Oil & Gas Docket No. 03-0212051.
6. Approval of the transfer of the subject wells is consistent with the Commission's duty pursuant to Texas Natural Resources Code §85.201 to promote conservation and will likely prevent the waste of producible hydrocarbons.
7. Approval of the transfer will not result in the circumvention of Commission rules concerning plugging of inactive wells or the prevention of pollution.

RECOMMENDATION

The examiners recommend that the above findings and conclusions be adopted and the attached order be approved, superceding the prior order in Docket No. 03-0212051, and allowing the subsequent Form P-4 transferral of the subject wells from Green Mountain to Delton Drum.

Respectfully submitted,

Scott Petry,
Hearings Examiner

Margaret Allen,
Technical Examiner