

October 24, 2006

OIL AND GAS DOCKET NO. 08-0247268

COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDERS ISSUED IN DOCKET NO. 08-0230847 REQUIRING PLUGGING OF WELL NO. 1 ON THE ANTHA RUSSELL (25290) LEASE, AND WELL NO. 1 ON THE RUSSELL (25965) LEASE, GERALDINE (FORD) FIELD, AND IN DOCKET NO. 08-0231676 REQUIRING PLUGGING OF WELL NO. 1 ON THE HALEY-PREWITT (22663) LEASE, EITHERWAY (DELAWARE) FIELD, CULBERSON COUNTY, TEXAS, AND TO ENABLE HARLAN HOPPER TO BECOME THE OPERATOR OF RECORD

APPEARANCES:

FOR APPLICANT:

Harlan Hopper, Owner

**FOR THE RAILROAD COMMISSION
OF TEXAS:**

Christopher Hotchkiss, Staff Attorney
Office of General Counsel - Enforcement

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	March 31, 2006
DATE CASE HEARD:	July 7, 2006
HEARD BY:	Mark Helmueller, Hearings Examiner Thomas H. Richter, Technical Examiner
RECORD CLOSED:	September 22, 2006
PFD CIRCULATION DATE:	October 24, 2006

STATEMENT OF THE CASE

This Commission Called Hearing was set on the request of Harlan Hopper (hereinafter "Hopper") to supercede the plug only provisions in the Final Orders in Oil & Gas Docket No. 08-0230847 and in Oil & Gas Docket No. 08-0231676 requiring Wanema Hopper, doing business as Thornton Hopper Co., to plug Well No. 1 on the Antha Russell (25290) Lease, Well No. 1 on the Russell (25965) Lease, Geraldine (Ford) Field (hereinafter the "Russell wells") and Well No. 1 on the Haley-Prewitt (22663) Lease, Eitherway (Delaware) Field, (hereinafter the "Haley well") Culberson County, Texas.

Hopper appeared at the hearing and presented evidence. Christopher Hotchkiss appeared on behalf of the Commission's Enforcement Section. The record was left open at the request of the parties to allow Hopper to submit evidence to support a continuing right to operate the wells and pay \$6,000 in administrative penalties assessed against Wanema Hopper. As of the issuance of the proposal for decision, no additional documentary evidence was submitted and the administrative penalties were not paid.

MATTERS OFFICIALLY NOTICED

The examiner took official notice of the Final Order in Oil & Gas Docket No. 08-0230847 requiring Wanema Hopper to plug the Russell wells. Official Notice was also taken of the Final Order in Oil & Gas Docket No. 08-0231676 requiring Wanema Hopper to plug the Haley well. Additionally, official notice was taken of the complete production records for the Russell and Haley wells and the wells operated by Harlan Hopper on the Prewitt, Billie (17343) Lease (hereinafter "Prewitt Lease") from the Commission's Production Data Query database. Official notice was also taken of the P-5 Organization Report records for Harlan Hopper and Wanema Hopper doing business as Thorton Hopper Co. Finally, official notice was taken of Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance) for the Russell and Haley wells.

SUMMARY OF OFFICIALLY NOTICED RECORDS

Harlan Hopper filed his most recent Commission Form P-5 (Organization Report) on February 13, 2006. Hopper has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit. Hopper currently operates 13 wells with a total depth of 49,763 feet.

Wanema Hopper filed her most recent organization report as a sole proprietor doing business as Thorton Hopper Co. on June 8, 2000. The only wells she operates are the three wells at issue in this docket.

Wanema Hopper was designated as the operator of the Russell wells by filing Commission Form P-4s, effective June 1, 1995. The wells had been previously operated by her husband, Thornton Hopper until he passed away in 1991. The Russell wells have not reported any production since at least January 1, 1993. The Russell wells were ordered to be plugged pursuant to a Final Order entered on November 13, 2002 for violation of Statewide Rule 14(b)(2). An administrative penalty of \$4,000.00 was assessed for the violations.

Wanema Hopper was designated as the operator of the Haley well by filing a Commission Form P-4 effective June 1, 1995. This well was also previously operated by her husband, Thornton Hopper. The Haley well has not reported any production since at least January 1, 1993. The Haley well was ordered to be plugged pursuant to a Final Order entered on December 20, 2002 for violation of Statewide Rule 14(b)(2). An administrative penalty of \$2,000.00 was assessed for the violation.

POSITIONS OF THE PARTIES

Harlan Hopper's Position

Hopper advises that Wamena Hopper, his mother, became the operator of the Russell and Haley wells after his father passed away. After the Commission's site remediation section sent a letter concerning clean-up operations on the leases, Hopper offered to take over the wells to restore them to active production. He also agreed to pay the administrative penalties assessed against Wamena Hopper for the violations of Statewide Rule 14(b)(2). Wamena Hopper will own no interest in the wells.

Hopper believes the Haley well can be restored to production at 2 bopd per well. He currently operates two oil wells on the Prewitt Lease offsetting the Haley well which are completed in the same field. Hopper believes that all three wells together would produce for a longer period as one could be converted to a disposal well. Hopper admits that he does not possess a current right to operate the Haley well, but believes he can obtain a lease from the mineral interest owner.

Hopper claims continuous production of the wells on the 653 acre section covered by the original Russell Lease provides a basis for his good faith claim of a continuing right to operate the Russell Wells. However, Commission records do not show any producing wells on that section and Hopper did not identify the wells he claims hold the original lease. He also did not provide any assignment showing how Thornton Hopper Co. obtained any interest in the Russell wells or any assignment showing his current interest in the wells. He claims the wells are equipped for production and will require some repair, but they have been shut-in since 1991 because there is no economic way to dispose of the produced water. He believes they can produce between 2-4 bopd based on the old records for the wells maintained by his father.

Staff's Position

Due to the relationships involved, staff opposed Hopper's request unless the administrative penalties assessed in the Enforcement Docket were paid. Assuming payment of the administrative penalty, Staff advised it would not oppose the lifting of the plug only requirement and recognition of Hopper as the operator of the three wells.

EXAMINERS' OPINION

Hopper claims he can meet the requirements to be recognized as the operator of the Russell and Haley wells and restore the wells to active production. However, his request is complicated by the Final Orders requiring his mother to plug the wells. An order superceding a Commission Final Order may be warranted if the new operator establishes: 1) a good faith claim of a continuing right to operate the well or lease; 2) compliance with the financial assurance requirements of Texas Natural Resources Code §91.107; and 3) plugging the wells may result in the waste of hydrocarbons.

Hopper failed to establishing a good faith claim of a right to operate the wells. He admits no lease covers the Haley well. Further, Commission records do not support Hopper's claim that continuous production from wells covered by same base lease provides a continuing right to operate the Russell wells. Further, Hopper did not provide any assignments from the original lease. Accordingly, the request for a superceding order and recognition of Hopper as the operator of the Russell and Haley wells should be denied.

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. Harlan Hopper (hereinafter "Hopper") was given at least 10 days notice of this proceeding by certified, first-class mail. Hopper appeared at the scheduled time and place for the hearing and presented evidence. The Commission Staff appeared as an intervenor.
2. Harlan Hopper filed his most recent Commission Form P-5 (Organization Report) on February 13, 2006. Hopper has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit. Hopper currently operates 13 wells with a total depth of 49,763 feet.
3. Wanema Hopper filed her most recent organization report as a sole proprietor doing business as Thorton Hopper Co. on June 8, 2000. The only wells she operates are the three wells at issue in this docket.
4. Wanema Hopper was designated as the operator of Well No. 1 on the Antha Russell (25290) Lease, Well No. 1 on the Russell (25965) Lease, Geraldine (Ford) Field (hereinafter "Russell wells") and Well No. 1 on the Haley-Prewitt (22663) Lease, Eitherway (Delaware) Field, (hereinafter "Haley well") by filing Commission Form P-4s, effective June 1, 1995. The wells had been previously operated by her husband, Thornton Hopper, until he passed away in 1991.
5. Production reports filed with the Commission indicate the Russell and Haley wells have not reported any production since at least January 1, 1993.
6. A Final Order in Oil & Gas Docket No. 08-0230847 was entered on November 13, 2002 in which the Russell wells were ordered to be plugged for violation of Statewide Rule 14(b)(2). An administrative penalty of \$4,000.00 was assessed for the violations.
7. A Final Order in Oil & Gas Docket No. 08-0231676 was entered on December 20, 2002 in which the Haley well was ordered to be plugged for violation of Statewide Rule 14(b)(2). An administrative penalty of \$2,000.00 was assessed for the violation.

8. The administrative penalties assessed in Oil & Gas Docket No. 08-0230847 and in Oil & Gas Docket No. 08-0231676 have not been paid.
9. Hopper admits he does not have a current right to operate the Haley well.
10. Hopper did not establish the existence of a good faith claim of a current right to operate the Russell wells.
 - A. Commission mapping and production records do not show any producing wells on the 653 acre Antha Russell Lease dated February 13, 1973.
 - B. No assignment or lease was provided establishing Thorton Hopper Co.'s right to operate the Russell wells.
 - C. No assignment or lease was provided from Thorton Hopper Co. to Harlan Hopper establishing a right to operate the Russell wells.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Hopper has not established a good faith claim of a continuing right to operate Well No. 1 on the Antha Russell (25290) Lease, Well No. 1 on the Russell (25965) Lease and Well No. 1 on the Haley-Prewitt (22663) Lease.

RECOMMENDATION

The examiners recommend the Commission deny the request to supercede the plug only provisions in the Final Orders in Oil & Gas Docket No. 08-0230847 and in Oil & Gas Docket No. 08-0231676 requiring Wanema Hopper, doing business as Thornton Hopper Co., to plug Well No. 1 on the Antha Russell (25290) Lease, Well No. 1 on the Russell (25965) Lease, Geraldine (Ford) Field and Well No. 1 on the Haley-Prewitt (22663) Lease, Eitherway (Delaware) Field, Culberson County, Texas.

Respectfully submitted,

Thomas H. Richter
Technical Examiner

Mark J. Helmueller
Hearings Examiner