



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0301507

COMPLAINT OF ANADARKO E & P ONSHORE LLC THAT RAW PRODUCTION (OPERATOR NO. 694866) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE RIVER BEND -A- LEASE (LEASE ID NO. 31525), WELL NO. 1, ARNO, N. (DELAWARE) FIELD, REEVES COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge
Richard Eyster, P. G. – Technical Examiner

PROCEDURAL HISTORY:

Complaint Filed:	August 16, 2016
Notice of Hearing:	October 4, 2016
Hearing Date:	November 4, 2016
Record Closed:	February 23, 2017
Proposal for Decision Issued:	March 20, 2017

APPEARANCES:

For Anadarko E & P Onshore LLC –
Ana Maria Marsland-Griffith, *Attorney*
OSBORN, GRIFFITH & HARGROVE

For Raw Production –
Robert Williamson, Principal
Dwayne Forga, Consultant

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I. Statement of the Case

Anadarko E & P Onshore LLC ("Complainant" or "Anadarko") filed a complaint claiming that Raw Production ("Raw"), does not have a good faith claim to operate the River Bend -A- Lease (Lease ID No. 31525), Well No. 1 (the "Well"), in the Arno, N. (Delaware) Field, in Reeves County, Texas. Complainant asserts the contractual oil and gas leases relied upon by Raw have terminated for lack of production and Complainant requests that Raw's permit to operate the Well be revoked and Raw be ordered to comply with inactive well rules.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Railroad Commission ("Commission") grant Complainant's request to revoke Raw's permit to operate the Well and order Raw to comply with inactive well rules. The Examiners have determined that there is insufficient evidence that Raw has a good faith claim to operate the Well.

II. Jurisdiction and Notice¹

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 4, 2016, the Hearings Division of the Commission sent a Notice of Hearing via first class mail to both Complainant and Raw setting a hearing date of November 4, 2016. Consequently, both parties received more than 10 days' notice. The Notice of Hearing contained (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.² The hearing was held on November 4, 2016, as noticed. Both parties appeared at the hearing.

III. Applicable Legal Authority

Complainant alleges that Raw does not have a good faith claim to operate the Well as that term is defined. A "good faith claim" is defined in in the 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

¹ The hearing transcript in this case is referred to as "Tr. at [pages.lines]". The Complainant's exhibits are referred to as "Complainant Ex. [exhibit no.]". Raw's exhibits are referred to as "Raw Ex. [exhibit no]".

² See TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.

currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.³

IV. Discussion of Evidence

Complainant provided the testimony of two witnesses and eleven exhibits. Raw provided the testimony of one witness and one exhibit.

A. Summary of Complainant's Evidence and Argument

Complainant is the surface owner and mineral leasehold estate owner of the tract where the salt-water injection Well is located. Complainant became aware of the Well when it purchased the property. Complainant asserts Raw does not have a good faith claim to operate because the underlying written leases have terminated for lack of production. Complainant wants the Commission to revoke Raw's authorization to operate the Well and require Raw to comply with inactive well rules.⁴

Anadarko's first witness was Judy Fridye DaPra. She is a staff landman for Anadarko and has a BBA in petroleum land management. She has reviewed numerous oil and gas leases throughout her career.⁵

Ms. DaPra provided a plat that is a boundary survey of the north half of Section 6 in Block 2, Houston and Great Northern Railroad Company Survey, Abstract No. 1671, (the "North Half") in Reeves County which is 329.27 acres. It is adjacent to the Pecos River, which is the county line between Reeves and Loving County. The plat identifies the well pad for the Well located on the North Half near the river.⁶ Complainant also provided the general warranty deed from the surface owners conveying the surface estate of the North-Half to Complainant.⁷ Ms. DaPra testified that Complainant owns leases on 100% of the mineral estate in the North-Half and provided copies of leases conveying the mineral interests to Complainant.⁸ Ms. DaPra testified that Complainant owns 100% of both the surface estate and mineral interests in the North-Half.⁹

Ms. DaPra noticed the well pad for the Well on the survey plat during the property acquisition process; obtaining the survey is one of the last steps in the closing process. She contacted Mr. Robert Williamson, a representative of Raw, and asked how Raw acquired operatorship of the Well. Ms. DaPra provided the Assignment of Oil and Gas Leases and Bill of Sale (the "Assignment") Mr. Williamson provided to establish operatorship.¹⁰ The Assignment assigns various oil and gas leases to Mr. Williamson. Ms.

³ Tex. Nat. Res. Code § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁴ Tr. at 11:2 to 12:2.

⁵ Tr. at 14:8 to 17:11.

⁶ Tr. at 18:2 to 19:15; Complainant Ex. 1.

⁷ Tr. at 19:16 to 20:20; Complainant Ex. 2.

⁸ Tr. at 20:24 to 22:4; Complainant Ex. 3.

⁹ Tr. at 49:24 to 50:24.

¹⁰ Tr. at 22:5 to 23:15; Complainant Exs. 4 and 7.

DaPra identified two of the leases (the "Written Leases")¹¹ in the Assignment as covering the North-Half.¹² Ms. DaPra obtained the Written Leases and reviewed them; they were also admitted into the record. The leases are dated in 1978 and have a five-year primary term. Ms. DaPra testified that after the primary term, if there is no production, the leases expire.¹³

Ms. DaPra testified that after she reviewed the Written Leases, she requested the regulatory department to verify whether there was any production. Consequently, Mr. Dave Christian, Anadarko's second witness, verified there was no production.¹⁴

Complainant's second witness was Mr. David Christian who is the Project Reservoir Engineer Adviser for Complainant. He is responsible for ensuring that Complainant complies with Commission rules and regulations. He is familiar with Commission regulations and records. He has been a petroleum engineer for approximately forty years.¹⁵

Mr. Christian provided Commission records showing the Well was originally a producing well. The Well was permitted in August 1987 and there are production records of the Well starting in November 1987. The last production from the Well was December 1989.¹⁶ In 1990, the Well was recompleted as a disposal well and from then forward it has not produced any hydrocarbons. Consequently, the Well has been nonproductive of hydrocarbons for approximately 26 years. Mr. Christian testified that the Well is the only well on the North-Half.¹⁷

Mr. Christian testified that Complainant ultimately wants the Well plugged due to concerns about the potential of pollution and potential damage to Complainant's interests. Complainant had an environmental survey performed after it acquired the property. During the survey, some areas of concern were identified for further investigation. Mr. Christian provided pictures from the survey showing contamination of the soil around the different pieces of equipment used for the disposal Well. Mr. Christian expressed concern about compliance with Commission rules in this area of the North-Half.¹⁸ Anadarko has also drilled several water wells in the area and is planning to drill more to supply water for drilling and hydraulic fracturing operations. Complainant is concerned about the potential contamination of the water wells from the Well.¹⁹

¹¹ Raw relies on only one of the Written Leases. However, the two Written Leases contain identical provisions and appear to cover the Well and assigned to Raw. The Examiners consider both Written Leases which is to Raw's benefit.

¹² Tr. at 25:13 to 26:12; Complainant Ex. 6 and Ex. 6, Enlargements A and B. Complainant also provided an Affidavit of Non-Production covering the leases as Complainant Ex. 5.

¹³ Tr. at 26:13 to 30:5.

¹⁴ Tr. at 30:6 to 32:25.

¹⁵ Tr. at 33:17 to 35:24.

¹⁶ Tr. at 36:1 to 40:9; Complainant Ex. 8.

¹⁷ Tr. at 40:10 to 41:13; Complainant Ex. 9.

¹⁸ Tr. at 41:14 to 44:14; Complainant Ex. 10.

¹⁹ Tr. at 44:15 to 46:17; Complainant Ex. 11.

B. Summary of Raw's Evidence and Argument

Raw asserts that the underlying Written Leases do cover the Well even though the Well is a saltwater disposal well. Raw claims that there has never been a complaint before Anadarko purchased the property. Raw claims it obtained the right to operate the Well before Anadarko purchased the property and Anadarko purchased the property knowing the Well existed. Raw requests to continue operating the Well.²⁰

Raw's witness was Mr. Robert Williamson, the principal for Raw. Mr. Williamson maintains that the Written Leases do authorize him to currently operate the disposal Well.²¹ He acknowledges there is no production on property covered by the Written Leases but maintains the Written Leases allow Raw to continue to operate the disposal Well.

Mr. Williamson testified that he has two producing wells on other leases he has obtained and that there is no production on the property covered by the Written Leases. He uses the disposal Well in conjunction with his two producing wells from the other leases. He refers to the other two leases as the "Hill Lease" and the "Exxon State Lease." He maintains that he has been using the disposal Well this way for many years before Anadarko purchased the surface and mineral interest estates.²²

Mr. Williamson acknowledged there is no production on the property covered by the Written Leases, but maintains the Written Leases authorize him to use the Well for disposal. He claims the Written Leases have terminated as to allowing him to use wells to produce but not as to allowing him to use wells to dispose of saltwater.²³

V. Examiners' Analysis

The Examiners recommend granting Complainant's request to have Raw's authorization to operate the Well revoked and that Raw be required to comply with inactive well rules.

Complainant alleges that Raw does not have a good faith claim to operate the Well. 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.²⁴

²⁰ Tr. at 12:7 to 12:9; Tr. at 12:25 to 13:13.

²¹ Tr. at 58:16 to 61:22; Raw Ex. 1 at 1-3.

²² Tr. at 61:23 to 63:17; Raw Ex. 1 at 4-5.

²³ Tr. at 63:18 to 64:25.

²⁴ 16 TEX. ADMIN. CODE 3.15(a)(5).

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.²⁵ 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," and another's good faith dispute of title or possessory interest will not alone defeat an applicant.²⁶ Raw did not provide sufficient evidence of a reasonably satisfactory showing of a good-faith claim to operate the Well.

Raw and Complainant have different interpretations of the Written Leases. The language at issue in both Written Leases are identical.

Complainant relies on the following language in the Written Leases regarding the term of the Written Leases:

To HAVE AND TO HOLD the leased premises for a term of five (5) years from the date October 3, 1978, hereinafter called "primary term", and as long thereafter as oil, gas or other hydrocarbons, or other minerals or leased substances, or either or any of them, are produced from the leased premises or from lands with which the leased premises are pooled or unitized.²⁷

Complainant asserts that according to this provision, the Written Leases terminate, after the primary term, if there is lack of production. Raw agrees that there has been no production and that Raw's right to produce under the Written Leases has terminated. Raw relies on another provision in the Written Leases.

Raw, as "Lessee," relies on the following language:

Lessor does grant, lease and let exclusively onto Lessee, its successors and assigns, all of the land hereinafter described, together with any reversionary rights therein for the purpose of exploring by geological, geophysical and other methods, and of drilling, producing and operating wells or mines for the recovery of oil, gas and other hydrocarbons, and all other minerals or substances, whether similar or dissimilar, that may be produced from any well or mine on the leased premises, including primary, secondary, tertiary, cycling, pressure maintenance methods of recovery, and all other methods, whether now known or unknown, with all incidental rights thereto, and to establish and utilize facilities for surface and subsurface disposal of salt water, and to construct, maintain and remove roadways, tanks, pipelines, electric power and telephone lines, power stations, machinery and structures thereon, to produce, store,

²⁵ *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, *7 (Tex. App.—Austin 2009, pet. denied) (mem. op.); 56 Tex. Jur. 3d Oil and Gas § 737, *Adjudication of title to property and contract rights* (June 2016 Update).

²⁶ *Id.*

²⁷ Complainant Ex. 6, Ex. 6 (Enlargement A); Raw Ex. 1 at 3 (emphasis added).

transport, treat and remove all substances described above, and the products therefrom, together with the right of ingress and egress to and from said land across any other land now or hereafter owned by Lessor.²⁸

Raw claims that the language underlined above authorizes it to use the Well for disposal. Complainant argues that this language in this provision allows the lessee the right to dispose as incidental to production, as demonstrated in the language in bold above, such that if there is no right to produce or production, there is no right to dispose.

The Examiners find that Raw's interpretation of these provisions in the Written Leases fails to establish "a reasonably satisfactory showing of a good-faith claim," which is the legal standard. The Examiners do not agree that it is reasonable to interpret the Written Leases such that the Lessee's right of production has terminated but the Lessee's right to utilize the property for other purposes—such as to dispose of saltwater waste from productive wells not associated with the Lessor—continues. The termination provision relied on by Complainant applies to the entire "leased premises" and not to only production. The provisions relied on by Raw allows saltwater disposal as "incidental" to production with the purpose being "to produce, store, transport, treat and remove all substances described above, and the products therefrom;" the products being from the property covered in the Written Leases, not production from another written lease not associated with the Lessor. The Examiners find Complainant's interpretation is reasonable. The Examiners allowed Raw, as well as Complainant, an opportunity to provide a legal basis or some legal authority for the assertion that it has a good faith claim; Raw was unable to do so.

The Examiners next evaluate the proposed relief requested by Complainant.

Complainant requests that Raw's permit, or authorization to operate the Well be revoked. While a permit applicant is not required to provide title or right to possession in the property affected by the permit, the applicant nonetheless must make "a reasonably satisfactory showing of a good-faith claim of ownership" in the property.²⁹ The origin of the "good-faith claim" requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission*.³⁰ 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."³¹ The Court concluded, "Of course, the Railroad

²⁸ *Id.* (emphasis added).

²⁹ *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *7 (Tex. App.—Austin 2009, pet. denied) (mem. op.); see also Vol. 3 Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 14.4, n.264 (2d ed. 2016).

³⁰ *Id.*; see *Magnolia Petroleum Co. v. R.R. Commission 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).

³¹ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith."³²

A permit for an injection well can be revoked if a material change of conditions occurs in the operation of the injection well, or there are material changes in the information originally furnished.³³ It is unclear that the Written Leases ever provided Raw a good faith claim to operate the Well. However, prior to Anadarko become the owner of the property where the Well is located, per Mr. Williamson, the prior property owner did allow Raw to dispose saltwater in the Well. Since Anadarko is now the owner and is not allowing Raw to dispose, Raw no longer has a good faith claim. The Examiners find there is sufficient evidence that the permit for the Well should be revoked.

Complainant also requests that Raw be ordered to comply with inactive well rules. The operator of record for a well is required to comply with inactive well rules and requirements.³⁴ Additionally, the operator of record for the well, by becoming the operator of record, is the party responsible for complying with all Commission rules regarding the well until a subsequent operator applies and is approved by the Commission to become the operator of record. Specifically, Statewide Rule 58 states:

Each operator who seeks to operate any well subject to the jurisdiction of the Commission shall file with the commission's Austin office a commission form P-4 (certificate of compliance and transportation authority) for each property on which the wells are located certifying that the operator has complied with Texas Natural Resources Code, Title 3; Texas Water Code, § 26.131; and Texas Water Code, Chapter 27, and orders, rules, and regulations of the commission pursuant to Texas Natural Resources Code, Title 3; Texas Water Code, § 26.131; and Texas Water Code, Chapter 27, in respect to the property.³⁵

Further, Rule 58 clarifies the duration of the operator's obligation:

An approved certificate of compliance and transportation authority shall bind the operator until another operator files a subsequent certificate and the Commission has approved the subsequent certificate and transferred the property on commission records to the subsequent operator.³⁶

There is no dispute that Raw is the current operator of record for the Well.³⁷ The Examiners find Raw remains responsible for regulatory compliance of the Well, including complying with inactive well requirements.

³² *Id.* at 191 (emphasis added).

³³ 16 TEX. ADMIN. CODE §§ 3.9(6)(A), 3.46(d)(1).

³⁴ See, e.g., TEX. NAT. RES. CODE §§ 89.011, 89.022; 16 TEX. ADMIN. CODE § 3.14(b)(2).

³⁵ 16 TEX. ADMIN. CODE § 3.58(a)(1).

³⁶ 16 TEX. ADMIN. CODE §§ 3.58(a)(2).

³⁷ See, e.g., Raw Ex. 1, Complainant Ex. 8.

For these reasons, the Examiners find that based on the evidence provided, Raw does not have a good-faith claim to operate the Well, Raw's permit to operate should be revoked and that Raw is required to comply with inactive well rules regarding the Well.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the Examiners recommend that the Commission find that Raw does not have a good faith claim to operate the Well and grant Complainant's request to revoke Raw's permit to operate the Well and order Raw to comply with inactive well rules regarding the Well.

Findings of Fact

1. On or about August 16, 2016, Anadarko E & P Onshore LLC ("Complainant" or "Anadarko") filed a complaint that Raw Production ("Raw") does not have a good faith claim to operate the River Bend -A- Lease (Lease ID No. 31525), Well No. 1 (the "Well"), in the Arno, N. (Delaware) Field, in Reeves County, Texas.
2. Complainant owns 100% of the surface estate and mineral interests where the Well is located.
3. On September 27, 2016, Raw filed a request for hearing.
4. On October 4, 2016, the Hearings Division of the Commission sent a Notice of Hearing via first class mail to both Complainant and Raw setting a hearing date of November 4, 2016. Consequently, both parties received more than 10 days' notice. The Notice of Hearing contained (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.³⁸
5. Complainant asserts that Raw's rights under the two applicable written leases covering the Well (the "Written Leases") have terminated due to lack of production.
6. The Written Leases provide for a term of "five (5) years from the date October 3, 1978, hereinafter called 'primary term', and as long thereafter as oil, gas or other hydrocarbons, or other minerals or leased substances, or either or any of them, are produced from the leased premises or from lands with which the leased premises are pooled or unitized."
7. Raw acknowledges there has been no production and that Raw's authorization to produce under the Written Leases has terminated.

³⁸ See TEX. GOV'T CODE § 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.

8. Raw uses the Well to dispose of saltwater from two productive wells he operates that are on other leased tracts and are not pooled or unitized with the property covered in the Written Leases.
9. To establish a good faith claim, Raw maintains that even though the authorizations in the Written Leases to produce have terminated, Raw still has a right under the Written Leases to dispose by injection into the Well.
10. Raw's interpretation of the Written Leases is not reasonable.
11. Raw is the current operator of record for the Well.

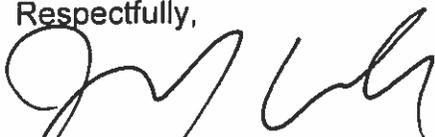
Conclusions of Law

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. See, e.g., TEX. GOV'T CODE §§ 2001.051 and 052; 16 TEX. ADMIN. CODE §§ 1.45 and 1.48.
2. The Commission has jurisdiction in this case. See, e.g., TEX. NAT. RES. CODE § 81.051.
3. At the hearing in this matter, Raw did not provide a reasonably satisfactory showing of a good-faith claim to continue operating the Well. See, e.g., 16 TEX. ADMIN. CODE § 3.15(a)(5).
4. Raw's authority to operate the Well should be revoked.
5. As the operator of record, Raw remains responsible for regulatory compliance, including complying with inactive well rules.

Recommendations

The Examiners recommend that the Commission find that Raw does not have a good faith claim to operate the Well and grant Complainant's request for revocation of Raw's permit to operate the Well and order that Raw remains responsible for compliance with inactive well rules regarding the Well.

Respectfully,



Jennifer Cook
Administrative Law Judge



Richard Eyster, P.G.
Technical Examiner