

CHRISTI CRADDICK, *CHAIRMAN*
RYAN SITTON, *COMMISSIONER*
WAYNE CHRISTIAN, *COMMISSIONER*



RANDALL D. COLLINS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL & GAS DOCKET NO. 09-0295134

COMPLAINT OF MAXEY'S BROKEN STIRRUP PROPERTIES, LLC THAT BLACK STRATA LLC (OPERATOR NO. 072748) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE MAXEY-MEI LEASE (LEASE NO. 33203), WELL NO. 2, NEWARK, EAST (BARNETT SHALE) FIELD, JACK COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:	Jennifer Cook – Administrative Law Judge Paul Dubois – Technical Examiner
PROCEDURAL HISTORY:	
Notice of Hearing:	February 23, 2017
Hearing Date:	March 28, 2017
Transcript Received:	May 8, 2017
Post-hearing Briefing Deadline and Close of Record:	June 16, 2017
Proposal for Decision Issued:	July 17, 2017

APPEARANCES:

For Complainant Maxey's Broken Stirrup Properties, LLC:
Charles W. Sartain,
Gray Reed & McGraw

For Respondent

Black Strata LLC:
George C. Neale and Christopher S. Hotchkiss,
George C. Neale, Attorneys at Law

Table of Contents

I.	Statement of the Case	3
II.	Jurisdiction and Notice	3
III.	Applicable Legal Authority.....	4
IV.	Discussion of Evidence	5
	A. Summary of Complainant's Evidence and Argument	5
	B. Summary of Black Strata's Evidence and Argument.....	6
V.	Examiners' Analysis	10
VI.	Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law	12

I. Statement of the Case

Maxey's Broken Stirrup Properties, LLC ("Complainant" or "Maxey"), filed a complaint ("Complaint") claiming that Black Strata LLC ("Black Strata" or "Respondent") does not have a good faith claim to operate the Maxey-MEI Lease, Lease No. 33203, Well No. 2 (the "Well"), in the Newark, East (Barnett Shale) Field in Jack County, Texas. Complainant requests that the Well be ordered plugged.

Complainant asserts Black Strata does not have a good faith claim to operate the Well and the Well should be plugged. The parties do not dispute the Well has not produced in years. Black Strata claims it has made sufficient shut-in payments to maintain the applicable contractual leases, as allowed by provisions within those leases. Complainant does not dispute the shut-in payments have been tendered but maintains the shut-in provisions are not applicable because the Well is not capable of production as required by the terms of the lease contracts.

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 to have the Well ordered plugged. The Examiners find there may be a bona fide lease dispute between the parties, the determination of such a dispute is outside the jurisdiction of the Commission, and the dispute does not defeat Black Strata's assertion of a good faith claim. The Examiners further find Black Strata has provided sufficient evidence to demonstrate 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 February 23, 2017, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") via first class mail to Complainant and Black Strata setting a hearing date of March 28, 2017.² Consequently, all 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.³ The hearing was held on March 28, 2017, as noticed. Complainant and Black Strata appeared at the hearing.

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

² See Notice of Hearing issued February 23, 2017.

³ See TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.

III. Applicable Legal Authority

Complainant alleges the current operator, Black Strata, does not have a good faith claim to operate the Well as that term is defined, and the Well should be plugged. 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.⁴

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁵ 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.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.⁷

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

⁴ TEX. NAT. RES. CODE § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁵ Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

⁶ 16 TEX. ADMIN. CODE § 3.15(a)(6).

⁷ 16 TEX. ADMIN. CODE § 3.15(d).

(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.⁸

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).

In sum, if the Well is inactive, it must be plugged or have plugging extensions. If Black Strata does not have a good faith claim to operate the Wells, then it is not eligible for plugging extensions. In that case, an order to plug the Well is warranted.

IV. Discussion of Evidence

Complainant provided the testimony of one witness and three exhibits. Black Strata provided the testimony of two witnesses and fourteen exhibits.

A. Summary of Complainant's Evidence and Argument

Complainant asserts Black Strata does not have a good faith claim to operate the Well and the Well should be plugged. Complainant claims Black Strata cannot make shut-in payments to maintain the contractual lease on the Well because the Well is not capable of production.⁹

Complainant's witness was Barbara Cantrell. She is Maxey's Vice President. She has visited the Well location several times. She provided photographs she took of the Well site on March 23, 2017.¹⁰ She provided several photographs of the Well's wellhead and filled pit locations. One photograph shows a pipe that had been cut that used to attach to the wellhead. The pipe continues approximately 100 yards to what appears to be rusty pipe infrastructure remains. Ms. Cantrell testified there used to be three tanks—one oil and two water—and a separator where these remaining pipes are located. She testified when the Well was producing, there was a pump jack in addition to the tanks and

⁸ (Emphasis added).

⁹ Tr. at 8:20 to 9:25.

¹⁰ Complainant Ex. 1.

separator.¹¹ It is her position the contractual leases (she referred to “three individual leases”) have expired.¹²

On cross examination, Ms. Cantrell acknowledged Black Strata was prohibited access to the Well site but asserted it could have been obtained with prior permission.¹³ She further testified no one from Black Strata has requested permission.¹⁴

At Complainant’s request and without objection, official notice was taken of Commission records demonstrating Black Strata’s status with the Commission at the time of the hearing was delinquent because Black Strata did not have an approved annual Commission Form P-5 *Organization Report* (“Form P-5”) on file as required, due to Black Strata’s failure to comply with inactive well requirements.¹⁵ Complainant also provided a Final Order against Respondent declining to renew Respondent’s Form P-5 issued on February 18, 2014.¹⁶

Complainant provided an *Affidavit of Nonproduction* signed by Ms. Cantrell stating the Well is not producing and there has been no drilling or reworking or other efforts by the operator since October 2011.¹⁷

Complainant does not dispute Black Strata attempted to make shut-in payments to Complainant, which Complainant rejected. Complainant’s main contention is shut-in payments will not prevent termination of the applicable contractual leases because the Well is not capable of producing in paying quantities as required.¹⁸

B. Summary of Black Strata’s Evidence and Argument

Black Strata acknowledges there has been no production of the Well for years. Black Strata claims it has made sufficient shut-in payments to maintain the applicable contractual leases. Black Strata further asserts the contractual leases require a judicial determination of default and opportunity to cure before the leases can be cancelled.

Respondent’s first witness was Craig Crockett. He is an attorney licensed in Texas since 1994. He was a member and the manager of Black Strata until late 2014 and is familiar with the facts at issue.¹⁹

Respondent provided a printout of a Commission RRC Online System data query showing Respondent’s status as delinquent. It identifies Arnold Morris and Craig Crockett as Respondent’s managers.²⁰ Mr. Crockett testified he is no longer the manager and that

¹¹ Tr. at 14:9 to 21:10; Complainant Ex. 1.

¹² Tr. at 25:22 to 26:15.

¹³ Tr. at 22:23 to 24:23.

¹⁴ Tr. at 26:17 to 27:4.

¹⁵ Tr. at 27:11 to 28:24.

¹⁶ Complainant Ex. 3.

¹⁷ See Complainant Ex. 2.

¹⁸ Tr. at 31:17 to 32:19.

¹⁹ Tr. at 33:23 to 34:18.

²⁰ Complainant Ex. 1.

Mr. Arnold is. Mr. Crockett said when Respondent's Form P-5 is renewed, he anticipates his name will be removed. He testified he was unaware Black Strata's Form P-5 had not been renewed and is delinquent.²¹ He testified Black Strata is working on getting the Form P-5 renewed. Black Strata requested 45 days from the hearing date to address the delinquent Form P-5.²²

Mr. Crockett testified it is his opinion the contractual leases Respondent relies on for authorization to operate the well have not expired. He provided copies of two written leases ("Leases") he claims are applicable.²³ Both Leases are dated August 18, 2008, with Roland and Mary Maxey (the "Maxeys") as lessors and Halek Energy LLC ("Halek") as lessee. The Leases are now assigned to Black Strata. The Leases contain a three-year primary term.²⁴ He testified both Leases are practically the same. One of the Leases pertains to "Tract One"²⁵ and the other to "Tract Two."²⁶ The Well is on Tract Two.²⁷ As Ms. Cantrell referenced, there is a third lease but it was not provided because it is not relevant to this case.²⁸

When Respondent obtained the Leases, initially there was a disagreement as to whether a clause in the Leases requiring activity within the first six months of the primary term had been complied with. The Maxeys claimed the activity the Leases required to occur within the first six months never occurred and the Leases had thus terminated. MagCart, Inc. (Black Strata's predecessor) filed a lawsuit against the Maxeys regarding this issue. Mr. Crockett presented a letter dated February 16, 2009, in which the Maxeys and Halek sign an acknowledgement regarding the Leases, stating:

Per our conversation on or about the 1st of February, 2009, it is our understanding that Halek Energy/CBO Energy will start operations concerning drilling the first well on Tract two no later than February 18th, 2009. It is also our understanding this extends all three leases and gives Halek Energy/CBO 6 months to commence operations on Tract #1 and than[sic] 6 more months to commence operations on Tract #3.²⁹

Mr. Crockett testified this letter demonstrates the activity required within six months of the Leases had been met by the original lessee. Ultimately, the parties reached a settlement agreement on or about October 6, 2009.³⁰ He further stated this letter is the first document in which the Leases were treated as community leases, in that activity on one lease extends to the others. Mr. Crockett testified that in the settlement agreement the Maxeys

²¹ Tr. at 34:20 to 35:24.

²² Tr. at 35:18 to 38:7.

²³ Black Strata Exs. 2, 3.

²⁴ Black Strata Exs. 2, 3 at ¶ 1.

²⁵ Black Strata Ex. 2.

²⁶ Black Strata Ex. 3.

²⁷ Tr. at 41:24 to 46:24.

²⁸ Tr. at 46:25 to 48:12.

²⁹ Black Strata Ex. 4.

³⁰ Black Strata Ex. 5.

release all claims with respect to the activity requirement within the first six months of the Leases contained in paragraph one.³¹

Mr. Crockett provided a *Mineral Lease Acknowledgement, Ratification and Affidavit of Nonproduction Pertaining to Maxey Leases* ("Ratification") signed on October 3, 2009, which was executed in conjunction with the settlement agreement. It was notarized and filed in Jack County.³² In it, the Maxeys acknowledge:

That certain language in the Maxey Leases to with: "...activity start by Lessee with Six Months of initiation of lease" was complied with by Halek Energy, LLC.³³

Mr. Crockett testified this provision acknowledges compliance with the requirements within six months of initiation of the Leases. He also discussed a provision in paragraph nine of the Ratification which states:

ACCORDINGLY, the Maxey Leases . . . are hereby confirmed, ratified and in full force and effect; so long as MagCart, Inc. commences operations for re-entry of a well on the Maxey Lease within 120 days of the Effective date of this [Ratification].³⁴

He testified it is Black Strata's position this provision modifies the original lease terms such that within 120 days of October 3, 2009, the lessee must re-enter one well to hold all three leases (two of which are the Leases) ("Three Leases"). It is his opinion that the Three Leases in effect became community leases according to applicable law.³⁵

Mr. Crockett provided documentation demonstrating Black Strata began re-entry of a well covered by the Three Leases that it intended to utilize as an injection well within 120 days of the Ratification.³⁶

Mr. Crockett testified subsequent to the re-entry operation of the intended injection well, Black Strata commenced drilling the Well. The Well was completed according to Commission records on September 18, 2011.³⁷ The Well produced 97.61 barrels in February 2012.³⁸ Black Strata sold the oil for \$7,332.38.³⁹

Mr. Crockett provided documentation of attempts to tender shut-in payments to maintain the Leases.⁴⁰ Mr. Crockett testified to and Complainant does not dispute that

³¹ Tr. at 48:13 to 53:8; Black Strata Ex. 5 at 4, ¶ 3.

³² Black Strata Ex. 6.

³³ *Id.* at 1, ¶ 8b.

³⁴ *Id.* at 2, ¶ 9.

³⁵ Tr. at 53:11 to 56:20.

³⁶ Tr. at 56:23 to 59:7; Black Strata Ex. 7.

³⁷ Black Strata Ex. 8 at 4. Black Strata also drilled Well No. 1 on this same Commission designated lease (the Maxey MEI Lease).

³⁸ Black Strata Ex. 9 at 1.

³⁹ Tr. at 59:8 to 62:2; Black Strata Ex. 9 at 2.

⁴⁰ Black Strata Ex. 11.

Black Strata has tendered shut-in payments to maintain the Leases. Mr. Crockett noted two provisions in the Leases Black Strata relies on in claiming the Leases have not terminated. The first provision relied on states:

If at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil, or gas or other substances covered hereby in paying quantities, but such well or wells are either shut-in or production therefrom is not being sold by Lessee, *such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this lease.*⁴¹

The Leases further provide for shut-in payments to maintain the Leases if the shut-in exceeds 90 days; the shut-in payments are due approximately every 90 days.⁴² Mr. Crockett asserts Black Strata has tendered the requisite shut-in payments to maintain the Leases. The second provision Mr. Crockett notes states:

Lessee's failure to properly pay shut-in royalty shall render the Lessee liable for the amount due, but shall not operate to terminate the lease.⁴³

Consistent with Ms. Cantrell's testimony, Mr. Crockett testified to and provided documentation of tendering shut-in payments to maintain the Leases.⁴⁴

Mr. Crockett provided a letter dated September 28, 2015, from Complainant's attorney, Charles W. Sartain, to WhiteMax, LLC ("WhiteMax"), a cotenant of the mineral interest estate in the Leases, and Black Strata. The letter states the Leases have expired, demands signed releases and authorizes access to the property only to plug the Well and remove equipment. The letter states access for any other purpose will be considered a trespass. The letter does not mention that access might be granted if requested.⁴⁵ Mr. Crockett provided an email from Complainant's attorney to Dan White of WhiteMax reminding the parties they have no right to be on the property "to conduct any oil and gas operations."⁴⁶ Mr. Crockett testified Black Strata took this seriously and did not further access the property.⁴⁷

Ultimately, Whitemax and its associates and/or co-tenants filed a lawsuit in Jack County District Court requesting a declaratory judgment that the Leases are valid and ongoing and that they have wrongly been denied access to the Well. Mr. Crockett provided a copy of the petition in that case.⁴⁸

⁴¹ See, e.g., Black Strata Ex. 2 at ¶ 2c, 10.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Tr. at 62:3 to 65:22; Black Strata Exs. 10, 11.

⁴⁵ Black Strata Ex. 12; Tr. at 66:2 to 68:22.

⁴⁶ Black Strata Ex. 13.

⁴⁷ Tr. at 69:4 to 69:21.

⁴⁸ Tr. at 71:9 to 73:12; Black Strata Ex. 14.

Mr. Crockett maintains Black Strata does have a good faith claim to operate the Well and requests, if necessary, that this proceeding be abated to allow the district court case to determine the rights between the parties.⁴⁹

Mr. Crockett also discussed another provision in the Leases Black Strata relies on. It states in pertinent part:

This lease shall not be forfeited or cancelled in whole or in part unless Lessee is given reasonable time after a judicial determination to remedy a breach or default under the lease and the Lessee fails to do so.⁵⁰

To clarify an issue regarding communications between the parties and access, Dan White also testified on behalf of Black Strata. He is a licensed attorney in Texas. He testified that after he received the September 28, 2015 letter denying Black Strata access, he had several friendly meetings with Mr. Sartain to discuss the mineral interest estate under the Leases. They discussed seeking a substitute operator for the Leases to resume production. Mr. White found an interested operator, G & F Oil, which he discussed with Mr. Sartain who seemed interested. Mr. White testified G & F Oil has extensive experience and investment resources. In response to the September 28 letter's denial of access, Mr. White testified he did request access to the property from Mr. Sartain but never received a response to his request.⁵¹

In response to Mr. White's testimony, Mr. Sartain acknowledged he did have meetings with Mr. White and they were amicable. He clarified that he did deny access to the property in the past but that no representative from Black Strata had approached him or Ms. Cantrell requesting access to the Well to perform tests necessary to get Black Strata's Form P-5 approved.⁵² One of Respondent's contentions is that it was denied access to the Well to perform tests necessary to get its Form P-5 renewed.

At the end of the hearing, the parties agreed to a schedule for filing written closing arguments. In addition, Black Strata was provided 45 days from the hearing to file documentation addressing its delinquent Form P-5.⁵³ Within that timeframe, Black Strata filed a letter with a printout of Commission records reflecting that Black Strata's Form P-5 has now been approved and Black Strata's status is no longer delinquent.

V. Examiners' Analysis

The Examiners recommend Complainant's request to have the Well plugged be denied and the Commission find Black Strata provided sufficient evidence at the hearing of a good faith claim to operate the Well.

⁴⁹ Tr. at 73:13 to 74:18.

⁵⁰ Tr. at 89:5 to 89:18; *see, e.g.*, Black Strata Ex. 3 at 2, ¶ 12.

⁵¹ Tr. at 100:6 to 103:22.

⁵² Tr. at 104:5 to 104:24.

⁵³ Tr. at 114:17 to 115:7.

Complainant alleges Black Strata does not have a good faith claim to operate the Well and the Commission should order the Well to be plugged. 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.⁵⁴

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.⁵⁵ 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.⁵⁶ Black Strata provided sufficient evidence of a reasonably satisfactory showing of a good faith claim to operate the Well.

All parties agree the Well has not been produced in recent years. Black Strata and Complainant have differing interpretations of the Leases. Black Strata maintains the Leases contain provisions allowing shut-in payments to maintain the Leases. Black Strata claims it has tendered shut-in payments sufficient to maintain the Leases. Additionally, Black Strata claims the Leases contain a provision requiring a judicial determination of a breach and opportunity to cure before the Leases can be terminated.

Complainant does not dispute shut-in payments have been made but argues the shut-in provisions are only applicable if the Well is capable of production as required by the terms of the Leases. Complainant maintains there is no bona fide dispute (and therefore no good faith claim), reasoning the law is clear that the Well is incapable of production and the shut-in provisions are not applicable. Complainant relies on the Texas Supreme Court's opinion in *Anadarko v. Thompson*.⁵⁷ In the contractual lease at issue in the *Anadarko* case, the lease is to continue so long as the lease "is or can be produced."⁵⁸ The Court adopted the standard to satisfy the "can be produced" requirement which is that the well "must be capable of producing in paying quantities without additional equipment or repairs."⁵⁹ The Court did not evaluate any fact scenario. While the Court noted that the well at issue was shut-in due to the need of pipe repairs, the Court remanded the case to the trial court for further proceedings to develop the facts.⁶⁰ The Court notes a prior case in which it held "a well is capable of production if it is shut-in

⁵⁴ 16 Tex. ADMIN. CODE 3.15(a)(5).

⁵⁵ *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.); 56 Tex. Jur. 3d *Oil and Gas* § 737, *Adjudication of title to property and contract rights* (June 2016 Update).

⁵⁶ *Id.*

⁵⁷ 94 S.W.3d 550 (Tex. 2002).

⁵⁸ *Id.* at 555.

⁵⁹ *Id.* at 558.

⁶⁰ *Id.* at 557-58.

because there is no available pipeline.”⁶¹ In a per curium response denying a motion for rehearing in the *Anadarko* case, the Court states:

to be capable of producing in paying quantities, there must be facilities located near enough to the well so that it would be economically feasible to establish a connection so that production could be marketed at a profit.⁶²

This indicates there are some circumstances in which a well can be capable of production if equipment or facilities are missing or in need of repair. The Examiners do not agree with Complainant assertion—based solely on the *Anadarko* case—that because the operator cannot “flip a switch” to turn on the Well, the Well is necessarily incapable of production in paying quantities.⁶³

Complainant’s basis for claiming the Well is incapable of production is that the Well would need additional equipment to enable production. The Examiners do not find the *Anadarko* case defeats Black Strata’s assertion that there is a bona fide lease dispute between the parties and that Black Strata has a good faith claim.⁶⁴ Moreover, Complainant does not address Black Strata’s claim that the Leases’ provisions requiring a judicial determination of default and opportunity to cure before cancellation applies in this situation. Further, the parties have been embroiled in legal disputes regarding the Leases, including a denial of access to the Well by Complainant.

For these reasons, the Examiners conclude based on the evidence provided, Black Strata has made a reasonably satisfactory showing of a good faith claim and there was insufficient evidence that the Well should be ordered plugged. Examiners recommend Complainant’s request to have the Well plugged be denied.

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

Based on the record in this case and evidence presented, the Examiners recommend Complainant’s request that the Well be plugged be denied, the Commission find that Black Strata provided sufficient evidence of a good faith claim to operate the Well, and the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Maxey’s Broken Stirrup Properties, LLC (“Complainant”) filed a complaint that Black Strata LLC (“Black Strata” or “Respondent”) does not have a good faith claim to operate the Maxey-MEI Lease, Lease No. 33203, Well No. 2 (the “Well”), in the Newark, East (Barnett Shale) Field in Jack County, Texas. Complainant asserts Black Strata’s rights under the applicable contractual leases (“Leases”) have

⁶¹ *Id.* at 558.

⁶² *Id.*

⁶³ See *Maxey Broken Stirrup Properties LLC’s Closing Argument* at 2 (filed June 5, 2017).

⁶⁴ The Examiners note that approximately 85 subsequent appellate cases cite to the *Anadarko* case, which Complainant did not discuss.

- terminated due to lack of production. Complainant requests the Commission order Black Strata to plug the Well.
2. On February 23, 2017, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") via first class mail to Complainant and Black Strata setting a hearing date of March 28, 2017. Consequently, all 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 March 28, 2017, as noticed. Complainant and Black Strata appeared at the hearing.
 3. There has been no production of the Well since approximately February 2012.
 4. Respondent has an active Commission Form P-5 *Organization Report*.
 5. Black Strata claims it has made sufficient shut-in payments to maintain the Leases. Complainant does not dispute the shut-in payments have been tendered but maintains the Leases' shut-in provisions are not applicable because the Well is not capable of production.
 6. Black Strata further asserts that the Leases require a judicial determination of default and opportunity to cure before the Leases can be cancelled.
 7. The Leases contain provisions allowing for shut-in payments to maintain the Leases.
 8. Black Strata's interpretation of the Leases is reasonable.
 9. Black Strata provided evidence that shut-in payments were tendered as required by the Leases.
 10. The parties do not dispute sufficient shut-in payments have been tendered. Complainant's claim is that the shut-in provisions are not applicable because the Well is incapable of producing.
 11. There has been no judicial determination that Black Strata is in breach or default of the Leases.

Conclusions of Law

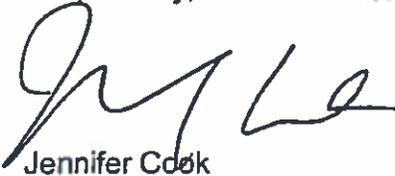
1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. See, e.g., TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.

2. The Commission has jurisdiction in this case. *See, e.g.,* TEX. NAT. RES. CODE § 81.051.
3. At the hearing in this matter, Black Strata provided a reasonably satisfactory showing of a good faith claim to continue operating the Well. 16 TEX. ADMIN. CODE § 3.15(a)(5).
4. Complainant's good faith dispute with Black Strata does not defeat Black Strata's reasonably satisfactory showing of a good faith claim.
5. There is insufficient evidence that the Well should be plugged.

Recommendations

The Examiners recommend the Commission enter an order finding Black Strata demonstrated a good faith claim to operate the Well and denying Complainant's request that the Well be plugged.

Respectfully,



Jennifer Cook
Administrative Law Judge



Paul Dubois
Technical Examiner