# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

**OIL AND GAS DOCKET NO. 04-0298156**

**THE COMPLAINT OF BENITO R. VILLAREAL ALLEGING THAT GREEN EXPLORATION COMPANY (OPERATOR NO. 330179) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE VILLAREAL (245754) LEASE, WELL NO. 1, SEJITA, WEST FIELD, DUVAL COUNTY, TEXAS**

### APPEARANCES

**FOR THE COMPLAINANT:**

Mr. Omar Villareal, proxy for Benito R. Villareal, *Pro Se*
Mr. Mario Villareal, proxy for Benito R. Villareal, *Pro Se*

**FOR GREEN EXPLORATION COMPANY:**

Mr. Mark R. Paisley, Attorney at Law
Mr. John Cantu, President

**PROCEDURAL HISTORY:**

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| Notice of Hearing: | March 1, 2016 |
| Hearing on the Merits: | May 2, 2016 |
| Proposal for Decision: | June 17, 2016 |
| Heard by: | Ryan M. Lammert, Administrative Law Judge<br>Brian K. Fancher, Technical Examiner |

## SUMMARY

In Docket No. 04-0298156, Benito R. Villareal ("Complainant") filed with the Commission a complaint letter challenging Green Exploration Company's ("Green") "good faith claim" to a continued right to operate the Villareal (245754) Lease, Well No. 1, Sejita, West Field, located in Duval County, Texas ("Well"). Specifically, Complainant's letter alleges that the subject oil, gas and mineral lease has expired by its own terms for lack of production from the Well. In response, Green timely requested a hearing on the merits.

At the hearing on the merits, Green acknowledged that the subject oil, gas and mineral lease had not produced oil or gas from the Well—for at least the previous nine (9) months—but that it was otherwise still in full force and effect pursuant to the "force majeure" clause contained therein. To bolster that position, Green asserts that it was precluded by a neighboring property from connecting a pipeline to market the gas produced from the subject oil, gas and mineral lease.

The record evidence demonstrates that Green did not present a "good faith claim" to operate the Lease. The Administrative Law Judge and Technical Examiner (collectively, "Examiners") recommend that the Commission order Green to plug the Well, and cancel the plugging extension for same.

## EVIDENCE PRESENTED

### COMPLAINANT

Complainant—representing himself *pro se*—largely offered testimony in support of its position that Green lacks a "good faith claim" to operate the subject property. Summarily, Complainant argues that: [1]

> [Complainant] met with [Green] . . . [Green] expressed and acknowledged that . . . the well was not in production. [Green] expressed that it was being held up because [Green] could not secure [an easement] . . .

And, that:[2]

> [Complainant] do[es'nt] believe that failure to get a neighbor to enter into contract would constitute the legal definition of force majeure.

Complainant did not offer or cite to any legal authority supporting that conclusion.[3]

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[1] Tr., pg. 9.

[2] Tr., pg. 11.

[3] Tr., pg. 12.

However, Complainant offered testimony demonstrating that the Well had ceased production as early as November 30, 2013, and the subject oil, gas and mineral lease expired by its own terms as early as November 30, 2014, for lack of production.[4]

Lastly, during the hearing on the merits, the Examiners took official notice of online Commission records—reflecting the production history of the Well—provided by Complainant in an affidavit subscribed and sworn to by Benito R. Villareal, on April 21, 2016.[5]

Online Commission records reflect that the Well had zero (0) reported production beginning September 2015 through December 2015, and no reported production beginning January 2016 through April 2016.[6]

GREEN EXPLORATION COMPANY

Green offered no evidence to contradict the assertion that the Well has ceased production, and, in fact, conceded that it is not in production.[7] Rather, Green elected to assert, as an affirmative defense, arguments relating to the "force majeure" clause contained within the subject oil, gas and mineral lease.[8]

First, Green submitted into evidence an oil, gas and mineral lease dated December 2012, between Benito R. Villareal, as Lessor, and Green Exploration, as Lessee, covering 80 acres of land, including the Well, for a one (1) year primary term ("Lease"), demonstrating that Green and Complainant entered into a valid lease agreement on that date.[9, 10] Green specifically cites to paragraph 10 of the Lease as evidence that the Lease in fact contains a "force majeure" clause.[11]

Paragraph 10 of the Lease states: [12]

> Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or from producing any oil, gas or minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, and Federal or state law or any order, rule or

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[4] Tr., pgs. 7-8; Tr., pg. 12.

[5] Tr., pgs. 16-17.

[6] Ex. 3 to Official Notice Ex. 1.

[7] Tr., pg. 8.

[8] Tr., pgs. 8-9.

[9] Green Ex. 1.

[10] It should be noted that the Lease only lists as its effective date "_____ day of December, 2012 . . ." Accordingly, the Examiners are unable to identify the precise date by which the primary term of the Lease was to take effect.

[11] Tr., pg. 20.

[12] Green Ex. 1.

> regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the lease premises; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

Green then offered testimony describing a series of events that occurred subsequent to securing the Lease from Complainant:[13]

> [Q]: Tell me what's happened with that property since November of 2012.
>
> [A]: . . . we began with some of the work on the well. We tested it . . . it tested well . . . we purchased 20-plus thousand feet of polyline, and laid that line to the – almost to the existing pipeline to connect it to turn the well on.
>
> . . .
>
> [Q]: . . . having done that and brought in some equipment . . . we're in the final process – or hoping to be in the final process of tieing [sic] in the line, and were told not to get on the – the last property to tie the – to tie the line into the main line – to do all gas gathering line – by the surface owner.

Green then submitted into evidence a Right-of-Way Agreement dated June 18, 1966, between L. A. Dickey and wife, Betty H. Dickey, as Grantors, and Valley Gas Transmission, Inc., as Grantee, conveying a pipeline easement unto Grantee over and across a tract of land immediately adjacent to the pipeline referenced in Green's testimony above.[14]

Next, Green submitted into evidence an Assignment, Conveyance and Bill of Sale dated effective April 1, 1996, between Valley Gas Transmission, Inc., as Seller, and Duval Gas Gathering Corporation ("Duval"), as Buyer, conveying all of Seller's right, title and interest in the above-described Right-of-Way Agreement and other physical assets associated with the pipeline system.[15]

Green offered testimony that its President, Mr. Cantu, is also the owner of Duval.[16] But, to further illustrate the purposes of Green Exhibits 2 and 3, Green offered testimony:

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[13] Tr., pgs. 21-23.

[14] Green Ex. 2.

[15] Green Ex. 3.

[16] Tr., pg. 26.

[Q]: So have you been working the last couple of years to get where gas from this well can be pipelined and sold out?

[A]: Yes, I have.

. . .

[A]: It was – I purchased 21,000 feet of – of line, and we're ready to tie into the – to the end of Duval's pipeline when we were told not to.

. . .

[A]: . . . Fritz Hofstetter, now owns the surface of the property where the end of Duval Gas Gathering line is, so he said for me not to cross and tie the line in, even though, according to Exhibit 2, I should have the right to. So I haven't crossed.

Green also submitted into evidence two letters dated February 8, 2014, and June 27, 2014, from Green's attorney, Mr. Paisley, to Fritz Hofstetter and Ed Pickett, respectively.[17, 18] Green contends that those letters demonstrate its position that the Right-of-Way Agreement dated June 18, 1966, is still in full force and effect permitting Duval (a Cantu owned company) "the right to enter onto your property for those pipeline purposes", but that, nonetheless, it "wants to have and keep a good relationship with [the surface owners]" and therein offered additional compensation to the surface owners because of the "general inconvenience."[19]

Green attached a Pipeline Easement and Right of Way Agreement to those letters for the surface owners to execute.[20] However, Green testified that the offers contained in those letters were subsequently rejected by the surface owners.[21]

Green concluded its case contending that the Lease is still in effect because of the "force majeure" clause contained therein, arguing that the above described events were unforeseeable to Green precluding it from producing from the Lease.[22]

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[17] Green Ex. 4.

[18] Green Ex. 5.

[19] Green Exs. 4 and 5.

[20] Green Ex. 6.

[21] Tr., pg. 31.

[22] Tr., pgs. 33-34.

## EXAMINERS' OPINION

In this Docket, the sole issue before the Commission is whether Green holds a "good faith claim" to a continuing right to operate the Lease. Statewide Rule 15(a)(5) defines "Good Faith Claim" 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.

The Commission's authority to determine a "good faith claim" arises from the *Magnolia* case. In discussing the Commission's authority to grant a drilling permit, the Texas Supreme 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."[23] The Court concluded, "Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in *good faith*.[24]

In the context of the right to continue operation of a lease, the Commission looks to the operator's lease and the production history from the lease. If the lease contains a "cessation of production" clause with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—for example 12 months—the contractual lease will generally not be considered a "good faith claim" to operate the property. If the lease contains a "continuous operations clause" with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—again, for example 12 months—the operator would be required to provide some evidence that operations had continued in an effort to restore production with no lapse in operations greater than 60 or 90 days, as the case may be. Failing that, the contractual lease would no longer be considered a "good faith claim" to operate the lease, unless—as asserted in the instant Docket—the operator argues that it is relieved from producing or operating the lease because of a "force majeure" event.

The purpose of a "force majeure" clause in an oil and gas lease "is to excuse the lessee from non-performance of lease obligations when the non-performance is caused by circumstances beyond the reasonable control of the lessee ... or when non-performance is caused by an event which is unforeseeable at the time the parties entered the contract."[25] Also, "When a lessee raises a force-majeure clause as an excuse for nonperformance, the lessee bears the burden of proof to establish that defense."[26]

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[23] *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

[24] *Id.* at 191 (emphasis added).

[25] *Hydrocarbon Mgmt., Inc. v. Tracker Exploration, Inc.*, 861 S.W.2d 427, 435-36 (Tex.App.-Amarillo 1993, no writ) (citations omitted).

[26] *Moore v. Jet Stream Investments, Ltd.*, 261 S.W.3d 412, 420 (Tex. App. 2008).

Lastly, the Texarkana Court of Appeals observed that, "The force-majeure clause will be interpreted based on the plain, ordinary, and generally accepted meaning of the language."[27]

Again, Paragraph 10 of the Lease states that:[28]

> Should Lessee be *prevented* from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations thereon or *from producing any oil, gas or minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure*, and Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith; and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas from the lease premises; and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

In the instant Docket, Green stipulates that production has ceased from the Well; but because it is precluded—by virtue of its inability to obtain an easement—from connecting to the pipeline system, Green is excused from non-performance of lease obligations. However, because Green only generally cites to Paragraph 10 (and, not to specific language contained therein), the Examiners are left to interpret the Lease without guidance from Green. Accordingly, the Examiners have assumed the italicized language above to be the relevant section of Paragraph 10 Green relies on to assert its "force majeure" defense.

The Examiners are not persuaded by Green's argument.

First, it should be noted that neither party asserts that the Lease is held by production from the Well. The Examiners also note that the Lease had zero (0) production beginning September 2015 through December 2015, and had no reported production since January 2016.

Second, the record evidence demonstrates that Mr. Cantu is the owner of both Green Exploration Company and Duval Gas Gathering Corporation, and exercises control over both entities. That is important because—in the same sentence—Mr. Cantu asserts (presumably as the owner of Duval) that it has a valid easement across the tract of land necessary to connect the Well to the pipeline system, but states that Green is somehow prevented from crossing same because the surface owner has withheld consent. Therefore, even if it is accepted by the Commission that lack of an easement *prevents production* from the Well, Green is only prevented from doing so because Duval has not

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[27] *Id.*

[28] Green Ex. 1 (emphasis added).

exercised (or, attempted to exercise) rights conferred upon it by virtue of a valid easement. It stands to reason that Duval should have attempted—through appropriate legal remedies—to exercise its right to access the property, so that Green could connect to the Well. The Examiners conclude that Green is prevented from producing the Well partially because Mr. Cantu has not exercised remedies available to him as the owner of both entities, and thus has not shown to have been prevented from producing the Well.

Next, the Examiners note that Green does not identify any particular date to designate the genesis of its alleged "force majeure" event, but the record demonstrates that Green engaged adjacent surface owners in an attempt to secure a "new" easement as early as February 2014 (and, then again in June 2014). It is not clear from the record when negotiations between Green and the surface owners broke down.

However, in those months, Green reported to the Commission production from the Well equal to 300 MCF and 100 MCF, respectively. After June 2014, Green reported production from the Well in August 2014, October 2014, October 2014, December 2014, February 2014, April 2015, June 2015, and August 2015.[29] In those months, it is clear from the record that Green had not secured the "necessary" easement, but nonetheless was able to produce from the Lease. Thus, it is logical to conclude that lack of an easement did not prevent the Well from producing—additional evidence that lack of an easement neither constitutes a "force majeure" event contemplated by the Lease, nor is Green prevented from producing any oil, gas or minerals therefrom by reason of scarcity of or inability to obtain or to use equipment or material because of that reason.

For these reasons, the Examiners conclude that Green did not present a "good faith claim" to operate the Lease and recommend that the Commission order Green to plug the Well, and cancel the plugging extension for same.

## CONCLUSION

The Examiners conclude that Green did not present a "good faith claim" to operate the Lease and make the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACTS

1. At least ten days notice was given to Green Exploration Company ("Green"), Respondent, and Benito R. Villarreal, Complainant. By letter dated November 3, 2015, Green was afforded the opportunity to submit evidence of a continuing right to operate the subject lease and well or request a hearing on the matter. Green requested a hearing on the matter.

2. A hearing on the merits was held on May 2, 2016.

3. Green holds Operator No. 330179.

[29] Reported to the Commission as flared volumes.

4. Green is the P-4 Record Operator of the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

5. On September 11, 2015, Complainant Benito R. Villarreal submitted to the Commission a request for the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas, to be plugged.

6. The Villarreal (ID No. 245754) Lease, Well No. 1, is physically located in the southeast portion of the Ynojosa, J M Survey, Abstract No. 623, Duval County, Texas.

7. On September 11, 2015, Complainant Benito R. Villarreal submitted to the Commission an unrecorded oil, gas and mineral lease dated November 30, 2012, from Benito R. Villarreal to Green Exploration.

   a. The oil, gas and mineral lease provided for a one (1) year primary term.

   b. The oil, gas and mineral lease covers eighty (80) acres of land – including land surrounding the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field.

   c. Evidence of lease perpetuation was not submitted to the Commission.

8. Green has an active Form P-5 and has financial assurance in place in the form of a $50,000.00 cash deposit, which expires on November 30, 2016. Green is the operator of 97 wells, of which 36 are in Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE § 3.14(b)(2)] inactive status.

9. Green is Commission designated operator of the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

10. The Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas had zero (0) production beginning September 2015 through December 2015, and had no reported production since January 2016.

11. A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) 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." [16 TEX. ADMIN. CODE § 3.15(a)(5)].

12. Green failed to successfully assert a "force majeure" defense, to excuse it from non-performance of Lease obligations.

13. Green failed to present evidence sufficient to demonstrate that it has a "good faith claim" to operate the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

14. Absent a "good faith claim" to operate, the subject well is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).

15. Absent eligibility for an extension to the plugging requirements of Statewide Rule 15(e)(3), the plugging extension of the subject well should be cancelled pursuant to Statewide Rule 15(h).

16. The plugging extension for the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas, should be cancelled pursuant to Statewide Rule 15(h) and the well plugged.

## CONCLUSIONS OF LAW

1. Proper notice of an opportunity for a hearing was timely issued to appropriate persons entitled to notice.

2. All things necessary to the Commission attaining jurisdiction have occurred.

3. Green Exploration Company does not have a "good faith claim" to operate the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

4. The Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas, is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).

5. The plugging extension the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas, should be cancelled pursuant to Statewide Rule 15(h).

## RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission enter an order cancelling the plugging extension for the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

The Administrative Law Judge and Technical Examiner also recommend the Commission enter an order directing Green Exploration Company to plug the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.

RESPECTFULLY SUBMITTED,

RYAN M. LAMMERT
Administrative Law Judge

BRIAN FANCHER
Technical Examiner