



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL & GAS DOCKET NO. 08-0265407

COMPLAINT AGAINST O & O OPERATORS LLC REQUESTING THAT THE COMMISSION CANCEL COMMINGLING PERMIT NO. 08-5724 FOR THE GREGG "AC" (04127) LEASE, GREGG "BA" (04128) LEASE, MASTERSON -A- (04130) LEASE, AND MASTERSON -B- (04131) LEASE, MASTERSON FIELD, PECOS COUNTY, TEXAS

APPEARANCES:

FOR COMPLAINANTS:

Carolyn Bailey
Chris Bailey

COMPLAINANTS:

The Bailey Family

FOR RESPONDENT:

Ismael Valenzuela

RESPONDENT:

O & O Operators LLC

FOR OBSERVER:

Matthew T. Scott

OBSERVER:

Texas General Land Office

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

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| DATE COMPLAINT FILED: | April 7, 2010 |
| DATE OF NOTICE OF HEARING: | April 30, 2010 |
| DATE OF HEARING: | June 15, 2010 |
| HEARD BY: | James M. Doherty, Hearings Examiner |
| DATE PFD CIRCULATED: | June 29, 2010 |

STATEMENT OF THE CASE

On April 7, 2010, Carolyn Bailey, on behalf of Chris Bailey, Ian Bailey, and Marck Bailey, filed a complaint with the Commission alleging that Commingling Permit No. 08-5724 should be canceled because the Form P-17 (Application for Exception to Statewide Rules 26 and/or 27) and Form P-17A (Interim Commingling/Measurement Application Supplement) filed February 9, 2005, which led to issuance of the commingling permit erroneously stated that all royalty and working

interest owners in the four oil leases covered by the permit were the same both as to the owners and their percentage of ownership. The complaint alleged that the royalty interest ownership in the four oil leases covered by Commingling Permit No. 08-5724 is not identical. The complaint also alleged that two of the four leases covered by the permit were State of Texas leases, and the Texas General Land Office did not permit State leases to be commingled with privately owned leases.

The Bailey complaint was set for hearing by Notice of Hearing served on April 30, 2010. A hearing was held on June 15, 2010. Carolyn and Chris Bailey appeared to represent the Bailey Family and presented evidence. Matthew T. Scott appeared to represent the Texas General Land Office as an observer and participated in the hearing by posing questions to respondent's representative and responding to questions posed by the examiner. Pursuant to the consent of all parties, Ismael Valenzuela appeared and participated at the hearing by telephone. Mr. Valenzuela presented evidence on behalf of the respondent O & O Operators LLC.

APPLICABLE LAW

As pertinent, Statewide Rule 26(a)(2) provides that all oil and any other liquid hydrocarbons as and when produced shall be adequately measured before the same leave the lease from which they are produced. Sufficient tankage and separator capacity must be provided on a lease by the producer to adequately take daily gauges of all oil and any other liquid hydrocarbons. However, pursuant to Statewide Rule 26(b), in order to prevent waste, promote conservation, or protect correlative rights, the Commission may approve surface commingling into a single storage tank of oil, gas, or oil and gas production from two or more tracts of land producing from the same Commission designated reservoir or from one or more tracts of land producing from different Commission designated reservoirs.

Pursuant to Statewide Rule 26(b)(1), an application for surface commingling may be approved administratively if (a) the tracts or Commission designated reservoirs have identical working interest and royalty interests; or (b) production from each tract and each Commission designated reservoir is separately measured and therefore there is no commingling of separate interests. Administrative approval is also authorized when the tracts or Commission designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the Commission has not received a protest to an application within 21 days of notice of the application being mailed by the applicant to all working and royalty interest owners or, if publication is required, within 21 days of the date of last publication and the applicant provides a method of allocating production to ensure the protection of correlative rights and evidence that proper notice has been provided to the working and royalty interest owners.

Pursuant to Statewide Rule 26(b)(2), when the tracts or Commission designated reservoirs do not have identical working and royalty interest ownership in identical percentages and a person entitled to notice of the application has filed a protest, the applicant may request a hearing. In this circumstance, the Commission may permit commingling if the applicant demonstrates that the

proposed commingling will protect the rights of all interest owners and will prevent waste, promote conservation or protect correlative rights. Pursuant to Statewide Rule 26(b)(3), the applicant must demonstrate that the proposed commingling will not harm correlative rights of the working or royalty interest owners of any of the wells to be commingled. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed that Commingling Permit No. 08-5724, as approved administratively on February 16, 2005, pursuant to Form P-17 filed on February 9, 2005, by Tripp & Sons LLC, purports to authorize the surface commingling of oil produced from the Gregg "AC" (04127) Lease, the Gregg "BA" (04128) Lease, the Masterson -A- (04130) Lease, and the Masterson -B- (04131) Lease, all in the Masterson Field, Pecos County, Texas. The examiner has also officially noticed the Commission's P-4 Inquiry database for each of the leases covered by Commingling Permit No. 08-5724, which shows that O & O Operators LLC designated itself the operator of the two Gregg leases and the Masterson -B- Lease by filing Forms P-4 (Certificate of Compliance and Transportation Authority) approved July 16, 2007, effective June 1, 2007, and designated itself the operator of the Masterson -A- Lease by filing a Form P-4 approved April 29, 2008, effective June 1, 2007. The next previous operator of these four leases was Pharaoh Oil & Gas, Inc., which became operator pursuant to Forms P-4 approved March 10, 2005, effective February 1, 2005. The operator of the leases prior to Pharaoh was Tripp & Sons LLC, which designated itself operator by Forms P-4 approved April 20, 2004, effective April 1, 2004.

The examiner has also officially noticed the Oil Proration Schedule database for each of the leases covered by Commingling Permit No. 08-5724. The Gregg "AC" (04127) Lease has Well Nos. 1, 2, 3, 4, and 6. Well Nos. 1, 4 and 6 are shown to be shut-in. Well Nos. 2 and 3 are shown to be producing. Plugging extensions stand denied for Well Nos. 1, 3, 4, and 6. The Gregg "BA" (04128) Lease has Well No. 1 only, and this well is shown to be producing. The Masterson -A- (04130) Lease has Well Nos. 1W, 2, 3, 4, 6, 7, 9, 10 and 11. Well Nos. 1W, 6, 7, and 11 are shown to be shut-in, and these wells are shown to have plugging extensions. Well Nos. 2, 3, 4, 9, and 10 are shown to be producing. The Masterson -B- (04131) Lease has Well Nos. 1, 2W, 3, 4, 5, 6, 7, and 8. Well Nos. 2W, 3, 4, 5, 7, and 8 are shown to be shut-in, and all these wells are shown to have plugging extensions. Well Nos. 1 and 6 are shown to be producing. The examiner has also officially noticed the P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry database for the Gregg "AC" Lease, which shows that this lease was severed on May 20, 2010, based on field rules violations.

The examiner has also officially noticed a Form P-17 filed with the Commission by O & O Operators LLC on or about April 22, 2010, which requests that Commingling Permit No. 08-5724 be amended to delete the Gregg "AC" (04127) Lease and the Gregg "BA" (04128) Lease from the

permit and to leave the Masterson -A- (04130) Lease and Masterson -B- (04131) Lease on the permit. Processing of this Form P-17 has been deferred in the Oil & Gas Division pending the outcome of this docket.

The Bailey Family

Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey are mineral interest owners in the property covered by the Gregg "AC" (04127) Lease and the Gregg "BA" (04128) Lease.¹ They believe that Commingling Permit No. 08-5724 was improperly approved, that oil production from the two Gregg leases has been illegally commingled with oil production from the Masterson -A- (04130) Lease and the Masterson -B- (04131) Lease, and that Commingling Permit No. 08-5724 should be canceled.

On February 9, 2005, Tripp & Sons LLC, which was then the operator of the two Gregg leases and the two Masterson leases, filed a Form P-17 and Form P-17A for approval of surface commingling of oil produced from these four leases. In Item 13 of the Form P-17, Tripp represented to the Commission that the commingled royalty interests in the four leases were the same and that Tripp intended to allocate commingled production based on W-10 tests of the wells on the leases. In Item 7 of the Form P-17A, Tripp represented that production from wells on the four leases to be commingled would not be separately measured. In Item 9 of the Form P-17A, Tripp represented that all working and royalty interest owners were exactly the same in the four leases proposed to be commingled and all working and royalty interests were in the same percentage in all four leases. The Form P-17 application filed by Tripp was approved administratively, without notice or hearing, on February 16, 2005, and Commingling Permit No. 08-5724 authorizing surface commingling of oil produced on all four leases was issued.²

The Baileys say that the representation made by Tripp in the Form P-17 and Form P-17A filed on February 9, 2005, that the royalty ownership in the four leases is identical was clearly erroneous. The two Masterson leases are State of Texas leases of Relinquishment Act land. The oil and gas leases in effect covering the Masterson -A- Lease as of February 9, 2005, and currently, are

¹ Although not an issue directly involved in this docket, the Baileys suggest that an old oil and gas lease covering this property has terminated. Assuming that the lease is still in effect, the named members of the Bailey family are royalty owners under this lease. If the lease has terminated, they appear to be unleased mineral interest owners in the property. For the purposes of this case only, the examiner will presume that the old lease is still in effect and the Baileys are royalty owners, because if the lease has terminated, O & O Operators, LLC has no right at all to produce oil from the two Gregg leases, much less commingle such oil with oil produced from the Masterson leases.

² It appears that surface commingling of oil produced from the two Masterson leases had previously been authorized by Commingling Permit No. 08-5724 as a result of administrative approval of a Form P-17 filed by Tripp on May 13, 2004, in which Tripp had likewise represented that the royalty ownership in the two Masterson leases was identical. The effect of the approval given on February 16, 2005, was to add the two Gregg leases to Commingling Permit No. 08-5724.

leases between the State of Texas acting through its agents William C. Benoit, individually and as trustee for Laverne M. Benoit, Edward T. Lehn, Jr., Bank of America, N.A., trustee of the Patricia L. Brundage Trust, and Bank of America, N.A. trustee of the Phyllis L. Gallagher Trust, lessors, and Ernest Producing Co., lessee (State of Texas Lease No. M-104962). These leases provided for a 1/5th royalty payable one-half to the Commissioner of the Texas General Land Office and one-half to the owners of the surface acting as the State's agents for leasing purposes.

The oil and gas leases in effect covering the Masterson -B- Lease as of February 9, 2005, and currently, are leases between the State of Texas acting through its agents William C. Benoit individually and as trustee for Laverne M. Benoit, NationsBank, N.A., trustee of the Patricia L. Brundage Trust, Edward T. Lehn, Jr., and NationsBank, N.A., trustee of the Phyllis L. Gallagher Trust, lessors, and Synergy Oil & Gas, Inc., lessee (State of Texas Lease No. M-100941). These leases provided for a 3/16th royalty payable one-half to the Commissioner of the Texas General Land Office and one-half to the owners of the surface acting as the State's agents for leasing purposes.

If there was any effective oil and gas lease covering the two Gregg leases as of February 9, 2005, when the Tripp Form P-17 was filed, or which is currently in effect, it is a May 1929 Oil and Gas Lease between Dean B. Gregg and Edna W. Gregg, and Monimia L. Botsford, lessors, and Monte Turner, lessee. This lease covered privately owned land and provided for a 1/8th royalty. Effective March 10, 2000, equal undivided 1/3rd mineral interests in the land covered by the two Gregg leases was conveyed to Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey. Assuming that the May 1929 Oil and Gas Lease was still in effect, Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey became the owners of the royalty interest in the Gregg leases after March 10, 2000.

The royalty interest ownership in the two Masterson leases is not identical, and was not identical as of May 13, 2004, or February 9, 2005, when the Tripp Forms P-17 were filed, because a 1/5th royalty applies as to the Masterson -A- Lease and a 3/16th royalty applies as to the Masterson -B- Lease. The royalty interest ownership in the two Masterson leases, on the one hand, and the two Gregg leases, on the other, is not identical, and was not identical as of February 9, 2005, when the Tripp Form P-17 was filed, because Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey do not own any royalty interest in the two Masterson leases, and the State of Texas does not own any royalty interest in the two Gregg leases.

Rules of the Texas General Land Office at 31 TEX. ADMIN. CODE §9.35 provide that a lessee of state owned mineral land shall obtain written permission from the GLO before surface commingling state leases or state pooled unit production with private lease production or before surface commingling oil and/or gas from two separate state leases. Complainants' research of GLO's mineral files relating to the subject leases did not disclose that any written permission has ever been obtained from GLO to commingle the two Masterson leases or to commingle the Masterson leases with the two Gregg leases.

Production data obtained from the Commission's Production Data Query database for January 2005 through March 2010 was presented for each of the four leases now covered by Commingling Permit No. 08-5724. For the Gregg "AC" (04127) Lease, minimal production amounting to 0 to 3 BOPM was reported for January 2005 through November 2006. For this same lease, zero production was reported for December 2006 through September 2007. More substantial production was reported for this lease once O & O Operators LLC became the operator. For October 2007 through August 2009, zero production was reported for a few months but during most months production ranged from 25 to 102 BOPM. Zero production was reported for this lease from September 2009 through March 2010.

For the Gregg "BA" (04128) Lease, minimal production was reported for January 2005 through November 2006, amounting to 0 to 4 BOPM. Zero production was reported for this lease from December 2006 through May 2007. More substantial production was reported after O & O Operators LLC became the operator. From June 2007 through August 2009, zero production was reported for a few months, but during most months production ranged from 17 to 51 BOPM. From September 2009 through March 2010, zero production was reported.

For the Masterson -A- (04130) Lease, zero production was reported from January 2005 through August 2005. Minimal production was then reported from September 2005 through August 2006, amounting to zero production for some months and 1 to 4 BOPM for the remaining months. Zero production was reported for this lease from September 2006 through September 2007. A greater amount of production was reported for this lease after O & O Operators LLC became the operator. For October 2007 through March 2010, zero production was reported for a few months but 24 to 152 BOPM was reported for most months.

For the Masterson -B- (04131) Lease, relatively substantial production was reported for January 2005 through May 2007, ranging from 113 to 453 BOPM except for October and November 2005 for which no production reports were filed. Reported production for this lease declined after O & O Operators LLC became the operator. From June 2007 through March 2010, zero production was reported for a few months but during most months reported production ranged from 12 to 51 BOPM.

The Baileys have the concern that there is no way to determine whether the production that has been reported for the two Gregg leases is what was actually produced from these leases and the Baileys may have been paid royalties that should have been attributed to the State's Masterson leases.

Texas General Land Office

Although the Texas General Land Office participated at the hearing only as an observer, Matthew T. Scott confirmed that the State of Texas is the owner of a royalty interest in the two Masterson Leases. Although Mr. Scott is the GLO official responsible for reviewing applications

filed with GLO to commingle State leases, he stated that he was unaware of any request for GLO permission to commingle the two Masterson leases with each other or with the two Gregg leases.

O & O Operators LLC

Mr. Valenzuela representing O & O Operators LLC gave no testimony regarding the royalty or working interest ownership in the four leases covered by Commingling Permit No. 08-5724. He confirmed that after the filing of the Bailey complaint, O & O filed a new Form P-17 with the Commission on or about April 22, 2010, requesting that the two Gregg leases, in which the Baileys are interested, be deleted from Commingling Permit No. 08-5724. If approved, this Form P-17 would leave authority to commingle the two Masterson leases. Mr. Valenzuela indicated unfamiliarity with the GLO rule requiring GLO's written permission to commingle production from these two leases, but testified that he intended to have his regulatory consultant who filed the most recent Form P-17 look into this issue. Mr. Valenzuela stated that wells on the two Gregg leases had been shut-in for quite a while because the old oil and gas lease covering the Gregg leases had terminated. He stated the understanding that Ernest Producing Co. had been in the process of obtaining a new lease from the Baileys covering the Gregg leases that O & O would operate. He stated that if this were accomplished, separate tank batteries would be established on the two Gregg leases so that oil produced from the Gregg leases would no longer be commingled with oil produced from the Masterson leases.

While O & O was still producing oil from the two Gregg leases, this oil was commingled with oil produced from the Masterson leases in a tank battery on the property where the Masterson leases are located. During this period, O & O's method of allocating production between the two Gregg leases and the two Masterson leases involved producing only one lease at a time for a period of 2-3 days, while the other leases were shut-in, and gauging the tanks to determine the amount of oil being produced from each separate lease. The production from the leases has not been separately measured by positive displacement meter and production has not been allocated based on W-10 tests.

EXAMINER'S OPINION

The examiner is of the opinion that Commingling Permit No. 08-5724 must be canceled. The Forms P-17 and P-17A filed by Tripp & Sons LLC that led to the issuance of this permit contained material misrepresentations concerning the royalty ownership of the leases covered by the permit. These Forms P-17 and P-17A represented that the royalty ownership in the two Masterson leases and in the Masterson leases, on the one hand, and the two Gregg leases, on the other, were identical both as to the identity of the royalty owners and their percentage of ownership. In fact, the royalty ownership is not identical and was not identical at the time the Forms P-17 and P-17A were filed and approved.

The erroneous representations by Tripp & Sons LLC in the Forms P-17 and P-17A resulted in administrative approval of the commingling applications and issuance of Commingling Permit

No. 08-5724, without the issuance of notice and opportunity for hearing to the royalty owners under the affected leases. This would not have been possible had Tripp & Sons LLC disclosed in the Forms P-17 and P-17A that the royalty ownership in the leases was not identical. Effective with this disclosure, Statewide Rule 26 would have required that notice of the commingling applications be sent to the royalty owners and that the royalty owners be afforded an opportunity to protest and oppose commingling of the leases at a hearing. The notice required by Statewide Rule 26 was not provided to the royalty owners because of the misrepresentations by Tripp & Sons LLC in the Forms P-17 and P-17A. Because of the failure to provide proper notice as required by Statewide Rule 26, Commingling Permit No, 08-5724 is void and should be canceled.

The recent filing by O & O Operators LLC of a new Form P-17 to delete the two Gregg leases from Commingling Permit No, 08-5724 does not solve the problem. Even if the Gregg leases were deleted, the permit would still authorize commingling of production from the two Masterson leases. The royalty ownership of the two Masterson leases is not identical because a 1/5th royalty applies as to the Masterson -A- Lease and a 3/16ths royalty applies as to the Masterson -B- Lease. The State of Texas, as a royalty owner under the two Masterson leases, has never been provided the notice required by Statewide Rule 26 and an opportunity to protest the proposed commingling of production from these two leases at a hearing. Furthermore, written permission of the Texas General Land Office is required to commingle these two leases, and has not been requested or obtained.

The examiner believes that the Form P-17 filed by O & O Operators, Inc., on or about April 22, 2010, should be denied administratively for all the reasons stated above. If O & O Operators LLC can obtain written permission of the Texas General Land Office to commingle production from the two Masterson leases, it may file a new Form P-17 and Form P-17A with the Commission requesting commingling authority. In this event, O & O would be expected to disclose that the percentages of royalty ownership in the two Masterson leases is not identical. In the absence of a waiver from GLO, Statewide Rule 26 notice would need to be sent to GLO providing it with an opportunity to protest.³

The examiner recommends that Commingling Permit No, 08-5724 be canceled. Based on the record in this case, the examiner further recommends adoption of the following Findings of Fact and Conclusions of Law.

³ In the opinion of the examiner, notice to the surface owners of the Masterson leases would also be required. Although GLO considers that the State is the owner of 100% of the royalty under these leases, these are Relinquishment Act leases that specifically provide for distribution of one-half of the royalty payments to the surface owners and one-half to the Commissioner of GLO. Whether or not the surface owners are considered to be royalty owners, the examiner believes that the surface owners have a property interest that could be affected by commingling of production from the leases.

FINDINGS OF FACT

1. Notice of this hearing was timely served on all affected persons, including O & O Operators LLC, the complainants, and the Texas General Land Office.
2. Commingling Permit No. 08-5724 approved on February 16, 2005, authorized the surface commingling of oil produced from the Gregg "AC" (04127) Lease, the Gregg "BA" (04128) Lease, the Masterson -A- (04130) Lease, and the Masterson -B- (04131) Lease ("subject leases"), all in the Masterson Field, Pecos County, Texas.
3. O & O Operators LLC designated itself the operator of the two Gregg leases and the Masterson -B- Lease by filing Forms P-4 (Certificate of Compliance and Transportation Authority) approved July 16, 2007, effective June 1, 2007, and designated itself the operator of the Masterson -A- Lease by filing a Form P-4 approved April 29, 2008, effective June 1, 2007.
4. On April 7, 2010, Carolyn Bailey, on behalf of Chris Bailey, Ian Bailey, and Marck Bailey, filed a complaint with the Commission alleging that Commingling Permit No. 08-5724 should be canceled because the Form P-17 (Application for Exception to Statewide Rules 26 and/or 27) and Form P-17A (Interim Commingling/Measurement Application Supplement) filed February 9, 2005, which led to issuance of the commingling permit, erroneously stated that all royalty and working interest owners in the four oil leases covered by the permit were the same both as to the owners' identity and their percentage of ownership.
5. Statewide Rule 26(a)(2) provides that all oil and any other liquid hydrocarbons as and when produced shall be adequately measured before the same leave the lease from which they are produced. Sufficient tankage and separator capacity must be provided on a lease by the producer to adequately take daily gauges of all oil and any other liquid hydrocarbons.
6. Pursuant to Statewide Rule 26(b), in order to prevent waste, promote conservation, or protect correlative rights, the Commission may approve surface commingling into a single storage tank of oil, gas, or oil and gas production, from two or more tracts of land producing from the same Commission designated reservoir or from one or more tracts of land producing from different Commission designated reservoirs.
7. Pursuant to Statewide Rule 26(b)(1), an application for surface commingling may be approved administratively if (a) the tracts or Commission designated reservoirs have identical working interest and royalty interests; or (b) production from each tract and each Commission designated reservoir is separately measured and therefore there is no commingling of separate interests. Administrative approval is also authorized when the tracts or Commission designated reservoirs do not have identical working interest and royalty

interest ownership in identical percentages and the Commission has not received a protest to an application within 21 days of notice of the application being mailed by the applicant to all working and royalty interest owners or, if publication is required, within 21 days of the date of last publication and the applicant provides a method of allocating production to ensure the protection of correlative rights and evidence that proper notice has been provided to the working and royalty interest owners.

8. Pursuant to Statewide Rule 26(b)(2), when the tracts or Commission designated reservoirs do not have identical working and royalty interest ownership in identical percentages and a person entitled to notice of the application has filed a protest, the applicant may request a hearing. In this circumstance, the Commission may permit commingling if the applicant demonstrates that the proposed commingling will protect the rights of all interest owners and will prevent waste, promote conservation or protect correlative rights. Pursuant to Statewide Rule 26(b)(3), the applicant must demonstrate that the proposed commingling will not harm correlative rights of the working or royalty interest owners of any of the wells to be commingled. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.
9. On May 13, 2004, Tripp & Sons LLC, a previous operator of the subject leases, filed a Form P-17 (Application for Exception to Statewide Rules 26 and/or 27) requesting authority to commingle oil production from the two Masterson leases only. This Form P-17 and the related Form P-17A (Interim Commingling/Measurement Application Supplement) stated that the royalty and working interests in the two Masterson leases were exactly the same in identity and percentage ownership and production was separately measured from the leases and wells proposed for commingling. This application was approved administratively without issuance of notice, and Commingling Permit No. 08-5724 was issued, on May 18, 2004.
10. On February 9, 2005, Tripp & Sons LLC filed another Form P-17 and Form P-17A requesting authority to commingle production from all four of the subject leases: the Gregg "AC" (04127) Lease, the Gregg "BA" (04128) Lease, the Masterson -A- (04130) Lease, and the Masterson -B- (04131) Lease, all in the Masterson Field, Pecos County, Texas. The Form P-17 stated that the commingled royalty interests were the same and Tripp & Sons LLC intended to allocate production on the basis of Form W-10 (Oil Well Status Report) tests. The Form P-17A stated that all royalty and working interests in the subject leases were exactly the same in identity and percentage ownership. The Form P-17A also stated that production was not separately measured for all leases and wells proposed to be commingled. This application was approved administratively without the issuance of notice, and amended Commingling Permit No. 08-5724 was issued, on February 16, 2005.
11. According to the Commission's Oil Proration Schedule as of the date of the hearing in this docket, the Gregg "AC" (04127) Lease has Well Nos. 1, 2, 3, 4, and 6. Well Nos. 1, 4 and

6 are shown to be shut-in. Well Nos. 2 and 3 are shown to be producing. The Gregg "BA" (04128) Lease has Well No. 1 only, and this well is shown to be producing. The Masterson -A- (04130) Lease has Well Nos. 1W, 2, 3, 4, 6, 7, 9, 10 and 11. Well Nos. 1W, 6, 7, and 11 are shown to be shut-in, and Well Nos. 2, 3, 4, 9, and 10 are shown to be producing. The Masterson -B- (04131) Lease has Well Nos. 1, 2W, 3, 4, 5, 6, 7, and 8. Well Nos. 2W, 3, 4, 5, 7, and 8 are shown to be shut-in, and Well Nos. 1 and 6 are shown to be producing.

12. The Commission's Production Data Query database shows that for the Gregg "AC" (04127) Lease, minimal production amounting to 0 to 3 BOPM was reported for January 2005 through November 2006. For this same lease, zero production was reported for December 2006 through September 2007. More substantial production was reported for this lease once O & O Operators LLC became the operator. For October 2007 through August 2009, zero production was reported for a few months but during most months production ranged from 25 to 102 BOPM. Zero production was reported for this lease from September 2009 through March 2010.
13. The Commission's Production Data Query database shows that for the Gregg "BA" (04128) Lease, minimal production was reported for January 2005 through November 2006, amounting to 0 to 4 BOPM. Zero production was reported for this lease from December 2006 through May 2007. More substantial production was reported after O & O Operators LLC became the operator. From June 2007 through August 2009, zero production was reported for a few months, but during most months production ranged from 17 to 51 BOPM. From September 2009 through March 2010, zero production was reported.
14. The Commission's Production Data Query database shows that for the Masterson -A- (04130) Lease, zero production was reported from January 2005 through August 2005. Minimal production was then reported from September 2005 through August 2006, amounting to zero production for some months and 1 to 4 BOPM for the remaining months. Zero production was reported for this lease from September 2006 through September 2007. A greater amount of production was reported for this lease after O & O Operators LLC became the operator. For October 2007 through March 2010, zero production was reported for a few months but 24 to 152 BOPM was reported for most months.
15. The Commission's Production Data Query database shows that for the Masterson -B- (04131) Lease, relatively substantial production was reported for January 2005 through May 2007, ranging from 113 to 453 BOPM except for October and November 2005 for which no production reports were filed. Reported production for this lease declined after O & O Operators LLC became the operator. From June 2007 through March 2010, zero production was reported for a few months but during most months reported production ranged from 12 to 51 BOPM.

Proposal for Decision

- 16 The royalty interest ownership in the subject leases is not, and as of May 13, 2004, and February 9, 2005, was not, exactly the same in identity or percentage ownership.
- a. The two Masterson leases are State of Texas leases of Relinquishment Act land.
 - b. The oil and gas leases in effect covering the Masterson -A- Lease as of May 13, 2004, and February 9, 2005, and currently, are leases between the State of Texas acting through its agents William C. Benoit, individually and as trustee for Laverne M. Benoit, Edward T. Lehn, Jr., Bank of America, N.A., trustee of the Patricia L. Brundage Trust, and Bank of America, N.A. trustee of the Phyllis L. Gallagher Trust, lessors, and Ernest Producing Co., lessee (State of Texas Lease No. M-104962). These leases provided for a 1/5th royalty payable one-half to the Commissioner of the Texas General Land Office and one-half to the owners of the surface acting as the State's agents for leasing purposes.
 - c. The oil and gas leases in effect covering the Masterson -B- Lease as of May 13, 2004, and February 9, 2005, and currently, are leases between the State of Texas acting through its agents William C. Benoit individually and as trustee for Laverne M. Benoit, NationsBank, N.A., trustee of the Patricia L. Brundage Trust, Edward T. Lehn, Jr., and NationsBank, N.A., trustee of the Phyllis L. Gallagher Trust, lessors, and Synergy Oil & Gas, Inc., lessee (State of Texas Lease No. M-100941). These leases provided for a 3/16th royalty payable one-half to the Commissioner of the Texas General Land Office and one-half to the owners of the surface acting as the State's agents for leasing purposes.
 - d. If there was any effective oil and gas lease covering the two Gregg leases as of February 9, 2005, or which is currently in effect, it is a May 1929 Oil and Gas Lease between Dean B. Gregg and Edna W. Gregg, and Monimia L. Botsford, lessors, and Monte Turner, lessee. This lease covered privately owned land and provided for a 1/8th royalty. Effective March 10, 2000, equal undivided 1/3rd mineral interests in the land covered by the two Gregg leases was conveyed to Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey. Assuming that the May 1929 Oil and Gas Lease is still in effect, Christopher K. Bailey, Ian G. Bailey, and Marck L. Bailey became the owners of the royalty interest in the Gregg leases after March 10, 2000.
17. Notice of the Form P-17 application filed by Tripp & Sons LLC on February 9, 2010, was required to be provided to all royalty and working interest owners of the subject leases because the royalty and working interests in the leases were not identical as to the identity of the owners and/or as to percentages of ownership and because Tripp & Sons LLC did not propose to separately measure production for all leases and wells proposed to be commingled. The required notice was not provided.

18. Rules of the Texas General Land Office at 31 TEX. ADMIN. CODE §9.35 provide that a lessee of state owned mineral land shall obtain written permission from the GLO before surface commingling state leases or state pooled unit production with private lease production or before surface commingling oil and/or gas from two separate state leases. Complainants' research of GLO's mineral files relating to the subject leases did not disclose that any written permission has ever been obtained from GLO to commingle the two Masterson leases or to commingle the Masterson leases with the two Gregg leases.

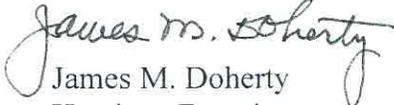
CONCLUSIONS OF LAW

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 to this hearing have been performed or have occurred.
3. Commingling Permit No. 08-5724 was issued without providing notice to royalty owners as required by Statewide Rule 26(b)(1)(C) [16 TEX. ADMIN. CODE §3.26(b)(1)(C)].
4. Commingling Permit No. 08-5724 is void for failure to provide notice to royalty owners as required by Statewide Rule 26(b)(1)(C).
5. Commingling Permit No. 08-5724 should be canceled.

RECOMMENDATION

The examiner recommends that the attached recommended final order be issued canceling Commingling Permit No. 08-5724.

Respectfully submitted,


James M. Doherty
Hearings Examiner