



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 20-0279070

HEARING ON THE APPLICATION OF MARK HAAS PETROLEUM, LLC FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS P-5 CANNOT BE RENEWED BECAUSE IT HAS NOT COMPLIED WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

APPEARANCES

FOR MARK HAAS PETROLEUM, LLC

David Gross, Attorney at Law
Mark L. Haas
Paul Fulbright, Attorney at Law

FOR THE RAILROAD COMMISSION OF TEXAS:

Elaine Moore, Staff Attorney, Enforcement Section
Sheila Weigand, Office of General Counsel

PROCEDURAL HISTORY

Hearing Requested:	October 24, 2012
Notice of Hearing:	November 2, 2012
Hearing on the merits:	November 29, 2012
	January 16, 2013
Transcript Received:	February 5, 2013
Record Closed:	January 16, 2013
Heard By:	Terry J. Johnson Legal Examiner Brian Fancher (November 29, 2012) Technical Examiner Andres J. Trevino (January 16, 2013) Technical Examiner

SUMMARY

Operator challenges staff determination that renewal of its P-5 should not be approved due to non-compliant inactive wells, claiming that it was incorrectly designated as operator of the leases. It is recommended that the Commission deny renewal of the P-5 and order the subject wells plugged.

APPLICANT'S CASE

KANSAS TO TEXAS

Mark L. Haas owns Mark Haas Petroleum, LLC. At hearing, he testified that he is a fourth-generation Kansas oil and gas operator who specializes in rehabilitating distressed wells.

“[. . .] if I have a forte or something I’m pretty good at, I think, is acquiring old leases, fix them up, put them back in production, plug the problem wells, take care of them, do some re-drilling and some stuff like that. That’s what we kind of do.”

He stated that his family successfully operates almost a thousand wells in Kansas. “We operate shallow wells,” he said, “500- to 3,000 [feet] deep.” In 2009, Mr. Haas began to look for opportunities in Texas, creating two companies to handle his business. Mormeg, LLC (Mormeg) would negotiate, purchase and hold legal title to oil and gas leases. Mark Haas Petroleum, LLC (Haas LLC) would be responsible for the physical operation of the leases.

ANACONDA

On April 6, 2010, for a price of around \$30,000, Mormeg bought a package of five oil leases from Anaconda Oil and Gas, LLC (Anaconda). All located in Navarro County, four of the five properties were subdivisions of a single June 17, 1988 master lease (Big Ella) that covered 488.4 acres. The fifth lease involved acreage unrelated to the Big Ella leases. Haas LLC filed a form P-4 (Certificate of Compliance and Transportation Authority) for each of the leases, designating itself as operator of record.

Haas LLC’s entry onto these properties soon gained the attention of the mineral estate owners of the Big Ella acreage, who notified the operator that the leases had expired long ago due to non-production. “And that’s what started the whole mess,” testified Mr. Haas.

LAWSUIT

On November 3, 2010, Mr. Haas consulted Corsicana attorney Paul Fulbright. On December 2, 2010, Mr. Fulbright filed suit on behalf of Mormeg against the Big Ella mineral owners, seeking a declaratory judgment that the leases covered by the Big

Ella master lease were valid. Mr. Fulbright testified that, as the case progressed, he made an unwelcome discovery.

“I went to the--to the court records and was unable, in a personal search, to find any record of a document of conveyance of that acreage into Anaconda Oil and Gas. Nothing on file at the courthouse.”

In other words, there was no evidence that Anaconda had ever held title to the leases, a shortfall of proof that seriously compromised Mormeg’s claim to title. A defective chain of title, however, would not be Mormeg’s only problem with these leases.

The 1988 Big Ella master lease itself contained a 90-day cessation clause, under which the mineral estate reverted to the lessors if 90 days passed without production of oil. And production records for the leases showed that each of the Big Ella properties had seen periods of non-production well in excess of this 90-day limit.

Any uncertainty about Mormeg’s title was removed on January 12, 2012, when the Navarro County District Court ruled that the leases covered by the Big Ella acreage had terminated in January 2005 for lack of production. The court also held that the April 6, 2010 conveyance from Anaconda to Mormeg was void.¹ Haas did not appeal.

NULLIFICATION

The court’s ruling meant that the mineral estate of the Big Ella leases had reverted to the lessors in January 2005, which in turn meant that Anaconda had no interest to convey to Mormeg on April 6, 2010. Mr. Haas reasoned that if Anaconda had no title to convey, then Mormeg had never actually had title to the leases. And if it never had title to the leases, then Mormeg had no right to make Haas LLC the record operator. Since it never had the right to operate, then Haas LLC had been installed in error as operator of record. Therefore, this error should be corrected by having Anaconda reinstated as the operator of record. Seeking guidance as to how to proceed, Mr. Haas turned to the Commission.

On March 5, 2012, Mr. Haas and Mr. Fulbright met with then-executive director John Tintera and Amy Maxwell of Commissioner Porter’s staff. Mr. Fulbright testified that Mr. Tintera outlined a course of action.

“And that was for us to circulate a letter and send a letter to the Commission requesting a retraction of the P-4, retraction or

¹The lawsuit, however, had invoked the court’s jurisdiction only over those properties covered by the 1988 Big Ella lease. Title to the First National Bank of Corsicana (02212) lease was not before the court.

nullification of the P-4 [of] Mark Haas Petroleum which, in fact, we quickly did.”

On March 16, 2012, Mr. Fulbright wrote to Ms. Maxwell, formally requesting Haas LLC’s removal as P-4 operator. There was no reply to the letter. Three weeks later, Mr. Haas wrote directly to Anaconda, attaching the P-4 forms necessary to transfer the leases from Haas LLC to Anaconda and requesting that Anaconda execute them. Anaconda neither executed the forms nor responded to the letter.²

LETTER OF AUTHORIZATION

Haas LLC had conducted no operations since litigation over the Big Ella leases commenced in December 2010.³ Spurred by Commission notices regarding Haas LLC’s numerous out-of-compliance wells, Mr. Fulbright wrote to the Commission’s P-5 Unit on November 21, 2011, explaining that Mormeg’s litigation had prevented Haas LLC from bringing the wells into compliance. There was no response to the letter.

As the notices continued to mount, Mr. Fulbright wrote to the Commission’s Oil and Gas Division and the Office of General Counsel.⁴ In a letter addressed to both offices dated August 8, 2012, Mr. Fulbright stated his view that Haas LLC would be exposed to a claim of trespass if it attempted to bring the leases into compliance. He requested a letter from the Commission authorizing entry onto the leases. If the Commission would not issue the letter, he wrote, compliance enforcement activities should be suspended. There was no reply to the letter.

THE NON-ANACONDA LEASE

In addition to being the operator of record for the five leases that Mormeg bought from Anaconda, Haas LLC is record operator of the Mobile -A- (01766) lease in Navarro County, which Mormeg bought from Texowa, LLC on May 10, 2010. The solitary well on this lease is also out of compliance.

RECKONING

Texas law conditions renewal of a P-5 Organization Report on an operator’s compliance with the requirements of Statewide Rule 15.⁵ Among other things, the rule establishes a one-year deadline for plugging an inactive well. While there are

²Mormeg is currently suing Anaconda.

³This stoppage apparently extended to the First National Bank of Corsicana (02212) lease and the Mobil -A- (01766) lease, neither of which was involved in the Big Ella litigation.

⁴Like the November 21, 2011 letter to the Commission’s P-5 Unit, the letter was not addressed to a person, but to the office.

⁵TEX. NAT. RES. CODE, Ch. 89, Subchapter B-1; 16 TEX. ADMIN. CODE § 3.15

circumstances under which an operator may obtain an extension of the deadline, an operator must either obtain a plugging extension or plug the well by the deadline. The Commission may not approve or renew the P-5 of an operator that fails to comply with these requirements.⁶

In processing Haas LLC's application for renewal of its P-5, Commission staff determined that all of the operator's wells—36 wells on six leases—were out of compliance. The case at hand is Haas' challenge to that determination.

DISCUSSION

The facts of this case are not in dispute.

On April 6, 2010 Anaconda sold a package of five oil leases to Mormeg. The properties were all located in Navarro County and completed in the Corsicana (Shallow) Field. Four of these leases were composed of acreage that was subject to the terms of a June 17, 1988 master lease: Allen, L. B. Estate Shallow -A- (00088), Jackson, Ella (00089), Allen, Laura B. (01283) and Allen, J. F. (01286). The fifth lease in the transaction was the First National Bank of Corsicana (02212), which involved acreage not related to the master lease.

Mr. Haas testified that for pre-purchase due diligence, Mormeg relied on a landman who uncritically assumed that Anaconda held good title.

“And so then we got [the] assignment from Anaconda. [The landman] took it that they had title to it. He did take me out [to the leases]. There was oil producing, there was oil in the tanks, there was a tank of oil there when we--so I just figured at that time, since he thought he had done his due diligence, that we had proper leases on it.”

A check of county records, however, would have disclosed that Anaconda had never been in the chain of title. And a review of Commission production reports would have revealed that each of the properties Anaconda was selling had failed to produce for periods well in excess of the 90-day limit that would terminate Anaconda's interest.

For example, Commission records show that except for the month of September 1999--when it made four barrels of oil--the Allen, L.B. Estate Shallow -A- (00088) lease had not produced since at least January 1993. The Jackson, Ella (00089) lease reported zero production from January 2005 to August 2005. The Allen, Laura B. (01283) lease reported no production from July 2004 to April 2009. The Allen, J.F. (01286) lease had zero production from at least January 1993 to October 1997 and again from November 2004 to April 2009. Even the First National Bank of

⁶TEX. NAT. RES. CODE § 89.022(c)

Corsicana (02212) lease reported zero production from December 2001 through February 2009.

Nevertheless, Mormeg bought the leases and Haas LLC formally installed itself as operator of record for each lease, effective April 2010. In addition, Haas LLC is the record operator of the Mobile -A- (01766) lease that Mormeg bought from Texowa, LLC on May 10, 2010. These six leases contain 36 inactive, non-compliant wells.

Haas LLC now faces non-renewal of its P-5 for failure to meet the requirements of Statewide Rule 15. Haas LLC's defense is that, because Mormeg was found to have no title to four of the leases, it should not be treated as the responsible operator on any of them.

OPINION

TITLE

Reduced to its core, this case is about a bad bargain.⁷ As a collateral consequence of that bargain, Haas LLC is now confronted with the loss of its authority to operate in Texas. In defense, Haas LLC argues that the Navarro County court order not only nullified Mormeg's title but also functionally extinguished Haas LLC's regulatory responsibility as operator.

This argument, however, avoids the fact that Mormeg and Haas LLC, are in fact separate and distinct legal entities. The court order voiding Mormeg's title to the Big Ella leases resolved Mormeg's claim, not Haas LLC's. Haas LLC was not a party to the lawsuit and it had no interest in the properties. More to the point, that order did nothing to impair Haas LLC's operation of the First National Bank of Corsicana (02212) and the Mobil -A- (01766) leases, which have 12 inactive non-compliant wells between them.

Haas LLC's argument that the Commission should re-install Anaconda as operator on the four Big Ella leases is equally unavailing. In the wake of the Navarro County lawsuit, Anaconda held no better title to the leases than did Mormeg, which is no title at all. Haas LLC cites no authority that would support the involuntary designation of an entity as P-4 operator when, as a matter of law, that entity lacks a good faith claim to operate the lease.

Moreover, title is immaterial to the issue of Haas LLC's regulatory responsibility. Even if Anaconda's conveyance had been valid, Mormeg—and Mormeg alone—would have held title to the leases. Haas LLC existed only to operate them. Under Texas law, the operator of a well is the person who assumes responsibility

⁷In Late Middle Age Europe, the seller of a product such as suckling pig might place his wares in a bag, or "poke". With certain merchants, a buyer who did not open the bag before purchase might later find himself displeased with its contents. Thus, paying for an item without inspecting it beforehand is said to be buying a pig in a poke.

*as shown by a form the person files with the commission.*⁸ The uncontradicted evidence of record demonstrates that Mark Haas Petroleum, LLC filed with the Commission a form P-4 for each of the six leases at issue in this case, assuming responsibility as the operator of record and certifying that it was responsible for regulatory compliance.⁹

Ultimately, acceptance of Haas LLC's defense would create a fertile environment for collusive litigation, where operators could evade responsibility by instituting a lawsuit over title and then intentionally lose it.¹⁰ Or where an operator could avoid responsibility through the simple expedient of allowing the lease to lapse for non-production. The better policy, and the one recommended here, is to hold the operator of record accountable.

ACCESS

Haas LLC does not need Commission authorization to enter the four Big Ella leases. Texas law expressly authorizes an operator to enter the land of another for the purpose of plugging a well.¹¹ In fact, plugging its wells and curing rule violations are the only activities that Haas LLC may lawfully perform without a valid P-5.¹²

RECOMMENDATION

It is recommended that the Commission enter an order denying renewal of the P-5 Organization Report of Mark Haas Petroleum, LLC and that the Commission order Mark Haas Petroleum, LLC to immediately plug the involved wells.

FINDINGS OF FACT

1. Mark Haas Petroleum, LLC (Haas LLC) holds Operator Number 526283.
2. Haas LLC is the operator of record for the following oil and gas properties, all located in Navarro County, Texas, Railroad Commission District 05:
 - (a) Allen, L.B. Estate Shallow -A- (00088)
 - (b) Jackson, Ella (00089)
 - (c) Allen, Laura B. (01283)
 - (d) Allen, J.F. (01286)

⁸TEX. NAT. RES. CODE § 89.002(a)(2) (emphasis supplied)

⁹16 TEX. ADMIN. CODE § 3.58(a)(1) *See also*: Form P-4, Block 16 (Current Operator Certification)

¹⁰To be clear, there is no suggestion of this in the case at hand.

¹¹TEX. NAT. RES. CODE § 89.044

¹²*Id.*, § 91.114(j)

- (e) First National Bank of Corsicana (02212)
- (f) Mobil -A- (01766)

3. On or about October 1, 2012, the Commission's P-5 Financial Assurance Unit notified Haas LLC that renewal of the operator's P-5 Organization Report would be denied for failure to meet the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15 (Statewide Rule 15).
4. Haas LLC timely requested a hearing to contest the determination that its wells fail to meet the requirements of Statewide Rule 15.
5. The Allen, L.B. Estate Shallow -A- (00088) contains six wells, all inactive for more than 12 years.
6. The inactive wells on the Allen, L.B. Estate Shallow -A- (00088) fail to meet the requirements of Rule 15 as follows:
 7. (a) none have been plugged
 - (b) none are subject to a plugging extension
 - (c) failure to certify that electric service has been disconnected
 - (d) failure to certify removal of surface equipment
8. The Jackson, Ella (00089) contains three wells, one inactive for more than seven years, two inactive for more than one year.
9. The inactive wells on the Jackson, Ella (00089) fail to meet the requirements of Rule 15 as follows:
 - (a) none have been plugged
 - (b) none are subject to a plugging extension
 - (c) failure to certify production fluids purged (7-year well)
10. The Allen, Laura B. (01283) contains eight wells, seven inactive for more than 14 years, one inactive for more than seven years.
11. The inactive wells on the Allen, Laura B. (01283) fail to meet the requirements of Rule 15 as follows:
 - (a) none have been plugged
 - (b) none are subject to a plugging extension
 - (c) failure to certify that electric service has been disconnected
 - (d) failure to certify production fluids purged (7-year well)
 - (e) failure to certify removal of surface equipment
12. The Allen, J.F. (01286) contains seven wells, two inactive for more than 11 years, five inactive for more than seven years.
13. The inactive wells on the Allen, J.F. (01286) fail to meet the requirements of

Rule 15 as follows:

- (a) none have been plugged
 - (b) none are subject to a plugging extension
 - (c) failure to certify that electric service has been disconnected
 - (d) failure to certify production fluids purged (7-year wells)
 - (e) failure to certify removal of surface equipment
14. The First National Bank of Corsicana (02212) contains 11 wells, all inactive for more than 10 years.
15. The inactive wells on the First National Bank of Corsicana (02212) fail to meet the requirements of Rule 15, as follows:
- (a) none have been plugged
 - (b) none are subject to a plugging extension
 - (c) failure to certify that electric service has been disconnected
 - (d) failure to certify removal of surface equipment
16. The Mobil -A- (01766) contains one well, inactive for more than one year.
17. The inactive well on the Mobil -A- (01766) fails to meet the requirements of Rule 15, as follows:
- (a) it has not been plugged
 - (b) it is not subject to a plugging extension
 - (c) failure to certify that electric service has been disconnected

CONCLUSIONS OF LAW

1. Mark Haas Petroleum, LLC received notice and an opportunity for hearing regarding compliance with TEX. NAT. RES. CODE §§89.021 - 89.030 and 16 TEX. ADMIN. CODE §3.15.
2. Mark Haas Petroleum, LLC has failed to comply with the requirements of TEX. NAT. RES. CODE, Chapter 89, Subchapter B-1.
3. The P-5 Organization Report of Mark Haas Petroleum, LLC may not be renewed or approved. TEX. NAT. RES. CODE § 89.022(c)

RESPECTFULLY SUBMITTED on this the 30th day of August, 2013.


TERRY J. JOHNSON
Hearings Examiner


ANDRES J. TREVINO
Hearings Examiner