



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 20-0295860

THE APPLICATION OF BRIGHT HAWK OPERATING COMPANY (OPERATOR NO. 093102) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT THE P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELLS REQUIREMENTS OF STATEWIDE RULE 15

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

Melissa Glaze, Staff Attorney, Enforcement Section
Becky Tate, Legal Assistant
Mysti Doshier, Manager, P-5 Financial Assurance Unit

FOR BRIGHT HAWK OPERATING COMPANY:

James Carroll, President
Larry Hargrave, Consultant

PROCEDURAL HISTORY:

Amended Notice of Hearing:	June 16, 2015
Hearing on the merits:	October 2, 2015
Proposal for Decision:	March 31, 2016
Heard by:	Laura Miles-Valdez, Hearings Examiner Peggy Laird, Technical Examiner
Prepared by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

In Docket No. 20-0295860, Bright Hawk Operating Company (Operator No. 093102), (Bright Hawk), challenges the Commission staff's determination that renewal of its Form P-5 Organization Report (P-5) cannot be approved due to Bright Hawk's failure to comply with the inactive well requirements of Statewide Rule 15(d)(1) (generally, SWR 15).¹ Bright Hawk is the current operator of 1 non-compliant oil well.

Bright Hawk appeared at hearing but failed to present evidence sufficient to show that it is in compliance with the inactive well requirements of SWR 15. The well at issue in the instant matter is identified as the Elliot, Glenn (15021) Lease, Well No. 1, Shackelford County Regular Field, located in Shackelford County, Texas.

To briefly elaborate, Bright Hawk elected to perform a fluid level test on the subject well (an inactive well more than 25 years old), as part of its annual P-5 renewal. Bright Hawk identifies the subject well as the "Glenn Elliot No. 1" and reports its physical location in Section 10, Block 11, Lunatic Asylum Lands Survey, Shackelford County, and being 660 feet from the west survey line and 1,100 feet from the south survey line. Commission records reflect that the subject well is located 150 feet from the west survey line and 1,100 feet from the south survey line - in contradiction to Bright Hawk's reported location.

Bright Hawk argues that because its Form H-15 (Test on an Inactive Well More than 25 Years Old) identifies a well location different than that reflected in Commission records, the well is labeled as an "H-15 failure" in violation of the inactive well requirements of SWR 15—precluding renewal of Bright Hawk's P-5.

However, regardless of any inconsistencies, Bright Hawk performed an unsuccessful H-15 fluid level test on the subject well, precluding it from obtaining an extension of deadline to plug the subject well. Without otherwise bringing the subject well into compliance with SWR 15, the well remains non-compliant.

The record evidence demonstrates that Commission records incorrectly identify the physical location of the subject well. However, the record evidence also demonstrates that the subject well is not in compliance with the inactive well requirements of SWR 15. As a result, Bright Hawk unsuccessfully challenged the Commission staff's determination that renewal of its P-5 cannot be approved.

The Administrative Law Judge recommends that the Commission deny the unrestricted renewal of Bright Hawk's P-5.

¹ 16 TEX. ADMIN. CODE § 3.15(d)(1) (Inactive Well Requirements).

EVIDENCE PRESENTED

ENFORCEMENT'S CASE

At hearing, Melissa Glaze, Staff Attorney, (Enforcement) submitted evidence demonstrating that Bright Hawk is the current operator of 1 well that fails to comply with the inactive well requirements of SWR 15(d)(1).² Enforcement also submitted evidence showing that Bright Hawk's P-5 renewal was due on November 1, 2014.³

Enforcement then submitted evidence demonstrating that, on August 8, 2014, Commission staff generated a "renewal packet" for Bright Hawk's P-5 renewal application.⁴ The evidence indicates that the "renewal packet" included information related to House Bill 2259 (annual requirements for an operator to address its inventory of inactive wells in order to obtain renewal of its annual organization report), House Bill 3134 (procedures to be followed subsequent to Commission Staff determination that an operator is not in compliance with the inactive well requirements), and SWR 15, as it was relevant to Bright Hawk – including Bright Hawk's non-compliant wells.^{5, 6}

Enforcement also submitted evidence showing that, on or before October 29, 2014, Commission Staff determined that Bright Hawk's P-5 renewal should be denied solely because of non-compliance with the inactive well requirements of SWR 15.⁷

Enforcement also submitted as evidence a notice letter dated October 29, 2014, demonstrating that Commission Staff notified Bright Hawk that its P-5 renewal would be denied for failure to meet the inactive well requirements of SWR 15 and, also, granted a 90-day extension in order to complete compliance work related to the non-compliant wells.⁸ Attached to the notice letter was an exhaustive list of Bright Hawk's 2 non-compliant wells accompanied by a description of their respective deficiencies. Of the 2 wells, the evidence shows that one required resolution to an H-15 delinquency, and the other required a resolution to an H-15 failure and a District Office field rule violation.⁹

The 90-day extension expired on January 31, 2015. As a result, Enforcement submitted a second notice letter issued February 4, 2015, as evidence that Commission Staff once again informed Bright Hawk that it remained non-compliant with the inactive well requirements of SWR 15.¹⁰ Attached to the letter was an exhaustive list of Bright Hawk's

² Staff Exh. 4.

³ Staff Exh. 1, pg. 2.

⁴ Staff Exh. 1, pg. 2.

⁵ Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

⁶ Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

⁷ Staff Exh. 2.

⁸ Staff Exh. 2.

⁹ Staff Exh. 2, pg. 2.

¹⁰ Staff Exh. 3.

2 non-compliant wells accompanied by a description of their respective deficiencies – identical in content to the October 29, 2014, notice.

Lastly, Mysti Doshier, Manager, (Staff), testified that only one of Bright Hawk’s wells remained out of compliance with the inactive well requirements of SWR 15 at the time of the hearing on October 2, 2015.¹¹ Enforcement submitted evidence demonstrating that the final non-compliant well does not have an approved Form W-3X (Application for an Extension of Deadline for Plugging an Inactive Well), and, additionally, has an “H-15 failure” and a “District Office issue”.¹²

BRIGHT HAWK’S CASE

James Carroll, President, and Larry Hargrave, Consultant, appeared at hearing on behalf of Bright Hawk.

In its opening statement, Bright Hawk asserted that:

We are in compliance now. There were two wells at issue. One was the Elliot A No. 1 which has been plugged and abandoned . . . and the other was the Glenn Elliot No. 1 . . . and there’s confusion as to what wellbore had been reentered . . .¹³

Bright Hawk contends that because “we conducted an H-15 . . . it was not accepted because the well that we tested . . . was located roughly 500 feet east of where the Commission had the well located in their records . . .”¹⁴ To that end, Bright Hawk submitted, as its Exhibit 1, an eight (8) page “Brief of Operator – with an additional thirty-six (36) pages of supporting documents – detailing Bright Hawk’s argument for the unrestricted renewal of its Form P-5 Organization Report.¹⁵

In the interest of brevity, the Administrative Law Judge will summarize Bright Hawk’s argument by quoting its “Summary and Prayer” from Exhibit 1:

We have plugged the Elliott “A” No. 1 in accordance with the Commission’s requirements, bringing that well into compliance with state laws and rules.

We believe the strong preponderance of the evidence supports our conclusion that the Glenn Elliott No. 1 is in fact the re-entry of the Gore R. B. Elliott No. 3 located at approximately 650’ FWL and 1100” FSL, and is not a well, that cannot be found, in the vicinity of 150’ FWL and 1100’ FSL. Further, if this conclusion is correct, then we have performed the

¹¹ Tr. pg. 52.

¹² Staff Exh. 4.

¹³ Tr. pg. 6-7.

¹⁴ Tr. pg. 8-9.

¹⁵ Bright Hawk Exh. 1.

necessary H-15 and filed the results, so that reporting for this well is now in compliance with state laws and rules. The Commission's maps should be corrected to show (1) the Gore No. 2 as a dry hole at 150' FWL and 1100' FSL (rather than the oil well currently shown there as No. 10 and (2) the Glenn Elliott No. 1 as producing oil well at 650' FWL and 1100' FSL (rather than the abandoned oil well currently shown there as No. 3).¹⁶

To demonstrate that it had conducted an H-15 fluid level test on the subject well, Bright Hawk submitted as evidence a Form H-15 (Test on an Inactive Well More than 25 Years Old).¹⁷ The submitted H-15 indicates the base of deepest usable quality water at 100' below the surface. The submitted H-15 also demonstrates that top of fluid in the wellbore was found at the surface of the subject well. Bright Hawk did not submit evidence of further testing of the subject well.

ADMINISTRATIVE LAW JUDGE'S OPINION

The well at issue in the instant matter is identified as the Elliot, Glenn (15021) Lease, Well No. 1, Shackelford County Regular Field, located in Shackelford County, Texas.

First, it should be noted that, subsequent to the hearing date, Bright Hawk and Commission staff reached an agreement regarding the subject well's disputed location. To that end, Commission staff now agree with evidence provided by Bright Hawk at hearing regarding the subject well's physical location, and Commission records now reflect the correct location of the subject well – identified as API No. 42-417-00634. This Proposal for Decision does not address those issues raised at hearing.

Nonetheless, pursuant to Statewide Rule 1, “. . . no organization . . . operating wholly or partially within this state . . . for the purpose of performing operations within the jurisdiction of the Commission shall perform such operations without having on file with the Commission an approved organization report . . .”¹⁸ Accordingly, an operator seeking to conduct oil and gas operations within the State must have on file with the Commission a current, active Form P-5 Organization Report.

Moreover, Texas law expressly conditions renewal of a P-5 on an operator's compliance with the requirements of SWR 15.¹⁹ Among other things, the rule establishes a deadline for plugging an inactive well. Unless the current operator obtains an extension of the plugging deadline, it must either re-establish production or plug the well within the deadline established by Commission rules.²⁰

¹⁶ Bright Hawk Exh. 1, pg. 8.

¹⁷ Bright Hawk Exh. 1, pg. 13.

¹⁸ 16 TEX. ADMIN. CODE § 3.1(a)(1).

¹⁹ 16 TEX. NAT. RES. CODE § 89.022(c).

²⁰ 16 TEX. ADMIN. CODE § 3.15(d)(1).

An inactive well is defined as “an unplugged well that has been spudded or has been equipped with the cemented casing and has no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.”²¹

At the October 2nd hearing, it was incumbent upon Bright Hawk to submit evidence that it “obtain[ed] approval of the Commission or its delegate of an extension of the deadline for plugging” its inactive well, or, to otherwise provide evidence of compliance with the inactive well requirements of SWR 15.²² Bright Hawk failed to present such evidence.

In order to obtain an extension of deadline for plugging an inactive land well, it is necessary that:

- (1) the Commission or its delegate approves the operator's W-3X;
- (2) the operator has a current organization report (Form P-5 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. (emphasis added).*²³

Terms and conditions to apply for an extension of deadline for plugging an inactive land well are dictated by SWR 15(f).²⁴

Chiefly, Bright Hawk failed to provide evidence sufficient to demonstrate that it had successfully conducted a fluid level or hydraulic pressure test establishing that the subject well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

Commission records reflect that the subject well was completed on May 3, 1979, and has been inactive for a period of 14 years and 1 month. Commission records do not reflect that the subject well has been plugged and abandoned. As such, the subject well qualifies as an inactive wellbore more than 25 years old.

²¹ 16 TEX. ADMIN. CODE § 3.15(a)(6).

²² 16 TEX. ADMIN. CODE § 3.15(d)(1)(C).

²³ 16 TEX. ADMIN. CODE § 3.15(e).

²⁴ 16 TEX. ADMIN. CODE § 3.15(f).

For an inactive wellbore more than 25 years old, SWR 15(e)(5) prescribes an additional requirement to obtain an extension of deadline for plugging – to successfully conduct and the Commission or its delegate approve 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.²⁵

In its direct case, Bright Hawk submitted a Form H-15 (Test on an Inactive Well more than 25 Years Old) dated March 28, 2014.²⁶ Bright Hawk mistakenly concludes that because it “performed the necessary H-15 and filed the results” the “reporting for this well is now in compliance with state laws and rules.”²⁷ That conclusion does not comport with SWR 15, which requires an operator to *successfully* conduct 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.²⁸

The submitted Form H-15 demonstrates that the base of deepest usable-quality water is located 100’ below the surface.²⁹ The submitted Form H-15 additionally indicates a top of wellbore fluid at the surface of the subject well.³⁰ That result indicates a failed H-15 test, thereby precluding an extension of plugging deadline for the subject well because it may pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

Bright Hawk did not submit evidence of further testing of the subject well.

Moreover, Bright Hawk also failed to demonstrate that it “restore[ed] the well to active status as defined by Commission rule.”³¹ For a well of this type and age, Commission rule defines “active operation” as “reported production of at least 10 barrels of oil . . . each month for at least three consecutive months.”³²

Lastly, Bright Hawk did not submit proof that it “plug[ged] the well in compliance with a Commission rule or order.”³³

The evidence of record in this case shows that Bright Hawk is the current operator of an oil well which fails to meet the requirements of Statewide Rule 15(d)(1). Bright Hawk failed to secure from the Commission an approved extension of deadline for plugging its inactive land well. Additionally, Bright Hawk failed to re-establish production from the

²⁵ 16 TEX. ADMIN. CODE § 3.15(e)(5).

²⁶ Bright Hawk Exh. 1, pg. 13.

²⁷ *Id.* at pg. 8.

²⁸ 16 TEX. ADMIN. CODE § 3.15(e)(5).

²⁹ 16 TEX. ADMIN. CODE § 3.15(e)(5).

³⁰ 16 TEX. ADMIN. CODE § 3.15(e)(5).

³¹ 16 TEX. ADMIN. CODE § 3.15(d)(1)(A).

³² 16 TEX. ADMIN. CODE § 3.15(a)(1).

³³ 16 TEX. ADMIN. CODE § 3.15(d)(1)(B).

well, or otherwise plug the well in accordance with Commission rules. As a result, Bright Hawk's inactive well is non-compliant with the inactive well requirements of SWR 15; and, thus, Bright Hawk failed to overcome Commission Staff determination that renewal of its P-5 cannot not be approved.

The Administrative Law Judge hereby incorporates by reference attached Staff Exhibit 4, being Commission records reflecting the P-5 Renewal Status of the subject well, as of the date of the hearing.

CONCLUSION

The Administrative Law Judge agrees with Enforcement that Bright Hawk should be denied unrestricted renewal of its P-5 Organization Report and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Bright Hawk Operating Company (Bright Hawk) holds Railroad Commission Operator Number 093102.
2. Bright Hawk is the current operator of the well identified on attached Appendix 1, which is hereby adopted and incorporated by reference for all purposes.
3. On or about October 29, 2014, Bright Hawk was sent notification from the Commission's P-5 Financial Assurance Unit that renewal of its P-5 Organization Report would be denied for failure to meet the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15(d)(1). The notice identified each of Bright Hawk's non-compliant wells and included a description of their respective deficiencies.
4. On or about February 4, 2015, Bright Hawk was sent notification from the Commission's P-5 Financial Assurance Unit that renewal of its P-5 Organization Report would be denied for failure to meet the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15(d)(1).
 - a. The notice identified each of Bright Hawk's non-compliant wells and included a description of their respective deficiencies.
 - b. The notice also established a 30-day deadline by which Bright Hawk could request a hearing to challenge Commission staff determination.
5. Bright Hawk timely requested a hearing on the matter.
 - a. At hearing, Bright Hawk presented insufficient evidence of compliance.
 - b. At hearing, Bright Hawk affirmed its intent to achieve compliance.

6. The oil well identified on Appendix 1 fails to meet the requirements of Statewide Rule 15. Appendix 1 is hereby adopted and incorporated by reference for all purposes.
 - a. The well identified lacks an approved Form W-3X (plugging extension).
 - b. The well has a Form H-15 (fluid level test) failure.
7. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto James Wayne Carroll, is an individual who held a position of ownership or control in Bright Hawk.

CONCLUSIONS OF LAW

1. Bright Hawk has been provided 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. Bright Hawk failed to comply with the requirements of TEX. NAT. RES. CODE, Chapter 89, Subchapter B-1 and 16 TEX. ADMIN. CODE § 3.15.
3. Bright Hawk's P-5 Organization Report may not be renewed or approved. TEX. NAT. RES. CODE § 89.022(c).

RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission enter an order denying the unrestricted renewal of Bright Hawk's P-5 Organization Report.

The Administrative Law Judge and Technical Examiner also recommend that the Commission cancel all P-4 Certificates of Compliance issued to Bright Hawk and sever all related pipeline or other carrier connections.

The Administrative Law Judge and Technical Examiner also recommend that Bright Hawk be directed to place the subject wells into compliance with all Commission Statewide Rules.

The Administrative Law Judge and Technical Examiner also recommend that James Wayne Carroll be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114(a)(2).

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT
Administrative Law Judge



PEGGY LAIRD
Technical Examiner