

August 28, 2008

OIL & GAS DOCKET NO. 01-0257329

COMMISSION CALLED HEARING REQUIRING MORE TEXAS OIL TO SHOW CAUSE WHY THE PLUGGING EXTENSIONS FOR WELL NOS. 1, 2, 3, 4, AND 5 ON THE SPEARS (11563) LEASE, SOMERSET FIELD, BEXAR COUNTY, TEXAS SHOULD NOT BE CANCELLED AND MORE TEXAS OIL SHOULD NOT BE ORDERED TO IMMEDIATELY PLUG THE WELLS

APPEARANCES:

For Respondent More Texas Oil:

Rex White

Jo Heichel

For Complainant The Jerry Spears and Mariam A. Spears Trust

Jerry Spears

Jamie Montelongo

PROPOSAL FOR DECISION
PROCEDURAL HISTORY

COMPLAINT FILED:	April 1, 2008
NOTICE OF HEARING ISSUED:	June 6, 2008
HEARING HELD:	June 23, 2008
HEARD BY:	Mark Helmueller, Hearings Examiner
PROPOSAL FOR DECISION CIRCULATED:	August 28, 2008

INTRODUCTION

More Texas Oil requested a Commission hearing to contest the proposed cancellation of the plugging extension for five inactive wells on the Spears (11563) Lease, Somerset Field, Bexar County, Texas (hereinafter "subject wells"). The proposed cancellation arose after the Commission received a complaint from the mineral interest owner, The Jerry Spears and Mariam A. Spears Trust (hereinafter "Spears") claiming More Texas Oil's lease had terminated. Upon receipt of Spears' correspondence, the Commission contacted More Texas Oil concerning the wells' eligibility for a plugging extension in the absence of a good faith claim of a continuing right to operate. More Texas Oil responded that Spears had interfered with its operations. A determination was made that More Texas Oil had failed to submit evidence supporting a continuing right to operate the subject wells and a recommendation was made to cancel the plugging extensions for the wells. More Texas Oil requested a hearing to address the cancellation.

APPLICABLE RULES

Statewide Rule 14(b)(2) provides in part:

Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. Plugging operations on delinquent inactive wells shall be commenced immediately unless the well is restored to active operation. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

Statewide Rule 14(b)(2)(C)(i) concerning revoking plugging extensions provides:

The Commission or its delegate may revoke a plugging extension if the operator of the well that is the subject of the extension fails to maintain the well and all associated facilities in compliance with Commission rules; fails to maintain a current and accurate organizational report on file with the Commission; fails to provide the Commission, upon request, with evidence of a continuing good faith claim to operate the well; or fails to obtain or maintain financial security as required by §§3.78 of this title (relating to Fees and Financial Security Requirements) (Statewide Rule 78).

MATTERS OFFICIALLY NOTICED

The examiner took official notice of Commission records showing More Texas Oil filed its most recent Commission P-5 (Organization Report) on February 28, 2008. Jo Heichel is listed as the owner of the company. More Texas Oil is currently shown as the operator of 85 wells with a total depth of 95,861 feet. Official notice was also taken of the Commission P-4 (Certificate of Compliance and Transportation Authority) records showing that More Texas Oil was recognized as the operator of the Spears (11563) Lease on October 16, 1996. Commission production history records from the "Production Data Query" system for the Spears (11563) Lease shows that the wells last reported a single barrel of production in June 2004.

DISCUSSION OF EVIDENCE

More Texas Oil contends that it still holds a valid right to operate the subject wells because Spears interfered with its operations on the lease. More Texas Oil originally entered into a Oil, Gas and Mineral Lease with Spears effective April 17, 1996 with a ten year primary term. The lease provides for termination if production ceases for 90 consecutive days after expiration of the primary term. The lease also contains a force majeure provision in paragraph 11 which maintains the lease in force and effect if events beyond the reasonable control of the lessee prevent it from continuing operations. A copy of the lease agreement is attached as Exhibit 1 to the proposal for decision.

More Texas Oil claims that the prior operator of the Spears (11563) Lease stripped the wells of all equipment. More Texas Oil reequipped the wells and operated them without interruption until 2003. More Texas Oil contends that its pumper, Kenneth McMahon, said Jerry Spears began turning off the wells in 2003 in order to avoid the receipt of income that would interfere with his wife's placement at a nursing home. More Texas Oil continued to turn on the wells, but Spears repeatedly turned them off. More Texas Oil ultimately gave up trying to fight with Spears in 2004, and made no further efforts to continue production.

The lease remained in effect until April 17, 2006 under its primary term. More Texas Oil believes the wells could be restored to production immediately, but claims it has made no efforts to restore production in the wells because of Spears' actions in 2003.

Spears contends that it has not received any royalty payments since 2002. Spears points to production records showing that the well has not reported any production since June 2004 to show the lease has now terminated due to lack of production.

Spears denies taking any action to lock out More Texas Oil from the subject wells. The minerals were held under a trust and income from the wells did not affect Mrs. Spears admission into a nursing home. Spears argues More Texas Oil had used 2 acres of his property as an equipment yard for its operations. Despite an agreement to pay rent, More Texas Oil owed payments from January to May 2002. The agreement was made with Mr. McMahon who claimed he was a partner in More Texas Oil. Spears brought suit to recover the payments and clean up the property. Spears believes McMahon shut-in the wells in retaliation for the dispute over rental payments.

EXAMINER'S OPINION

The question in this case is relatively simple: Does More Texas Oil possess a continuing good faith claim to support its right to operate the well? It is the examiner's opinion that the legal theory advanced by More Texas Oil is not a factually supported claim sufficient to establish the continued validity of the April 1996 oil, gas and mineral lease.

The Commission has jurisdiction to determine an applicant's claimed possessory interest in the mineral estate when issuing a permit as held in *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943). The Texas Supreme Court recognized in *Magnolia*:

"... the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property." *Magnolia* at p. 191.

The Commission has incorporated *Magnolia's* holding in determining the eligibility of an inactive well for a plugging extension. This is reflected by the language of Statewide Rule 14(b)(2)(C)(i):

The Commission or its delegate may revoke a plugging extension if the operator of the well that is the subject of the extension . . . fails to provide the Commission, upon request, with evidence of a continuing good faith claim to operate the well....

More Texas Oil contends the April 1996 lease is perpetuated by the provision which excuses it from operations for events outside of its control, commonly referred to as a “force majeure” provision. More Texas Oil claims Spears’ alleged actions in 2004 trigger this provision.

It is undisputed that no production has been reported since June 2004 and that the primary term of the lease expired in April 2006. The theory that the April 1996 lease was perpetuated by Spears’ action is not a factually supported claim. The only evidence to support the claim that Spears’ locked out More Texas Oil is unsubstantiated and unreliable hearsay statements which Mr. McMahan reportedly told Ms. Heichel. Further, there is no explanation why alleged actions during the primary term of the lease in 2003 somehow prevented any attempts by More Texas Oil to restore production after April 2006.

More Texas Oil has not provided factual support for its theory perpetuating the April 1996 lease. In the absence of any factually supported claim of a recognized legal theory to support a continuing right to operate, More Texas Oil’s plugging extensions must be canceled.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. More Texas Oil appeared at the hearing and presented evidence. The Jerry Spears and Mariam A. Spears Trust (hereinafter “Spears”) also appeared at the hearing.
2. More Texas Oil last filed a Commission P-5 (Organization Report) on February 28, 2008. Jo Heichel is listed as the owner of the company. More Texas Oil is currently shown as the operator of 85 wells with a total depth of 95,861 feet.
3. Commission P-4 (Certificate of Compliance and Transportation Authority) records show that More Texas Oil was recognized as the operator of the Spears (11563) Lease, Somerset Field, Bexar County, Texas on October 16, 1996.

4. There has been no reported production from the Spears (11563) Lease since June 2004.
5. More Texas Oil originally entered into a Oil, Gas and Mineral Lease with Spears effective April 17, 1996 with a ten year primary term. The lease provides for termination if production ceases for 90 consecutive days after the expiration of the primary term.
6. More Texas Oil did not establish a factually supported claim that the April 1996 lease remained valid under the force majeure provision.
 - A. There has been no reported production from the Spears (11563) Lease since June 2004.
 - B. The primary term expired in April 2006.
 - C. More Texas Oil did not provide any reliable factual evidence to support its claim that it was locked-out of the Spears (11563) Lease by the landowner and prevented from producing the wells prior to the expiration of the primary term of the lease.
 - D. More Texas Oil made no attempt to restore production after the expiration of the primary term.

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. Statewide Rule 14(b)(2)(C)(i) requires an operator to establish a good faith claim of a continuing right to operate a well as a condition to obtaining a plugging extension.
4. More Texas Oil did not provide a factually supported claim of a current right to operate the Spears (11563) Lease, Somerset Field, Bexar County, Texas.
5. Pursuant to Statewide Rule 14(b)(2)(c)(i), the plugging extensions for the Spears (11563) Lease, Somerset Field, Bexar County, Texas, should be revoked because More Texas Oil did not provide a factually supported claim of a current right to operate the well.

RECOMMENDATION

The examiner recommends the plugging extensions for the Spears (11563) Lease, Somerset Field, Bexar County, Texas be canceled.

Respectfully submitted,

Mark Helmueller
Hearings Examiner