

**OIL & GAS DOCKET NO. 09-0256098**

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**COMMISSION CALLED HEARING TO GIVE BRAMMER PETROLEUM, INC., AN OPPORTUNITY TO SHOW CAUSE WHY THE PLUGGING EXTENSION FOR WELL NO. 1, EAST HAM GAS UNIT LEASE, PARADISE COVE (LO DORNICK HILLS) FIELD, GRAYSON COUNTY, TEXAS, SHOULD NOT BE CANCELLED AND BRAMMER PETROLEUM, INC., SHOULD NOT BE ORDERED TO IMMEDIATELY PLUG THE WELL**

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**APPEARANCES:**

**FOR RESPONDENT:**

Ana Maria Marsland-Griffith  
Larry Brammer

**RESPONDENT:**

Brammer Petroleum, Inc.

**FOR COMPLAINANT:**

George C. Neale  
Rosa L. Rohr  
Cal Barker  
Celeste Barker

**COMPLAINANT:**

Graceland Ranch Partnership

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR HEARING:</b>	March 14, 2008
<b>DATE OF NOTICE OF HEARING:</b>	March 19, 2008
<b>DATE OF HEARING:</b>	May 1, 2008
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE RECORD CLOSED:</b>	June 2, 2008
<b>DATE PFD CIRCULATED:</b>	June 6, 2008

**STATEMENT OF THE CASE**

This is a hearing called by the Commission to provide Brammer Petroleum, Inc. ("Brammer") an opportunity to show cause why the Statewide Rule 14(b)(2) plugging extension for Well No. 1 (RRC No. 106860), East Ham Gas Unit Lease, Paradise Cove (Lo Dornick Hills) Field,

Grayson County, Texas (“subject well”) should not be cancelled and why Brammer should not be ordered to plug the well. A hearing was held on May 1, 2008. The respondent Brammer and complainant Graceland Ranch Partnership (“Graceland”) appeared and presented evidence. At the conclusion of the hearing, the record was held open until June 2, 2008, for submission of additional information requested by the examiner.

### **APPLICABLE LAW**

Pursuant to Statewide Rule 14(b)(2), plugging operations on each dry or inactive well must be commenced within a period of one year after drilling operations cease. However, an operator with an active Form P-5 organization report and the required amount of financial assurance on file will be granted a one-year plugging extension at the time of annual renewal of its organization report for each well that has been inactive for 12 months or more if (1) the well and associated facilities are in compliance with all laws and Commission rules; and (2) the operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.

Statewide Rule 14(a)(1)(E) defines “good faith claim” as a factually supported claim based on a recognized legal theory to a continuing possessory right in a 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.

Pursuant to Statewide Rule 14(b)(2)(C), the Commission may revoke a plugging extension for a well if the operator fails to maintain the well and all associated facilities in compliance with Commission rules, fails to maintain an active organization report and approved financial assurance on file, or fails to provide the Commission, upon request, with evidence of a continuing good faith claim of right to operate the well. If the Commission or its delegate revokes a plugging extension, the operator must either return the well to active operation or, within 30 days, plug the well or request a hearing on the matter.

### **BACKGROUND**

By letter to the Director of the Hearings Section, dated January 7, 2008, Graceland, the surface owner of the property where the subject well is located, asserted that the well had not produced since 1999 and Brammer no longer had a good faith claim of right to operate the well. This letter requested the assistance of the Commission in obtaining the plugging of the well and removal from Graceland’s property of all related equipment.

By letter to Brammer dated January 25, 2008, Examiner Marshall Enquist advised of the filing of the Graceland complaint and requested Brammer to furnish, within 15 days, evidence of Brammer’s good faith claim of right to operate the subject well. This letter notified Brammer that failure to establish a good faith claim as requested would result in cancellation of the plugging extension for the well.

Brammer replied to examiner Enquist by letter dated February 13, 2008, explaining that the subject well “has been non-commercial for years and obviously the lease would be expired unless held by production from another unit.” Brammer asserted, however, that plugging of the subject well would cause waste, and Brammer was able to obtain a “farmout” when it was ready to recomplete the well.

By letter dated February 19, 2008, examiner Enquist determined that Brammer had not furnished evidence that it had a good faith claim to a continuing right to operate the subject well, and cancelled the plugging extension for the well. Brammer was notified that under Rule 14(b)(2)(C), it had 30 days “to bring the well into compliance with Statewide Rule 14 by plugging the subject well or by requesting a hearing on the matter.” On March 14, 2008, Brammer requested this hearing.

### **DISCUSSION OF THE EVIDENCE**

#### **Brammer**

Brammer has an active organization report and the required amount of financial assurance on file with the Commission. Brammer agreed that the oil and gas lease upon which it formerly relied to produce the subject well has terminated, and, accordingly, it did not contend that it is entitled to a Statewide Rule 14(b)(2) plugging extension for the well. However, on April 1, 2008, Brammer sold the cased wellbore to OKT Resources LLC (“OKT”). Through Matthew Avery, a consultant and land broker, OKT has acquired four oil and gas leases from mineral owners of the acreage where the subject well is located. These leases were made on various dates in 2007, and all of the leases are still in their primary term. Brammer earlier was interested in obtaining a farmout from OKT enabling Brammer to rework or recomplete the subject well, but OKT decided that it wanted the right to operate the well. Brammer and OKT have executed a two-signature Form P-4 (Certificate of Compliance and Transportation Authority) requesting the Commission to approve a change of operator for the subject well from Brammer to OKT.

The examiner has officially noticed the Commission’s P-5 Master Inquiry and P-5 Financial Assurance Inquiry databases for OKT, which show that OKT is an active operator with approved financial assurance in the amount of \$25,000. The examiner has also officially noticed the On Schedule Leases, Wells, Wellbores by Operator database showing that OKT is the record operator of two wells in Texas having total depth of 24,530’. The examiner has also officially noticed a two-signature Form P-4 filed with the Commission’s Oil and Gas Division on May 8, 2008, requesting a change of operator of the subject well from Brammer to OKT.<sup>1</sup>

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<sup>1</sup> Because this Form P-4 is directly related to this case wherein the Commission is called upon to consider whether Brammer should be ordered to plug the well, the Form P-4 has been referred from the Compliance Unit to the Hearings Section for disposition in the Commission’s Final Order in this docket.

The subject well was drilled in 1982 and initially completed on February 12, 1983. Subsequently, the well was recompleted to the Paradise Cove (Lo Dornick Hills) Field on August 11, 1983. The well was last produced in 1999. Brammer has been evaluating the possibility of recompleting the well to a different zone for about two years. It learned that OKT had taken oil and gas leases covering the acreage where the well is located only about six months prior to the hearing. Brammer negotiated with OKT for a farmout of acreage around the well for about two months prior to the hearing, but was unsuccessful.

Brammer is willing to plug the subject well if the Commission orders it to do so, but believes that plugging the well at this time would result in the waste of hydrocarbons. From analysis of the log for the well, Brammer has concluded that the well will produce hydrocarbons from the Middle Viola zone at about 14,000 feet, and Brammer says that a contract engineer who has worked with Brammer on evaluating wells for possible recompletion for about 20 years agrees with this conclusion. The Middle Viola was tested when the well was drilled, but was not considered under circumstances existing at the time to be a “high volume” zone. Nonetheless, Brammer estimated that even without use of modern frac methods, the well is capable of producing about 250 mcf per day of gas and 20-30 barrels of condensate per day. Brammer asserted that with the use of modern frac methods developed in the Barnett Shale, this volume of hydrocarbons producible from the subject well might be tripled. Brammer believes that if the well is plugged, these hydrocarbons probably would be wasted.

Although the Commission has not yet scheduled the subject well for a H-15 test (Test on An Inactive Well More than 25 Years Old), Brammer claims that it shot a fluid level test on the well about one year ago, and the fluid level in the well is about 10,000' below the base of fresh water. Brammer also believes that the well is cased and cemented in a way that precludes any possibility that the well is presenting a threat of pollution of surface or subsurface water. According to Brammer, it has never been notified by the Commission of any violations of Commission rules related to the subject well.

Because OKT purchased only the cased wellbore, Brammer committed to remove all surface equipment and related junk from the surface of the complainant’s property within 30 days of the date of the hearing.

### **Graceland**

Graceland is a general partnership owning the surface estate of about 90 acres where the subject well is located. The general partnership acquired this ownership about three years ago, but at least one of the general partners has owned the property since 1997. Graceland was aware of the existence of the subject well when it became the owner of the property, and was also aware that it was not acquiring the mineral estate. Except for signs of entry on the property within the month prior to the hearing, Graceland has not observed any activity on or around the subject well or its related surface facilities in many years. Graceland’s partners would like to develop the property, but believe that they cannot do so because of the existence of the inactive and unplugged well and

related pump jack, tanks, pipe, equipment and junk around the well. Graceland believes that Brammer should be required to plug the well and remove all the related surface equipment and junk from Graceland's property.

### **EXAMINER'S OPINION**

This hearing was called to determine: (1) whether Brammer is entitled to a Statewide Rule 14(b)(2) plugging extension for the subject well; and (2) whether Brammer should be ordered to plug the well. As to the first issue, Brammer is not entitled to a plugging extension for the well because it no longer possesses a good faith claim to a continuing right to operate the well. This much is conceded by Brammer.

As to the second issue, the examiner does not believe that issuance of an order requiring that the well be plugged is required by Statewide Rule 14(b)(2). OKT Resources LLC, an active operator with the required amount of financial assurance, has filed a Form P-4 (Certificate of Compliance and Transportation Authority) requesting that the Commission approve a change of operator for the well from Brammer to OKT, and OKT has a good faith claim of right to operate the well by virtue of currently effective oil and gas leases taken from the owners of the mineral estate of the property where the well is located. If this Form P-4 is approved, the subject well will be placed into compliance with Statewide Rule 14(b)(2) because OKT will be entitled to a plugging extension for the well until such time as the well is placed back into production or plugged, just so long as OKT continues to have a good faith claim and the well is in compliance with Commission rules.

The requirement of Statewide Rule 14(b)(2)(C) that an operator plug a well within 30 days of cancellation of a plugging extension for the well applies only if the operator does not request a hearing on the matter. That Rule 14(b)(2)(C) provides the opportunity for hearing strongly suggests that the rule contemplates that an operator may be able to show circumstances justifying compliance with Rule 14(b)(2) by means other than plugging. Transfer of a well to another operator having an active organization report and the required amount of financial assurance, and a good faith claim of right to operate, is a recognized and common means of achieving compliance with Rule 14(b)(2) as an alternative to plugging.

Although Brammer's evidence on this point is somewhat speculative, this evidence shows that there is at least a possibility that the well, if recompleted, will produce additional hydrocarbons. OKT appears to be sufficiently interested in this possibility to take a transfer of the well and to assume the responsibility for timely plugging of the well and other compliance with Commission rules. There is no evidence that the well is posing any threat of pollution of surface or subsurface water, and, in fact, there is evidence to the contrary. Had Brammer and OKT filed a two-signature Form P-4 to change the operator of the subject well before the calling of this hearing, the change of operator most likely would have been approved administratively without inquiry as to the likelihood of a successful recompletion.

The position taken by Graceland is understandable. Some benefit to this surface owner has been achieved by Brammer's commitment to remove old surface equipment and junk from Graceland's property. However, as a surface owner, Graceland is not entitled, as a matter of right, to demand plugging of a well potentially useful for the recovery of hydrocarbons by the current owner of the possessory interest in the mineral estate, where compliance with Statewide Rule 14(b)(2) can be achieved by means other than plugging and there is no actual threat of pollution of surface and subsurface fresh water.

In the circumstances, the examiner recommends that the Commission enter an order approving the Form P-4 requesting a change of operator of the subject well from Brammer to OKT and ordering that this proceeding otherwise be dismissed. 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. Brammer Petroleum, Inc. ("Brammer") and John S. Unell, a general partner in Graceland Ranch Partnership ("Graceland"), were given at least ten (10) days notice of this hearing. Brammer and Graceland appeared at the hearing and presented evidence.
2. Brammer is the designated Form P-4 operator of the East Ham Gas Unit Lease, Well No. 1 (RRC No. 106860), Paradise Cove (Lo Dornick Hills) Field, Grayson County, Texas ("subject well").
3. By letter dated January 7, 2008, John S. Unell, on behalf of Graceland, the owner of the surface estate of acreage where the subject well is located, filed a complaint with the Commission asserting that Brammer's oil and gas lease had terminated and requesting that the well be plugged and related surface equipment be removed from Graceland's property.
4. On February 13, 2008, a Statewide Rule 14(b)(2) plugging extension for the subject well was cancelled, after Brammer had failed to provide evidence, upon request, that it had a good faith claim of a continuing right to operate the well.
5. By letter dated March 14, 2008, Brammer requested that the Commission call this hearing. The hearing was called to give Brammer an opportunity to show cause why the plugging extension for the subject well should not be cancelled and why Brammer should not be ordered to plug the well.
6. Brammer has an active Form P-5 organization report and approved financial assurance on file with the Commission.
7. The subject well was last produced in 1999.

8. The oil and gas lease formerly relied upon by Brammer to produce the subject well has terminated, and, accordingly, Brammer conceded that it is not entitled to a Statewide Rule 14(b)(2) plugging extension for the well.
9. OKT Resources LLC (“OKT”) has acquired four oil and gas leases from mineral owners of the acreage where the subject well is located. These leases were made on various dates in 2007, and all of the leases are still in their primary term.
10. Brammer attempted to obtain a farmout from OKT in order that Brammer might pursue a plan to recompleting the subject well to a different zone, but was unsuccessful when OKT decided that it wanted to operate the well.
11. On April 1, 2008, Brammer sold the cased wellbore of the subject well to OKT.
12. OKT has an active Form P-5 organization report and approved financial assurance in the amount of \$25,000 on file with the Commission. At the time of the hearing in this docket, OKT was the designated operator of two wells in Texas having total depth of 24,530’.
13. On May 8, 2008, a Form P-4 was filed with the Commission requesting approval of change of operator of the subject well from Brammer to OKT.
14. If the subject well is transferred to OKT, OKT will be entitled to a plugging extension for the well while evaluating recompletion of the well and/or restoration of the well to producing status.
15. There is a possibility that the subject well will produce additional hydrocarbons in commercial quantities if the well is recompleted.
  - a. A well log and testing by Brammer when the well was drilled show that the well is potentially productive in the Middle Viola zone at about 14,000’.
  - b. Based on log analysis, testing when the well was drilled, and the advice of a contract engineer, Brammer believes that the subject well, if recompleted in the Middle Viola, will produce at least 250 mcf of gas per day and 20 to 30 barrels of condensate per day. Brammer believes also that with use of modern frac methods, this production could be tripled.
16. There is no evidence that the subject well is currently posing any actual threat of pollution of surface or subsurface fresh water.

17. OKT does not propose to use any of the surface equipment presently associated with the subject well, and Brammer has committed to remove all such surface equipment and related junk from Graceland's property.

**CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Brammer Petroleum, Inc., is not entitled to a plugging extension for the East Ham Gas Unit Lease, Well No. 1 (RRC No. 106860), Paradise Cove (Lo Dornick Hills) Field, Grayson County, Texas, pursuant to Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)], and a previous plugging extension for this well properly was cancelled on February 19, 2008, pursuant to Statewide Rule 14(b)(2)(C) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)(C)].
4. Approval of the Form P-4 (Certificate of Compliance and Transportation Authority) filed with the Commission on May 8, 2008, requesting approval of a change of operator of the East Ham Gas Unit Lease, Well No. 1 (RRC No. 106860), Paradise Cove (Lo Dornick Hills) Field, Grayson County, Texas, will place this well into compliance with Statewide Rule 14(b)(2).
5. The Form P-4 (Certificate of Compliance and Transportation Authority) filed with the Commission on May 8, 2008, requesting approval of a change of operator of the East Ham Gas Unit Lease, Well No. 1 (RRC No. 106860), Paradise Cove (Lo Dornick Hills) Field, Grayson County, Texas, should be approved, and the well should not be ordered to be plugged at this time.

**RECOMMENDATION**

The examiner recommends that the Commission enter an order approving the Form P-4 requesting a change of operator of the subject well from Brammer to OKT and ordering that this proceeding otherwise be dismissed.

Respectfully submitted,

James M. Doherty  
Hearings Examiner