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HEARINGS SECTION

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

June 4, 2007

OIL AND GAS DOCKET NO. 08-0250700

APPLICATION OF JOEL G. SOLIS TO SUPERCEDE THE FINAL ORDERS AGAINST RAIDER OIL & GAS COMPANY IN DOCKET NO. 08-0244257 REQUIRING THE PLUGGING OF WELL NO. 1, DQ-18 (34276) LEASE AND WELL NO. 1, SABINE ROYALTY (22365) LEASE, CRANE COUNTY AND DOCKET NO. 08-0244540 REQUIRING THE PLUGGING OF WELL NO. 1, SLAVIN (29433) LEASE, CRANE COUNTY, TEXAS.

APPEARANCES:

FOR APPLICANT:

Joel G. Solis

APPLICANT:

Raider Oil & Gas Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	February 20, 2007
NOTICE OF HEARING:	February 20, 2007
DATE CASE HEARD:	March 7, 2007
HEARD BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	June 4, 2007

STATEMENT OF THE CASE

This Hearing was set to consider the request of Joel G. Solis (hereinafter "Solis") to supercede the Final Order issued May 17, 2006 in Docket No. 08-0244257 requiring plugging of Well No. 1 on the DQ-18 Lease and Well No. 1 on the Sabine Royalty Lease, Crane County. Solis also seeks to supercede the Final Order issued May 17, 2006 in Oil & Gas Docket No. 08-0244540 requiring plugging of Well No. 1 on the Slavin Lease, Crane County.

The examiner notes that the Respondent in the two Enforcement dockets listed above was Joel G. Solis dba Raider Oil & Gas Company and that the applicant in the present docket is the same Joel G. Solis. Solis seeks to supercede the plugging requirement for these wells and asks that the Commission recognize "Raider Oil & Gas Company" as the operator of record. Raider Oil & Gas Company is not a legal entity but is merely a name under which Solis does business as a sole proprietor.

Joel G. Solis appeared at the hearing in support of the application. Solis presented limited evidence in support of the application.

AUTHORITY

Texas Natural Resources Code §85.049(a) provides:

On a verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent or lessen the waste.

Texas Natural Resources Code §89.041 establishes the affirmative statutory responsibility of the Commission concerning abandoned wells:

If it comes to the attention of the commission that a well has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Texas Natural Resources Code §89.042(a) provides:

If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

Texas Natural Resources Code §91.107 requires that an operator have, on file with the Commission, financial assurance in the form of a bond, letter of credit or cash deposit in the amount necessary for both existing wells operated and any wells being transferred, prior to Commission approval of the transfer.

Under Statewide Rule 14, the Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim of a continuing right to operate.

SUMMARY OF SOLIS' EVIDENCE

Solis, appeared *pro se* at the hearing. In order to show that waste would be prevented by allowing Solis to operate the subject leases and wells, Solis submitted a Commission Form W-10 Oil Well Status Report, which purports to show that Well No. 1 on the DQ-18 (34276) Lease tested at 6 BOD, 4 BWD and 0 MCFD; that Well No. 1 on the Sabine Royalty (22365) Lease tested at 2

BOD, 2 BWD and 0 MCFD; and Well No. 1 on the Slavin (29433) Lease tested at 1 BOD, 1 BWD and 15 MCFD. However, this report has not been date-stamped by either the District Office or the Commission in Austin.

Solis did not show that he had a good faith claim to operate any of the subject leases. Solis could only state that he operated leases in the general vicinity of the subject wells and leases, but not the same wells and leases. The examiner allowed Solis a two week extension, until March 21, 2007, to late-file valid leases. No such leases were ever submitted by Solis.

EXAMINER'S OPINION

An order superceding a Commission Final Order may be warranted if the applicant/operator shows: 1) that it has a good faith claim of a continuing right to operate the well or lease; 2) that it has met the financial assurance requirements of Texas Natural Resources Code §91.107; and 3) that a superceding order is necessary to prevent waste. Solis cannot satisfy parts 1) or 3) of these requirements. Even if this were not the case, Solis would be precluded from making this application by the doctrine of collateral estoppel.

The first two of the factors listed above apply to all transfers of inactive wells, not just cases where a well is ordered to be plugged. Any operator seeking to acquire an existing well which has been inactive for more than 12 months must show that it has a good faith claim of a continuing right to operate the well upon demand by the Commission. This requirement is found in Statewide Rule 14(b)(2). Additionally, the operator must show that it has met the requirements of Texas Natural Resources Code §91.107 which preclude the Commission from approving the requested transfer of an existing well to a new operator unless the new operator has filed financial assurance with the Commission in the form of a bond, letter of credit or cash deposit.

In this case, Solis was not able to show that he has a good faith claim to operate the subject leases and wells, thus failing to meet the first factor listed above. Although granted two weeks in which to late-file a good faith claim, Solis did not do so.

The examiner has taken official notice of the Final Orders in Oil & Gas Docket Nos. 08-0244257 and 08-0244540, Commission records related to Solis' Commission Form P-5 (Organization Report) filings under the dba Raider Oil & Gas Company, and Commission records identifying the wells for which Solis is currently recognized as the operator. Solis is presently the operator of 87 wells, 67 of which are SWR 14(b)(2) wells. Solis filed its most recent Organization Report with the Commission on April 16, 2007, and has posted financial assurance with the Commission in the form of a \$50,000 cash deposit. Solis can meet the financial security requirement listed as the second factor listed above.

Superceding a Final Order to Prevent Waste

Final Orders in Commission Enforcement Proceedings generally require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. These “plug-only” orders reflect the Commission policy, that in cases where a well is in violation of Commission rules and has not reported any production or injection activity for a lengthy period of time, the Commission will require that the well be plugged.

To support these “plug-only” orders, a Finding of Fact identifies when the well or lease last reported any production or injection activity. An additional finding of fact addresses the statutory requirement in Texas Natural Resources Code §89.041, by finding that the unplugged well is causing or is likely to cause pollution of fresh water above or below the ground.

A “plug-only” order falls under the Commission’s authority in Texas Natural Resources Code §89.042. Further, the courts recognize that a Commission order to plug a well “is entitled to the same weight and finality as an order granting or refusing a permit to drill a well.” *Wrather Petroleum Corporation v. Railroad Commission*, 230 S.W.2d 388, 390 (Tex.App. - Austin 1950, *reh’g denied*) citing *Railroad Commission of Texas v. Gulf Production Co.*, 132 S.W.2d 254, 256, (Tex. 1939). Finally, the findings of fact are not “technical prerequisites” but satisfy a “substantial statutory purpose.” *Morgan Drive Away, Inc. v. Railroad Commission*, 498 S.W.2d 147, 150 (Tex.1973); *Railroad Commission of Texas v. R. J. Palmer*, 586 S.W.2d 934 (Tex.App. - Austin 1979, *no writ*).

In this case, the Final Orders entered against Raider Oil & Gas Company in Docket Nos. 08-0244257 and 08-0244540 as to, respectively, Well No. 1 on the DQ-18 (34276) Lease and Well No. 1, Sabine Royalty (22365) Lease, as well as Well No. 1 on the Slavin (29433) Lease, were “plug-only” orders. To meet the requirements of the third factor listed above, Solis must show that a superceding order is necessary to prevent waste. In an attempt to do so, Solis presented a Commission Form W-10 Oil Well Status Report. However, the report did not bear any file stamps indicating that it had been filed with either the District Office or the Commission’s offices in Austin.

Solis did not present sufficient evidence to support the entry of a superceding order to prevent waste. The Form W-10 presented by Raider has never been officially filed with the Commission. Without accompanying supporting documents, or accompanying credible testimony, it amounts to little more than an unsupported assertion of the wells’ productive capabilities.

Collateral Estoppel

Even if Raider could meet all three factors required for a superceding order, Raider would still be precluded from a successful application by the rule of collateral estoppel. Collateral estoppel “or as it is sometimes phrased, estoppel by judgment, bars relitigation in a subsequent action upon a different cause of action issues actually litigated and essential to a prior judgment.” See *Benson v. Wanda Pet Co.*, 468 S.W.2d 361, 362 (Tex. 1971). “The rule is generally stated as binding a party

and those in privity with him.” *Id.*, at 363, citing Kirby Lumber Corp. v. Southern Lumber Co., 145 Tex. 151. “...Privity connotes those who are in law so connected with a party to a judgment as to have such an identity of interest that the party to the judgment represented the same legal right.” *Id.*, at 363. “Due process requires that the rule of collateral estoppel operate only against persons who have had their day in court either as a party to a prior suit or as a privy, and, where not so, that, at the least, the presently asserted interest was actually and adequately represented in the prior trial.” *Id.*, at 363.

Solis, under the dba Raider Oil & Gas Company, is already the current Commission-recognized operator of the subject leases and wells. Solis designated himself the operator of Well No. 1 on the Slavin (29433) Lease by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with the Commission effective on October 1, 2000. Solis designated himself the operator of Well No. 1 on the DQ-18 (34276) Lease by filing a Form P-4 with the Commission effective March 1, 2004. Solis designated himself the operator of Well No. 1 on the Sabine Royalty (22365) Lease by filing a Form P-4 with the Commission effective on June 1, 1996.

In Oil & Gas Docket No. 08-0244257, Solis was ordered to plug Well Nos. 1 and 2 on the University (23296) Lease, Well No. 1 on the DQ-18 (34276) Lease, and Well No. 1 on the Sabine Royalty (22365) Lease and pay an administrative penalty of \$9,500.

In Oil & Gas Docket No. 08-0244540, Solis was ordered to plug Well No. 1 on the Slavin (29433) Lease and pay an administrative penalty of \$5,000.

Joel G. Solis and Raider Oil & Gas Company are one and the same. Raider Oil & Gas Company is merely a name under which Joel G. Solis does business. Solis’ present application for a superceding order is an impermissible collateral attack upon the Commission’s earlier order that the subject wells be plugged and is barred by the rule of collateral estoppel.

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

FINDINGS OF FACT

1. Joel G. Solis (hereinafter “Solis”) dba Raider Oil & Gas Company was given at least 10 days notice of this proceeding. Solis appeared at the scheduled time and place for the hearing and presented evidence.
2. Solis, using the dba Raider Oil & Gas Company, filed his first Commission Form P-5 (Organization Report) with the Commission on February 7, 1995, and filed his most recent Commission Form P-5 on April 16, 2007. Solis has posted financial assurance with the Commission in the form of a \$50,000 cash deposit. Raider Oil & Gas Company is not a legal entity, but is merely a dba under which Solis does business.

3. Solis designated himself the operator of Well No. 1 on the Slavin (29433) Lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on October 1, 2000. Solis designated himself the operator of Well No. 1 on the DQ-18 (34276) Lease by filing a Form P-4 with the Commission effective March 1, 2004. Solis designated himself the operator of Well No. 1 on the Sabine Royalty (22365) Lease by filing a Form P-4 with the Commission effective on June 1, 1996.
4. In Oil & Gas Docket No. 08-0244257, Solis, under his dba Raider Oil & Gas Company was ordered to plug Well Nos. 1 and 2 on the University (23296) Lease, Well No. 1 on the DQ-18 (34276) Lease, and Well No. 1 on the Sabine Royalty (22365) Lease, Crane County, and pay an administrative penalty of \$9,500.
5. In Oil & Gas Docket No. 08-0244540, Solis, under his dba Raider Oil & Gas Company was ordered to plug Well No. 1 on the Slavin (29433) Lease, Crane County, and pay an administrative penalty of \$5,000.
6. Solis could not provide a copy of a new lease or make a good faith claim to operate the University (23296) Lease, the DQ-18 (34276) Lease, or the Sabine Royalty (22365) Lease.
7. Superceding the requirement in the Final Orders entered in Oil & Gas Docket Nos. 08-0244257 and 08-0244540 is not necessary to prevent waste.
 - (a) Solis' only evidence that a superceding order was necessary to prevent waste was a Commission Form W-10.
 - (b) Solis' Form W-10 was never officially filed with the Commission and had no supporting documentation or accompanying credible testimony.
8. The Final Orders in Oil & Gas Docket Nos. 08-0244257 and 08-0244540 (whose plug-only requirements are sought to be superceded in the present docket) were entered against "Raider Oil & Gas Company", a name under which Joel G. Solis does business as a sole proprietor. The applicant in the present docket is Joel G. Solis.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Joel G. Solis failed to prove that he has a good faith claim of a right to operate the subject wells and leases.
4. Joel G. Solis failed to prove that a Final Order superceding the Final Order entered in Oil &

Gas Docket No. 08-0244257 ordering Raider Oil & Gas Company to plug Well No. 1 on the University (23296) Lease, Well No. 1 on the DQ-18 (34276) Lease, and Well No. 1 on the Sabine Royalty (22365) Lease is necessary to prevent waste.

5. Joel G. Solis failed to prove that a Final Order superceding the Final Order in Oil & Gas Docket No. 08-0244540, ordering Raider Oil & Gas Company to plug Well No. 1 on the Slavin (29433) Lease is necessary to prevent waste.
6. Joel G. Solis, as applicant in this docket and as the subject of the Final Orders sought to be superceded, has made an impermissible collateral attack on the prior orders of the Commission and is barred from the re-litigation of matters previously decided.

RECOMMENDATION

The examiner recommends that the Commission deny Solis' request to supercede the provisions in the Final Orders entered in Oil & Gas Docket Nos. 08-0244257 and 08-0244540.

Respectfully submitted,



Marshall Enquist
Hearings Examiner