



RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

February 24, 2005

OIL AND GAS DOCKET NO. 08-0241485

COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDER ISSUED JANUARY 21, 2003 IN OIL & GAS DOCKET NO. 08-0231505, BLACK (26920) LEASE, WELL NO. 1, WARD, SOUTH (95138001) FIELD, WARD COUNTY, TEXAS, ENABLING M T M OIL TO BECOME THE OPERATOR OF RECORD AND TO PRODUCE THE ABOVE-REFERENCED WELL.

APPEARANCES:

FOR APPLICANT:

Chester E. Reeves

APPLICANT:

M T M Oil

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	January 7, 2005
NOTICE OF HEARING:	January 21, 2005
DATE CASE HEARD:	February 11, 2005
DATE HEARING CLOSED:	February 15, 2005
HEARD BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	February 24, 2005

STATEMENT OF THE CASE

This Hearing was set to consider the request of M T M Oil (hereinafter "M T M") to supercede the Final Order issued January 21, 2003 in Docket No. 08-0231505, requiring Murphree Brothers Production (hereinafter "Murphree") to plug Well No. 1 on the Black (26920) Lease, Ward, South Field (hereinafter "subject lease"), and to recognize M T M as the operator of record. M T M asserts that it can restore the well to production and therefore the well should not be plugged.

SUMMARY OF EVIDENCE

The examiner took official notice of the file and Final Order in Oil & Gas Docket No. 08-

0231505, Commission records related to Murphree's most recent Commission Form P-5 (Organization Report) filing on September 29, 1999, and Commission records identifying the wells for which Murphree Brothers Production is currently recognized as the operator.

M T M became a recognized P-5 Operator on February 14, 2003 and filed its most recent Organization Report with the Commission on November 5, 2004. It has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit. M T M currently operates 38 wells.

M T M's owner-operator, Chester E. Reeves, appeared at the hearing and presented evidence in support of the application. The hearing was left open until February 15, 2005, allowing M T M to late-file an exhibit, a copy of the base lease. M T M is a working interest owner of the well, and provided a copy of an Assignment and Bill of Sale from Murphree dated March 19, 2003, a Ratification of the base lease signed July 27, 2004 (by an owner of 4/13 of the minerals) with an effective date of March 1, 2003, and a copy of the base lease, dated September 20, 1976.

The current Commission recognized operator of the subject lease, Murphree Brothers, submitted Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance), for the lease effective June 1, 1990. In Oil & Gas Docket No. 08-0231505, Murphree was ordered to plug the Black (26920) Lease Well No. 1 and pay an administrative penalty of \$2,000 pursuant to a Final Order entered on January 21, 2003, for a violation of Statewide Rule 14(b)(2). The well last produced on or before April 30, 1994. M T M has submitted a two signature Form P-4 to designate itself as the operator of the subject lease and has stated that it has no officers in common with Murphree or any connection to Murphree. Murphree received notice of this hearing at its P-5 Organization Report address, but did not appear in protest. The superceding order sought by M T M would be effective only as to transferring the ownership of the subject well and removing the plug-only requirement. The Final Order in Oil & Gas Docket No. 08-0231505 would remain in effect as to the requirement that Murphree pay an administrative penalty of \$2,000.

M T M states that the well still has its original equipment and needs little more than an electric hookup. The well last produced one to two barrels of oil per day, at the same time producing one to two barrels of water. If this still holds true, the well could produce from 365 BO to 730 BO per year. M T M operates wells on adjacent leases and is currently injecting water into the producing formation in hopes of enhancing recovery from his producing wells. Of the fourteen leases that M T M currently operates, eleven are in the Ward, South Field. Due to the current high price of oil, M T M believes Well No. 1 on the Black Lease is worth restoring to production.

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.

EXAMINER'S OPINION

M T M asserts that it can meet the requirements to be recognized as the operator of the subject lease and restore the well to active production. However, this claim is complicated by the Final Order requiring that Murphree plug the well. An order superceding a Commission Final Order may be warranted if the 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. M T M has satisfied all of these requirements.

The first two factors 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, a good faith claim of a right to operate the subject leases is established by virtue of the Assignment and Bill of Sale from Murphree and Ratification of the base lease by one of the mineral interest owners. M T M also has a \$50,000 Letter of Credit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107.

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, that 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 Order entered against Murphree was a "plug-only" order. As noted above, M T M must show that a superceding order is necessary to prevent waste.

Application of Waste Standard

In this docket, the question is whether M T M presented sufficient evidence that an order superceding a "plug-only" order is necessary to prevent waste. It is the examiner's conclusion that M T M presented sufficient evidence to support the entry of a superceding order to prevent waste.

M T M proposes to restore production to the well previously operated by Murphree. The testimony supports M T M's claim that the well was not used for production due to its low volume of production and the then comparatively low price of oil. By restoring electric power to the pump,

and waterflooding the formation, M T M hopes to restore the well to productive status. The examiner expresses no opinion as to the likelihood of success in this venture to the degree that M T M anticipates. However, the risk that M T M's attempt to restore production may not be completely successful is not a basis for denying it the opportunity to restore production where M T M has met all the other requirements to operate the well. It is likely that M T M's efforts will result in the recovery of at least some hydrocarbons that would not otherwise be recovered. Accordingly the examiner concludes that an order superceding the plug-only provisions in the Final Order will prevent waste.

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. M T M Oil (hereinafter "M T M") and Murphree Brothers Production (hereinafter "Murphree") were given at least 10 days notice of this proceeding. M T M appeared at the scheduled time and place for the hearing through its owner-operator Chester E. Reeves and presented evidence. Murphree did not appear.
2. M T M filed its first Commission Form P-5 (Organization Report) with the Commission on February 14, 2003. M T M has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit.
3. Murphree was recognized as the operator of the Black (26920) Lease (hereinafter "subject lease") after filing Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance), effective June 1, 1990.
4. In Oil & Gas Docket No. 08-0231505, Murphree was ordered to plug the Black Lease Well No. 1 and pay an administrative penalty of \$2,000 pursuant to a Final Order entered on January 21, 2003 for a violation of Statewide Rule 14(b)(2).
5. M T M is a working interest owner of the well, and provided a copy of the Assignment and Bill Of Sale from Murphree and the Ratification of the Base Lease from a 4/13 mineral owner, under which M T M will operate the wells.
6. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 08-0231505 that the Black Lease Well No. 1 be plugged is necessary to prevent waste.
 - (a) Providing electric power to the Black Lease Well No. 1 will restore it to production.
 - (b) Waterflooding from injection wells on adjacent leases operated by M T M may result in increased production from the well.

- (c) The well may produce 365 to 730 barrels of oil per year, or more if waterflood operations are successful.
7. The requirement in the Final Order in Oil & Gas Docket 08-0231505 that Murphree pay an administrative penalty of \$2,000 will remain in effect.

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. M T M has a good faith claim of a right to operate the subject lease.
4. M T M has filed financial assurance in the type and amount required under Texas Natural Resources Code §91.107 to be approved as the operator of the subject lease.
5. A Final Order superceding the Final Order entered in Oil & Gas Docket No. 08-0231505 requiring plugging of Well No. 1 on the Black (26920) Lease, Ward, South Field, Ward County, is necessary to prevent waste.
6. The Final Order in this Docket superceding the Final Order in Oil & Gas Docket 08-0231505 is effective only as to the disposition of Well No. 1 on the Black (26920) Lease, Ward, South Field, Ward County, and does not relieve Murphree Brothers Production of their obligation to pay an administrative penalty of \$2,000 to the Railroad Commission.

RECOMMENDATION

The examiner recommends that the Commission grant M T M's request to supercede the provisions in the Final Order entered in Oil & Gas Docket No. 08-0231505 requiring plugging of Well No. 1 on the Black (26920) Lease. The examiner further recommends that all other provisions of the Final Order in Oil & Gas Docket 08-0231505 remain in full force and effect.

Respectfully submitted,



Marshall Enquist
Hearings Examiner