

October 17, 2006

OIL AND GAS DOCKET NO. 04-0241866

COMMISSION CALLED HEARING ON THE COMPLAINT OF THE BRAD COLEMAN, TRUSTEE FOR STANDARD TRUST REGARDING THE VALIDITY OF THE PERMITS ISSUED FOR THE H.A. SULTENFUSS (11603) LEASE, WELL NO. 1 AND THE OLIVIA SCHNITZ (12863) LEASE, WELL NO. 1, ESTES COVE FIELDS, ARANSAS COUNTY, TEXAS AND REQUEST THAT THE WELLS BE SHUT-IN BY THE CURRENT OPERATOR MAGNUM PRODUCING, L.P.

APPEARANCES:

For Complainant Standard Trust:

Jamie Nielson
Brad Coleman
Gerald Brundrett, Jr.
Barry Hageman

For Magnum Producing, L.P.:

Dick Marshall
Philip Bell

REVISED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	September 30, 2004
NOTICE OF HEARING:	February 10, 2006
HEARING DATE:	March 30, 2006
HEARD BY:	Mark Helmueller - Hearings Examiner
RECORD CLOSED:	May 4, 2006
PROPOSAL FOR DECISION ISSUED:	August 14, 2006
RECORD REOPENED:	September 14, 2006
RECORD RECLOSED:	October 13, 2006
REVISED PROPOSAL FOR DECISION ISSUED:	October 17, 2006

STATEMENT OF THE CASE

This case arises from the complaint of the Brad Coleman, trustee for Standard Trust ("Standard") which asserts the re-entry permits issued to Magnum Producing, L.P., ("Magnum") for the H.A. Sultenfuss (11603) Lease, Well No. 1 and the Olivia Schnitz (12863) Lease, Well No. 1, are invalid for the failure to provide proper notice to offsetting unleased mineral interest owners. The complaint is based on a claimed error in plats and permit applications regarding the northern boundary of the units and the assigned acreage.

A proposal for decision was originally issued on August 14, 2006. In exceptions to the proposal for decision, the parties noted the field recognized for the H. A. Sultenfuss Well No. 1 was the Estes Cove (E-1, Fault Block B) Field, not the Estes Cove (7940) Field, which was the subject of the most recent permit. Additionally, Magnum represented that it intended to plug the H.A. Sultenfuss Well No. 1 making the proposal for decision moot as to that issue. Based on these exceptions, the record was reopened to allow Magnum to provide evidence to show the well was plugged.

On October 13, 2006, Magnum advised the examiner it no longer intended to plug the H. A. Sultenfuss Well No. 1. This revised proposal for decision has been issued to clarify the field in which the H.A. Sultenfuss Well No. 1 is currently completed.

FACTUAL SUMMARY

Magnum is the current operator of the H.A.Sultenfuss Well No. 1 in the Estes Cove (E-1, Fault Block B) Field (hereinafter “Sultenfuss Unit” and/or “Sultenfuss Well”) and the Olivia Schnitz Well No. 1 in the Estes Cove (F-1 FB-B) Field (hereinafter “Schnitz Unit” and/or “Schnitz Well”). The irregularly-shaped 80 acre pooled units are identical for both wells. The plats filed with the re-entry permit applications at issue in this docket are attached as Exhibits 1 and 2.

Standard is the current owner of the mineral interest in 17 acres adjoining the Sultenfuss and Schnitz Units on their northern boundary. At Standard’s request, on April 18, 2005, a licensed surveyor prepared a new survey related to Standard’s property. The new survey relied on the most currently available global positioning satellite (GPS) equipment and was consistent within 6 inches to a survey of the same area conducted in 1960 which was filed with the Aransas County Surveyor’s Office as part of the officially maintained surveying records for the county.

The April 18, 2005 survey revealed a discrepancy between the depiction of the border of the Sultenfuss and Schnitz Units in Magnum’s re-entry permit applications and the border identified by the survey. The boundary error places the Sultenfuss well at a location 229 feet from the northern lease boundary of the unit instead of 475 feet. Standard also asserts that the boundary error reduces the designated area for the pooled units by 8 acres, thereby causing the units to be smaller than the 80 acre minimum required under Statewide Rule 38. A copy of an exhibit showing the discrepancy between the boundary depicted in the re-entry permit applications and the April 18, 2005 survey commissioned by Standard is attached as Exhibit 3.

It is undisputed that notice of application for Magnum’s re-entry permit application for the Sultenfuss well identifying the well location as 475 feet from the northern lease line fails to comply with Statewide Rule 37 requirements if the location is only 229 feet from the lease line. It is also undisputed that neither Standard nor its predecessors were provided with notice of the re-entry drilling permit applications for the Sultenfuss and Schnitz wells under Statewide Rule 38 because both applications designate 80 acres in the pooled units.

Sultenfuss Well

The initial Commission Form W-1 (Application for Permit to Drill, Recomplete or Re-Enter) for the Sultenfuss Well was filed on March 16, 1971 by Kelly Bell-Skelly-Pennzoil in various Estes Cove Fields all subject to 660 feet minimum lease line spacing requirements and minimum acreage requirements of 80 acres. The well location is shown 475 feet south of the northern boundary. The permit application, plat and Commission Form P-12 (Certificate of Pooling Authority) all identify an 80 acre pooled unit for the well.

On March 16, 1989, a Wildcat permit was obtained for the Sultenfuss Well at the same location on the same 80 acre pooled unit by Fort Worth Oil & Gas, Inc. No notice was provided as the permit application identified the well as regular for both the spacing and density requirements. The well was recompleted in a new field, the Estes Cove (E-1, Fault Block B) Field, by Magnum on March 18, 1989.

A re-entry permit for the Sultenfuss Well was issued to Magnum on March 1, 2000, in the Estes Cove (7940) and Wildcat Fields for the same location on the same 80 acre pooled unit. Notice of application for an exception to the lease line spacing requirements for the location 475 feet south of the northern boundary of the unit was provided to offset operators and unleased mineral interest owners, as the Estes Cove (7940) Field rules require minimum lease line spacing of 660 feet. While a permit was issued, the well was not recompleted in the Estes Cove (7940) Field. The March 1, 2000 drilling permit for the Estes Cove (7940) and Wildcat Fields has expired.

Schnitz Well

The Schnitz Well was applied for as a regular permit on November 14, 1974 by Skelly Oil Company in the Wildcat Field. The well location is shown 1980 feet south of the northern boundary of a 325.29 acre unit. The well was completed in the Estes Cove (Q-2) Field.

On June 14, 1984, Getty Oil Company filed an application for a drilling permit for the Aransas Pass, East (E-4) & (D-5) Fields for the Schnitz well at the same location. However, the size of the Schnitz unit was reduced to 80 acres. No notice was provided to offset operators and mineral interest owners as the permit application identified the well as regular for both the spacing and density requirements.

A drilling permit application for the Schnitz well at the same location on the same 80 acre unit was filed on January 15, 1992 for the Estes Cove (E-3), (H-2), and (I-2) Fields. Notice of application for an exception to Statewide Rule 37 was issued consistent with 660 feet lease line spacing requirements for the property to the south and east of the unit.

A re-entry permit for the Schnitz Well at the same location on the same 80 acre unit was issued to Magnum on August 27, 1999, in the Estes Cove (F-1 FB-B) and Wildcat Fields. Notice of application for an exception to Statewide Rule 37 was provided to the operators and unleased mineral interest owners of the offsetting properties to the south and east of the unit, as the Estes

Cove (F-1 FB-B) Field rules require minimum lease line spacing of 660 feet.

STANDARD'S POSITION AND EVIDENCE

Standard argues that the permits for both the Schnitz and Sultenfuss wells were obtained without providing notice to offsetting unleased mineral interest owners as required by Statewide Rules 37 and 38. Standard further contends the defective notice renders the permits void consistent with the Commission's decisions in Oil & Gas Docket No. 06-0229019: *Commission Called Hearing on the Complaint of the Long Trusts Regarding Whether Proper Notice Was Given By Union Pacific Resources Co. of its Application for an Exception to Statewide Rule 37, Barksdale Estate Gas Unit, Well No. 8, Oak Hill (Cotton Valley) Field, Rusk County Texas* (Final Order entered September 12, 2002) and Oil and Gas Docket No. 01-0233429: *Commission Called Hearing to Show Cause Why Lewis Petro Properties, Inc.'s Killam Well No. 1 Should Not be Declared Void and the Killam Well No. 1 be Shut-In, Atlee (Olmos) Field, LaSalle County, Texas* (Final Order entered August 5, 2003). Finally, Standard claims Commission rules require the wells be shut-in.

Standard claims the Wildcat permit issued to Fort Worth Oil & Gas, Inc., for the Sultenfuss Well is void because a recent survey shows the well is located within 229 feet from its lease line as opposed to 475 feet from its lease line. Standard asserts any unleased mineral interest owner was required to be provided notice of the precise well location under Statewide Rule 37 when the Wildcat permit was issued on March 16, 1989.

Standard's second claim applies to both permits. Standard contends the re-entry permits for both the Sultenfuss well and Schnitz well are void because the W-1s, P-12s, and plats all improperly identify an 8 acre strip in the 80 acre pooled units. This 8 acre strip represents the difference between the boundary depicted on the plats submitted with the permit applications and Standard's recent survey establishing the boundary line. Standard essentially urges that both the Sultenfuss and Schnitz units are only 72 acres, therefore requiring an exception to Statewide Rule 38 density requirements which were never noticed.

Standard's surveyor opined both to the accuracy of the most recent survey which recognized the discrepancy in the boundary, and the mistakes made in the prior permit applications erroneously identifying the boundary line of the Sultenfuss and Schnitz units. Standard contends review of surveys in the public records of the Aransas County Surveyor's Office would have put both Magnum and its predecessors on notice of the mistaken northern boundary line for the Sultenfuss and Schnitz units shown in the permit applications and attachments.

Finally, Standard asserts 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). Standard notes the Commission has exercised this authority in several cases in which boundary disputes raised notice issues under Statewide Rule 37, including the most recent decision in Rule 37 Case No. 0243737: *Application of Michael D. Lillis for a Rule 37 Exception to Drill the Kathy Cox Lease, Well No. 2,*

Speck, North (Goen) Field, Concho County, Texas (Final Order entered February 28, 2006).

MAGNUM'S POSITION AND EVIDENCE

Magnum contends the re-entry permits for the Sultenfuss and Schnitz wells were obtained based on a good faith claim of a right to operate the wells at their existing locations in the 80 acre units reflected in the re-entry permit applications. Magnum believes the survey boundary issue should not be determined in a Commission hearing, but instead should be resolved in a court of competent jurisdiction also citing *Magnolia*. Magnum further contends prior Commission determinations regarding boundaries do not fit the facts of this case.¹

Magnum urges the leases, land titles, unit designations, title opinions, and abstracts, relied on for the original permits for the Sultenfuss and Schnitz wells were, by inference, also reasonably relied on when the permit applications were granted to re-enter the wells.² Magnum claims these documents reflect a boundary dispute long recognized in the area created by the Burton and Danforth Subdivision Survey. Magnum argues surveyors could reasonably arrive at different conclusions concerning the northern border as reflected by the Commission permit filings and supporting documents. However, Magnum did not present testimony from a surveyor to support the accuracy of the boundary identified in the re-entry permit applications it relied on. Magnum also did not contest the accuracy of Standard's survey.

EXAMINER'S OPINION

The dispute in this case is limited to the re-entry permits which Magnum relied on to recomplete the two wells.³ In brief, Standard argues the inaccurate boundary led to a failure to provide required notice under Commission rules, rendering the permits for the Sultenfuss and Schnitz wells void. Standard contends the Commission has made similar determinations in numerous cases by properly exercising its authority to evaluate an applicant's good faith claim of an interest in the mineral estate in conjunction with the issuance of a permit. In response, Magnum asserts it reasonably relied on prior permit applications establishing the northern boundary and acreage designated for the Sultenfuss and Schnitz Units to prove a good faith claim of the right to develop the mineral interest in the 8 acre property claimed by Standard. Magnum further urges the proper forum to resolve any boundary dispute is the Aransas County District Court.

Both parties identify the previously cited *Magnolia* case as the guiding precedent in this

¹ Magnum also argued that doctrine of collateral estoppel applies to this case due to a prior hearing in Oil & Gas Docket No. 4-94,105: *Complaints of Standard Resources, Inc. and Fort Worth Oil and Gas, Inc. Regarding Certain Matters in Aransas County, Texas* (Hearing convened and dismissed December 12, 1989). The examiner ruled against Magnum at the hearing, noting that the parties entered into a settlement agreement without having an evidentiary hearing on the matter, the issuance a Proposal for Decision by the examiner or the entry of a Final Order by the Commission thereby precluding the applicability of the collateral estoppel doctrine.

²Magnum did not offer testimony that it reviewed the leases, land titles, unit designations, title opinions, and abstracts in its preparation of the re-entry permit applications.

³While not specifically addressed by the parties in their closing statements, the question of the validity of the original permits is now moot as the prior permits are no longer in force and effect for the Sultenfuss and Schnitz Wells. Additionally, while Magnum did not obtain the Wildcat permit for the Sultenfuss Well No. 1, it relied on that permit to recomplete the well in the current field.

matter. 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 courts have affirmed that the Commission does not exceed its authority if it relies on a record survey prepared by a licensed surveyor in determining whether a party has a good faith claim of title related to a permit application. In *Sun Oil Company v. Railroad Commission*, 390 S.W.2d 803 (Tex. Civ. App. -- Austin, 1965, writ ref'd n.r.e.), the court relied on *Magnolia* to uphold the Commission's authority to make a good faith claim of title determination based on a survey prepared by a licensed surveyor. Additionally, in *Superior Oil Company v. Railroad Commission*, 571 S.W.2d 51 (Tex. App. – Austin, 1978, no writ), the court again held the Commission was not precluded from inquiring into the validity of a survey to find that an applicant did not possess a good faith claim as a basis for a Commission permit.

In this complaint proceeding, the initial burden of proof was placed on Standard to establish that the applicants were required to provide notice of the re-entry permit applications to unleased mineral interest owners adjoining the units under Statewide Rules 37 and 38. The recent survey, supported by expert testimony by a surveyor regarding its accuracy and methodology meets this burden. Accordingly, the focus shifts to consideration of whether the argument and supporting evidence submitted by Magnum raises a legal question which can only be resolved by the courts.

The accuracy and methodology of the recent survey is not challenged. Additionally, there is no competing testimony of a surveyor opining that the location of the boundary line depicted in the plats filed with the Commission for the re-entry permits were consistent with historical surveys. Instead Magnum urged that the re-entry permit applications reasonably relied on the work of predecessor operators in their permit applications.

Magnum did not refute the accuracy of Standard's survey. If it had presented such evidence, the proper forum for resolution of the boundary dispute would be the District Court of Aransas County. Instead, Magnum claims it properly relied on the plats submitted in the prior applications, urging it was not required to independently verify the accuracy of the information to establish a valid right to operate the wells at the location represented in the original application. In essence, Magnum argues any due diligence requirement for the re-entry permit applications was satisfied by incorporating the work of the prior operators, even if the original work was wrong.

While it is common for operators to rely on prior permits to prepare re-entry permit applications, there is nothing in Commission rules which would nullify a previously unnoticed error in the original permit application. Commission rules and forms related to drilling permit applications clearly establish a separate and independent duty for each application regardless of whether it is for a new well or the recompletion or re-entry of an existing well. This is best illustrated by the certification requirements on the Form W-1 and Form P-12, as well as the provisions of Statewide Rule 5 requiring plats submitted with drilling permit applications to be certified. The separate certification required by the applicable Commission forms and rules

contradicts Magnum's theory that reliance on the prior permit applications and supporting documentation establishes a "good faith claim" of a continuing right to operate.

Standard made a *prima facie* case that the original permit applications and supporting plat may have been wrong in depicting the boundary of the unit and the assigned acreage. Therefore, Magnum must present credible evidence showing the prior survey was right before it can claim the requirements attendant to any re-entry permit applications were satisfied. There was no evidence presented by Magnum contradicting the accuracy and methodology of the Standard survey. Additionally, there was no new evidence offered by Magnum which established the accuracy of the original permit applications or Magnum's depiction of the boundary of the Sultenfuss and Schnitz Units in the re-entry permit applications. Magnum therefore failed to establish either the existence of a disputed issue subject to judicial resolution or any basis of a good faith claim of a right to operate the 8 acre area created by the discrepancy between the survey and its re-entry permit applications. Accordingly, the examiner concludes it is a proper exercise of the Commission's authority to determine whether notice was provided as required under Commission Statewide Rules 37 and 38 prior to the issuance of the re-entry permits for the Sultenfuss and Schnitz Wells.

Because it is not contested that the notice of application for the re-entry permits did not meet the requirements of Statewide Rules 37 and 38 based on the recent survey, the Commission should find the reentry permits are void for the failure to issue proper notice to affected persons. Additionally, the wells should be ordered shut-in until valid permits are obtained.

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. Notice of Hearing was provided to the parties through their attorneys of record who attended the proceedings and presented evidence.
2. Magnum Producing, L.P. (hereinafter "Magnum") is the current operator of the H.A. Sultenfuss Well No. 1 in the Estes Cove (E-1, Fault Block B) Field (hereinafter "Sultenfuss Unit" and/or "Sultenfuss Well") and the Olivia Schnitz Well No. 1 in the Estes Cove (F-1 FB-B) Field (hereinafter "Schnitz Unit" and/or "Schnitz Well"). The irregularly-shaped 80 acre pooled units are identical for both wells.
3. Standard Trust ("Standard") is the current owner of the mineral interest in 17 acres adjoining the Sultenfuss and Schnitz Units on their northern boundary.
4. On April 18, 2005, a licensed surveyor prepared a new survey related to Standard's property. The new survey relied on the most currently available global positioning satellite (GPS) equipment and was consistent within 6 inches to a survey of the same area conducted in 1960 which was filed with the Aransas County Surveyor's Office as part of the officially maintained surveying records for the county.
5. The April 18, 2005 survey revealed a discrepancy between the depiction of the border of the

- Sultenfuss and Schnitz Units in Magnum's re-entry permit applications and the border identified by the survey. The boundary error places the Sultenfuss well at a location 229 feet from the northern lease boundary of the unit instead of 475 feet.
6. The boundary error reduces the designated area for the Sultenfuss and Schnitz Units by 8 acres, thereby causing both units to be smaller than the 80 acre minimum required under Statewide Rule 38.
 7. The initial Commission Form W-1 (Application for Permit to Drill, Recomplete or Re-Enter) for the Sultenfuss Well was filed on March 16, 1971 by Kelly Bell-Skelly-Pennzoil in various Estes Cove Fields all subject to 660 feet minimum lease line spacing requirements and minimum acreage requirements of 80 acres. The well location is shown 475 feet south of the northern boundary. The permit application, plat and Commission Form P-12 (Certificate of Pooling Authority) all identify an 80 acre pooled unit for the well.
 8. On March 16, 1989, a Wildcat permit was obtained for the Sultenfuss well at the same location on the same 80 acre pooled unit by Fort Worth Oil & Gas, Inc. No notice was provided as the permit application identified the well as regular for both the spacing and density requirements. The well was recompleted in a new field, the Estes Cove (E-1, Fault Block B) Field, by Magnum on March 18, 1989.
 9. A re-entry permit for the Sultenfuss Well was issued to Magnum on March 1, 2000, in the Estes Cove (7940) and Wildcat Fields for the same location on the same 80 acre pooled unit. Notice of application for an exception to the lease line spacing requirements for the location 475 feet south of the northern boundary of the unit was provided to offset operators and unleased mineral interest owners, as the Estes Cove (7940) Field rules require minimum lease line spacing of 660 feet. While a permit was issued, the well was not recompleted in the Estes Cove (7940) Field. The March 1, 2000 drilling permit for the Estes Cove (7940) and Wildcat Fields has expired.
 10. The Schnitz Well was applied for as a regular permit on November 14, 1974 by Skelly Oil Company in the Wildcat Field. The well location is shown 1980 feet south of the northern boundary of a 325.29 acre unit. The well was completed in the Estes Cove (Q-2) Field.
 11. On June 14, 1984, Getty Oil Company filed an application for a drilling permit for the Aransas Pass, East (E-4) & (D-5) Fields for the Schnitz well at the same location on 80 acres. No notice was provided to offset operators and mineral interest owners as the permit application identified the well as regular for both the spacing and density requirements.
 12. A drilling permit application for the Schnitz well at the same location on the same 80 acre unit was filed on January 15, 1992 for the Estes Cove (E-3), (H-2), and (I-2) Fields. Notice of application for an exception to Statewide Rule 37 was issued consistent with 660 feet lease line spacing requirements for the property to the south and east of the unit.
 13. A re-entry permit for the Schnitz Well at the same location on the 80 acre unit was issued to Magnum on August 27, 1999, in the Estes Cove (F-1 FB-B) and Wildcat Fields. Notice

of application for an exception to Statewide Rule 37 was provided to the operators and unleased mineral interest owners of the offsetting properties to the south and east of the unit, as the Estes Cove (F-1 FB-B) Field rules require minimum lease line spacing of 660 feet.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred to give the Commission jurisdiction to decide this matter.
3. Standard satisfied its initial burden of proof by establishing through a survey of its property that Magnum was required to provide the notice of its re-entry permit applications to unleased mineral interest owners adjoining the unit under Statewide Rules 37 and 38.
4. Commission rules and forms related to drilling permit applications establish a separate and independent certification requirement for each application regardless of whether it is for a new well or the recompletion or re-entry of an existing well.
5. It is a proper exercise of the Commission's authority under *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943), to determine whether applicant possessed a good faith claim of a right to operate all acreage assigned to the Sultenfuss and Schnitz Wells.
6. Magnum failed to establish a good faith claim of a right to operate the 8 acre area created by the discrepancy between the April 18, 2005 survey and its re-entry permit applications.
7. It is a proper exercise of the Commission's authority to determine whether notice was provided as required under Commission Statewide Rules 37 and 38 prior to the issuance of the re-entry permits for the Sultenfuss and Schnitz Wells.
8. The notice of application for the March 16, 1989 re-entry permit application for the Sultenfuss well identifying the well location as 475 feet south of the northern unit boundary fails to comply with Statewide Rule 37 requirements.
9. The notice of application for the March 16, 1989 re-entry permit application for the Sultenfuss well identifying an 80 acre pooled unit fails to comply with Statewide Rule 38 requirements.
10. The notice of application for Magnum's August 27, 1999 re-entry permit application for the Schnitz well identifying an 80 acre pooled unit fails to comply with Statewide Rule 38 requirements.
11. The re-entry permit issued on March 16, 1989 for the Sultenfuss well is void, due to the failure to comply with the notice requirements of Statewide Rule 37.

12. The re-entry permit issued on March 16, 1989 for the Sultenfuss well is void, due to the failure to comply with the notice requirements of Statewide Rule 38.
13. The re-entry permit issued to Magnum on August 27, 1999 for the Schnitz well is void, due to the failure to comply with the notice requirements of Statewide Rule 38.
14. The Sultenfuss well is required to be shut-in because it does not possess a valid permit.
15. The Schnitz well is required to be shut-in because it does not possess a valid permit.

RECOMMENDATION

The examiner recommends the Commission find the re-entry permits for the H.A. Sultenfuss Well No. 1 and the Olivia Schnitz Well No. 1 are void for the failure to comply with the notice requirements of Statewide Rules 37 and 38. The examiner further recommends the Commission order the wells to be shut-in until such time as valid permits are obtained for the wells.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner