

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION**

Plaintiff,

v.

**THE HEARTLAND GROUP
VENTURES, LLC; et al.**

Defendants.

and

**DODSON PRAIRIE OIL & GAS, LLC,
et al.**

Relief Defendants.

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Civil Action No. 4:21-cv-1310-O-BP

**RAILROAD COMMISSION OF TEXAS’S UNOPPOSED MOTION FOR LEAVE TO
FILE A BRIEF SUPPLEMENTAL AMICUS CURIAE IN OPPOSITION TO
RECEIVER’S MOTION TO ABANDON INTERESTS IN OIL AND GAS PROPERTIES**

The Railroad Commission of Texas (“Commission”) requests leave to supplement its brief amicus curiae previously filed in this matter to reflect the Commission’s opposition to Receiver’s Motion for Authority to Abandon Interests in Oil and Gas Properties (“Abandonment Motion”). The motion is unopposed.

I. Background and Summary

1. The Securities and Exchange Commission (“SEC”) brought this suit alleging securities fraud in connection with oil and gas offerings. The SEC seeks civil penalties, disgorgement of ill-gotten gains, and injunctive relief to redress Defendants’ violations of the Securities Act and Exchange Act. The Court appointed a receiver in this case to marshal and preserve all assets of the Defendants and those assets of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in

constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (“Receivership Estates”).

2. On December 1, 2022, the Receiver filed a motion to confirm that the Receiver has no right, obligation, or interest to operate a gas pipeline in Palo Pinto County, Texas (“Palo Pinto Pipeline”), or, in the alternative, to abandon any interest in the Palo Pinto Pipeline (“Pipeline Motion”). Pipeline Motion, Document No. 288.

3. On December 16, 2022, the Receiver filed a motion to seek authority to abandon any interest or obligation related to oil and gas properties which are not sold or otherwise transferred within three months’ competition of auction or other sale process. Abandonment Motion, Document No. 296.

3. On December 19, 2022, the Commission filed an unopposed motion for leave to file a brief amicus curiae in opposition to the Pipeline Motion (“Commission’s Motion”). Commission’s Motion, Document 298. The Court granted the Commission’s Motion on December 20, 2022. Order Granting Commission’s Motion, Document 299.

4. The Commission requests leave from the Court to file a supplement to its brief amicus curiae in opposition to the Pipeline Motion. The supplement extends and applies a portion of the arguments asserted in the Commission’s Brief to the arguments asserted in the Abandonment Motion. The Commissions’ proposed brief is attached as Exhibit A to this motion. The Commission’s proposed order granting this motion is attached as Exhibit B.

II. Argument

5. The extent to which district courts permit amicus briefing “lies solely within the court’s discretion” and “[f]actors relevant to the determination include whether the proffered information is ‘timely and useful’ or otherwise necessary to the administration of justice.” *United*

States v. Olis, 2008 WL 620520 at *7 (S.D. Tex. Mar. 3, 2008). Northern District Local Rule 7.2 requires that an amicus brief specifically set forth the interest of the amicus curiae in the outcome of the litigation. The Commission seeks to provide supplemental briefing that will aid the Court’s judgment on the Abandonment Motion.

6. The Commission will extend the previously briefed argument regarding the Receiver’s duties under law. Specifically, the Commission will show that the Receiver is bound—by statute and this Court’s order—to conduct any abandonment of oil and gas properties in compliance with Commission rules.

7. As shown by the Commission’s Brief and the Commission’s Supplemental Brief, the Commission has a significant interest in this litigation. The Receiver’s regulatory obligations with respect to oil and gas properties are within the Commission’s exclusive jurisdiction. Furthermore, the Commission has an interest in enforcing its rules on the abandonment of oil and gas wells.

8. The Commission also requests to be heard at the hearing on the Abandonment Motion set for May 4, 2023.

III. Conclusion and Prayer

Briefing from the Commission will assist the Court in considering the Abandonment Motion. The Commission requests the Court to grant this motion to file the attached supplemental amicus brief and to allow the Commission to appear at the hearing on the motion.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that on April 19 & 20, 2023, undersigned counsel consulted with counsel for the Plaintiff and the Receiver concerning the filing of this motion. Plaintiff and the Receiver were not opposed.

/s/ Wesley S. Williams
WESLEY S. WILLIAMS
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2023, the foregoing document was served via CM/ECF on all parties appearing in this Case.

/s/ Wesley S. Williams
WESLEY S. WILLIAMS
Assistant Attorney General

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NORTHERN DISTRICT OF TEXAS
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<i>Plaintiff,</i>	§	
v.	§	
THE HEARTLAND GROUP VENTURES, LLC; et al.	§	Civil Action No. 4:21-cv-1310-O-BP
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<i>Relief Defendants.</i>	§	
	§	
	§	

**RAILROAD COMMISSION OF TEXAS’S BRIEF SUPPLEMENTAL AMICUS CURIAE
IN OPPOSITION TO RECEIVER’S MOTION TO ABANDON INTERESTS IN OIL
AND GAS PROPERTIES**

The Railroad Commission of Texas (“Commission”) files this brief supplemental amicus curiae in opposition to Receiver’s Motion to Abandon Interests in Oil and Gas Properties [ECF No. 296] (“Abandonment Motion”). This brief is a supplement to the Commission’s earlier brief amicus curiae in opposition to Receiver’s Motion to Confirm Receiver Has No Right, Obligation, or Interest to Operate the Palo Pinto Pipeline, or, in the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline [ECF No. 300] (“Commission’s Brief”), which is hereby incorporated by reference. If the Court grants the Abandonment Motion, the Court should require that the abandonment comply with the rules of the Commission.

Background

The Commission has exclusive jurisdiction over and may adopt all necessary rules for governing and regulating all oil and gas wells, and all persons owning or engaged in drilling or

operating oil or gas wells, in the state. Tex. Nat. Res. Code §§ 81.051(a), 81.052, 81.0523(b). The Commission's rules governing oil and gas wells require operators who assume responsibility for inactive wells¹ to either restore the well to active operation, plug the well in compliance with a Commission rule or order, or obtain approval for an extension to plug an inactive well. 16 Tex. Admin. Code § 3.15(d)(1). The entity designated as the operator of a well specifically identified on the well's Form P-4 (Producer's Transportation Authority and Certificate of Compliance) is responsible for properly plugging the well. 16 Tex. Admin. Code § 3.14(c)(1). Plugging must be done in accordance with Section 3.14 of Title 16 of the Texas Administrative Code and all other applicable Commission rules concerning plugging. *Id.*

In the Abandonment Motion, the Receiver identifies various oil and gas wells and transportation systems ("Oil and Gas Properties") operated by ArcoOil Corp, Barron Petroleum LLC, Dodson Prairie Oil and Gas, Panther City Energy, LLC, and Leading Edge Energy, LLC (collectively, "Operators"). Each Operator maintained the appropriate permits to operate the Oil and Gas Properties. Abandonment Motion ¶ 5. As outlined in the Abandonment Motion, the Receiver was directed to take possession and control of all assets of the Operators, including the Oil and Gas Properties. *Id.* ¶¶ 2-3.

On September 15, 2022, the Receiver sold approximately 267 wells from the Oil and Gas Properties. *Id.* ¶ 13. The sale of these wells will be finalized upon Commission approval of the relevant P-4 permits.² *Id.* Approximately 168 wells have, at the time of the Receiver's filing of the Abandonment Motion, gone unsold. *Id.* ¶ 14. The Receiver now seeks authority to abandon any of

¹ The term "inactive well" is defined as "[a]n unplugged well that has been spudded or has been equipped with cemented casing and that has no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months." 16 Tex. Admin. Code § 3.15(a)(6).

² Approval of these P-4 permit transfers may be subject to a Good Faith Claim review pursuant to 16 Tex. Admin. Code § 3.15(a)(5).

the Oil and Gas Properties where the Receiver is unable to transfer, within 3 months of the sale/auction process, regulatory responsibility to a third-party.

The Commission's Interest in the Litigation

The Commission has significant interest in this litigation. The Commission has the exclusive jurisdiction to regulate the Oil and Gas Properties and to enforce rules related to the abandonment of oil and gas wells. Accordingly, the Commission maintains an interest in enforcing its rules on the regulatory abandonment of oil and gas wells in Texas.

Argument

I. The Receiver must abandon the Oil and Gas Properties in compliance with Commission rules.

The Receiver asks for this Court's blessing to "abandon any interest or obligation related to oil and gas properties which are not sold or otherwise transferred within three (3) months completion of auction(s) and/or the sale process." Abandonment Motion at 2. The Commission does not dispute the Court's ability to authorize such an abandonment of ownership; however, the Commission regulates operatorship, not ownership. Accordingly, such abandonment must be conducted in compliance with Commission rules to satisfy the public interest in "the protection of water and land of the state against pollution or the escape of oil or gas...." Tex. Nat. Res. Code § 89.001.

As previously asserted, the Receiver is required by federal statute and this Court's order to comply with Texas law. Under 28 U.S.C. § 959(b), the Receiver is to manage the Oil and Gas Properties according to the laws of Texas and "in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." The Court's order appointing the Receiver expressly incorporates this obligation on Receiver. *See* Order Appointing Receiver [ECF No. 17] ¶ 5. The mandate of this Court's order is clear: the Receiver is obligated to manage and operate

the Oil and Gas Properties “in the same manner that the owner or possessor thereof would be bound to do[.]”

When hearing oral arguments on the Receiver’s Motion to Confirm Receiver has No Right, Obligation, or Interest or Operate the Palo Pinto Pipeline, or, in the Alternative, to Abandon Any Interest in the Palo Pinto Pipeline [ECF No. 288] (“Pipeline Motion”), currently pending, the Court questioned the Receiver’s responsibility over the property that she sought to abandon.³ Unlike with the Pipeline Motion, no such doubt exists as to the Receiver’s responsibility for the Oil and Gas Properties. The Receiver’s responsibility is firmly established by assumption of the Operator’s assets, which includes the P-4 Permits for the Oil and Gas Properties, and by the filing of a P-5 form designating the Receiver as the party assuming regulatory responsibility for the operation of the Operator’s assets. Further, the Receiver acknowledges that the Oil and Gas Properties are part of the Receivership Estate, and goes as far to demonstrate instances where she has remedied numerous violations of Commission regulations. Abandonment Motion ¶¶ 3, 7, 41. The fact that the Receiver here does not ask this Court to make a similar “no interest in” declaration as the Receiver asked the Court for in the Pipeline Motion is further evidence that responsibility for the Oil and Gas Properties rests solely with the Receiver.

The Receiver claims that she “will have no choice but to abandon” oil and gas wells where the P-4 permits are not transferred to a new operator. *Id.* ¶ 16. The Receiver cites a lack of records, employees, and sufficient assets to comply with Commission regulations “and other statutory, regulatory, and contractual obligations” that apply to the Oil and Gas Properties. *Id.* Nevertheless, the Receiver is still under a statutory obligation to comply with Commission rules governing the

³ The attorney for the Palo Pinto Bond Company has indicated to the Commission that he intends to file a Proper Operator Hearing Motion with the Commission to allow the Commission’s administrative law judges to exercise their jurisdiction to adjudicate which party has regulatory responsibility for operating or properly abandoning the Palo Pinto Pipeline. The motion has yet to be filed due to family illness.

abandonment oil and gas wells, regardless of the cost or burden, as established by the United States Supreme Court in *Gills v. California*, 293 U.S. 62 (1934). See Commission’s Brief at 5-6. Financial and logistical burdens do not relieve the Receiver from complying with Texas law.

The Receiver appears to imply that she will abandon the Oil and Gas Properties without satisfying the requirements of Sections 3.14 and 3.15 of Title 16 of the Texas Administrative Code. In the Abandonment Brief, the Receiver “does not dispute that the [Commission] may assert a claim for reimbursement of actual and reasonable costs and abandon each wells against each Operator.” Abandonment Brief ¶ 44. Undoubtably, flouting Commission regulations may expose the Receiver and/or the Receivership Estates to liability under state law while also shifting all costs for plugging the Oil and Gas Properties to the people of Texas. Should the Receiver abandon the Oil and Gas Properties without first satisfying the requirements imposed by Texas law, then the Commission reserves its right to take enforcement action against the Receiver, and seek reimbursement from the Receiver for State funds expended to protect health and human safety and the environment from threats posed by the abandoned Oil and Gas Properties.

Conclusion

The Commission neither disputes this Court’s ability to authorize the Receiver to abandon the Oil and Gas Properties nor opposes the Receiver’s ultimate abandonment of the Oil and Gas Properties. If the Court grants the Abandonment Motion, the Court should require the Receiver to follow all applicable rules for proper abandonment of oil and gas wells.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2022, the foregoing document was served via CM/ECF on all parties appearing in this Case.

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WESLEY S. WILLIAMS
Assistant Attorney General

