

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of an Order to Show Cause) Docket No. 17-CONS-3127-CSHO
issued to Jaed Production Co., Inc.)
("Operator") regarding responsibility under) CONSERVATION DIVISION
K.S.A. 55-179 for unplugged wells on an)
expired license.) License No: 3945

ORDER ON UNPLUGGED WELLS

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission makes the following findings and conclusions:

I. Background

1. On January 24, 2017, the Commission issued its *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*. The Order found that Jaed Production Co., Inc. (Jaed or Operator) should attend an evidentiary hearing to show cause why it is not responsible for the unplugged Hower #1, Hower #3, Forbeck #1, Horton #2, and Rosecrans #'s 2, 4, 5 and 6 wells listed on its expired license.¹

2. On February 9, 2017, an initial Prehearing Conference was held.² Various continuances ensued until June 30, 2017, at which point the parties agreed to a procedural schedule setting an evidentiary hearing for September 21, 2017.³

3. On August 28, 2017, Commission Conservation Staff (Staff) witnesses, Cynthia Maine and Jeff Klock, pre-filed direct testimony. (Maine Direct and Klock Direct).

¹ *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*, ¶¶ 4, 6 and Exhibit A (Jan. 24, 2017).

² *See Prehearing Officer order Continuing Prehearing Conference*, ¶ 2 (Feb. 16, 2017).

³ *See Order Setting Procedural Schedule*, ¶ 2 (July 11, 2017).

4. On September 5, 2017, Ed Broyles pre-filed direct testimony as the former President of Jaed. (Broyles Direct).⁴

5. Although the Commission's procedural schedule allowed for rebuttal testimony,⁵ neither party filed such testimony.

6. In accordance with the Kansas Administrative Procedure Act (KAPA), an evidentiary hearing was held on September 21, 2017, at the Commission's Wichita office.⁶ The Commission heard live testimony from three witnesses, two on behalf of Staff and one for Jaed. The parties had the opportunity to cross-examine the witnesses as well as redirect their own witnesses.

II. Findings of Fact

7. The record shows Jaed's license is expired,⁷ and Jaed is no longer in existence as a corporate entity.⁸

8. Ms. Maine testified that, having reviewed Jaed's license record and well inventory, she found eight (8) wells remaining on Jaed's expired license, namely, the Hower #1, Hower #3, Forbeck #1, Horton #2, and Rosecrans #'s 2, 4, 5 and 6 wells.⁹

9. Mr. Klock also testified that none of "the eight subject wells of this Show Cause" were "transferred to another operator via T-1."¹⁰

10. Regarding the Hower #1 and #3 wells, Mr. Klock testified that the "Operator filed well plugging applications (CP-1) dated March 1, 2011. No subsequent plugging records were

⁴ See Pre-filed Testimony of Ed Broyles, p. 2 (Sept. 5, 2017).

⁵ See *Order Setting Procedural Schedule*, ¶ 2.

⁶ See Hearing Transcript, p. 1, lines 14-20 (Sept. 21, 2017) (Tr.).

⁷ Maine Direct, p. 2, lines 21-22; Broyles Direct, p. 2.

⁸ Broyles Direct, p. 2; Tr., p. 28, lines 5-7 and p. 29, lines 2-14.

⁹ Maine Direct, p. 2, lines 18-19, 24 and Exhibit A.

¹⁰ Tr., p. 22, lines 12-18.

filed.”¹¹ Mr. Broyles conceded that Jaed “could be responsible for . . . the Hower #1 and the Hower #3 wells. At the time the plugging applications were filed, the company intended to sell these wells, but that did not happen.”¹² Thus, no evidence was presented that these two wells were transferred to another operator.

11. Regarding the Forbeck #1 well, the “Operator filed [a] well completion form[] (ACO-1) for the Forbeck #1 on December 14, 1998.”¹³ Mr. Broyles testified to “location issues” with this well¹⁴ and provided a T-1 form with an effective transfer date of September 1, 2011, showing Cyclone Petroleum, Inc. as the past operator and Endeavor Energy Resources, L.P. as the new operator.¹⁵ Although both the well completion form and the T-1 form list the well as the Forbeck #1, the well completion form provides a different API number than the T-1 form.¹⁶ Mr. Broyles stated his understanding that “this well is producing today and [is] operated by Endeavor Energy Resources.”¹⁷ No Forbeck B lease, under which the Forbeck #1 well would have been drilled,¹⁸ was provided by either party.

12. Regarding the Horton #2 well, Jaed also “filed [a] well completion form[] (ACO-1) . . . on January 16, 2002.”¹⁹ Mr. Broyles provided an oil and gas lease from Earl W. Horton and Donna M. Horton to Jaed Production Co., Inc., dated August 21, 2001. (Horton Lease).²⁰ Mr. Broyles also provided a Release of Oil and Gas Lease, wherein Mike Mackey, an assignee of the Horton Lease, released all his rights under the lease back to the Hortons on November 19,

¹¹ Klock Direct, p. 3, lines 26-27 and Exhibit H.

¹² Broyles Direct, p. 2.

¹³ Klock Direct, p. 3, lines 29-30 and Exhibit I.

¹⁴ Broyles Direct, p. 3.

¹⁵ Broyles Direct, Exhibit 4.

¹⁶ See Klock Direct, Exhibit I; Broyles Direct, Exhibit 4.

¹⁷ Broyles Direct, p. 3.

¹⁸ See Broyles Direct, Exhibit 4.

¹⁹ Klock Direct, p. 3, lines 29-30 and Exhibit I.

²⁰ Broyles Direct, Exhibit 1.

2006.²¹ Mr. Broyles provided subsequent leases covering the same acreage from the Hortons to Sandstone Energy Acquisitions Corp., dated June 13, 2007,²² and from the Earl W. Horton and Donna L. Horton, Co-Trustee of the Earl W. Horton & Donna L. Horton Revocable Trust to J.R. Sorrels, Jr., dated June 14, 2010.²³ Finally, Mr. Broyles provided a Bill of Sale & Assignment, dated February 1, 2010, wherein Earl W. Horton and Donna L. Horton, Individually and as Co-Trustees of the Earl W. Horton and Donna L. Horton Revocable Trust, agreed “to assign all of their right[,] title and interest in and to the Abandoned well and well bore and well equipment known as the Horton #2 Well . . . To Cheyenne Oil Properties.”²⁴ The Bill of Sale & Assignment stated that the Horton #2 well “was drilled and completed by JAED Production in the month of September, 2001. Said well has been deemed abandoned by Assignors and has not produced Oil or Gas Since.”²⁵

13. Regarding the Rosecrans lease, containing Rosecrans #2, #4, #5 and #6 wells, Mr. Klock and Mr. Broyles provided a T-1 form, dated December 15, 2000, transferring the Rosecrans wells from Jerry Sullivan to Jaed Production Co., Inc.²⁶ Mr. Broyles provided subsequent T-1 forms transferring certain wells on the Rosecrans lease from Jaed Production to Drake Exploration, L.L.C.,²⁷ from Drake Exploration to Cyclone Petroleum, Inc.,²⁸ and from Cyclone Petroleum to Endeavor Energy Resources, L.P.²⁹ However, as Mr. Klock testified, none

²¹ Broyles Direct, Exhibit 1.

²² Broyles Direct, Exhibit 1.

²³ Broyles Direct, Exhibit 2.

²⁴ Broyles Direct, Exhibit 2.

²⁵ Broyles Direct, Exhibit 2.

²⁶ Klock Direct, Exhibit G; Broyles Direct, Exhibit 5.

²⁷ Broyles Direct, Exhibit 5.

²⁸ Broyles Direct, Exhibit 5.

²⁹ Broyles Direct, Exhibit 5.

of these subsequent T-1 forms transferred the Rosecrans #2, #4, #5 or #6 wells off Jaed's expired license.³⁰

14. Mr. Klock acknowledged that his Exhibit B, attached to his direct testimony, "tend[ed] to show that Endeavor Energy Resources is operating the Rosecrans lease."³¹ Mr. Klock further agreed "that Endeavor Energy currently produces hydrocarbons from the [Rosecrans] lease."³² However, Mr. Broyles did not produce any evidence that the Rosecrans wells at issue were ever transferred off Jaed's license, and when asked whether "all of the wells on the T-1 from Jerry Sullivan to Jaed Production Co., Inc. [were] also shown on the subsequent T-1 forms," Mr. Broyles replied: "No. That does not change the fact that this [Rosecrans] lease has sold several times, and the public records of Sumner County will show that to be the case."³³ No such records were produced by Mr. Broyles in this proceeding, and thus, his statement cannot be verified.

15. Mr. Broyles also testified that he is not responsible for plugging wells that are now operated by Endeavor Energy Resources,³⁴ yet he provided no specific evidence demonstrating Endeavor is currently operating any of the subject Rosecrans wells. The actual Rosecrans lease, under which the subject wells were drilled, was not provided by either party.

III. Findings and Conclusions

16. K.S.A. 55-179(b) states: "For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, one or more of the following:

³⁰ See Tr., p. 17, lines 2-5; p. 21, lines 6-8; p. 22, lines 11-18.

³¹ Tr., p. 13, lines 7-12.

³² Tr., p. 13, lines 10-11; p. 14, lines 23-25.

³³ See Broyles Direct, p. 3.

³⁴ Broyles Direct, pp. 3-4.

- Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water;
- the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well;
- the original operator who plugged or abandoned such well; and
- any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.”

17. K.S.A. 55-179(a) provides that the Commission may investigate an abandoned well, and if the Commission finds the abandoned well is causing or likely to cause pollution of usable water strata or loss of usable water, and that the person legally responsible for the care and control of such well is no longer in existence, then upon completion of its investigation, as funds are available, the Commission must plug, replug or repair the abandoned well or cause it to be plugged, replugged, or repaired.

18. The Commission finds Jaed is legally responsible for the care and control of the Hower #1 and #3 wells because Mr. Broyles conceded Jaed’s possible responsibility for these wells³⁵ and provided no evidence showing Jaed no longer has responsibility for them. Moreover, the fact that Jaed was the last operator to file any paperwork on the Hower #1 and #3 wells indicates Jaed is the last operator who had care and control of these two wells. K.S.A. 55-179 provides that “the current or last operator of the lease upon which” the Hower #1 and #3 wells are located, or “the original operator who . . . abandoned” these two wells, may be deemed the person legally responsible for the wells, but it does not limit responsibility to such persons. Based on Jaed’s filing of paperwork on the Hower #1 and #3 wells, along with its inability to sell

³⁵ See Broyles Direct, p. 2.

the wells,³⁶ the Commission finds Jaed is legally responsible for the Hower #1 and #3 wells, pursuant to K.S.A. 55-179(b).

19. The Commission finds Jaed is not legally responsible for the care and control of the Forbeck #1 well. Although Jaed filed a well completion form for the Forbeck #1 well in 1998,³⁷ Mr. Broyles provided a September 2011 T-1 form showing a change of operator on the Forbeck #1 well from Cyclone Petroleum, Inc. to Endeavor Energy Resources, L.P., which indicates that Jaed is no longer operating the Forbeck #1 well. The Commission finds that a T-1 form does not demonstrate whether Jaed is the “current or last operator of the *lease*” upon which the Forbeck #1 well is located or “the original operator who plugged or abandoned” the Forbeck #1 well. Indeed, because the record contains no copy of the Forbeck B lease, the Commission is unable to ascertain whether Jaed was ever the “operator of the lease upon which” the Forbeck #1 well is located, or whether Jaed is “the original operator who . . . abandoned such well.” Thus, the Commission finds that Staff has not provided sufficient evidence to demonstrate that Jaed is legally responsible for the Forbeck #1 well.

20. The Commission finds Jaed is not legally responsible for the Horton #2 well. Based on the leasing history explained in paragraph 12 of this Order, the Commission finds there is not sufficient evidence in the record to consider Jaed “the current or last operator of the lease upon which” the Horton #2 well is located. In addition, although the Bill of Sale & Assignment provided by Mr. Broyles stated that the Horton #2 well “was drilled and completed by JAED Production in the month of September, 2001,”³⁸ this document also does not conclusively show that Jaed is the “current or last operator of” the Horton lease. Moreover, the statement that

³⁶ See Broyles Direct, p. 2.

³⁷ See Klock Direct, Exhibit I.

³⁸ Broyles Direct, Exhibit 2.

“[s]aid well has been deemed abandoned by Assignors and has not produced Oil or Gas since”³⁹ does not make it clear that Jaed was “the original operator who . . . abandoned” the Horton #2 well. Thus, the Commission finds that Staff has not met its burden of demonstrating that Jaed is legally responsible for the Horton #2 well.

21. The Commission finds Jaed is legally responsible for the care and control of the Rosecrans #2, #4, #5 and #6 wells. As with the Forbeck #1 well, the record contains no copy of a Rosecrans lease. The record contains only one T-1 form pertaining to the Rosecrans #2, #4, #5 and #6 wells, namely the T-1 form listing Jerry Sullivan as the past operator and Jaed Production Co., Inc. as the new operator.⁴⁰ None of the subsequent T-1 forms provided by Mr. Broyles transferred the Rosecrans #2, #4, #5 and #6 wells off Jaed’s expired license.⁴¹ Mr. Klock’s statements that his direct testimony “tend[ed] to show that Endeavor Energy Resources is operating the Rosecrans lease” and that “Endeavor Energy currently produces hydrocarbons from the [Rosecrans] lease,”⁴² do not absolve Jaed of responsibility for the subject Rosecrans wells under K.S.A. 55-179(b) because, even if true, Mr. Klock’s statements do not rule out the possibility of Jaed being “the last operator of the [Rosecrans] *lease*” or “the original operator who . . . abandoned such wells.” Further, as stated above, K.S.A. 55-179(b) does not limit legal responsibility for abandoned wells to the current or last operator of the lease upon which such wells are located, nor to the original operator who abandoned such wells. The Commission finds Jaed is legally responsible for the Rosecrans #2, #4, #5 and #6 wells because the last T-1 form specifically pertaining to these four wells named Jaed Production Co., Inc. as the operator of the

³⁹ Broyles Direct, Exhibit 2.

⁴⁰ See Klock Direct, Exhibit G.

⁴¹ See ¶ 13 of this Order, *supra*.

⁴² See ¶ 14 of this Order, *supra*.

wells, and the record contains no documentary evidence that the Rosecrans lease “has sold several times”⁴³ or that Endeavor is currently operating the four subject Rosecrans wells.⁴⁴

22. The Commission also finds that an operator’s licensure or corporate status is irrelevant to its status as “a person who is legally responsible for the proper care and control of an abandoned well,”⁴⁵ because K.S.A. 55-179(b) does not limit its own applicability to active operators. However, Jaed is no longer in existence as a corporate entity, and thus, pursuant to K.S.A. 55-179(a)(2)(B), and in the absence of another responsible person, the responsibility for plugging, replugging or repairing the subject wells falls back upon the Commission.

23. Notwithstanding Jaed’s defunct status, and based on K.S.A. 55-179(b)’s provision of joint and several liability for the plugging of abandoned wells,⁴⁶ the Commission finds that Staff is free to investigate whether an operator other than Jaed may also be legally responsible for the care and control of the subject wells named in this proceeding.

THEREFORE, THE COMMISSION ORDERS:

A. Jaed Production Co., Inc. is legally responsible for the Hower #1, Hower #3, Rosecrans #2, Rosecrans #4, Rosecrans #5, and Rosecrans #6 wells, pursuant to K.S.A. 55-179(b).

B. Pursuant to K.S.A. 55-179(a)(2)(B), the Commission is currently responsible to plug, replug or repair the subject wells, or cause them to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water, and shall remediate pollution from the wells, whenever practicable and reasonable.

⁴³ See Broyles Direct, p. 3.

⁴⁴ See Broyles Direct, p. 3.

⁴⁵ See K.S.A. 55-179(b).

⁴⁶ *John M. Denman Oil Co. v. State Corp. Comm’n of State*, 51 Kan. App. 2d 98, Syl. ¶ 2 (2015), review denied (Sept. 24, 2015).

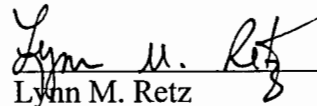
C. The parties have fifteen (15) days from the date of electronic service of this Order to petition for reconsideration.⁴⁷

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: OCT 31 2017


Lynn M. Retz
Secretary to the Commission

MJD

⁴⁷ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

I certify that on 10/31/17, I caused a complete and accurate copy of this Order to be served electronically to the following:

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