

BEFORE THE OIL & GAS COMMISSION

MAVERICK OIL & GAS, INC.,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Appeal Nos. 833 & 834

Review of Chief's Orders 2010-40 &
2011-05

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: Kenneth L. Gibson, Counsel for Appellant Maverick Oil & Gas, Inc.; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: September 14, 2011

BACKGROUND

These matters came before the Oil & Gas Commission upon appeal by Maverick Oil & Gas, Inc. ["Maverick"] from Chief's Order 2010-40 and Chief's Order 2011-05. These appeals have been assigned case numbers 833 and 834, respectively.

On September 29, 2010, Chief's Order 2010-40 [hereinafter the "Bond Forfeiture Order" or "BFO"] was issued to Maverick, demanding the forfeiture of a \$15,000 "blanket bond" posted in support of several oil & gas wells owned by Maverick. On March 9, 2011, Maverick appealed the BFO to the Oil & Gas Commission (appeal # 833).

On February 4, 2011, Chief's Order 2011-05 [hereinafter the "Plug All Wells Order" or "PAWO"] was issued to Maverick. The PAWO asserted that, based upon the September 29, 2010 forfeiture of Maverick's bond, Maverick's wells were now un-bonded. The PAWO specifically referenced the issuance of Chief's Order 2010-40 (the September 29, 2010 BFO). The PAWO ordered Maverick to suspend all oil & gas operations, and either post bond (in the amount of \$50,000) or transfer all wells under its ownership. If the wells were not so bonded or transferred, Maverick was ordered to plug all wells under its ownership. On March 9, 2011, Maverick appealed the PAWO (appeal # 834).

On April 21, 2011, the Division filed a Motion to Dismiss Maverick's appeal of the BFO (appeal # 833). As the BFO was issued on September 29, 2010 and was not appealed until March 9, 2011, the Division argued that Maverick's appeal of the BFO was not filed within the thirty-day appeal period set forth by law. (See O.R.C. §1509.36.) On May 2, 2011, Maverick responded to the Division's Motion. The Division's Motion to Dismiss will be addressed *infra*.

ISSUES

The primary issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in ordering the forfeiture of Maverick's re-posted blanket bond.**

This appeal also presents the following issues: (1) **When a blanket bond has been forfeited based upon the non-compliant condition of certain wells, and those wells remain in non-compliance, can a second blanket bond be posted?** (2) **And, if a second blanket bond is posted, does that re-posted bond apply to the non-compliant wells that were the subject of the previous bond forfeiture?** (3) **If so, can the re-posted blanket bond be forfeited based upon the non-compliant condition of the same wells that were the subject of the previous forfeiture?**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.12 provides in part:

(B) When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in the order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

3. O.R.C. §1509.062(A)(1) provides:

The owner of a well that has not been completed, a well that has not produced within one year after completion, or an existing well that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of mineral resources management.

4. O.R.C. §1509.01 defines the "owner" of an oil & gas well as:

(K) "Owner," ... means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter

5. O.R.C. §1509.07 provides *inter alia*:

... [A]n owner of any well, before being issued a permit under section 1509.06 of the Revised Code or before operating or producing from a well, shall execute and file with the division of mineral resources management a surety bond conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

* * *

An owner, operator, producer, or other person shall not operate a well or produce from a well at any time if the owner, operator, producer, or other person has not satisfied the requirements established in this section.

6. O.R.C. §1509.01(EE) defines "material and substantial violation to include:

(3) Failure to obtain or maintain a surety bond that is required under this chapter;

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status under section 1509.062 of the Revised Code or the chief has approved another option concerning the abandoned well or idle and orphaned well;

7. O.R.C. §1509.071 provides for the forfeiture of bond:

(A) When the chief of the division of mineral resources management finds that an owner has failed to comply with a final nonappealable order issued or compliance agreement entered into under section 1509.04, the restoration requirements of section 1509.072, plugging requirements of section 1509.12, or permit provisions of section 1509.13 of the Revised Code, or rules and orders relating thereto, the chief shall make a finding of that fact and declare any surety bond filed to ensure compliance with those sections and rules forfeited in the amount set by rule of the chief. The chief thereupon shall certify the total forfeiture to the attorney general, who shall proceed to collect the amount of the forfeiture. In addition, the chief may require an owner, operator, producer, or other person who forfeited a surety bond to post a new surety bond in the amount of fifteen thousand dollars for a single well, thirty thousand dollars for two wells, or fifty thousand dollars for three or more wells.

In lieu of total forfeiture, the surety or owner, at the surety's or owner's option, may cause the well to be properly plugged and abandoned and the area properly restored or pay to the treasurer of state the cost of plugging and abandonment.

8. O.R.C. §1509.04(E) provides:

(E) The chief may issue a bond forfeiture order pursuant to section 1509.071 of the Revised Code for failure to comply with a final nonappealable order issued or compliance agreement entered into under this section.

9. O.A.C. §1501:9-1-03 addresses performance bond and provides in part:

(A) Amount: ... for an individual bond covering a single well, five thousand dollars; for a blanket bond covering all such wells operated by the principal, fifteen thousand dollars;

* * *

- (C) Forfeiture criteria and amount. The chief shall forfeit the total amount of the performance bond when he or she finds that the oil or gas well owner or permittee has:

* * *

(3) Failed to comply with the plugging requirements of section 1509.12 of the Revised Code, the permit provisions of section 1509.13 of the Revised Code or rules adopted thereunder.

FINDINGS OF FACT

1. Maverick is the registered owner of certain oil & gas wells in the State of Ohio. Maverick is a small operator, owning only eleven or twelve wells.¹

2. The parties to this action have stipulated that, in lieu of a merit hearing, the Commission may consider the Findings of Fact from the Commission's May 7, 2009 decision in related appeal # 810, and a portion of the transcript from the Commission's merit hearing in appeal # 810, as the "facts" in the immediate appeals (the Findings of Fact from appeal # 810 and the relevant portion of the transcript from appeal # 810 are attached). The parties also were permitted to file briefs, addressing the factual and legal issues presented by appeals # 833 and # 834.

3. The four, non-compliant wells at issue have been covered by three separate "blanket bonds."

- The wells were originally covered by a \$15,000 blanket bond posted by Murphy Oil Company, through surety Old Republic Surety Company.² The Division determined that four of the Murphy wells (the wells at issue) were idle and non-productive. On May 8, 2006, Chief's Order 2006-64 was issued to Murphy Oil Company and Old Republic Surety Company, demanding the forfeiture of Murphy's \$15,000 blanket bond. The Murphy Oil bond was, thereafter, forfeited.

- On January 10, 2007, Maverick, through surety Fifth Third Bank, posted a \$15,000 blanket bond. This bond covered the four wells at issue and eight other wells owned by Maverick.

¹See Footnote 8, regarding the number of wells owned by Maverick.

²The four wells at issue were originally owned by Murphy Oil Company. Maverick purchased these wells from Murphy Oil in 2003 and 2004. At that time, the four wells remained under a bond posted by Murphy Oil. While Maverick had purchased the four wells in 2003 and 2004, Maverick did not file a notice with the Division transferring ownership of the wells until 2007.

The Division determined that four of Maverick's well (the wells at issue) were idle and non-productive, and that Maverick had failed to comply with a Consent Order addressing these four wells. On November 4, 2008, Chief's Order 2008-88 was issued to Maverick and Fifth Third Bank, demanding the forfeiture of Maverick's first \$15,000 blanket bond (the second bond to cover these wells). Chief's Order 2008-88 was appealed to the Oil & Gas Commission (appeal # 810). On May 7, 2009, the Commission **affirmed** Chief's Order 2008-88, and Maverick's first blanket bond was, thereafter, forfeited.

- On April 16, 2010, Maverick, through surety Fifth Third Bank, posted a second \$15,000 blanket bond. The Division determined that, regarding four of Maverick's wells (the wells at issue), Maverick remained in non-compliance with a Consent Order addressing these wells. On September 29, 2010, Chief's Order 2010-40 was issued to Maverick and Fifth Third Bank, demanding the forfeiture of Maverick's second \$15,000 blanket bond (the third bond to cover these wells). Chief's Order 2010-40 was based upon the non-compliant nature of the same four wells that caused the Division to forfeit Maverick's first blanket bond in 2008. Chief's Order 2010-40 was appealed to the Oil & Gas Commission (appeal # 833), and is the subject of the instant decision.

4. The salient facts from the Findings of Fact from previous appeal # 810 are:

a. Maverick is the owner of certain wells in the State of Ohio. Maverick purchased these wells from Murphy Oil Company, and the wells were, initially, covered by a blanket bond posted by Murphy Oil Company.

b. In 2006, pursuant to a Division inspection (conducted in November 2005), four Maverick³ wells were determined by the Division to be idle and non-producing (the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well and the Wasil #1 Well) [the "non-compliant wells"].

c. Eight Maverick wells are asserted by Maverick to be productive [the "compliant wells"], and these eight wells have not been determined by the Division to be idle or non-producing.

d. On May 8, 2006, Chief's Order 2006-64 was issued.⁴ This order asserted that the four "non-compliant" wells were idle and had not been produced or plugged. Chief's Order 2006-64 demanded the forfeiture of Murphy Oil Company's \$15,000 blanket bond covering the four "non-compliant" wells.

³ At this time, while Maverick had purchased the four wells at issue, these wells were still registered to their previous owner, Murphy Oil Company, and were covered by a blanket bond posted by Murphy Oil Company.

⁴ Chief's Order 2006-64 was issued to Murphy Oil Company and its surety Old Republic Surety Company, as Murphy Oil Company held the bond in support of these wells.

e. In 2006, Maverick, and others, filed an action in the Court of Common Pleas for Summit County, Ohio, seeking a restraining order, to enjoin the Division from requiring the plugging of the four "non-compliant" wells.

f. On December 6, 2006, a Journal Entry and Consent Order was entered in the Common Pleas Court action. The Consent Order reflected an agreement between Maverick and the Division, and set forth a plan for bringing the four "non-compliant" wells into compliance with Ohio law. Under this agreement, specific time deadlines were established for either plugging or producing the four "non-compliant" wells. The Consent Order provided that the Division could seek bond forfeiture in the event that Maverick did not comply with the Court's Consent Order, and set forth certain penalties that would be imposed if Maverick failed to take the actions agreed upon in the Consent Order.

g. On January 10, 2007, Maverick posted a \$15,000 blanket bond [Maverick's first blanket bond]⁵ covering the four wells at issue and eight other wells owned by Maverick. Maverick's first blanket bond was filed in accordance with O.R.C. §1509.07 and pursuant to the Order of the Summit County Court of Common Pleas.

h. Maverick failed to comply with the Common Pleas Court Consent Order, and ultimately owed the Division approximately \$90,000 in penalties (per the legal brief filed by the Division, this amount may have since increased to approximately \$200,000).

i. In 2008, the Division Chief issued Chief's Order 2008-88, for Maverick's failure to comply with the Common Pleas Court's Consent Order. Chief's Order 2008-88 demanded the forfeiture of Maverick's first blanket bond. On December 3, 2008, Maverick appealed Chief's Order 2008-88 to the Oil & Gas Commission (appeal # 810). This matter was set for hearing. On May 7, 2009, following hearing, the Oil & Gas Commission issued a decision **affirming** the Chief's 2008 forfeiture of Maverick's first \$15,000 blanket bond.

k At the Oil & Gas Commission's merit hearing in appeal # 810 (the appeal of the Chief's Order forfeiting Maverick's first blanket bond), the following testimony from Division employee Rick Simmers was heard:

**Question by Molly Corey, Assistant Attorney General
(representing the Division):**

Of all 12 [wells], because I guess I should ask, the bond forfeiture would affect all 12, correct, not just these four?

⁵ Maverick's first blanket bond is the second bond to cover these wells.

Answer by Division witness Rick Simmers:

To be able to own and properly produce a well in Ohio, you are supposed to post a bond. Without a bond, you are not supposed to operate wells. So the wells --- if a bond is revoked and there is no appeal filed, again, the wells that may be productive, the ones that aren't associated with the consent agreement should be shut in, and then a new bond should be reposted, reestablished. If that's done, then the wells that aren't subject of this consent agreement could be properly produced again.

5. There has been no evidence presented to suggest that Maverick has plugged, or produced in commercial quantities, the four "non-compliant" wells that were the subject of the 2006 forfeiture of Murphy Oil's blanket bond, the Summit County Court's 2006 Consent Order, and the 2008 forfeiture of Maverick's first blanket bond.

6. There has been no evidence presented to suggest that the four "non-compliant" wells have reported production for two consecutive reporting periods prior to the issuance of the BFO on September 29, 2010.

7. There has been no evidence presented to suggest that Maverick has requested, or obtained, temporary inactive status for the four "non-compliant" wells.

8. On April 16, 2010, Maverick re-posted a \$15,000 blanket bond (Maverick's second blanket bond).⁶ Maverick asserts that its decision to re-post the blanket bond was based, at least in part, upon the testimony of Division employee Rick Simmers (given at the Commission's hearing on the 2008 forfeiture of Maverick's first blanket bond).⁷

9. On September 29, 2010, the Division Chief issued Chief's Order 2010-40 [the BFO] to Maverick and Fifth Third Bank. This Chief's Order demanded the forfeiture of Maverick's second blanket bond (posted on April 16, 2010), based upon Maverick's continued non-compliance with Ohio law and continued non-compliance with the Order of the Summit County

⁶ Maverick's second blanket bond is the third bond to cover these wells.

⁷ Maverick asserts that its understanding of Mr. Simmers' testimony was that by re-posting a blanket bond, Maverick could continue to operate its eight "compliant" wells, even though Maverick had not plugged, or produced in commercial quantities, the four "non-compliant" wells (which wells were the basis of the forfeiture of Maverick's first blanket bond).

Court relating to the four "non-compliant" wells. Maverick asserts that it did not receive a copy of this Chief's Order through certified mailing. On March 9, 2011, Maverick appealed Chief's Order 2010-40 to the Oil & Gas Commission (appeal # 833).

10. As Maverick's second blanket bond had been forfeited pursuant to Chief's Order 2010-40, the Division Chief determined that Maverick's oil & gas wells were no longer covered by bond, as is required by law. Therefore, on February 4, 2011, the Chief issued to Maverick, Chief's Order 2011-05 [the PAWO]. This Order required Maverick to suspend all of its oil & gas operations, and required Maverick to either: (1) post bond (in the amount of \$50,000), or (2) transfer all wells under its ownership.⁸ If Maverick did not bond or transfer these wells, Chief's Order 2011-05 required Maverick to plug all wells under its ownership. On March 9, 2011, Maverick appealed Chief's Order 2011-05 to the Oil & Gas Commission (appeal #834).

11. Appeals # 833 and # 834 are the subject of the immediate decision.

DISCUSSION

In the State of Ohio, before being issued a permit to drill a well, or before operating or producing an oil & gas well, the well owner must post a performance bond. (See O.R.C. §1509.07.) The purpose of the bond is to ensure that the well owner complies with the laws and rules regulating the production of oil & gas. If an operator fails to comply with the laws and rules regulating the production of oil & gas, or fails to comply with an agreement addressing its wells, the posted bond may be forfeited to the State. (See O.R.C. §1509.071.)

O.R.C. §1509.071 specifically states that the performance bond is conditioned upon compliance with the plugging requirements of O.R.C. §1509.12. O.R.C. §1509.12 requires the plugging of wells that the Division Chief determines should be plugged.

⁸ Chief's Order 2011-05 lists eleven wells as being owned by Maverick. Included in this listing are the four "non-compliant" wells (the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well, and the Wasil #1 Well). Testimony at the Commission's hearing in previous appeal # 810 indicated that Maverick owned twelve wells (it is possible that one well has been plugged or transferred since the 2009 hearing in appeal # 810).

Generally, wells that are found to be incapable of producing oil or gas in commercial quantities, or that are not being used for domestic purposes, qualify for plugging. (See Michael L. Kiser, dba Bootstrap Oil vs. Division, case no. 775 [Oil & Gas Commission, November 21, 2008]; Cheftain Energy Corporation vs. Division, case nos. 734, 735 & 741 [Oil & Gas Commission, February 6, 2006]; Alsid Oil & Gas vs. Division, case no. 650 [Oil & Gas Commission, January 11, 1999]). O.R.C. §1509.062(A)(1) specifically requires that wells, which have not shown production for two consecutive years, must be plugged under O.R.C. §1509.12. The plugging of non-productive wells is intended to protect both the environment and other oil & gas producing strata.

The instant decision addresses four wells currently owned by Maverick (the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well and the Wasil #1 Well). Evidence adduced at the Commission's hearing in previous appeal # 810⁹ revealed that Maverick acquired these wells in 2003 and 2004. Maverick is a small operator, and at the time of acquiring these wells, the company's President Mr. Carr was fairly inexperienced in the area of oil & gas production.

According to reports on file with the Division, and the testimony of witnesses for both parties at the hearing in previous appeal # 810, these four wells had not shown significant production for several years prior to Maverick's purchase in 2003 and 2004. Upon acquiring the wells, Maverick made efforts to rehabilitate and restore the wells. However, a combination of operator inexperience and unfortunate financial circumstances, interfered with the redevelopment of these wells.

Indeed, the four wells at issue have a long history of non-compliance. Beginning in 2005, enforcement actions were issued by the Division in an attempt to require the owner of the wells to either bring the wells into commercial production or properly plug and abandon them. Evidence adduced in appeal # 810 revealed that Maverick made efforts to bring these wells into compliance. The evidence in appeal # 810 established that the Fabro #1 Well and the Boss #1 Well were incapable of commercial production, in that these two wells were not connected to a production system. The evidence further showed that, despite Maverick's attempts to produce the

⁹ The parties have stipulated that the Findings of Fact from the Commission's decision in previous appeal # 810 may be applied in the immediate appeals. The Commission's decision in appeal # 810 is attached to this decision.

Lockhart #3 Well, because of structural problems inherent to that well, Maverick was unable to successfully produce this well. And while the Lockhart #3 Well was swabbed for oil, the swabbing of this well did not constitute commercial production. As regards the Wasil #1 Well, the evidence in previous appeal # 810 showed that this well did produce some oil & gas, but again the amount produced was minimal and did not constitute commercial production. Additionally, none of these four wells were used for domestic purposes.

In previous appeal # 810, this Commission reviewed the facts relating to the four wells at issue, to determine whether the Division Chief had reasonable grounds (in 2008) to find that these wells were incapable of producing oil or gas in commercial quantities.¹⁰ In this regard, the Commission applied the five-point analysis set forth in State of Ohio v. Baldwin Producing Corporation, no. 76-AP-892 (Court of Appeals, Franklin County [March 10, 1997]).

Applying the Baldwin analysis, the Commission determined that the four wells at issue were not producing in commercial quantities. The Commission further found that Maverick had failed to comply with a Court Order, which order specifically addressed the rehabilitation of these wells. Therefore, the Commission **held** that the Division Chief acted reasonably and lawfully in forfeiting Maverick's first blanket bond.

The Commission's decision in appeal # 810 (the appeal of the forfeiture of Maverick's first blanket bond) was issued on May 7, 2009. Approximately one year later, on April 16, 2010, Maverick re-posted a \$15,000 blanket bond. No evidence has been presented to suggest that Maverick has taken any significant steps to either plug, or commercially produce, the four wells at issue after the issuance of the Commission's May 7, 2009 decision.

¹⁰ At the time at which the Commission considered and decided appeal # 810, O.R.C. §1509.12 (the plugging requirement) provided in part:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section that is being used to produce oil or gas for domestic purposes, or that is being lawfully used for a purpose other than production of oil or gas.

(Emphasis added.) O.R.C. §1509.12 was amended on June 30, 2010 (the current version is quoted *supra*, at page 3). O.R.C. §1509.062 (enacted on June 30, 2010) now requires that existing wells "that [have] no reported production for two consecutive reporting periods" (*i.e.*, two years) must be plugged.

As the four wells at issue are still registered to Maverick, and are still in non-compliance with both Ohio law and a related Court Order, on September 29, 2010, the Division ordered the forfeiture of Maverick's re-posted bond (appeal # 833).

Once this forfeiture was ordered, the Division found that Maverick now owned unbonded wells, in violation of Ohio law. Therefore, on February 4, 2011, the Division issued the PAWO, requiring Maverick to suspend all of its oil & gas operations, and either post bond (in the amount of \$50,000) or transfer its wells to another operator. If Maverick chose not to post the required bond or transfer the wells, the PAWO required Maverick to plug all of its Ohio wells (appeal # 834). Maverick's current appeals raise several distinct questions:

After a bond is forfeited, who owns the wells that were the subject of the bond forfeiture, and who is responsible for plugging non-compliant wells that were the subject of a bond forfeiture?

O.R.C. §1509.062(A) provides:

(A)(1) The owner of a well that has not been completed, a well that has not produced within one year after completion, or an existing well that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well this is approved by the chief of the division of mineral resources management.

O.R.C. §1509.12 provides in part:

(B) When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in the order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order.

If a well owner fails to comply with the plugging requirements of O.R.C. §1509.12, the Chief may order the forfeiture of bond. (See O.R.C. §1509.071.) The forfeiture of a bond results in the forfeiture of the **posted funds**, but does not result in the forfeiture of the **actual wells** at issue.¹¹ Indeed, when bond is forfeited under O.R.C. §1509.071, the moneys collected are not dedicated, specifically, to the plugging of the non-compliant wells upon which a forfeiture was based.¹²

Wells registered to an owner, remain the property, and responsibility, of their registered owner. O.R.C. §1509.01(K) defines a well owner as:

(K) "Owner," ... means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter

(Emphasis added.)

Thus, ownership in a well terminates when a well is properly plugged. The transfer of a well to a new registered owner may also operate to terminate ownership in the transferring party.

As Maverick is still the registered owner of the four wells at issue, Maverick remains the party responsible for plugging these wells. The forfeiture of Maverick's first blanket bond did not alter Maverick's ownership status or its plugging responsibilities.

¹¹ Abandoned wells, for which no owner can be located, may be physically forfeited to the State. Such wells are designated as "idle and orphaned" wells. (See O.R.C. §1509.01(CC).) These wells do become the property of the State and may be plugged utilizing state funds. (See O.R.C. §1509.071(B).) However, the owner of the four wells at issue is known. Thus, these wells are not "idle and orphaned" and are not considered the property of the State.

¹² Although no evidence has been presented in this appeal (or in related appeal # 810) as to the actual cost of plugging the four wells at issue, this Commission is aware that the moneys forfeited by Maverick would be inadequate to plug these four wells.

What wells are covered by a "blanket bond"?

O.A.C. §1501:9-1-03(A) addresses the filing of performance bond in support of oil & gas wells, and provides:

(A) Amount: ... for an individual bond covering a single well, five thousand dollars; for a blanket bond covering all such wells operated by the principal, fifteen thousand dollars;

While bond for a single well is set at \$5,000, the law allows an owner to post a "blanket bond" in the amount of \$15,000. The "blanket bond" covers all wells registered to an owner. Maverick is a small operator, owning only eleven or twelve wells. However, with large operators, "blanket bonds" often cover dozens, or even hundreds, of wells. The option of posting a "blanket bond" is a great benefit to any operator who owns multiple wells, as the "blanket bond" allows an operator to produce several wells, without encountering high bonding costs.

O.R.C. §1509.07 provides that the posted bond is:

. . . conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, . . .

Thus, the bond required by O.R.C. §1509.07 is a "performance" bond, intended to ensure that a regulated operator will comply with provisions of Ohio's oil & gas law, rather than risk forfeiture. The fact that the law allows for the filing of a \$15,000 "blanket bond," which may cover any number of wells under common ownership, indicates that the O.R.C. §1509.07 bond is not a "de-commissioning" bond, intended to provide the necessary funds to actually plug wells, if an owner cannot, or will not, produce or plug its wells. The amount of the "blanket bond" simply would be inadequate to this task.

When an owner files a "blanket bond," that bond covers all wells registered to that owner. There is no exception for wells that have been the subject of prior forfeiture orders. If wells that were the subject of prior forfeiture orders have not been transferred to a new owner or plugged, they will be covered under a re-posted "blanket bond." When Maverick re-posted its blanket bond in April 2010, the four wells at issue were covered under that "blanket bond."

Can a re-posted "blanket bond" be forfeited, based upon the non-compliant condition of wells that were the subject of a previous bond forfeiture?

Upon forfeiture of a performance bond, an operator must re-post bond, if the owner intends to produce its oil & gas wells. After forfeiture, the option of posting a blanket bond may be denied to an operator. In this regard, O.R.C. §1509.071 provides:

(A) ...the chief may require an owner, operator, producer, or other person who forfeited a surety bond to post a new surety bond in the amount of fifteen thousand dollars for a single well, thirty thousand dollars for two wells, or fifty thousand dollars¹³ for three or more wells.

After the forfeiture of its blanket bond in 2008, Maverick re-posted another \$15,000 blanket bond on April 16, 2010. The re-posted blanket bond covered all wells registered to Maverick, including the four non-compliant wells.

While generally the Division would require the plugging of these four non-compliant wells, in this case, the Summit County Court Order allowed Maverick to either plug or produce these wells. Maverick did neither.

Therefore, nearly six months after Maverick's re-posting of the bond, the Division determined that Maverick remained in non-compliance with Ohio law and in non-compliance with the Summit County Order. Therefore, the forfeiture of Maverick's re-posted bond was ordered.

Maverick argues that the testimony of Division employee Simmers, indicates that Maverick would be allowed to effectively "walk away" from its four non-compliant wells, and continue to produce its eight compliant wells, without the threat of further forfeiture (based upon the non-compliant wells). The duty created by O.R.C §1509.12 to plug a well is a continuing duty. (See Houser vs. Brown, 29 Ohio App. 3d 358 [December 30, 1986].) This duty does not disappear until a well is successfully, plugged or transferred. Moreover, Maverick's obligation to fulfill its agreement under the Summit County Court Order was not erased by the first forfeiture of its bond.

¹³ The PAWO issued after the forfeiture of Maverick's second blanket bond required Maverick to post bond in the amount of \$50,000.

The testimony of Rick Simmers does not state that Maverick was no longer responsible to plug or produce the four non-compliant wells.¹⁴ Consistent with the testimony of Mr. Simmers, Maverick had the option to re-post a bond and then either plug or produce its four non-compliant wells, while continuing to operate its other, compliant, wells. Notably, regardless of Mr. Simmers' testimony, or Maverick's understanding of that testimony, Mr. Simmers cannot re-write Ohio law relating to the bonding of wells that have been the subject of a previous forfeiture. The Commission must apply the relevant statutes and regulations, regardless of the testimony of any witness at hearing.

Significantly, if Maverick was anxious to return to production on its compliant wells, and was unsure of its ability to produce the four non-compliant wells, Maverick could have posted individual (\$5,000) bonds for each of its compliant wells. (See O.A.C. §1501:9-1-03(A).) Unlike a blanket bond, which applies to all wells under Maverick's ownership, the individual bonds would be specific to a particular well, and would not be subject to forfeiture based upon the non-compliant condition of other wells owned by Maverick.

Maverick's second blanket bond was posted on April 16 2010 and, thereafter, forfeited on September 29, 2010. The Division gave Maverick more than five months to bring the four wells at issue into compliance with Ohio law and into compliance with the Summit County Court Order.

Maverick did not bring these wells into compliance. Significantly, the problems with these four wells have existed since at least 2005. Despite enforcement actions, forfeitures, a court order and penalties, Maverick has not brought these wells into compliance with Ohio law. Thus, this Commission **FINDS** that the Division's issuance of Chief's Order 2010-40 (forfeiting Maverick's re-posted bond) and Chief's Order 2011-05 (suspending Maverick's operations, and requiring Maverick to bond, transfer or plug all of its wells) were reasonable and lawful.

¹⁴ The parties have stipulated that an excerpt from Mr. Simmers' testimony, which was given at the Commission's hearing in prior appeal # 810 may be considered as part of the stipulated "facts" of the immediate appeals. The excerpt of Mr. Simmer's testimony is attached to this decision.

RULING ON THE PENDING MOTION TO DISMISS

On April 21, 2011, the Division filed a Motion to Dismiss Maverick's appeal of the BFO (appeal # 833). As the BFO was issued on September 29, 2010 and was not appealed until March 9, 2011, the Division asserts that Maverick's appeal of the BFO was not filed within the thirty-day appeal period set forth by law. (See O.R.C. §1509.36.) On May 2, 2011, Maverick responded to the Division's Motion.

Maverick argues that the certified mailing of the BFO was never received by Maverick, and that Maverick's first notice that a forfeiture had been ordered was received on February 22, 2011, when Maverick received the PAWO, referencing the 2010 BFO. Maverick asserts that its receipt of the PAWO prompted it to contact the Division and request a copy of the 2010 BFO. Maverick asserts that it received a copy of the BFO on February 24, 2011, via e-mail transmission. Thereafter, on March 9, 2011, Maverick filed its appeal of the BFO with the Commission.

The Division established that the BFO was sent by certified mail to Maverick, but was returned by the postal service as "unclaimed." Once the BFO was returned as "unclaimed," the Division made no attempt to send the Order by regular mail or to send the Order to Maverick's statutory agent.

Mr. Brian Carr of Maverick, via Affidavit, stated that he did not deliberately avoid service of the 2010 BFO, but that, due to work and travel schedules, he was unable to access his post office box during the relevant time period. Mr. Carr further avers that, by the time he had access to his post office box, the certified mailing had already been returned to the Division, and he was given no information by the postal service regarding who had sent the certified letter.

O.R.C. §1509.36 sets forth the method by which an appeal is perfected to the Oil & Gas Commission. That section of law provides *inter alia*:

Any person claiming to be aggrieved or adversely affected by an order by the chief of the division of mineral resources management may appeal to the oil and gas commission . . . The appeal shall be filed with the commission within thirty days after the date upon which the appellant received notice by certified mail . . .

(Emphasis added.)

Maverick argues that under O.R.C. §1509.36, the statutory appeal period does not begin to run until receipt of an order. Maverick asserts that it did not receive the September 29, 2010 BFO until February 24, 2011, and that its appeal was filed within thirty days of its actual receipt of the BFO.

The Division argues that Maverick's failure to claim a certified mailing should not operate to extend its appeal period.

In this case, as the factual stipulations and legal briefs have been presented to the Commission, and as a genuine issue exists as to whether Maverick was properly given notice of the BFO (so that it could avail itself of the appeal process in a timely manner) the Commission has elected to view the Motion to Dismiss as now **moot**, and to proceed with a ruling upon the merits of appeal # 833.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is both lawful and reasonable.

2. Maverick is the "owner" of the wells that are the subject of Chief's Order 2010-40 and Chief's Order 2011-05. Pursuant to O.R.C. §1509.07, Maverick posted a \$15,000 bond with the Division in support of these wells.

3. The four non-compliant wells require plugging under the provisions of O.R.C. §1509.062.

4. The four non-compliant wells have not been placed in temporary inactive status.

5. Maverick is not in compliance with Ohio law or with the Consent Order entered in the matter of Lockhart Development Co. et al. v. Ohio Department of Natural Resources, Division of Mineral Resources Management, et al., case number 1006 11 7338, as regards the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well, and the Wasil #1 Well, as these wells are idle, or not in commercial production, or are incapable of commercial production, and have not been properly plugged and abandoned.


6. Maverick has failed to fully comply with the Ohio law and the terms of the Consent Order entered by the Common Pleas Court of Summit County. Therefore, the issuance of Chief's Order 2010-40, requiring the forfeiture of Maverick's second blanket bond, pursuant to O.R.C. §1509.071, was both lawful and reasonable.

7. After the forfeiture of its bond, Maverick owned wells that were not supported by bond, as is required under O.R.C. §1509.07. Therefore, the issuance of Chief's Order 2011-05, requiring Maverick to suspend its operations, and to bond, transfer or plug all wells under its ownership, was both lawful and reasonable.

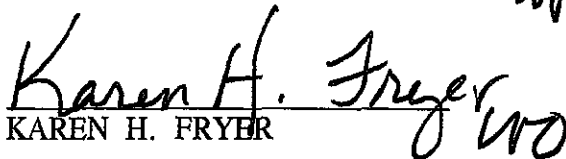
ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2010-40 and Chief's Order 2011-05.

Date Issued: 9/14/2011


M. HOWARD PETRICOFF, Chairman *wo*


ROBERT W. CHASE *wo*


KAREN H. FRYER *wo*

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

Kenneth Gibson, Via Fax (330-929-6605) & Certified Mail #: 91 7108 2133 3936 6717 5772
Molly Corey, Via Fax (614-268-8871) & Inter-Office Certified Mail #: 6628

ATTACHMENT 1

Oil & Gas Commission Decision

Maverick Oil & Gas, Inc. vs. DMRM
case number 810
(May 7, 2009)

BEFORE THE OIL & GAS COMMISSION

MAVERICK OIL & GAS, INC.,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Appeal No. 810

Review of Chief's Order 2008-88

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: Kenneth L. Gibson, Counsel for Appellant Maverick Oil & Gas, Inc.; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued:

May 7, 2009

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Maverick Oil & Gas, Inc. ["Maverick"] from Chief's Order 2008-88. Chief's Order 2008-88 was issued for Maverick's failure to comply with a consent agreement, which addressed four wells, known as the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well, and the Wasil #1 Well. This agreement set forth a plan for bringing these four wells into compliance with Ohio law. Chief's Order 2008-88 demanded the forfeiture of bond in the amount of \$15,000.

Maverick filed its notice of appeal from Chief's Order 2008-88 on December 3, 2008. Accompanying the notice of appeal was a Request for Stay. On December 24, 2008, the Commission conducted a hearing on the Request for Stay. On December 24, 2008, the Commission stayed the execution of Chief's Order 2008-88 during the pendency of this proceeding.

On February 25, 2009, this cause came on for hearing before three members of the Oil & Gas Commission. At the commencement of hearing, the Appellee Division of Mineral Resources Management [the "Division"] moved for dismissal, based upon the Appellant's admitted failure to serve notice of the Commission's hearing upon royalty owners, as required by O.A.C. §1509-1-15(B). The Commission took this motion under advisement, and proceeded to the merit hearing. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

ISSUES

Two issues were presented in the matter at bar.

The first issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in ordering the forfeiture of Maverick's blanket bond.**

The second issue presented by this appeal is: **Whether the appeal by Maverick should be dismissed for failure to serve royalty owners with notice of the Commission's hearing in accordance with O.A.C. §1509-1-15(B).**

FINDINGS OF FACT

1. Maverick Oil & Gas, Inc. ["Maverick"] owns oil and gas wells in the State of Ohio. Maverick is a small operator, owning only 12 wells. Among the wells owned by Maverick are: the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well and the Wasil #1 Well [the "wells at issue" or the "four wells"]. Maverick acquired these four wells in 2003 and 2004. Brian Carr, President of Maverick, testified that when he acquired these wells, he had no experience in oil and gas production. At the time of acquisition, these wells had not been operated for several years. Since acquiring these four wells, Maverick has expended moneys attempting to restore and produce the wells. Since acquiring these four wells, Maverick has also worked on, and expended money upon, other wells owned by Maverick, hoping to generate income.

2. The four wells at issue were purchased by Maverick in 2003 and 2004. Maverick holds the mineral leases associated with these wells and claims ownership rights in the wells. The permits, issued by the Division and associated with these four wells, were initially held by Murphy Oil Company ["Murphy"]. In January 2007, Maverick applied for the transfer of these permits from Murphy. Maverick is now considered the registered owner of these four wells.

3. The wells at issue were initially covered by a \$15,000 "blanket bond" posted by Murphy Oil Company. This bond was forfeited by order of the Division Chief, issued on May 8, 2006. On January 10, 2007, Maverick, with Fifth Third Bank as surety, posted a \$15,000 "blanket bond" in support of these wells. This "blanket bond" was filed in accordance with O.R.C §1509.07, and pursuant to an order of the Summit County Court of Common Pleas (see Finding of Fact 23).

THE FABRO #2 WELL

4. Maverick is the registered owner of the Fabro #2 Well, located in the City of Norton, Summit County, Ohio. This well is covered by permit #792, issued by the Division. The Fabro #2 Well was installed in 1981, and is drilled into the Clinton Formation, to a total depth of 3,840 feet.

5. On December 16, 2008, January 21, 2009 and February 24, 2009, the Division conducted inspections of the Fabro #2 Well. The Division determined that this well was idle and incapable of producing oil or gas in commercial quantities. This determination was based upon the Division's findings that the well was not connected to a flow line, that no chart was on the gas measurement device, and that there was no physical evidence of activity in the vicinity of the well.

6. Records on file with the Division indicate production from the Fabro #2 Well between the years of 1984 and 2004. However, production since 1995 has been minimal, amounting to only 69 mcf of gas during this nine-year period. Since 2004, no production from this well has been reported to the Division. On May 13, 2008, upon Maverick's application, the Division issued a permit to plug the Fabro #2 Well. This permit remains in effect, but will expire on May 13, 2009. The Fabro #2 Well is incapable of commercial production and has not been plugged.

THE BOSS #1 WELL

7. Maverick is the registered owner of the Boss #1 Well, located in Copley Township, Summit County, Ohio. This well is covered by permit #801, issued by the Division. The Boss #1 Well was installed in 1981, and is drilled into the Clinton Formation, to a total depth of 3,816 feet.

8. On December 16, 2008 and February 24, 2009, the Division conducted inspections of the Boss #1 Well. The Division determined that this well was idle and incapable of producing oil or gas in commercial quantities. This determination was based upon the Division's findings that the well was not connected to a flow line and that no gas measurement device existed at the well or at the tank battery.

9. Records on file with the Division indicate production from the Boss #1 Well between the years of 1984 and 1993. Since 1993, no production has been reported to the Division. On July 2, 2008, upon Maverick's application, the Division issued a permit to plug the Boss #1 Well. This permit remains in effect, but will expire on July 2, 2009. The Boss #1 Well is incapable of commercial production and has not been plugged.

THE LOCKHART #3 WELL

10. Maverick is the registered owner of the Lockhart #3 Well, located in Coventry Township, Summit County, Ohio. This well is covered by permit #1798, issued by the Division. The Lockhart #3 Well was installed in 1984, and is drilled into the Clinton Formation to a total depth of 3,948 feet.

11. On December 16, 2008, December 18, 2008, December 23, 2008, December 24, 2008, December 29, 2008, December 30, 2008, January 22, 2009 and February 24, 2009, the Division conducted inspections of the Lockhart #3 Well. The inspections revealed that the Lockhart #3 Well was connected to a production system, and that work was being done on this well. The evidence further revealed that sand had been encountered in the well, and that attempts to pump the sand from the well were being undertaken. On December 18, 2008, the well owner, and others, were on site, and the well was being sand pumped. On December 23, 2008, December 24, 2008 and December 29, 2008, a contractor was on site swabbing the well. On December 30, 2008, swabbing had concluded and the well was shut in. A photograph of the meter for this well was taken on January 22, 2009, and showed no indication of the recent sale of natural gas. The Division determined that this well was not producing oil and/or gas in commercial quantities.

12. Records on file with the Division indicate production from the Lockhart #3 Well between the years of 1985 and 1994. Since 1994, no production has been reported to the Division. On May 13, 2008, upon Maverick's application, the Division issued a permit to plug the Lockhart #3 Well. This permit remains in effect, but will expire on May 13, 2009. The Lockhart #3 Well is not producing oil or gas in commercial quantities and has not been plugged.

THE WASIL #1 WELL

13. Maverick is the registered owner of the Wasil #1 Well, located in the City of Norton, Summit County, Ohio. This well is covered by permit #792, issued by the Division. The Wasil #1 Well was installed in 1981, and is drilled into the Clinton Formation, to a total depth of 3,819 feet.

14. On December 16, 2008, January 21, 2009 and February 24, 2009, the Division conducted inspections of the Wasil #1 Well. At the time of these inspections, the Division found the well to be idle and not in production. Discussions with the landowner indicated that the landowner had not received any recent royalty payments. A photograph of the meter for this well was taken on January 21, 2009, and showed an old chart located on the well's meter. The condition of this chart indicated that the well had not been operated for some time.

15. Records on file with the Division indicate production from the Wasil #1 Well between the years of 1984 and 2007. However, no production was reported for the nine-year period between 1995 and 2003. In 2004, only 3 mcf of gas was reported. No production was reported in 2005 and 2006. In 2007, production of only 66 barrels of oil and 36 mcf of gas was reported. Since 2007, no production has been reported to the Division.

16. Maverick's President Brian Carr testified at hearing that, since February 2007, 180 barrels of oil, and some amount of natural gas, have been produced from the Wasil #1 Well. However, the production reports on file with the Division do not reflect this amount. Proof of the payment of royalties for oil or gas produced from this well was not presented at hearing.

17. Maverick has not applied for a permit to plug the Wasil #1 Well, and this well remains unplugged.

THE ENFORCEMENT ORDERS

18. On November 2, 2005, Chief's Order 2005-97 was issued to Murphy Oil Company. This order declared the four wells at issue to be idle and incapable of producing oil and/or gas in commercial quantities. The order required Murphy to produce these wells within 10 days or to properly plug and abandoned the wells within 30 days. These abatement deadlines were extended several times by the Division. At the time of the issuance of Chief's Order 2005-97, Murphy held the well permits and had posted the associated bond; however, Maverick had purchased these wells and was considered the "owner" of the wells. Chief's Order 2005-97 was not appealed to the Oil & Gas Commission.

19. On May 8, 2006, Chief's Order 2006-64 was issued to Murphy Oil Company and Old Republic Surety Company. This order asserted a failure to comply with Chief's Order 2005-97, which order had required that the wells at issue be plugged or produced. Chief's Order 2006-64 demanded the forfeiture of Murphy's \$15,000 bond. Chief's Order 2006-64 was issued to Murphy as the holder of the bond associated with these wells. Chief's Order 2006-64 was not appealed to the Oil & Gas Commission.

20. Sometime in 2006, Maverick, and others, filed an action in the Court of Common Pleas for Summit County, Ohio, seeking a restraining order, to enjoin the Division from requiring the plugging of the Fabro #2 Well, the Boss #1 Well, the Lockhart #3 Well and the Wasil #1 Well. This action was assigned case number 2006 11 7338, and is captioned Lockhart Development Co. et al. v. Ohio Department of Natural Resources, Division of Mineral Resources Management, et al. ["the Common Pleas Court action"].

21. On December 6, 2006, a Journal Entry and Consent Order was entered in the Common Pleas Court action. The Consent Order reflected an agreement between Maverick and the Division, and set forth a plan for bringing these four wells into compliance with Ohio law. The Consent Order established certain deadlines. Pursuant to the Consent Order, Maverick committed to plugging or commercially producing the four wells by the following dates:

<u>Well</u>	<u>Plug or Produce By</u>
Fabro #2	May 2, 2007
Boss #1	May 2, 2007
Lockhart #3	June 2, 2007
Wasil #1	February 2, 2007

22. The Consent Order provided that the Division could seek bond forfeiture in the event of Maverick's non-compliance with its agreement. The Consent Order also provided that failure to comply with the Consent Order would result in a \$2,000 penalty for each well found to be in non-compliance, and an additional \$1,000 penalty for each well for every 30-day period, or part thereof, during which the well remained in non-compliance.

23. The Consent Order in the Common Pleas Court action also required Maverick to post a bond in support of the four wells at issue and to have the wells transferred into Maverick's name. Maverick complied with these requirements. On January 10, 2007, Maverick, through surety Fifth Third Bank, posted a \$15,000 bond in support of the wells. Also, on or about January 10, 2007, Maverick applied for the transfer of the four wells at issue from Murphy Oil Company.

24. Maverick's President Brian Carr testified that the Wasil #1 Well was placed into production on or before the Court's deadline of February 2, 2007. Division witness Inspector Robert Worstall, testified that he was informed by another operator (who shares the storage tank for the Wasil #1 Well with Maverick) that production of this well did not commence until February 9, 2007, one week beyond the deadline set by the court. Production reports on file with the Division, show production in 2007 of 66 barrels of oil and 36 mcf of gas from this well. Therefore, production of the Wasil #1 Well has been very limited, and in quantities which may not constitute commercial amounts. Moreover, Maverick's witness admitted that Maverick did not comply with the notice and pre-payment requirements set forth under the Court's Consent Order as regards the Wasil #1 Well.

25. On November 9, 2007, the Division filed Charges in Contempt of Court against Maverick and its President, Brian Carr. The Charges in Contempt alleged that Maverick had failed to comply with the Consent Order entered in the Common Pleas Court action, by failing to plug or produce the wells at issue by the designated deadlines. At hearing, before this Commission, Mr. Carr admitted that he had failed to comply with the Consent Order as regards the Fabro #2 Well, the Boss #1 Well and the Lockhart #3 Well. On February 26, 2008, a Magistrate's Order was issued by the Common Pleas Court, finding:

It is concluded that Maverick has failed to comply with the agreement it made on December 6, 2006, and is therefore subject to the penalties imposed by the order, and that Mr. Carr individually is also jointly and severally liable and otherwise personally responsible for such penalties. . .

26. The Magistrate's February 26, 2008 Order, scheduled a hearing for May 6, 2008. Mr. Carr failed to appear before the Summit County Common Pleas Court for that hearing. And, on May 12, 2008, the Magistrate specifically found that Mr. Carr continued to be in contempt of that court.

27. At the time of the Commission's hearing, the unpaid penalties owed by Maverick or Mr. Carr to the Division totaled at least \$90,000.

28. On November 4, 2008, Chief's Order 2008-88 was issued to Maverick and Fifth Third Bank. This order noted that Maverick had failed to comply with the Consent Order entered in the Common Pleas Court action, as the four wells at issue had not been commercially produced, or properly plugged and abandoned, in accordance with the parties' agreement. Chief's Order 2008-88 demanded the forfeiture of Maverick's \$15,000 bond. Chief's Order 2008-88 was appealed to the Oil & Gas Commission on December 3, 2008, and is the subject of the instant decision.

DISCUSSION

Before being issued a permit, the owner of any oil and gas well in the State of Ohio must post a performance bond. The purpose of the bond is to ensure that the well owner complies with the laws and rules regulating the production of oil and gas. The bond is also intended to provide funds to insure the plugging of non-productive wells. See O.R.C. §1509.071.

O.R.C. §1509.071 specifically states that the performance bond is conditioned upon compliance with the plugging requirements of O.R.C. §1509.12. This section of the law requires the plugging of wells that are determined to be incapable of producing oil or gas in commercial quantities, and are not being used for domestic purposes. This plugging requirement is intended to protect both the environment and other oil and gas producing strata.

The instant decision addresses four wells currently owned and bonded by Maverick. The evidence revealed that Maverick acquired these wells in 2003 and 2004. Maverick is a small operator, and at the time of acquiring these wells, the company's President Mr. Carr was inexperienced in the area of oil and gas production. Indeed, Mr. Carr testified that at the time of acquiring these wells, he knew virtually nothing about oil and gas production. According to reports on file with the Division, and the testimony of witnesses for both parties, these four wells had not shown significant production, if any, for several years prior to Maverick's purchase. Upon acquiring the wells, Maverick made efforts to rehabilitate and restore the wells, focusing particularly on the Wasil #1 Well and the Lockhart #3 Well. However, a combination of operator inexperience, problems with the wells and unfortunate financial circumstances, interfered with the rehabilitation of these wells.

Beginning in 2005, enforcement actions were issued by the Division in an attempt to require the owner of the wells to either bring the wells into commercial production or properly plug and abandon them. Chief's Order 2005-97 declared these wells to be idle and unproductive, and ordered that the wells be either produced or plugged. Upon failure of the owner to comply with Chief's Order 2005-97, the Chief issued Order 2006-64, demanding the forfeiture of bond held in support of the wells. Bond was, thereafter, forfeited to the State.

In January 2007, Maverick re-posted a bond to cover the wells at issue, pursuant to a court order entered by the Summit County Court of Common Pleas. The court order accepted and adopted the terms of a consent agreement between the Maverick and the Division. This Consent Order set forth certain deadlines by which the four wells at issue would need to be either commercially produced or properly plugged. The Consent Order also specified certain notice and pre-payment requirements, which would apply to Maverick's activities surrounding these wells. Finally, the Consent Order provided for the assessment of monetary penalties for failure to comply with its terms, and acknowledged that bond forfeiture could result from such non-compliance.

The evidence revealed that Maverick made efforts to comply with the Consent Order, eventually obtaining permits to plug the Fabro #1 Well, the Boss #1 Well and the Lockhart #3 Well. Maverick also took certain steps to attempt to produce the Fabro #1 Well, the Lockhart #3 Well and the Wasil #1 Well, resulting in limited production from the Wasil #1 Well.

To determine whether the Division Chief has reasonable grounds to believe that a well is incapable of producing oil or gas in commercial quantities, this Commission has developed a five-point test. State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997]). The Baldwin test requires consideration of five indicia of commercial production, which are:

1. Has the owner of the well requested permission from the Chief for the well to stand idle and presented firm, reasonable plans, which he is capable of carrying out, to produce oil or gas in commercial quantities?
2. How recently the well has, in fact, produced oil or gas in commercial quantities and how much oil or gas has been sold?
3. Is the well equipped sufficiently with both surface and in-hole equipment to allow for commercial production?
4. How recently have actual good faith on-site attempts been made to produce the well in commercial quantities?
5. Has the state caused investigation to be made on the well site?

See also: Lake Underground Storage v. Mason, appeal #487 (June 27, 1996); Alsid Oil & Gas v. Division, appeal #650 (January 11, 1999).

In the Baldwin appeal, the Commission held, and the courts affirmed, that the word "incapable" does not mean that there was no "technical or proprietary hope" that the well will produce in commercial quantities. Rather, the examination focuses upon whether the well has recently produced commercial quantities of oil or gas, and whether the well is equipped for such production. This Commission has consistently held that the lack of surface and/or in-hole equipment necessary for commercial production indicates that a well is incapable of production. See Gary Harris & Group Maintenance v. Division, appeal #714 (October 27, 2003).

The term "commercial production" is not defined in statute. However, the court order entered by the Common Pleas Court specifically addressed the standard of "commercial production," which would be applied with regards to these particular wells, stating:

To meet the standard of commercial production, the well in accordance with Division approval must be fitted with equipment that is used for the recovery and sale of oil and gas; the well must be hooked up with a gas meter, tanks; separator; gathering, sales, and/or production lines; and other required equipment; and the well must include a sales point for any natural gas. Commercial production specifically excludes swab production of oil and domestic use of natural gas.

The evidence in this case showed that the Fabro #1 Well and the Boss #1 Well were incapable of commercial production, in that these two wells were not connected to a production system. The evidence further showed that, despite recent attempts to produce the Lockhart #3 Well, because of structural problems inherent to that well, Maverick has been unable to successfully produce this well. And while the Lockhart #3 Well had been swabbed for oil, the Consent Order in the Common Pleas Court action specifically excluded swabbing as a means of commercial production.

Therefore, as regards the Fabro #1 Well, the Boss #1 Well and the Lockhart #3 Well, Maverick has failed to comply with the provisions of the Consent Order entered in the Common Pleas Court for Summit County, and is in non-compliance with that Court's order.

As regards the Wasil #1 Well, the evidence showed that this well did produce oil and gas by, or shortly after, the deadline for production set by the Common Pleas Court. The amount of oil and gas obtained from the well was minimal, and it is in dispute as to whether the production amount would be considered a "commercial quantity." And while Maverick may have achieved the production deadline set by the Court, it failed to comply with certain other provisions of the Consent Order relating to notice and the pre-payment of costs.

Based upon the facts of this appeal, the Commission **FINDS** that the Division's issuance of Chief's Order 2008-88, ordering the forfeiture of Maverick's bond, is supported by the evidence, which evidence clearly established that Maverick did not fully comply with the Consent Order entered by the Court of Common Pleas for Summit County.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is both lawful and reasonable.
2. Maverick is the "owner" of the wells that are the subject of Chief's Order 2008-88. Pursuant to O.R.C. §1509.07, Maverick has posted a \$15,000 surety bond with the Division in support of these wells.
3. The evidence produced at hearing established that Maverick is not in compliance with the Consent Order entered in the matter of Lockhart Development Co. et al. v. Ohio Department of Natural Resources, Division of Mineral Resources Management, et al., case number 2006 11 7338, as regards the Fabro #2 Well, the Boss #1 Well and the Lockhart #3 Well, as these wells are idle, or not in commercial production, or incapable of commercial production, and have not been properly plugged and abandoned.

4. The evidence produced at hearing established that Maverick substantially complied with the production requirement contained in the Consent Order as regards the Wasil #1 Well, as the evidence did not conclusively prove that Maverick did not produce this well by the Court's deadline. However, the evidence also established that Maverick failed to comply with the notice and pre-payment requirements relating to production at the Wasil #1 Well contained in the Court's order.

5. Maverick has failed to fully comply with the terms of the Consent Order entered by the Common Pleas Court of Summit County. Therefore, the issuance of Chief's Order 2008-88, requiring the forfeiture of Maverick's blanket bond, was both lawful and reasonable.

**RULING ON THE PENDING
MOTION TO DISMISS**

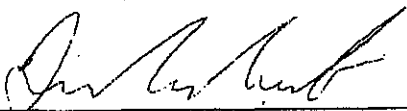
At the commencement of the merit hearing, the Division moved for the dismissal of this appeal upon the grounds that the Appellant failed to serve proper notice of the Commission's hearing as required by O.A.C. §1509-1-15(B). In light of the Commission's decision to affirm the Chief's Order, the Division's Motion to Dismiss the appeal of Chief's Order 2008-88 is rendered moot.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-88.



M. HOWARD PETRICOFF, Chairman



TIMOTHY C. McNUTT, Secretary

ABSTAINED

JAMES H. CAMERON



ROBERT W. CHASE

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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BEFORE THE OIL & GAS COMMISSION

MAVERICK OIL & GAS, INC.,	:	Appeal No. 810
	:	
Appellant,	:	
	:	Review of Chief's Order 2008-88
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	
MANAGEMENT,	:	
	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
Appellee.	:	

Before: M. Howard Petricoff, Chair

In Attendance: Robert W. Chase, Timothy C. McNutt

Appearances: Kenneth L. Gibson, Counsel for Appellant Maverick Oil & Gas, Inc.;
Molly Corey, Assistant Attorney General, Counsel for Appellee Division
of Mineral Resources Management

WITNESS INDEX

Appellant's Witnesses:

Brian Carr Direct Examination; Cross Examination

Appellee's Witnesses:

Richard Simmers Direct Examination; Cross Examination
Robert Worstall Direct Examination; Cross Examination

EXHIBIT INDEX

Appellant's Exhibits:

- Appellant's Exhibit 1 Journal Entry and Consent Order, Lockhart Development Co., et al. v. Ohio Department of Natural Resources, Division of Oil & Gas, et al., case no. CV 2006 11 7338; issued December 6, 2006
- Appellant's Exhibit 2 Judgment Entry, Lockhart Development Co., et al. v. Ohio Department of Natural Resources, Division of Oil & Gas, et al., case no. CV 2006 11 7338; issued July 3, 2008
- Appellant's Exhibit 3 Copies of checks paid out of Maverick account, since 2003
- Appellant's Exhibit 4 - **withdrawn** Invoice for servicing meter, meter test and meter chart, Lockhart #3 Well (withdrawn by Appellant)

Appellee's Exhibits:

- Appellee's Exhibit 1 Chief's Order 2005-97; issued November 2, 2005
- Appellee's Exhibit 2 Chief's Order 2006-64; issued May 8, 2006
- Appellee's Exhibit 3 Letter, Gibson to Simmers; dated October 30, 2006
- Appellee's Exhibit 4 Journal Entry and Consent Order, Lockhart Development Co., et al. v. Ohio Department of Natural Resources, Division of Oil & Gas, et al., case no. CV 2006 11 7338, December 6, 2006
- Appellee's Exhibit 5 Charges of Contempt, Lockhart Development Co., et al. v. Ohio Department of Natural Resources, Division of Oil & Gas, et al., case no. CV 2006 11 7338; filed November 9, 2007

Appellee's Exhibit 18	Permit to Plug Fabro #2 Well; issued May 13, 2008
Appellee's Exhibit 19	Inspection Report, Boss #1 Well; dated December 16, 2008
Appellee's Exhibit 20	Photograph, Boss #1 Well, well; taken May 5, 2008
Appellee's Exhibit 21	Application for Permit to Plug Boss #1 Well; filed April 28, 2008
Appellee's Exhibit 22	Permit to Plug Boss #1 Well; issued July 2, 2008
Appellee's Exhibit 23	Inspection Reports, Lockhart #3 Well; dated December 16, 2008, December 18, 2008, December 23, 2008, December 24, 2008, December 29, 2008 and December 30, 2008
Appellee's Exhibit 24	Photograph, Lockhart #3 Well, well; taken January 22, 2009
Appellee's Exhibit 25	Photograph, Lockhart #3 Well, meter; taken January 21, 2009
Appellee's Exhibit 26	Application for Permit to Plug Lockhart #3 Well; filed April 28, 2008
Appellee's Exhibit 27	Permit to Plug Lockhart #3 Well; issued May 13, 2008
Appellee's Exhibit 28	Letter, Carr to Schumacher; dated April 26, 2008, with attached Permits to Plug the Fabro #2 Well, the Boss #1 Well and the Lockhart #3 Well
Appellee's Exhibit 29	Master Report for the Lockhart #3 Well
Appellee's Exhibit 30	Master Report for the Boss #1 Well
Appellee's Exhibit 31	Master Report for the Farbro #2 Well
Appellee's Exhibit 32	Master Report for the Wasil #1 Well

ATTACHMENT 2

**excerpt of proceedings before the
Oil & Gas Commission
case number 810**

(February 25, 2009)

**transcribed partial testimony of
witness Rick Simmers**

1 BEFORE THE OHIO OIL AND GAS COMMISSION

2

3 IN THE MATTER OF:

4 MAVERICK OIL & GAS,
5 INC.,

5

6 Appellant,

6

7 vs.

8 DIVISION OF MINERAL
9 RESOURCES MANAGEMENT;

9

Appellee.

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EXCERPT OF PROCEEDINGS

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In the above-captioned matter, before Hearing Officer Linda Osterman, taken by Kim Snyder, RPR, Notary Public in and for the State of Ohio, at the offices of the Ohio Oil and Gas Commission, Fountain Square, Building I, Assembly Center, Columbus, Ohio, on Wednesday, February 25, 2009, at 12:46 p.m.

RECEIVED

APR 21 2011

OIL & GAS COMMISSION

Civil Action No.
810

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1 APPEARANCES:

2

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4

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Cuyahoga Falls, Ohio 44221
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kennethleegibson@hotmail.com

Maverick Oil 2-25-09 excerpt.txt

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on behalf of the Appellant.

Raymond Studer
Molly Corey
Assistant Attorney General
OHIO ATTORNEY GENERAL, RICHARD CORDRAY
ODNR - Environmental Enforcement
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molly.corey@ohioattorneygeneral.gov

on behalf of the Appellee.

□

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--O--

PROCEEDINGS

--O--

BY MS. COREY:

Q. Of all 12, because I guess I should ask,
the bond forfeiture would affect all 12,
correct, not just these four?

A. To be able to own and properly produce a
well in Ohio, you are supposed to post a bond.
without a bond, you are not supposed to operate

17 Q. Mr. Carr could not, after a bond
18 forfeiture, file to ask for a permit to plug the
19 Wasil well; is that correct?

20 A. No. As I stated earlier, under a
21 special agreement with the State a company can
22 come in, even a company that has a bond revoked,
23 can come in, and the Division will work under
24 special agreement to issue a permit to plug a

5

1 well.

2 The reason the Division grants this
3 exception or enters into an agreement for that
4 type of exception is the risk and the liability
5 are potentially eliminated, and the financial
6 liability to the State of Ohio is reduced or
7 eliminated, if that occurs. So under special
8 agreement, the State has done that with other
9 companies.

10 * * *

11 BY MR. GIBSON:

12 Q. Now, one last question on this point, if
13 the bond is forfeited and Maverick were to post
14 another bond for another \$15,000, would they be
15 permitted to, at least as to the other wells,
16 continue operation --

17 A. Yes.

18 Q. -- even though they were in default
19 under this bond or under a court order?

20 A. The eight that aren't the subject of the
21 consent agreement now?

22 Q. Yes.

23 A. Yes, he could operate those.

24 * * *

6

1 BY MR. GIBSON:

2 Q. If Maverick were to post an additional
3 bond of \$15,000, could he attempt to produce out
4 of any of these existing wells that we're
5 talking about here, those four, or are you in a
6 position now where it just has to be plugged?

7 A. No. The judge ruled that consent
8 agreement must have compliance. The consent
9 agreement offers either production or plugging.
10 We entered into this consent agreement with our
11 eyes open. We knew that two options existed.
12 Mr. Carr had the option to chose one or the
13 other. It was his decision.

14 when neither was selected, and we went
15 to the courts to say help move this along, the
16 judge said that this was a valid order, consent
17 agreement, sided with the State of Ohio, and
18 said that Mr. Carr must comply with the order.
19 Two options still exist, and the judge said the
20 order has to have compliance. The State is
21 obligated to go either way, but it has to be
22 done now.

23 Q. Just one last issue here then, even
24 though the bond has been forfeited by the

7

1 chief's order subject to the appeal, Mr. Carr
2 could, in fact, post an additional bond and
3 continue the right to attempt to produce these

4 in a timely fashion. I understand that.

5 How do you define what that timely
6 fashion is in this circumstance? I mean, where
7 we are at now. If he were to post \$15,000
8 additional bond, which, by the way, he had
9 offered to do, is there a time frame that would
10 allow him to bring these into production and --
11 I understand there is penalties. And it's your
12 position that those penalties are accruing every
13 month?

14 A. That's our position, absolutely.

15 Q. Right. And that's what the order says?

16 A. That's correct.

17 Q. And they'll continue until they were
18 either produced or applied?

19 A. That's correct.

20 Q. But if he posted an additional \$15,000
21 as a bond, how much realistic time, subject to
22 those penalties, would he have in order to
23 actually finish this project and try to put the
24 wells in production?

1 A. I can't give you an exact time. What I
2 would offer to you would be the original consent
3 agreement as signed on December 6th of '06 gave
4 time frames for the four wells. In the consent
5 agreement, it recognized the fact that equipment
6 sometimes isn't always available, so there can
7 be time delays associated with equipment.

8 What the consent agreement asked was
9 that Mr. Carr contract with operators of service
Page 6

10 companies qualified to do this work, make some
11 payment in earnest money to them so that they
12 are under contract to do the work, notify us
13 that he has indeed done those things.

14 The consent agreement says he is
15 supposed to do that, the findings by the
16 magistrate and later by the judge say he's
17 supposed to do that, too, so we can contact
18 those service companies to make sure, one, it
19 has occurred, and we can verify with those
20 contractors to find out what their schedule is.
21 Once we know realistically what the third
22 party's schedule is, then we can help come up
23 with a time frame to get the work done.

24 * * *

9

1 MR. GIBSON: I started off by telling
2 you that the evidence would show that we had not
3 or Maverick had not complied with the terms of
4 the consent agreement. It is no surprise that
5 that's what the evidence showed. We admitted
6 that from the beginning.

7 He had the opportunity to explain the
8 circumstances of that, and I didn't hear
9 anything in the evidence that led --
10 contradicted the fact that there were economic
11 and in some instances things out of his control,
12 and that he was attempting in good faith to
13 follow the order. He just simply was unable to
14 do so.

15 On the other hand, we have the court
Page 7

16 order that has already penalized him for the
17 conduct of his noncompliance with that order,
18 that the bond forfeiture is, you know, sort of a
19 double penalty, but even if that were permitted,
20 the concern I have is this: I heard what the
21 assistant chief said with regard to the fact
22 that the Division could enter into an agreement
23 that would allow us to do certain things,
24 continue to rehab or not, but whether they will

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1 is some matter in the future that's not present
2 now.

3 I think that this Commission should set
4 up a rule for going forward. In other words, I
5 think, ultimately your job here is to do what
6 makes commonsense, and I think the commonsense
7 of this is this: I have no objection if he be
8 required to post an additional bond. We offered
9 that before in connection with my appeal letter.
10 And if, in fact, that is -- I mean, obviously
11 any money that he has to put toward a bond is
12 obviously money he doesn't have to rehab the
13 wells. Nonetheless, if that's what's required,
14 let's do it.

15 Give him some time by Commission order,
16 not by some situation where we may or may not
17 agree to something here, give him some time to
18 comply with the order that is in existence. You
19 know, I -- that order at least as to the wasil
20 well and as to the others, you know, is still in
21 effect and still allows this alternate way of

22 satisfying it. I was very, you know, happy to
23 hear Mr. Simmers' testimony that he viewed that
24 option as still open as far as doing one or the

11

1 other.

2 If you revoke his bond, pretty much the
3 only thing he can do -- and not allow it to be
4 refiled -- and, by the way, we were told that's
5 one of the reasons why we actually had a hearing
6 today. We were told that when -- we could not
7 post another bond and continue. That was the
8 position before today, and that's why we're
9 here.

10 In this particular instance, we believe
11 that the best solution for everybody, for
12 Maverick, for the State of Ohio, for the
13 potential royalty holders to the extent that
14 they have waited a long time, I guess, for
15 everybody would be to allow these wells to come
16 into production within a reasonable period of
17 time, and we request that you do that.

18 I do not believe that it is in the best
19 interest -- I mean, basically if Maverick is not
20 permitted to go forward, has the full obligation
21 of doing this, some of the funds that might have
22 been able to apply toward this were not
23 available because they didn't allow transfer of
24 wells that allowed him to receive royalties from

12

1 those wells. And so, you know, it just has to

Maverick Oil 2-25-09 excerpt.txt
2 make sense that we could go forward, that we can
3 take care of these, get them in production, stop
4 the potential for having the State of Ohio incur
5 whatever liability if Maverick goes under, and
6 Mr. Carr is unable to do it.

7 It just makes sense to go forward and
8 allow this to occur. If he has to post an
9 additional bond, you can make that a
10 requirement. I'm suggesting that that's okay.
11 But let's let this occur. There has been some
12 activity indicating good faith in the last few
13 months. We're a few pump jacks away from this
14 being in a pretty good position to produce, and
15 he has an agreement that somebody will take an
16 interest and provide the equipment. So I just
17 think that's the way it should go. That's all I
18 have to say.

19 --O--

20 Thereupon, the excerpt of proceedings
21 of February 25, 2009, were concluded at 2:20
22 p.m.

23 --O--

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CERTIFICATE

2 I, Kim Snyder, RPR, a Notary Public in
3 and for the State of Ohio, do hereby certify
4 that I reported the foregoing proceedings and
5 that the foregoing transcript of such
6 proceedings is a true and correct transcript of
7 my stenotypy notes as so taken.

Maverick Oil 2-25-09 excerpt.txt

8 I do further certify that I was called
9 there in the capacity of a court reporter, and
10 am not otherwise interested in this proceeding.

11 In witness whereof, I have hereunto
12 set my hand and affixed my seal of office at
13 Columbus, Ohio, on this day
14 of , 2011.

15

16

17 Kim Snyder, RPR
Notary Public, State of Ohio.

18 My commission expires: January 12, 2015

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