

BEFORE THE OIL & GAS COMMISSION

BARCLAY PETROLEUM, INC.,	:	Case No. 632
	:	
Appellant,	:	
	:	Review of Chief's Order 97-153
-vs-	:	
	:	
DIVISION OF OIL & GAS,	:	<u>FINDINGS, CONCLUSIONS</u>
	:	<u>& ORDER OF THE</u>
Appellee.	:	<u>COMMISSION</u>

Appearances: Bruce Kelley, on behalf of Appellant Barclay Petroleum, Inc.; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: November 20, 1998

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Barclay Petroleum [Barclay] from Chief's Order 97-153. Chief's Order 97-153 requires Barclay Petroleum to plug an oil & gas well known as the Harper Well #1, which well was determined by the Division of Oil & Gas to be incapable of producing oil & gas in commercial quantities.

On February 25, 1998, this cause came on for hearing before four members of the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

After a review of the Record, the Oil & Gas Commission makes the following findings of fact and conclusions of law.

ISSUE

The issue presented by this appeal is: **Whether Barclay Petroleum, who is listed as the owner of a well in the Division's records, is responsible to plug an unproductive well.**

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. §1509.01(K) defines a well "owner" as:

. . .the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

3. An owner is responsible to assure that wells are operated in compliance with the law. An owner is responsible to plug unproductive wells. O.R.C. §1509.12.

FINDINGS OF FACT

1. The Chief's Order under appeal addresses the Harper Well #1, which is located in Jackson Township, Vinton County, Ohio.

2. In November 1990, Barclay submitted to the Division of Oil & Gas a Request for Change of Owner Form [a Form 7] that was signed by Mr. Bruce Kelley of Barclay Petroleum. In the Form 7, Mr. Kelley attested that Barclay Petroleum was the owner of the well and that Barclay had the right to appropriate the oil & gas produced from that well. (See attached Form 7).

3. The Division of Oil & Gas recorded the transfer of the Harper Well #1 to Barclay Petroleum on January 29, 1991. No transfer of owner form has been filed with the Division of Oil & Gas since 1991. Thus, for the Harper Well #1, Barclay Petroleum is the "owner" pursuant to the records of the Division of Oil & Gas.

4. The Division's records indicate that this well has not produced oil or gas in commercial quantities since 1984. Barclay Petroleum has never consistently operated the Harper Well #1 to produce oil or gas. Barclay did prepare the well for production, and briefly pumped the well to determine if the well was operable. The Division of Oil & Gas has inspected the Harper Well #1 site. The inspection revealed that the flow line is broken between the well and the tank. No sales meter exists on the well. The well is not being used for domestic purposes.

5. On October 1, 1997, Chief's Order 97-153 was issued to Barclay. This Chief's Order contained the following findings:

(1) Barclay Petroleum, Inc. is the owner of the [Harper #1] well.

(2) An inspection conducted on September 3, 1997, revealed that the No. 1 Harper well is incapable of producing oil and/or gas in commercial quantities.

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 lawful and reasonable.

2. O.R.C. §1509.01(K) defines an "owner" as:

. . . the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

3. O.R.C. §1509.12 requires the plugging wells, which are or become incapable of producing oil or gas in commercial quantities. That section of law provides in pertinent 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, . . . When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing and shall specify in such 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 . . .

4. In 1990, Barclay Petroleum became the "owner" of the Harper Well #1 as defined in O.R.C. §1509.01(K) by its filing of a Form 7, Request for Transfer of Ownership with the Division of Oil & Gas, wherein Mr. Kelley attested that Barclay was the "owner" of the well, as such term is defined in Chapter 1509

5. Based on the evidence presented at hearing, it was neither unlawful or unreasonable for the Chief of the Division of Oil & Gas to determine that the Harper Well #1 has become incapable of producing oil and/or gas in commercial quantities.

6. The issuance of Chief's Order 97-153 to Barclay Petroleum was not unlawful or unreasonable.

DISCUSSION

Ohio's oil and gas law defines a well "owner" as the person who has the right to produce a well. See O.R.C. §1509.12. An owner is responsible to assure that wells are operated in compliance with the law. Ownership of a well may be transferred from one entity to another. See O.R.C. §1509.31.

The facts of this case reveal that a Form 7, Request for Change of Owner, signed by Bruce Kelley for Barclay, was filed with the Division in 1990. In signing this form, Mr. Kelley attested to Barclay's ownership of the Harper Well #1. Thus, the Division's files show Barclay as the owner of the Harper Well #1. The Division must be able to rely upon attestations made in such documents, as the Division has no obligation to independently review issues of title. Lester Roach v. Mason, Oil & Gas Board of Review appeal #544 (June 27, 1996). Evidence at hearing demonstrated that Barclay Petroleum performed tests on the Harper Well #1, further indicia of Barclay's belief it was the "owner" of the well as defined in O.R.C. §1509.01(K).

Because there has been no transfer of this well from Barclay pursuant to the provisions of O.R.C. §1509.31, Barclay has not been relieved from its legal responsibilities relative to this well. Roger Blodgett v. Mason, Oil & Gas Board of Review appeal #581 (March 10, 1997); Victor Petroleum Corp. v. Skalkos, Oil & Gas Board of Review appeal #63 (Sept. 26, 1983); Gem Energy Corp. v. Houser, Oil & Gas Board of Review appeal # 152 (Feb. 20, 1986).

The evidence was uncontested that the flow line is broken, no sales meter exists and no production has occurred from the Harper Well #1 for approximately 14 years. Thus, the Division's finding that the well has become incapable of production is not unreasonable. As "owner" of the Harper Well #1, as defined in O.R.C. §1509.01(K), Barclay Petroleum is responsible to plug this well.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 97-153.



WILLIAM J. TAYLOR, Chairman

ABSTAIN

JAMES H. CAMERON



JOHN A. GRAY

ABSTAIN

GAIL IGNATZ-HOOVER



BENITA KAHN, Secretary

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:

Bruce W. Kelley
Certified Mail #: P 260 035 122

Raymond Studer
Inter-Office Certified Mail #: 5463

Jeff Hoselton, Mead Corporation

ATTACHMENT A
FORM 7

REQUEST FOR CHANGE OF OWNER
OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL & GAS, FOUNTAIN SQ., BLDG. A, COLUMBUS OH 43224

1. Date of Application: _____		FORM 7: Revised 03/85
2. Check Type of Request ** If Individual Transfer indicate API number: 3 4 1 6 3 2 0 3 9 9 * 1 4 If Multiple Transfer list all API numbers and complete data on back of form.		
3. I, We (Assignor/Transferor) Nicholas A. Ross Owner# _____, hereby request that records on file with the Division of Oil and Gas, Department of Natural Resources, State of Ohio, be amended to reflect the Change of Owner of the oil and/or gas well described in #7 through #18.	7. COUNTY: Vinton	
	8. CIVIL TOWNSHIP: Jackson	
4. Assignor Address & Telephone Number: 3965 Palmer Road, NE New Lexington, Ohio 43764	9. WELL #: 1	
	10. LEASE NAME: Charles Harper	
5. Assignee/Transferee: Barclay Petroleum, Inc. Owner# 075	11. SECTION: 3 12. LCT:	
	13. FRACTION: 14. QTR TWP:	
6. Assignee Address & Telephone Number: 9320 Marietta Road P.O. Box 81 Bremen, Ohio 43107 (614) 569-4327	15. TRACT/ALLOT:	
	16. FOOTAGE:	
17. STATUS: Producing Non-Producing **		18. DATE OF ASSIGNMENT TO ASSIGNEE/TRANSFEEE _____ 19 ____.
IF WELL HAS NOT BEEN SPUDED, IT CANNOT BE TRANSFERRED		

THIS REQUEST MUST BE ACCOMPANIED BY A TRUE COPY OF THE ASSIGNMENT OF LEASE OR THE BILL OF SALE

ASSIGNOR/TRANSFEROR:

I, the undersigned, hereby agree to furnish any and all records and reports required by the Division of Oil and Gas for compliance with Chapter 1509, Ohio Revised Code, and all rules of that Division for the period ending on the date of assignment. Furthermore, I hereby depose and state that all holders of royalty interests that are affected by this assignment or transfer, will be properly notified in conformance with Section 1509.31 O. R. C. It is understood that my liabilities for this well will not be terminated until I comply with the above.

(Signature of Assignor/Transferor)

ASSIGNOR/TRANSFEROR:

(Printed or Typed)

STATE OF _____ COUNTY OF _____ being first duly sworn by me, says that the information set forth herein is true and accurate.

SHORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____ 19 ____.

(SEAL)

(Notary Public)

ASSIGNEE/TRANSFEEE:

I, the undersigned, depose and state that I am the owner of aforementioned oil and/or gas well and that I have the right to appropriate the oil or gas that I produce therefrom either for myself or for others. I further depose and state that I shall comply with the assignor/transferor's Restoration Plan and Plan for Storage and Disposal of Brine and other Waste Substances or that I shall submit a new Restoration Plan and Plan for Storage and Disposal of Brine and other Waste Substances to be approved by the Division. Further it is understood that upon proper completion of this form, I will become the "owner" as defined under Chapter 1509, O. R. C. and must comply with all rules and orders by the Chief.

[Signature]
(Signature of Assignee/Transferee)

ASSIGNOR/TRANSFEROR:

Barclay Petroleum, Inc.

(Printed or Typed)

STATE OF Ohio COUNTY OF Fairfield, being first duly sworn by me, says that the information set forth herein is true and accurate.

SHORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY OF November 19 90

(SEAL)

[Signature]
(Notary Public)

SARA D. MERCKLE
Notary Public, State of Ohio
My commission expires 11-26-90

DIVISION USE ONLY

Assignee/Transferee is in compliance with:

Date

- DX Certificate of Insurance
- DX Bond Requirements
- DE Geophysical Log
- DE Organization & Authorization Form
- Well Completion Record
- Statement of Production

10-7-91
1-25-91
1-25-91

Trans 1-29-91

*OIL TR - P - was based on well from
1-29-91*

APP'E EX 1