

Question #2 - Selected Answer

1. The Railroad Commission cannot properly require any of Able, Rex or New Oil to plug the abandoned well. Under Texas law, the operator who was in control of a well and operating it at the time a well is abandoned has the duty to plug the well. If that operator for some reason is not able to or will not plug the abandoned well, then a non-controlling operator who has a working interest in the well has the duty to plug the well. In this case, Joe's Oil would have had to plug the well when production ended in 1958 since it was the operator of the well then but it did not and Joe's Oil no longer exists and its sole shareholder cannot be found. From the facts, it does not appear that there were any other operators with working interests in the abandoned well. While the abandoned well needs to be plugged for safety and environmental reasons, the Railroad Commission cannot require Able, Rex or New Oil who had no operating roles at the time the well was abandoned to assume the responsibility for plugging the well, Neither Able's ownership interest in Blackacre nor Rex's royalty interest in the then-existing lease is enough to make either of them assume the responsibility. New Oil, while it would be responsible for plugging any abandoned wells it drills, cannot be held liable for the abandoned well which was drilled by Joe's Oil more than 50 years ago. Thus, in this case, the Railroad Commission will just have to use the funds from the general plugging well fund created by statute just for these types of situations in which the responsible parties for plugging a well cannot be found or will not plug its abandoned well, and use those funds to plug this abandoned well.
2. New Oil will have to revise the division order to be in compliance with applicable statute and once correctly revised, resubmit it to the division order to Rex for his approval and pay Rex the royalties due to him from his royalty interest. Since 1991 under the new division order statute, division orders are required to contain certain statutorily mandated provisions. However, if the division order does not contain those provisions, or contains provisions which are not appropriate under the statute, then the royalty and other interest owners are authorized to reject the division order and not sign it. Here, the statement requiring Rex to acknowledge responsibility for plugging the abandoned well is improper and not authorized by statute. Moreover, as discussed above, Rex does not have the responsibility to plug the abandoned well. Thus, Rex was within his rights to refuse to sign the division order. New Oil will thus have to revise the division order to be in compliance with statute and obtain Rex's signature for such revised division order. Once he approves, New Oil can then pay him his royalty payments under that division order. Until then, however, New Oil should continue to pay him his royalties under the existing division order which Rex must have signed.
3. New Oil should make the royalty payments for Gloria's 80-acre tract to Gloria after payment of Rex's share to Rex. Because Gloria obtained her 80-acre tract after the lease to New Oil was granted on all of Able's 200-acre tract, the rule of non-apportionment applies. This means that when Gloria obtained her tract which was subject to the lease, she also obtained a proportionate share of any delay rentals to be paid on the 200-acre tract and a possibility of reverter from the lease interest on the 80-acre tract but not any share of the royalties which may be payable on the lease if a producing well is drilled on Able's 120-acre portion of the 200-acre tract. In this case, however, the producing well was drilled on Gloria's tract, not Able's tract, and Able did not reserve any interest in the oil and gas in the 80-acre tract when he conveyed the tract to Gloria. Thus, while Gloria's tract is subject to royalties payable to Rex under his one-eighth royalty interest reservation, there are no royalties due to Able and Gloria is entitled to receive all royalty payments from New Oil (after payment of Rex's royalty payments) on the producing well on her tract.

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1. The railroad commission cannot require Able, Rex or New Oil to plug the abandoned well. The duty to plug an abandoned well is placed first on the operator in charge at the time the well was abandoned or ceased operation. In this case, that would be Joe's Oil Company. If the operator cannot be found, the commission can require the owner of a working interest of the lease, even if he was never an operator, to plug the well. If this person cannot be located, the commission will use money from its oil field clean-up fund to plug the well. Liability cannot be placed on the owner of the surface estate (Able), the royalty interest owner (Able & Rex), or a new operator who did not operate the unplugged well (New Oil).
2. New Oil is not entitled to withhold royalty payments to Rex because he refuses to sign this division order. If New Oil does not provide a proper division order or pay Rex, New Oil will be liable for interest and attorneys fees.
A lessee may refuse to make payments if the royalty interest owner refuses to sign a proper valid division order. A proper division order may only contain the following: (1) effective date of the D/O; (2) description of the property; (3) description of the different interests and fraction of payments to each interest holder; (4) a statement clarify distributions; and (5) a statement that lessee can withhold payments if title to land is in dispute.
New Oil has added an additional term, a term requiring Rex to acknowledge responsibility for plugging the well. Aside from the fact that Rex is not responsible, a division order cannot include additional terms or statements. If it does, like the one in this case, the royalty interest holder is entitled to refuse to sign, and New Oil cannot withhold payments based on this refusal. As previously mentioned, wrongful withholding can subject New Oil to liability for interest and attorney's fees.
Rex's right to a 1/8 royalty is not in dispute and therefore cannot be withheld as a result of the dispute between Able and Gloria regarding the remaining royalty interest.
3. The royalty payments on Gloria's tract should be made to Rex (for his 1/8 he reserved) and any remaining royalty interest belongs to Gloria.
When Able sold the land to Gloria, it was subject to the New Oil lease. Gloria was also aware of the 1/8 royalty interest retained by Rex. The deed, however, did not include any reservation of interest for Able.
When Able transferred the property, Gloria obtained the surface estate in fee simple and a possibility of reverter in the mineral estate. Her interest in the mineral estate is burdened by Rex's interest.
Under the rule of non-apportionment, when property is subdivided and sold after a lease is granted royalty payments are not apportioned. If a well is located on the sold tract, as it is in this case, the prior owner has no right to a royalty from this well unless he reserved such right in the deed.
Thus, because Able mad not reservation in the deed he has no interest (royalty or mineral) in the land transferred to Gloria and has no right to share in the royalties from a well on her property. Gloria would get any royalty interest, subject to Rex's reserved 1/8.

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1. The duty to plug and abandon the well belongs to the working interest owner of the mineral estate who conducted the operations and drilled the well. If this working interest owner cannot be located then the next person in line would be any other working interest owners at the time. Here, Joe's Oil was responsible for plugging and abandoning the well. However, Joe's is no longer in business and cannot be found. The Railroad Commission (RRC) cannot force the surface owner, the mineral owner or the nonparticipating royalty owner to pay for the costs of properly plugging the well. Nor can the State require New Oil to properly plug the well because they are not responsible for the condition of the well and had no duty to plug it. Therefore, the state will pay for it. The state has a fund that is funded by drilling permit fees and other fees that is set aside specifically for this purpose--when a well is improperly abandoned and no one responsible for the improper abandonment can be located to be forced to pay.

2. In Texas, a working interest or leasehold interest owner is entitled to withhold payment of royalties if the royalty owner refuses to sign a standard division order, and may withhold such payments without owing interest to the royalty owner. However, where the division order includes items that are not included on a standard division order, the working interest owner has no right to withhold the payments and will owe the royalty owner interest for the amount withheld. Here, the acknowledgement of responsibility for plugging and abandoning the well is not a standard item in a division order. The standard items include clarification of proceeds, calculation of the interest, warranty of ownership in the percentage stated, amount payable, that there are no issues regarding title, etc. However, the provision inserted by New Oil is not a standard item and therefore, New Oil must pay Rex the amount withheld plus interest.

3. In Texas, under nonapportionment rule, any severance/conveyance made of the a part of the mineral tract after the lease is entered into is not entitled to a portion of the proceeds from production if the well is drilled on the nonsevered tract. That is, since Able owned the 200 acre tract and leased his entire interest in the lease to New Oil before conveying 80 acres out of this tract to Gloria, if the well had been drilled on Able's tract, Gloria would not be entitled to production from the well. Note that Gloria owns both the surface and the

minerals because Able did not reserve the minerals in his conveyance to Gloria. However, Gloria's mineral interest is subject to Rex's nonparticipating royalty interest. Also, Gloria took subject to the lease that Able had granted to New Oil and received a possibility of reverter in the mineral estate should that lease expire. Here, the well was produced on the tract was conveyed to Gloria, and therefore, Able would not be entitled to apportion the royalty unless the lease contained an entireties clause or they signed a community lease, or Able makes a fair and reasonable offer to pool under the mineral interest pooling act (MIPA) (assuming the field was discovered after March 8, 1961). Therefore, in the absence of any of these, Gloria is entitled to the royalty payment from New Oil. Able would not have a claim for the implied covenant to prevent drainage because that covenant only applies to separate leasehold tracts. He could make a claim for breach of implied covenant to further develop, but this is difficult to prove because must show likelihood that would be profitable (revenues exceed costs of drilling and production) and reasonably prudent operator would engage in such development.

The royalty payments should be distributed to Gloria and Rex in the accordance with the lease.

END OF EXAM