

Question 11 – February 2020 – Selected Answer 1

A) No the Texas RRC cannot properly require Beaty(B), Shipley (S), or NewCo to plug the abandoned well.

Under Texas law, the responsibility for plugging the well falls on the lessee who is a operator of the well. If it cannot be found, then on the non operator with a working interest on the property. Working interest is the right to explore, develop and produce oil and gas. If these two entities cannot be found, then the onus is on the Texas RRC's established oil clean up fund, to clear up the abandoned well. Royalty interest owners, mineral interest owners, lessors do not have a responsibility to plug oil wells and cannot be required to do so.

Here, Riley Inc was the operator of the well at the time it was abandoned. It has since dissolved, and its shareholder cannot be found. The next would be a non-operator with a working interest, which is non here. The royalty interest owner S, the lessee NewCo, mineral interest owners B and G cannot be required to plug the abandoned well. Alas, the responsibility of plugging thw well befalls on the Texas RRC to use the proceeds of the oil cleanup fund to be utilized.

Therefore, B, S and NewCo will not be required to plug the abandoned well, it will fall to Texas RRC to do so.

B) NewCo's responsibilities to Shipley is to pay royalties according to terms of the division order.

Under Texas law, a oil and gas company cannot add items to the standard division order, that require the royalty owners to adhere to additional responsibility. A division order sets out the interest of each royalty owner, the date, and the amount of royalty that each RIO is owed. An oil and gas company who wrongfully refuses to pay the royalties according to a division order that purports to add additional terms could be liable for the payment of the royalties along with any interest accrued and reasonable and necessary attorneys fees.

Here, the division order sets out that Shipley has to pay for the plugging of the well as an additional term which was not agreed upon. Further, as set out above, royalty interest owners do not have the responsibility to plug abandoned well. NewCo is wrongfully asking Shipley to sign off on his division order. Shipley is refusing to sign off on the division order and that is his right to do so. If NewCo continues to withhold payment from Shipley, it will be liable for not only the amount of royalties, but the interest accrued on those royalties, and with attorneys fees and costs.

Therefore, NewCo owes royalties to Shipley and those obligations do not change with his refusal to sign off on the division order.

C) NewCo should make the payment for the well located on Gavin's 80 acre tract to Gavin only.

Under Texas law, there is a rule of non-apportionment. It sets out that when the property is subdivided after the lease is already in place on the tract, the royalties are not apportioned but given to the royalty interest owner on whose property the well physically sits. Delay rentals however are apportioned.

Here, the oil and gas lease was entered into August 2008. The 80 acre tract was then sold to Gavin on September 2018. The rule of non-apportionment therefore applies. The royalty payments should be given to Gavin, as the well that is producing is located on his 80 acre tract, is physically located there. The royalty payments should not be apportioned but given all to Gavin. The delay rentals, if any would have been payable, would be apportioned according to both tracts.

NewCo should only give the royalty interest payment to Gavin.

Question 11 – February 2020 – Selected Answer 2

(A) The Texas Railroad Commission cannot require Beaty, Shipley or Newco to plug the abandoned well on Whiteacre. Under Texas Law, the following dictates the order in which parties are responsible for plugging an abandoned well: (1) The operator, who is in control of the well at the time that it is abandoned; (2) If the operator is not available to plug the well, then a parting who has a working interest must do so, generally a lessee; and if neither of the two exists, then the Railroad Commission must plug the well for safety environmental reasons. Furthermore, landowners and non-participating royalty interest (NPRI) holders are not responsible for plugging an abandoned well. Here, Riley Oil (ROI) is responsible for plugging the abandoned well. In 1966 Beaty signed an Oil and Gas lease with Riley Oil on Whiteacre and after production ended ROI abandoned Whiteacre, without properly plugging it. However, Riley its sole shareholder, cannot be located and cannot be charged with plugging the well until he is found. Based on the facts, there is also no person with a working interest that can be held responsible for plugging the abandoned well. There, the only responsible party left is the Railroad Commission who must plug the well for safety environmental reasons. Newco reported the improperly plugged well to the Railroad Commission, but Newco would not be liable to plug the abandoned well because it was not the operator of that particular well, nor did it have a working interest in the

well. Beaty, as a landowner would not be responsible for plugging the well because that is not her responsibility. Shipley, as a NPRI holder, is also not responsible for plugging the well.

(B) Newco still has the responsibility to pay royalties to Shipley, despite Shipley's refusal to sign the division order. Under Texas Law, a division order is a writing which outlines how and whom royalty payment should be made. A division order cannot contradict an underlying lease, alter the interest/responsibilities of partners or include terms prohibited by law. A party may refuse to sign a division order if it includes improper terms, and the party is still entitled to receive royalty payments. However, a party who refuses to sign a proper division order may have payments withheld from him and will not be entitled to the withheld payments at a later time. Here, Newco sent a division order to Shipley that included terms for Shipley to acknowledge responsibility for plugging the well, but this was an improper term that is prohibited and seeks to alter the responsibility of Shipley. As a NPRI holder, Shipley was not responsible to plug the well and may refuse to sign the division order because it includes such a term. Shipley became a NPRI holder when it Whiteacre to Beaty and reserved a 1/8 interest in any oil and gas and other minerals. Because Newco sent Shipley an improper division order, Newco is still entitled to make royalty payments of 1/8 to Shipley and must amend the division order to comply with the law.

(C) Royalty payments are owed to Shipley and Gavin. Under Texas Law, when land is subdivided and sold after the execution of an oil and gas lease, delay rentals are apportioned and royalty payments are due to the owner of the tract of land upon which the producing well sits. Here, Beaty granted an oil and gas lease to Newco in August 2008, subsequently, Beaty sold an 80-acre tract out of her 200-acre tract of land to Gavin. In this conveyance, Beaty contained an exception that included Shipley's 1/8 royalty interest. In December of 2018, Newco drilled a producing oil well on Gavin's 80-acre tract. Because the well sits on Gavin's tract, Gavin is entitled to royalty payments, however such payments will be subject to what's remaining after Shipley is paid his 1/8 royalty interest. Therefore, Newco should make royalty payments to Shipley and Gavin.