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## **What You (Yes, You) Need to Know to Drill and Complete an Oil or Gas Well in Texas**

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# **What You (Yes, You) Need to Know to Drill and Complete an Oil or Gas Well in Texas**

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## **I. INTRODUCTION**

Drilling and completing an oil or gas well in Texas seems like a simple prospect: obtain an oil and gas lease, obtain a permit from the Railroad Commission of Texas (“RRC”), and drill the well. Depending on the specifics of your situation, however, it can be much more complicated. The RRC has a robust history of regulating oil and gas, and many of the applicable rules were established for traditional vertical drilling and production. With the advent of horizontal drilling, these vertical concepts have been adapted to accommodate modern development.

## **II. HISTORY & JURISDICTION**

The RRC was established in 1891 under a constitutional and legislative mandate to regulate the railroads in Texas as common carriers.<sup>2</sup> The RRC is the oldest regulatory agency in the State.<sup>3</sup> It no longer regulates railroads,<sup>4</sup> but now has jurisdiction over the oil and natural gas industry, natural gas and hazardous liquids pipelines, alternative fuels, and coal and uranium surface mining.

The agency began the transition to energy regulation in 1917 when the Texas Legislature adopted the Pipeline Petroleum Law.<sup>5</sup> Like railroads, pipelines were declared to be common carriers and placed under the RRC’s jurisdiction.<sup>6</sup> The transition continued when, in 1919, the Legislature passed the Oil and Gas Conservation Law which granted the RRC jurisdiction over production of oil and gas.<sup>7</sup> The Gas Utilities Act of 1920 granted the RRC regulatory and rate authority over production, transportation, and distribution of natural gas in Texas.<sup>8</sup> And the Texas Surface Mining and Reclamation Act of 1975 authorized the RRC to regulate the exploration and surface mining of coal, lignite, and uranium.<sup>9</sup> Finally, regulation of compressed natural gas (CNG) was added to the RRC’s responsibilities in 1983.<sup>10</sup>

Regarding jurisdiction over oil and gas exploration, production, and transportation, the RRC has primary jurisdiction over all:

- 1) Common carrier pipelines;
- 2) Oil and gas wells;
- 3) Persons owning or operating pipelines in Texas; and
- 4) Persons owning or engaged in drilling or operating oil or gas wells in Texas.<sup>11</sup>

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<sup>2</sup> *About Us*, R. R. COMM’N OF TEX. (March 20, 2023), <https://www.rrc.texas.gov/about-us/>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Tex. S.B. 68, 35<sup>th</sup> Leg., R.S. (1917).

<sup>6</sup> *RRC History*, R. R. COMM’N OF TEX. (March 20, 2023), <https://www.rrc.texas.gov/about-us/rrc-history/>.

<sup>7</sup> Tex. S.B. 350, 36<sup>th</sup> Leg., R.S. (1919).

<sup>8</sup> Tex. H.B. 11, 36<sup>th</sup> Leg., 3<sup>rd</sup> C.S. (1920).

<sup>9</sup> Tex. S.B. 55, 64<sup>th</sup> Leg., R.S. (1975).

<sup>10</sup> Tex. S.B. 617, 68<sup>th</sup> Leg., R.S. (1983).

<sup>11</sup> TEX. NAT. RES. CODE § 81.051.

The legislature has charged the RRC to “adopt all necessary rules for governing and regulating persons and their operations under [the RRC’s] jurisdiction...”<sup>12</sup>

The RRC is composed of three, statewide elected officials called Commissioners.<sup>13</sup> One Commissioner position is up for election every two years.<sup>14</sup> Once elected, the Commissioner serves a six-year term.<sup>15</sup> The three Commissioners elect a Chairman.<sup>16</sup> The current Chairman is Christi Craddick (re-elected as Commissioner in 2018; re-elected as Chairman in 2022). The two other Commissioners are Wayne Christian (re-elected in 2022) and Jim Wright (elected in 2020).

### III. DRILLING AN OIL OR GAS WELL

An operator planning to drill, deepen, plug-back, or re-enter a well must first ensure they have an active organization report (Form P-5)<sup>17</sup> and sufficient financial security on file with the RRC.<sup>18</sup> The operator must also comply with the following requirements:

#### A. Standard Procedure

The following is information generally applicable to operators planning to drill, deepen, plug-back, or re-enter a well. (Information specific to horizontal wells will be discussed in Section B of this paper.) However, there may be unique challenges applicable to individual oil or gas wells. It is recommended that the operator consult with someone with RRC regulatory experience before drilling a well in Texas.

#### 1. Do you have a good faith claim?

Before drilling, deepening, plugging-back, or re-entering a well, an operator must have a good faith claim to develop the property. A good faith claim is defined as “[a] factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.”<sup>19</sup> The burden to demonstrate a good faith claim is less than that required to prove title or a right of possession<sup>20</sup> because the RRC does not have jurisdiction to adjudicate those issues.<sup>21</sup>

The practice of determining whether an operator has a good faith claim originates from a 1943 Texas Supreme Court decision, *Magnolia Petroleum Company v. Railroad Commission of*

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<sup>12</sup> *Id.*, at § 81.052.

<sup>13</sup> *Commissioners*, R. R. COMM’N OF TEX. (March 20, 2023), <https://www.rrc.texas.gov/about-us/commissioners/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> TEX. NAT. RES. CODE § 81.01002.

<sup>17</sup> 16 TEX. ADMIN. CODE § 3.1.

<sup>18</sup> 16 TEX. ADMIN. CODE § 3.78.

<sup>19</sup> 16 TEX. ADMIN. CODE § 3.15(a)(5).

<sup>20</sup> *See, e.g.*, Docket Nos. OG-22-00008685 and OG-22-00008686, *Good Faith Claim Review at the Request of Office of General Counsel-Legal Enforcement Section of a Dual Signature Form P-4 Transfer from Hitex Resources, LP (Operator No. 390521) to Big Star Exploration (Operator No. 070442) for Various Leases, Palo Pinto County, Texas; District 7B*.

<sup>21</sup> *Magnolia Petroleum Co. v. R. R. Comm’n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

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