

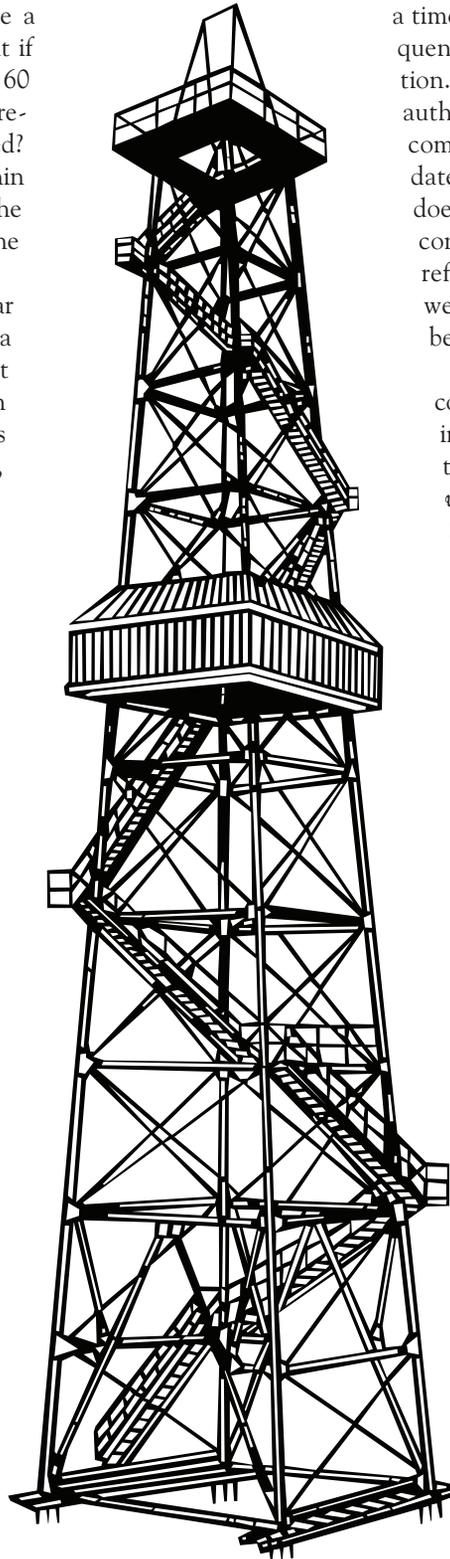
Completely Complete:

Determining When a Well can be Considered Completed

By Conrad Hester

Determining whether an oil and gas lease expired as to certain acreage can be a tricky proposition. For instance, what if the lease requires that the lessee drill within 60 days from the completion of the last well to preserve the lease, but “completion” is not defined? Is the lease in effect if the lessee drilled within 60 days from reaching total depth? Or from the date of first production? What if, perish the thought, the lessee drilled a dry hole?

Although operationally it may be clear when the drilling of a well is completed, from a legal perspective completion is a more difficult concept to define. The completion date can have substantial ramifications for continuous development and retained acreage clauses, so the ability to determine completion as precisely as possible is important. A review of case law from the highly active dockets in Texas can help even the experienced landman better understand the term by examining different well events. Of course, the lease at issue should always be examined closely in case it defines the term differently.



Looking at the different well events one at a time, the first event — production — is frequently considered to align with well completion. However, although there is some limited authority to the contrary, under the law, the completion date is not necessarily the same date as first production. In fact, completion does not require production at all. Rather, completion has a broader meaning that refers to finishing the required work on the well, regardless of whether the well actually becomes a producer.

A well that is capable of producing can be completed, even if it is not actually producing, so long as it is “prepared for production.” In 2011, in the case of *Exxon Corp. v. Emerald Oil & Gas Co. L.C.*, the Texas Supreme Court held that “completion” occurs when a hole is “bored in the ground, and if oil or gas in paying quantities is encountered, the casing must be perforated or otherwise prepared for production.” Procedures such as acidizing and fracking most certainly prepare the well for production, regardless of whether hydrocarbons flow at that time.

If production is not required, is merely drilling to a predetermined depth enough to complete a well? It depends on whether the well is a dry hole. Where hydrocarbons are encountered in commercial quantities, merely reaching total depth is not enough; completion requires acts in addition to drilling. But if no hydrocarbons are found, some Texas cases state that reaching total depth may be all that is required for the well to be completed. However, a contentious issue could arise if the particular dry hole was actually capable of producing oil or gas but was abandoned because production or marketing was not profitable.

If a well is a true dry hole, though, other cases hold that just reaching total depth is still not enough to complete the

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well, looking to abandonment as evidencing completion. In the case of *Barrett v. Ferrell*, a 1977 Tyler Court of Civil Appeals case, the operator drilled the well and then plugged and abandoned it as a dry hole. Although the operator had not installed completion equipment on the dry hole, the court found that this was unnecessary and that he had still achieved completion by plugging and abandoning.

Although abandonment constitutes dry hole completion, the next question is what action is considered to be abandonment? Some cases clearly state that plugging constitutes abandonment. For instance, in *Whelan v. Shell Oil Co.*, a 1946 Texarkana Court of Civil Appeals case, the operator plugged the wells and removed the tanks, derricks, well supplies, equipment and pipelines from the premises. The court stated that the operator had “unquestionably” abandoned the wells by the date such actions had concluded. While this may seem to make it clear that plugging constitutes abandonment, it does not conclusively shut the door on other acts — such as desertion — that might establish abandonment.

As the phrase “plugged and abandoned” would indicate, abandonment is often juxtaposed with plugging, signifying that abandonment means something different. Defined as “the relinquishment of the possession of a thing by the owner with the intention of terminating his ownership, but without vesting it in anyone else,” abandonment connotes desertion. However, case law shows that simply not using a well does

not constitute abandonment, suggesting that actual desertion plus the intent to desert equals abandonment.

In summary, based on the case law, when hydrocarbons in economic amounts are encountered, completion occurs after reaching total depth. Production does not need to be obtained, but the well must be prepared for production. In that case, the date the well is fracked or perforated would likely qualify as the completion date. Wells can be completed as dry holes. In those situations, plugging or possibly even desertion or reaching total depth would constitute the date of completion. 🚧

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Conrad Hester is a trial associate in the Fort Worth office of Thompson & Knight LLP where he focuses his practice on oil, gas and energy law. His oil and gas expertise includes contract disputes, royalty litigation, lease termination suits, trespass to try title claims, surface access and damages disputes, and drafting and negotiating agreements regarding acquisition, exploration and production, and operations. He also represents energy clients in a variety of bankruptcy and commercial litigation matters.