



RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL & GAS DOCKET 03-0283751

**APPLICATION OF NEWQUEST PROPERTIES, L.L.C., FOR
A QUALIFIED SUBDIVISION PURSUANT TO
S.W.R. 76 FOR A 20.4318-ACRE TRACT IN
FORT BEND COUNTY, TEXAS.**

HEARD BY: Laura E. Miles-Valdez - Legal Examiner
Richard Atkins, P.E. - Technical Examiner

REVIEWED BY: Paul Dubois - Technical Examiner

APPEARANCES:

FOR APPLICANT:

Brandon Barchus, Attorney
Jeff Hayes, Vice President

REPRESENTING:

Newquest Properties, L.L.C.

FOR PROTESTANTS:

Paul Tough, Attorney
Scott Ramsey, Land Manager
Tom Duncan, Geology Manager
Rick Johnston, Consulting Engineer

REPRESENTING:

Finley Resources, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:	July 11, 2013
NOTICE OF HEARING:	August 20, 2013
HEARING DATE :	December 3, 2013
PFD CIRCULATION DATE:	July 18, 2014

STATEMENT OF THE CASE

Newquest Properties, L.L.C. ("Newquest" or "Applicant"), seeks approval of a qualified subdivision pursuant to Statewide Rule 76 for a 20.4318 tract of land in Fort Bend County, Texas. On December 3, 2013, the Commission held a hearing to consider evidence offered by Newquest in support of its application. Also appearing and presenting evidence is Protestant, Finley Resources, Inc. and Finley Production Company (collectively, "Finley"), who operates the E.E. Denny Well No. 1, located within the vicinity of the proposed qualified subdivision. Finley is represented by Mr. Paul Tough, attorney.

On November 13, 2013, Protestant Finley filed a Motion to Dismiss which alleged that the parties entered into a voluntary agreement establishing a different 4.0 acre operations site for a portion of the tract of land that includes the qualified subdivision proposed by NewQuest and therefore the Commission lacks jurisdiction to hear Newquest's application. Finley's Motion argues that Newquest's application is contrary to the parties' agreement and if Newquest's application is granted, will unreasonably restrict future mineral development.

DISCUSSION OF THE EVIDENCE

Newquest Properties, L.L.C.

Newquest Energy seeks approval of a qualified subdivision pursuant to Statewide Rule 76 for a 20.4318 tract of land in Fort Bend County. Fort Bend County is a county with a population in excess of 400,000. Newquest testified that it has authority to represent the surface owner, Riddle Holdings, Ltd., of the 20.4318 acres contained in the proposed qualified subdivision at issue. Newquest's application submitted to the Commission on July 11, 2013, contained the names and addresses of all owners of possessory mineral interest and all mineral lessors of land contained within the proposed qualified subdivision.

Newquest did not present evidence that the proposed qualified subdivision has been subdivided in a manner authorized by law by the surface owner for residential, commercial, or industrial use.¹ While Newquest submitted a proposed plat showing that the tract of land it intends to have subdivided by the surface owners for commercial use, it did not show the proposed qualified subdivision has been subdivided in "a manner authorized by law." The plat accompanying Newquest's application states: "Preliminary: Not for Recordation," indicting the plat is a preliminary proposal, but does not demonstrate that the proposed qualified subdivision has been, in fact, subdivided in a manner authorized by law. Further, no metes and bounds description of the proposed 20.4318 acre qualified subdivision were submitted by Newquest.

There is extensive mineral development in a 2 ½ mile radius of the proposed qualified subdivision. Specifically, there are 28 fields within a 2 ½ miles radius. The known Railroad

¹ See SWR 76 (a)(4)(B).

Commission designated fields within the 2 ½ mile radius of review include: Fulshear (7900), Fulshear (Clodine, Upper 7100), Fulshear (Hillebrenner), Fulshear (Watson), Fulshear IV-F), Fulshear (IV-A), Fulshear (Feeney Sand), Fulshear (Murphy 2B 7200), Fulshear (IV-C), Fulshear (III-C), Fulshear (III-D), Fulshear (III-B), Fulshear (Wilcox 11,000), Fulshear (4350), Tomball Wilcox 8400, Katy (Combined), Katy (First Wilcox), Katy (I-A), Katy (I-B), Katy (II-AL), Katy (II-B), Katy (II-C), Katy (III-A), Katy (IV), Katy (V), Katy (II-A U), Liberty South, and the Katy (Wilcox Consolidated) Fields. Within the 2 ½ miles radius of the proposed qualified subdivision there are 113 wells, which include permitted locations, existing wells, dry holes, and plugged wellbores. The Commission designated oil and/or gas field underlying the proposed qualified subdivision are the Katy, S. (First Wilcox). Newquest did not present evidence indicating the total depths for each well located within 2 ½ miles of the proposed location, as required by Statewide Rule 76(c)(5), but they did state the deepest well within the 2 ½ mile radius was drilled to a total depth of 13,500 feet.

There is one gas well on the proposed qualified subdivision, the E.E. Denny Well No. 1, operated by the Protestant Finley Resources. The E.E. Denny Well No. 1 was vertically drilled to a total depth of 11,305 feet. The E.E. Denny Well is located on the northern portion of Newquest's proposed operations site.² The current drill site for the E.E. Denny Well No. 1 is 4.006 acres.

Newquest's application proposes one 2.7629-acre operations site for the 20.4318 acre tract of land and seeks to shrink the E.E. Denny Well No. 1's current 4.006-acre drill site/operations site. At the hearing, Newquest's Vice President of Brokerage Services Development, Mr. Hayes initially stated that the proposed operations site consists of 4.63 acres - comprised of two parcels of land, designated as parcels "D" and "E" on the Original Drill Site Map. *See* Newquest Exhibit 5 (Attached as Exhibit I.) However, Mr. Hayes' later testimony was unclear as to how much and what acreage Newquest intended to have designated as the qualified subdivision's operations site. The amount of acreage in Newquest's proposed operations site varied and included acreage amounts of: 4.63 acres³; 3.287⁴ acres (which included tract D, Tract E but did not included the access drive located between the two tracts); and 3.45⁵ acres (which included tract D and tract E with the access drive located between the two tracts). The map sponsored by Mr. Hayes indicates the proposed operations site and does not include a .271 acre "spite strip" which runs along the frontage of Spring Green Road, located to the east of the proposed operations site. (Attached is Exhibit II). The .271 acre spite strip is currently included in Finley's drill site, but would not be included in the Newquest proposed qualified subdivision operations site.

² 16 Tex. Admin. Code §3.76(a)(2) defines "operations site" as a "surface area. . . that an owner of a possessory mineral interest may use to explore for and produce minerals, which is located in whole or in part within a qualified subdivision, and designated on the subdivision." An "operations site" is commonly referred to as a "drill site" outside the context of SWR 76.

³ Page 59, ln. 5

⁴ Pg. 63, ln. 3;

⁵ Pg. 64; lns. 3-6.

Newquest intends to use the northern portion of the proposed operations site also as a parking lot to comply with the City of Katy's minimum requirements for parking necessary to accommodate the planned Kroger's grocery store. Newquest's proposed operations site was designed to accommodate the City of Katy's parking requirements and not in contemplation of future mineral development. Despite the various acreage amounts presented during the hearing, Newquest's counsel stated that Newquest is willing to concede to Finley any additional drill site acreage needed by Finley.⁶

Mr. Hayes was unqualified to testify as to whether the proposed operations site would accommodate the operation of the currently existing gas well. He also was not qualified to testify as to whether the 2.7-acre site would be able to accommodate future development and exploration of the mineral estate. Mr. Hayes's only experience dealing with oil and gas operations is based on his experiences involving the current docket.

The existing pipeline easements are located southwesterly adjacent to, but off site of, the proposed designated operations site. Newquest's proposed pipeline easements do not currently provide a pipeline easement across the proposed access road which separates parcels D and E of the proposed operations site. Newquest indicated it could provide pipeline easements to Finley if Finley requested such an easement.

Newquest presented no testimony regarding mineral reserve estimates for their proposed qualified subdivision, nor did they testify demonstrating how the proposed application would ensure that the mineral resources of the subdivision would be fully and effectively developed. Further, Newquest presented no evidence, technical data, or any other type of studies regarding oil and gas production, volumetrics, seismic data, or geological data of the area.

PROTESTANT FINLEY RESOURCES, INC.

Finley protests Newquest's proposed qualified subdivision because Newquest's proposed operations site shrinks the only drill site for a 215.7-acre tract which has a 4.006 acre drillsite to 2.7629 acres, as indicated on Newquest's application. (See attached Exhibit III, a copy of Finley's Exhibit 18). Finley also contends because the predecessor-in-interest for each side entered into a voluntary agreement which established the 4.006-acre drill site, the Commission does not have jurisdiction to hear Newquest's SWR 76.

On November 13, 2013, Protestant Finley, filed a Motion to Dismiss alleging that the parties entered into a voluntary agreement that established an 4.0 acre operations site for a 215.7-acre tract. (Finley is the operator of the lease beneath which the proposed qualified subdivision is located.) The 215.7 acre leased tract subject to the parties' voluntary agreement includes the 20.4318 acres proposed by Newquest to form the subject qualified subdivision; however, Newquest's proposed

⁶ See Pg. 102, ln.18-22.

qualified subdivision application only designates a 2.7 acre drill site. Finley asserts that the Commission does not have jurisdiction to hear Newquest's SWR 76 application because the parties' agreement imposes restrictive covenants which run with the land at issue and the Commission's "consideration of the Newquest Application impairs the obligation of contracts."

Finley currently operates the E.E. Denny Well No. 1, which is the only well on two leases totaling 215 acres, which is also part of a 320 acre gas unit. This well operates off the 4.006 acre tract, which Newquest proposes to cut down to the 2.7 acre operations site for its qualified subdivision. Mr. Ramsey, Finley's land manager, testified in opposition to Newquest's application. He testified Newquest's application would negatively affect Finley's rights to develop the minerals under the proposed qualified subdivision, and would also affect the rights of the mineral interest owners of the 215 acre tract and the 320 acre gas unit. The 4.006 acre drill site operated by Finley is the only site for the 215 acre leased tract (comprised of two leases) and the 320 acre gas unit. Mr. Ramsey also stated Finley has recently filed a drilling permit application seeking Commission authority to drill an additional well on the 215 acre leased tract.

Mr. Tom Duncan, a geologist and the exploration and development manager for Finley testified as to cumulative production for the existing wells in and around the gas unit, as well as historical production data for the E.E. Denny Well No. 1. Finley proposes to drill its additional well and target the Wilcox formation, which has had substantial recovery in the nearby area of the proposed qualified subdivision. Finley's targeted Wilcox formation has a fault-separated zone where wells producing from the targeted Wilcox zone have produced from 2.2 to 6.5 bcf gas and 36,000 tp 60,000 bbl oil. Finley's expert testified that an additional well is necessary to access the fault-separated reserves under the gas unit. Mr. Duncan concluded his testimony stating that if the application is granted for Newquest's proposed qualified subdivision, then Finley's development would be limited and it would not allow them to fully develop the mineral rights.

Mr. Rick Johnston, a petroleum engineer, testified for Finley and stated that in his over thirty years of petroleum engineering experience, an operations site of 4-acres or more is needed to accommodate a well targeting a formation of 8,000 feet or deeper, such as the Wilcox formation.⁷ Mr. Johnston stated that Finley recently filed a drilling permit for a second well on the E.E. Denny Lease, which would be relegated to the Newquest proposed operations site. He testified as to logistical problems with Newquest's proposed operations site. Specifically, the proposed 2.7 acre operations site would not allow Finley to set up a drilling rig necessary for a second Wilcox well. To maintain the 150-foot safety radius required for the operation of a 1500-horsepower drilling rig, Finley would not be able drill a second well on its leased acreage based on Newquest's proposed operations site. Further, as proposed, the operations site's access road south of the site would not allow access to any drilling rig set up for a second well on the Lease. Mr. Johnston detailed the bare-minimum dimensions that would be needed to operate the rig and the associated equipment. Specifically, he stated that a minimum of 215 feet by 325 feet would be required to accommodate the drilling rig footprint. There would also need to be more space on the operations site to

⁷ Vol. I, pg. 185-86.

accommodate the entry and exiting of 18-wheel trucks to off-load pipe, the rig catwalk, the drilling floor, the draw works, the mud system, and the mud tanks, as well as the diesel generators to power the drilling operations. The operations site would also need room for other required equipment (including the derrick and fracing equipment), and ancillary structures such as the site office, the driller trailer, the mud logger trailer, and crew trailers, and other structures necessary for the drilling and operation of Finley's proposed directional well.

Finley proposes to recomplete and rework the E.E. Denny Well No. 1, which would target the Katy (3600) Field. In order to rework the Denny Well No. 1, a medium-sized drilling rig with a derrick fall safety radius of 110 feet would be required. The 110-foot safety radius' location on Newquest's proposed operations site would encroach on the area which Newquest stated is required by the City to be dedicated for additional parking.⁸ Based on a review of the exhibits presented by Newquest, Mr. Johnston testified that there were no access roads to the existing Denny Well No. 1, nor are there pipeline easements for the existing pipeline or any new potential pipelines. Further, the proposed operations site will not allow Finley to drill the proposed Denny Well No. 2, and will prevent the minerals underneath the tract from being fully and effectively exploited. The Newquest proposed operations site does not provide sufficient acreage to explore for minerals, produce minerals, or for future mineral development under the E.E. Denny Lease. Mr. Johnston explained that as proposed, the Newquest application would not allow for the future development of minerals, due to the limited space necessary for the drilling equipment, the placement of diesel generators, the lack of road access, and the lack of pipeline access.

EXAMINERS' OPINION

The examiners believe that based on the evidence presented Newquest's application for a qualified subdivision does not satisfy the requirements of Statewide Rule 76. Newquest's proposed operations site, lack of easements, and lack access roads fail to demonstrate that a Commission designated qualified subdivision will allow for the future mineral development of the entire 20.4318 acre tract. Accordingly, the examiners recommend that the proposed qualified subdivision be denied.

As a preliminary matter, Newquest asked that the hearings examiners take official notice of Railroad Commission production database for the E.E. Denny Well No. 1, (API # 093774). While the examiners have taken official notice of the production records, it was noted during the hearing that production on the E.E. Denny Well is irrelevant to the burden imposed on the Applicant by Rule 76.

An application for a qualified subdivision pursuant to SWR 76, requires that the applicant demonstrate specific criteria have been or will be met. Specifically, the application must evidence that the proposed qualified subdivision is a tract of land (not more than 640 acres) which has been

⁸ See Finley Exh. 18.

subdivided in a manner authorized by law; and the proposed qualified subdivision contains an operations site of 2 or more acres for each 80-acres within the tract of land, and which provides for roads and pipeline easements to allow use of the operations site. After consideration of the evidence presented by the applicant, the Commission must ensure that the mineral resources of the subdivision will be fully and effectively developed.

Newquest's proposed qualified subdivision contained numerous barriers to meeting the requirements of SWR 76, as well as meeting the stated statutory purpose of a qualified subdivision designation - that there be "full and efficient utilization and development of all the land " while ensuring that "the mineral resources of this state be fully and effectively exploited and that all land in this state be maintained and utilized to its fullest and most efficient use."⁹ After a review of the application and the evidence presented, the proposed qualified subdivision will not ensure that the mineral resources of the subdivision will be fully and effectively developed.

Newquest's lone witness in support of its application was Newquest's Vice President of Brokerage Services Development, Mr. Hayes. While Mr. Hayes was able to testify in support of certain portions of the application, he failed to demonstrate how the application would ensure that the mineral resources of the subdivision may be fully and effectively developed. Mr. Hayes was unqualified to testify as to whether the proposed 2.7 acre operations site would accommodate the operation of the currently existing gas well, or future development of the mineral estate. His only experience dealing with any oil and gas operations is based on his experience with the current docket.

Newquest did not present evidence that the proposed qualified subdivision has been subdivided in a manner authorized by law by the surface owner for residential, commercial, or industrial use as required under SWR 76 (a)(4)(B). No metes and bounds description of the proposed 20.4318 acre qualified subdivision was submitted. No plat had been filed with the County Clerk. The plat accompanying Newquest's application states: "Preliminary: Not for Recordation" indicating that the plat is a preliminary proposal and not an official filing or document.

Further, the proposed qualified subdivision fails to provide for road and pipeline easements to allow use of the operations site. Testimony indicated that the existing pipeline easements are located southwesterly adjacent to, but off site of, the proposed designated operations site. Nonetheless, the proposed pipeline easements do not provide a pipeline easement across the proposed access road which separates portions of the proposed operations site.

In protest of the application, Finley sufficiently demonstrated how Newquest's application and proposed qualified subdivision would fail to ensure (presently and in the future) that the mineral resources of the subdivision will be fully and effectively developed. Finley currently operates the E.E. Denny Well No. 1, which is the only well on the 215 acre leased tract, which is also part of a 320acre gas unit. This well currently operates off a 4.006 acre tract, which Newquest proposes to

⁹ Tex. Res. Code §92.001.

cut down to the 2.7 acre operations site for its qualified subdivision. (*see* attached Exhibit III, a copy of Finley's Exhibit 18.) Finley has filed a drilling permit application with the Commission, seeking to drill a second well on the 320-acre unit. This second well would operate from the 4.006 acre designated operations site currently used to operate the Denny Well No. 1.

Finley's experts, a geologist and petroleum engineer, testified as to estimated reserves under the site and the practical aspects of operating and exploring for minerals held under the proposed qualified subdivision. Specifically, the targeted Wilcox formation has a fault-separated zone where wells producing from the targeted Wilcox zone have produced from 2.2 to 6.5 bcf gas and 36,000 to 60,000 bbl oil. Finley's expert testified that an additional well is necessary to access the fault-separated reserves in the gas unit. Finley's petroleum engineer testified as to logistical problems with Newquest's proposed operations site, that the proposed 2.7 acre operations site would not accommodate a drilling rig necessary for a second Wilcox well. The proposed 2.7 acres would not allow for sufficient space to re-work the current Denny Well No. 1, there are no access roads to the existing Denny Well No. 1, nor are there pipeline easements for the existing pipeline or any new potential new pipelines. Based on the lack of evidence presented by Newquest, as well as Finley's evidence, it is apparent that the proposed operations site will not allow for the reworking and operation of the currently-existing gas well, or future development of the mineral estate.

Finally, Finley's Motion to Dismiss should be denied. Finley argues that a contract entered into by the parties' predecessors-in-interest regarding the designation of the operations site controls and therefore, the Commission should not have jurisdiction over the issue. However, the application of Newquest is squarely within the jurisdiction of the Commission pursuant to SWR 76. Nothing argued within the motion sufficiently challenges the Commission's jurisdiction over the application. Contractual matters entered into by the parties (or their predecessors-in-interest) are completely outside of the jurisdiction of the Commission.

Based on the record in this case, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At least ten days' notice was given to the applicant and owners of possessory mineral interests and mineral lessors in the proposed qualified subdivision.
2. Newquest Properties, L.L.C.'s ("Newquest" or "Applicant") application is protested by Finley Resources, Inc. and Finley Production Company (collectively, "Finley"), who operates the E.E. Denny Well No. 1, located within the proposed qualified subdivision.
3. Riddle Holdings, Inc. ("Riddle"), owns all of the surface acreage in the proposed qualified subdivision. Newquest has authority to represent all of the surface owners in the proposed qualified subdivision in this docket.

4. The proposed qualified subdivision is located in Fort Bend County, a county having a population in excess of 400,000 people.
5. Newquest did not present evidence that the proposed qualified subdivision has been subdivided in a manner authorized by law by the surface owner for residential, commercial, or industrial use. No plat has been filed with the County Clerk. The plat accompanying Newquest's application states: "Preliminary: Not for Recordation," and is attached as Exhibit I.
6. Newquest's Statewide Rule 76 qualified subdivision application proposes one operation site of 2.7 acres. The 2.7 acre operations site has limited access to a proposed public road. The proposed 2.7-acre operations site does not allow the possessory mineral interest owners to explore for and produce minerals in the future. The proposed operations site is located within the proposed qualified subdivision and is designated as parcel "D" on the plat attached as Exhibit I. No metes and bounds description of the proposed 20.4318 acre qualified subdivision were submitted by Newquest.
7. Newquest's proposed qualified subdivision plat does not contain sufficient provision for road and pipeline easements, attached as Exhibit I. The proposed qualified subdivision plat provides limited ingress/egress to the operations site and does not provide access to pipeline easements.
8. The proposed qualified subdivision operations site does not provide adequate provision for road and pipeline easements to allow use of the operations site. The proposed operations site does not provide accommodation of current exploration and production of the minerals under the Lease, or for future mineral development under the proposed qualified subdivision.
9. The proposed operations site will not allow Finley to drill the proposed Denny Well No. 2, and will prevent the minerals underneath the Lease from being fully and effectively exploited.
10. In the 2.5 mile area of review around the proposed qualified subdivision there has been developement in the Lake Creek (Wilcox Consolidated), Pinehurst (Wilcox Consolidated), Pinehurst (Middle Wilcox) and Pinehurst (Upper Wilcox) Fields along a well-defined trend, which does not include the proposed qualified subdivision. There are 37 wells active within the 2.5 mile are of review. The E.E. Denny Well No. 1 is the only known well on the proposed qualified subdivision.
11. The proposed operations site and pipeline and road access via a public road are not adequate to ensure that the mineral resources under the proposed qualified subdivision may be fully and effectively exploited.

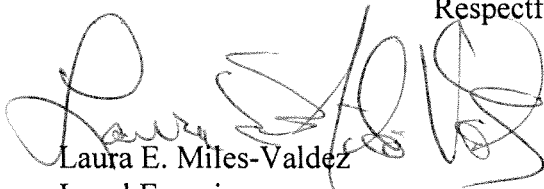
CONCLUSIONS OF LAW


1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. The application of Newquest Properties, L.L.C. for Commission approval of its proposed qualified subdivision as presented does not meet the requirements of Texas Natural Resources Code, Chapter 92, and Statewide Rule 76 [16 TEX. ADMIN. CODE §3.76] because it does not ensure that the mineral resources of the subdivision may be fully and effectively developed.

RECOMMENDATION

The examiners recommend that the application of Newquest Properties, L.L.C. for approval of a qualified subdivision containing a 20.4318-acre tract in Fort Bend County, Texas, as indicated by the plat attached hereto and incorporated herein for all purposes, is hereby **DENIED** and the Motion to Dismiss filed by Finley Resources, Inc. is **DENIED**.

Respectfully submitted,


Laura E. Miles-Valdez
Legal Examiner


Paul Dubois
Technical Examiner