RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0282996

APPLICATION OF AMMONITE OIL AND GAS, INC. PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE ENERGEN ELMER 33-67 WELL, TWO GEORGES (BONE SPRING) FIELD, WARD COUNTY, TEXAS AND THE ENERGEN KATH "A" 3-11 WELL, TWO GEORGES (BONE SPRING) FIELD, REEVES COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:	**REPRESENTING:**
Rob Hargrove, Atty.	Ammonite Oil & Gas, Inc.
William Osborne	
Donna Chandler, Consultant	
FOR PROTESTANT:	**PROTESTANT:**
Brian Sullivan, Atty.	Energen Resources Corp.
Michael Choate, Atty.	
Also Appearing in Protest of the Application:	
John Soule, Atty.	Devon Energy

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE APPLICATION FILED:	June 30, 2013
DATE OF NOTICE OF HEARING:	July 8, 2013
DATE OF HEARING:	March 25, 2015
DATE TRANSCRIPT RECEIVED:	April 8, 2015
DATE RECORD CLOSED:	May 8, 2015
PFD CIRCULATED:	January 20, 2016

HEARD BY:

Hearings Examiner:	Laura Miles-Valdez
Technical Examiner:	Karl Caldwell

STATEMENT OF THE CASE

This application[1] is brought by Ammonite Oil & Gas Corporation ("Ammonite") pursuant to the Mineral Interest Pooling Act, ("MIPA"), Chapter 102, Texas Natural Resources Code. Ammonite requests that the Commission order compulsory pooling of its mineral interests in two Energen Resources Corporation ("Energen") wells—the Energen Elmer 33-67 Well, (herein referred to as the "Elmer well"), Two Georges (Bone Spring) Field, Ward County, Texas and the Kath "A" 3-11 Well, (herein referred to as the "Kath well"), Two Georges (Bone Spring) Field, Reeves County, Texas. Ammonite is the agent for the State of Texas, which owns the fee under the riverbed of the Pecos River located in both Reeves and Ward Counties.[2]

Ammonite requests that two (2) acres of the State of Texas' Pecos River riverbed interests neighboring the Elmer well be pooled with the Elmer well for a pooled unit of 152 acres. Ammonite also requests that 4.8 acres of State of Texas' Pecos riverbed interests neighboring the Kath well be pooled with the 320-acre Kath well for a pooled unit of 324.8 acres. Ammonite contends that its application for pooling authority under the MIPA meets all the statutory requirements– including having an ownership interest in the proposed tracts to be pooled into the Energen tracts, a reasonable offer to voluntary pool; proof that forced pooling of the unleased acreage is necessary to avoid the drilling of unnecessary wells, protect correlative rights, or prevent waste; and that the Energen wells and the subject Pecos River riverbed acreage "embrace a common reservoir."

Protestant Energen asserts that Ammonite's application failed to meet its statutory burden in demonstrating that: (1.) Ammonite has an ownership interest in the proposed tracts to be pooled into the Energen tracts, as required pursuant to MIPA §102.012; (2.) that Ammonite failed to make a reasonable offer to voluntary pool the tracts; (3.) that Ammonite failed to provide proof that forced pooling of the unleased acreage is necessary to avoid the drilling of unnecessary wells, protect correlative rights, or prevent waste; and (4.) that Ammonite did not demonstrate that the Energen wells and subject Pecos River riverbed acreage "embrace a common reservoir." Energen asks that the Commission deny the Ammonite application for failing to meet the statutory requirements.

The key issue before the Examiners is whether Ammonite made a fair and reasonable offer to pool the State of Texas' Pecos River riverbed tracts into Energen's Elmer and Kath wells. Second, if the Examiners determine Ammonite made fair and reasonable offers to pool for the proposed MIPA units, as required by the MIPA §102.013, the Commission then may order compulsory pooling ***only if*** Ammonite demonstrates that ordered pooling is necessary to avoid the drilling of

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[1] Ammonite filed its application for two separate proposed units; while traditionally the two MIPA units would have been filed as two separate applications, Ammonite filed only one application. Therefore, while there are two separate proposed MIPA units, this Proposal For Decision will refer to the singular application filed by Ammonite.

[2] *See* Tex. Nat. Res. Code section. 102.004(d).

unnecessary wells, protect correlative rights, or prevent waste.[3]

Ammonite has currently effective contracts with the Texas General Land Office for purposes of representing the State in un-leased and un-pooled Pecos river acreage adjacent to two of Energen's wells. Ammonite's contracts with the GLO authorize Ammonite to negotiate potential pooling of the Pecos River acreage, and if necessary, seek authority pursuant to the MIPA, for pooling of the acreage into pooled units. Ammonite sent written voluntary pooling offers to Energen for each of the two wells, in July and August of 2012. Energen declined Ammonite's pooling offers. As a result, Ammonite filed the above-referenced application for pooling authority in June 10, 2013. A Pre-Hearing Conference was held on August 13, 2013. The Hearing on the Merits was held on March 25, 2015, during which Ammonite presented its evidence and Energen presented no direct case.

The Examiners recommend the application be granted, as Ammonite made fair and reasonable offers to Energen to pool voluntarily as required by §102.013 of the MIPA, and because compulsory pooling was shown to be required to protect correlative rights in a common reservoir as required by §102.011 of the MIPA. Further, Ammonite adequately demonstrated that it has authority to apply for pooling pursuant to MIPA § 102.012.

DISCUSSION OF THE EVIDENCE

Ammonite seeks forced pooling of two State of Texas' Pecos riverbed tracts into two existing units owned by Energen. Ammonite entered into contracts with the State of Texas wherein Ammonite agreed to act as agent for the State and pursue forced pooling for the subject Pecos riverbed tracts.[4] The two proposed MIPA units would be comprised of Pecos Riverbed acreage, which would be pooled into two existing Energen well acreage units– the Elmer 33-67 Well and the Kath "A" 3-11 Well, (the "MIPA wells"). As Protestant Energen did not present a direct case, discussion of the evidence presented will be limited to Applicant Ammonite's evidence.

In July and August 2012, Ammonite sent Energen written formal offers to pool voluntarily the State's interests in two Pecos riverbed tracts adjoining Energen's Elmer 33-67 Well and the Kath "A" 3-11 Well, located in Reeves and Ward counties. Both of Ammonite's offers proposed:

> "production from the pooled unit to be allotted on the basis of each owners' Net Pro Rata Share of surface acreage within the unit, and that the working interest owners therein share in the cost of drilling, operation, rework and plugging of the

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[3] Tex. Nat. Res. Code §102.011 (Authority of Commission); Smith & Weaver, Texas Law of Oil and Gas, Chapter 12, § 12.3[A][6] at page 12-23.

[4] *See* Ammonite Exhs. 9 & 10.

> well thereon based on each working interest owner's Net Pro Rata Share of acreage contributed to the unit. Ammonite would have its share of that cost taken out of its share of production from and after the effective date of the pooled unit, plus a ten per cent (10%) risk penalty or such greater penalty as may be prescribed by the Railroad Commission if a MIPA case should have to be adjudicated before that agency. If the acreage to which reference has been made is currently subject to a Joint Operating Agreement (JOA), please provide a copy to us for review by Ammonite, as we would anticipate ratification thereof. ..."[5]

At the hearing, Ammonite asserted that its voluntary pooling offers are fair and reasonable. Ammonite "proposed that Energen contribute adjacent acreage; that Energen be the operator of the wells; that the interval to be pooled be limited to the correlative interval designated by the Commission for the field of completion for the wells."[6] Ammonite also proposed a ten (10) % risk penalty— or other such greater penalty prescribed by the Commission; and if necessary, ratification or entry into a Joint Operating Agreement.[7] Energen did not respond to Ammonite's offers for either the proposed Elmer or Kath MIPA units. Ammonite also offered testimony as to how it attempted to settle these two Pecos River riverbed proposed MIPA applications along with numerous other proposed riverbed/potential MIPA cases, in which the State owns the mineral rights under a riverbed and seeks pooling into an adjacent productive tract.[8]

Ammonite presented testimony and evidence regarding Energen's production history and economic success in the recent past. This evidence indicated that Energen's wells and production history demonstrate positive growth in the past. Ammonite presented this evidence to demonstrate the viability of the two Energen wells as it concerns assessment of a risk penalty under MIPA §102.052(a).

Ms. Donna Chandler, a designated expert in petroleum engineering and petroleum engineering regulatory Commission issues, testified as to the two Energen wells. Specifically, she testified that the Two Georges (Bone Spring) Field was discovered after March 8, 1961; in 1997[9], in compliance with §102.003. Ms. Chandler further testified as to the Two Georges (Bone Spring) field rules history, and presented evidence demonstrating where the productive interval is within and

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[5] Ammonite Exhs. 11 & 12.

[6] Trns. Vol. I, pgs. 33-34.

[7] Trns. Vol. I, pg. 34.

[8] Trns. Vol. 1, pg. 38.

[9] Trans. Vol. I, pg. 70, ln. 12.

throughout the Field,[10] and that the two Energen wells and the proposed Pecos River riverbed tracts fall within the same productive reservoir.[11] Ms. Chandler also presented evidence regarding the production history for the two Energen wells. She testified that the total reported production from the four wells on the Elmer Lease, as of January 2015, was 411,481barrels of oil and 1,145,967 mcf of casinghead gas;[12] the total reported production from the two wells on the Kath Lease, as of January 2015, was 83,990 barrels of oil and 255,337 mcf of casinghead gas.[13]

Ammonite and Energen submitted written closings marshaling the evidence presented. Ammonite contends that it has met all the statutory requirements of the MIPA and further contends: "By refusing to allow Ammonite to voluntarily pool the riverbed tracts into Energen's existing units, Energen has deprived the General Land Office and the Permanent School Fund of any reasonable opportunity to produce their fair share of the oil and gas in this common reservoir. An order under the MIPA is the only way to protect the State's correlative rights and to prevent waste."[14] Ammonite concludes that its voluntary pooling offers presented to Energen were fair and reasonable because absent pooling the State would not receive royalty shares in the riverbed tracts; however it fails to articulate how the pooling offer would be fair and reasonable to Energen's mineral interest owners who would be diluted by the forced pooling.[15] Ammonite also asserts that it has indicated that "it would accept from the Commission something less than what it asked Energen for initially. Instead of a 299 acre unit, with 4 acres of Pecos River riverbed, as initially proposed, Ammonite will accept a 152 acre unit, with 2 acres of Pecos River riverbed" for the Elmer well.[16]

Conversely, Energen's Closing Argument asserts that Ammonite failed to meet its burden in demonstrating that Ammonite has met the statutory requirements of MIPA. Specifically, Energen asserts that: (1.) Ammonite failed to satisfy the burden that, ". . . force pooling the unleased riverbed acreage would result in the avoidance of drilling unnecessary wells, protect correlative rights, or prevent waste;"[17] (2.) "Ammonite presented Energen with an inherently unfair and unreasonable

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[10] Trans. Vol. I, pg. 85.

[11] Trns. Vol. 1, pgs. 88-89.

[12] Ammonite Exh. 43.

[13] Ammonite Exh. 42.

[14] Ammonite's Reply to Energen's Closing Argument, at pgs. 4-5.

[15] *See Carson v. Railroad Com'n of Texas*, 669 S.W.2d 318 (Tex. 1984).

[16] Ammonite's Reply to Energen's Closing Argument, at pg. 8.

[17] Energen Resources Corporation's Reply Closing Statement, at pg. 1.

offer;"[18] (3.) Contrary to the requirements of §102.012 of MIPA, Ammonite does not have an interest in the unleased riverbed tracts and therefore, the Commission does not have jurisdiction over this MIPA application; [19] and (4.) Ammonite failed to met its burden to prove the existence of a common reservoir as defined in *Gage v. Railroad Comm'n of Texas.*[20] In discussing the reasonableness of Ammonite's voluntary pooling offer to Energen, Energen asserts that Ammonite's offer fails to be fair and reasonable, because according to case law, the offer "must be fair and reasonable from the standpoint of the party being forced pooled."[21] In conclusion, Energen asserts that Ammonite fails to meet the statutory requirements of MIPA and therefore the subject application should be dismissed. In the alternative, Energen asserts that Ammonite failed to demonstrate that the subject application demonstrated that force pooling the unleased riverbed acreage would result in the avoidance of drilling unnecessary well, protect correlative rights, or prevent waste, and therefore the subject application should be denied.

EXAMINERS' OPINION

The Railroad Commission is a creature of the Legislature and has no inherent authority.[22] Like other state administrative agencies, the Commission has only those powers that the Legislature expressly confers upon it and any implied powers that are necessary to carry out the express responsibilities given to it by the Legislature.[23] It is not enough that the power claimed by the Commission be reasonably useful to the Commission in discharging its duties; the power must be either expressly conferred or necessarily implied by statute. The agency may not exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.[24]

The Commission, therefore, does not have unlimited authority to compel the pooling of mineral interests whenever it is presented with a compulsory pooling application that in some sense may be deemed conceptually sound. Compulsory pooling may be ordered only as expressly

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[18] Energen Resources Corporation's Reply Closing Statement, at pg. 3.

[19] Energen Resources Corporation's Reply Closing Statement, at pg. 4.

[20] 582 S.W.2d 410, 413 (Tex. 1979).

[21] Energen Resources Corporation's Reply Closing Statement, at pg. 2, citing *Windsor Gas Corp. v. Railroad Comm'n of Texas*, 529 S.W.2d 834, 837 (Tex. Civ. App.—Austin 1975, writ dism'd as moot, 1976).

[22] *Public Util. Comm'n v. GTE-SW Corp.*, 901 S.W.2d 401, 407 (Tex. 1995)

[23] *Public Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001).

[24] *Gage*, 582 S.W.2d at 413.

authorized by the MIPA, which is a limited compulsory pooling statute unique to Texas.[25]

The Examiners are of the opinion that the Ammonite application should be granted as Ammonite's offer to voluntary pool was fair and reasonable, and, further, compulsory pooling is necessary to avoid the drilling of unnecessary wells and to protect correlative rights. Further, Ammonite met its burden in demonstrating the statutory requirements.

Authority to Apply for and Approve MIPA

As required by MIPA § 102.003, Ammonite demonstrated that the Field was discovered after March 8, 1961. Testimony offered demonstrated that the Two Georges (Bone Spring) Field was discovered after March 8, 1961; the Field was discovered in 1997. Ammonite demonstrated that the proposed MIPA units fall within the same productive reservoir, per MIPA § 102.011. Testimony offered demonstrated that the two Pecos River riverbed tracts and the two Energen wells fall within the same productive reservoir.

Ammonite has adequately demonstrated that it has authority to apply for pooling pursuant to MIPA § 102.012. While Ammonite does not *own* an interest in the Pecos River riverbed tracts, Ammonite filed its applications as an agent of the State of Texas in accordance with the terms of the Ammonite/GLO contracts and as authorized by §102.004 of the MIPA. The Ammonite/GLO contracts entered into with the State of Texas grant Ammonite the authority to represent the State in un-leased and un-pooled Pecos River riverbed acreage. The contracts do not confer an ownership interest in the two Pecos Riverbed tracts, nor does it grant Ammonite jurisdiction under §102.012 of the MIPA; however, the contracts do confer authority upon Ammonite to bring the application pursuant to MIPA §102.004.

Fair and Reasonable Offer

The Examiners conclude that Ammonite's offer to voluntary pool was fair and reasonable. Section 102.013 of the MIPA requires that the applicant for forced pooling "set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit." This section also provides that the Commission *shall* dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant. The Commission does not have jurisdiction under the MIPA unless a fair and reasonable offer to pool voluntarily has been made.[26] The MIPA has thus been characterized by scholars as a "compulsory voluntary pooling act," because a force pooling order will not issue unless the applicant has made a strong effort to secure

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[25] Smith and Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.1(B) at page 12-5 (LexisNexis Matthew Bender 2010).

[26] *Carson v. Railroad Com'n of Texas*, 669 S.W.2d 315, 316 (Tex. 1984).

pooling voluntarily and has been rebuffed.[27] A fair and reasonable offer to pool voluntarily is one which takes into consideration those relevant facts, existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties.[28] While it is true that authority exists for the position that whether an offer to pool voluntarily is "fair and reasonable" is to be judged from the standpoint of the party being forced to pool;[29] the facts of each MIPA application will determine whether an offer was fair and reasonable to all parties.[30] Here, Ammonite made an initial voluntary offer to pool to two separate proposed MIPA units. Energen refused to respond to either Ammonite's offer. As was the case in the *Mulvey* MIPA case, the fact that the party to be pooled into did not respond to the initial voluntary pooling offer supports granting the MIPA.

In the *Mulvey* MIPA[31], the Examiner stated that it was significant that the party to be pooled into (i.e., Bay Rock Operating Co.), made no counteroffer to Mulvey and made no attempt to negotiate or respond to Mulvey's offer in any manner. This determination is in line with the Texas Supreme Court's holding in *Carson*:

> "It is well recognized that the intent of the MIPA is to encourage negotiation and voluntary pooling. In *American Operating Co. v. Railroad Commission*,[32] the court stated, 'The fact that the MIPA was enacted to encourage voluntary pooling would seem to contemplate a process of negotiations among the parties. . . Although the MIPA does not require that a counter offer be made in response to a voluntary pooling offer, it is a factor which we consider in making a determination as to whether such an offer is a fair and reasonable offer under the ACT."[33]

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[27] *See* Smith and Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.1(B) at pg. 12-5 (LexisNexis Matthew Bender 2010).

[28] *Carson v. Railroad Com'n of Texas, supra* at page 318.

[29] *Windsor Gas Corp. v. Railroad Com'n of Tex.*, 529 S.W.2d 834, 837 (Tex.Civ.App.-Austin 1975, writ dism'd as moot); *Pend Orielle Oil & Gas Co., Inc. v. Railroad Com'n of Texas*, 788 S.W.2d 878 (Tex.App.-Austin 1990, *writ granted*), *affirmed in part, reversed in part on other grounds* 817 S.W.2d 36 (Tex. 1991).

[30] *See* Oil & Gas Docket 2-97041; *Application of Michael R. Mulvey pursuant to the Mineral Interest Pooling Act to Pool into the Pecos Development Corporation's Block 71 Unit, Well No. 2, Clayton (Wilcox 7360) Field, Live Oak County, Texas.* (Final Order issued April 6, 1992).

[31] *Id.*

[32] 744 S.W.2d 149, 154 (Tex.App.–Houston[14th Dist.] 1987), *writ denied.*

[33] *See also Carson*, 669 S.W.2d at 318 (discussing that failure to negotiate by offeror contributed to holding that the offer was not fair and reasonable), *and Windsor*, 529 S.W.2d at 834 (holding that "take it

Further, when judged from the standpoint of the parties being forced to pool, Ammonite's voluntary pooling offer to Energen was fair and reasonable. The voluntary offer presented by Ammonite did not substantially dilute Energen's royalty owners share of the production from the common reservoir. This was not the case in the *Carson* case relied upon heavily by Energen. There the interest of the parties in opposition to the pooling would have had their interests reduced by more than two-thirds. Here, Ammonite's proportionate share of the pooled interest would be substantially smaller: 4.8 acres into a 320-acre tract - for a combined MIPA unit of 324.8 acres in the case of the Kath MIPA unit; and 2 acres into a 150-acre tract - for a combined MIPA unit of 152 acres in the case of the Elmer MIPA unit. Ammonite's voluntary offer was fair and reasonable in light of the circumstances and was the exact type of offer contemplated in the creation of the MIPA.[34]

Charge for Risk

Section 102.052 of the MIPA states the Commission shall make "provision in the pooling order for reimbursement ... of all actual and reasonable drilling, completion, and operating costs PLUS a charge for risk not to exceed 100 % of the drilling and completion costs."[35] The clear implication from the MIPA is that imposition of a "risk penalty" is to assure that the economic risk assumed in the drilling and completing of a well is reasonably shared by the operator and the working interest owners. The Commission has previously recognized the "standard for assessing a fair and reasonable risk penalty is the actual chance of a successful completion at the time the well [is] drilled."[36] Further, the Commission has also recognized that in the absence of evidence of risk, and where most wells drilled in the field appear to be commercially producible, the Commissionhas concluded that a nominal risk penalty (e.g. 10%) is appropriate.[37]

In its voluntary pooling offers presented to Energen, Ammonite proposed a charge for risk. Specifically, Ammonite's offers stated "Ammonite would have its share of that cost taken out of its share of production from and after the effective date of the pooled unit, plus a ten per cent (10%) risk penalty . . .".[38] Here, the charge for risk presented by Ammonite was 10%, which would be taken out of its share of production from and after the effective date of the pooled unit, the Examiners

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all" or "leave it all" offer was not fair and reasonable).

[34] *See Carson*, at 317.

[35] Tex. Nat. Res. Code 102.052 (emphasis added).

[36] Oil & Gas Dockets 3-77,090 & 3-79,517, the *Applications of General Production Corp. Et. Al., Giddings (Austin Chalk, Gas) Field, Lee County, Texas*, at page 6 (Final Order signed April 9, 1984.)

[37] Oil & Gas Docket 6-75,587, *Application of Panola Producing Company, Carthage (Cotton Valley) Filed, Panola County, Texas* (Final Order signed September 7, 1982).

[38] Ammonite's Exhs. 11 & 12.

believe that such a penalty is supported by precedent. It follows, that a determination that Ammonite's voluntary pooling offers were "fair and reasonable"(as discussed above); and then ordering a 10% charge for risk is also "fair and reasonable." While the record is limited as to the traditional factors which are taken into consideration when determining a "fair and reasonable" charge for risk, the evidence presented demonstrates and Commission precedent supports a determination that imposition of a 10% charge for risk based on the facts of this case, is fair and reasonable as is required by Section 102.017 of the MIPA.

Compulsory Pooling Required

Ammonite demonstrated that the two proposed MIPA units will protect the State's correlative rights.[39] Testimony demonstrated that Ammonite is unable to drill a well on the Pecos River riverbed leased acreage and it is not possible for the State's Pecos River oil and gas to be produced without pooling; no well could be drilled solely within the riverbed to recover these hydrocarbons.[40] Ammonite's evidence demonstrated that only through the two proposed MIPA units would the State's correlative rights be protected. Under the MIPA, the Commission may order compulsory pooling only if it is necessary to avoid the drilling of unnecessary wells, protect correlative rights, or prevent waste.[41] Here, by denying the two proposed MIPA units, the State of Texas's General Land Office and the Permanent School Fund would be denied the reasonable opportunity to recover their fair share of the oil and gas in the shared common reservoir; thereby denying the State the opportunity to protect its correlative rights in the two Pecos River riverbed tracts.

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. Notice of this hearing was provided by mail to all interested parties at mailing addresses provided by the applicant at least 30 days prior to the hearing.

2. By this application, Ammonite Oil & Gas Corporation ("Ammonite") requests that the Commission enter an order pursuant to the Mineral Interest Pooling Act ("MIPA"), Chapter 102, Natural Resources Code, for force pooling of the State's mineral interests in two tracts

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[39] Nominal evidence was presented regarding how compulsory pooling will prevent waste. In Ammonite's Closing Argument, Ammonite tied its arguments regarding the protection of correlative rights to that of preventing waste. "For the same reasons, (as discussed regarding the protection of correlative rights), it will prevent waste." [parenthetical comment added for clarification by Examiner.] Ammonite Closing Argument at p. 13.

[40] Tr. Vol. I, pps. 104-105.

[41] Smith & Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.3[A][6] at pg. 12.23.

of Pecos River bed into the two proposed MIPA Units— for the existing Energen Elmer 33-67 Well (API # 42-475-35933), Two Georges (Bone Spring) Field, Ward County, Texas ("Elmer Well") and the Kath "A" 3-11 Well (API # 42-475-32814), Two Georges (Bone Spring) Field, Reeves County, Texas ("Kath Well" and collectively the "MIPA wells").

3. On June 10, 2013, Ammonite filed its application to force pool two (2) acres of its Pecos Riverbed interests neighboring the Energen Elmer Well be pooled with the Elmer Well for a pooled unit of 152 acres. Ammonite also requests that 4.8 acres of its Pecos Riverbed interests neighboring the Energen Kath Well be pooled with the 320-acre Kath Well for a pooled unit of 324.8 acres.

4. Appendix "A" to this Proposal for Decision, incorporated into this finding by reference, is a copy of the plats (Ammonite Exhibit Nos. 7 & 8) filed in conjunction with Ammonite's application in which Ammonite seeks the two proposed MIPA pooled units.

5. Ammonite has currently effective contracts with the Texas General Land Office for purposes of representing the State in un-leased and un-pooled Pecos river acreage adjacent to the MIPA Wells. Ammonite's contracts with the GLO authorize Ammonite to negotiate potential pooling of the Pecos River acreage, and if necessary, seek authority pursuant to the MIPA, for pooling of the acreage into pooled units.

6. Ammonite, as agent for the State, sent written voluntary pooling offers to Energen for each of the MIPA Wells, in July and August of 2012.

    a. By letter dated July 2, 2012, Ammonite sent to Energen a letter proposing to pool a section of the State of Texas' mineral estate under the Pecos River riverbed which adjoins the Energen Elmer Well.

    b. By letter dated August 24, 2012, Ammonite sent to Energen a letter proposing to pool a section of the State of Texas' mineral estate under the Pecos River riverbed which adjoins the Energen Kath Well.

7. Energen never responded to either of the Ammonite letters, which proposed to pool the two separate MIPA units into the Energen Elmer Well or the Kath Well.

8. The Two Georges (Bone Spring) Field was discovered after March 8, 1961; the Field was discovered in 1997.

9. The two Pecos River riverbed tracts and the MIPA Wells fall within the same productive reservoir.

10. No evidence was presented to establish the amount of current recoverable gas beneath the proposed MIPA Wells.

11. Compulsory pooling is necessary to protect the correlative rights of the State of Texas.

12. Ammonite presented evidence supporting a charge for risk of 10 percent of the drilling and completion costs of the respective wells.

CONCLUSIONS OF LAW

1. Pursuant to Texas Natural Resources Code §102.016, notice of the hearing was given to all interested parties by mailing the notices to their last known addresses at least 30 days before the hearing.

2. Ammonite Oil & Gas Corporation, made make a fair and reasonable offer to pool voluntarily to the operator of the proposed units and the Commission is required to dismiss the application pursuant to Texas Natural Resources Code §102.013(b).

3. Ammonite Oil & Gas Corporation demonstrated that compulsory pooling as proposed is necessary to protect the correlative rights of the State of Texas pursuant to Texas Natural Resources Code 102.011.

4. Compulsory pooling of each of the proposed proration units will be subject to a charge for risk of 10%, payable out of Ammonite's share of production, effective on the date of the order pooling the MIPA Wells, is fair and reasonable within the meaning of Texas Natural Resources Code §102.017.

5. Compulsory pooling of the mineral interests in all tracts within the boundaries of the two MIPA Wells serve the purpose of protecting correlative rights.

6. The terms and conditions of the Commission's Final Order in this proceeding are fair and reasonable and will afford the owner of each tract or interest in the two MIPA Wells the opportunity to produce or receive his fair share.

RECOMMENDATION

The Examiners recommend that the application for the two proposed MIPA units be GRANTED as proposed. Specifically, that the State's mineral interests in two tracts of Pecos River riverbed be forced pooled into the two proposed MIPA Units— for the existing Energen Elmer 33-67 Well, Two Georges (Bone Spring) Field, Ward County, Texas and the Kath "A" 3-11 Well, Two Georges (Bone Spring) Field, Reeves County, Texas ("MIPA wells").

Respectfully submitted,

Laura Miles-Valdez
Hearings Examiner

Karl Caldwell
Technical Examiner