RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL & GAS DOCKET NO. 01-0290024: THE APPLICATION OF AMMONITE OIL AND GAS CORPORATION PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE FORMATION OF A POOLED UNIT FOR THE CHESAPEAKE BUTTERFLY DIM LEASE WELL NO. J4H, BRISCOE RANCH (EAGLEFORD) FIELD, DIMMIT COUNTY, TEXAS

OIL & GAS DOCKET NO. 01-0290026: THE APPLICATION OF AMMONITE OIL AND GAS CORPORATION PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE FORMATION OF A POOLED UNIT FOR THE IVEY RANCH LEASE, WELL NO. A 6H, THE IVEY RANCH UNIT, WELL NO. B1H, AND THE IVEY RANCH UNIT, WELL NO. B5H, BRISCOE RANCH (EAGLEFORD) FIELD, DIMMIT COUNTY, TEXAS

OIL & GAS DOCKET NO. 01-0290029: THE APPLICATION OF AMMONITE OIL AND GAS CORPORATION PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE FORMATION OF A POOLED UNIT FOR THE GRINGITA DIM UNIT, WELL NO. A3H, BRISCOE RANCH (EAGLEFORD) FIELD, DIMMIT COUNTY, TEXAS

APPEARANCES

For Applicant Ammonite Oil and Gas Corporation:
Rob Hargrove, Attorney at Law
William Osborn, President, Ammonite Oil and Gas Corporation

For Respondent, Chesapeake Operating, Inc.
Davin McGinnis, Attorney at Law
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Stan Williams, Manager-Land, South Texas
Tim Smith, Petroleum Engineer

For the Texas General Land Office (Observer):
Dan Gutierrez, Petroleum Engineer
J. Daryl Morgan, Landman

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Date Applications Filed:	December 12, 2013
Date of Notice of Hearing:	June 8, 2015
Date of Hearing:	July 21, 2015
Transcript Received:	August 10, 2015
Record Closed:	August 10, 2015
Proposal for Decision Issued:	March 13, 2017
Heard by:	Laura Miles-Valdez, Legal Examiner Peggy Laird, Technical Examiner
Authors:	Ryan M. Lammert, Administrative Law Judge Clayton J. Hoover, Administrative Law Judge

STATEMENT OF THE CASE

Ammonite Oil and Gas Corporation ("Ammonite") has filed three applications under the Texas Mineral Interest Pooling Act ("MIPA"), Chapter 102 of the Texas Natural Resources Code. The three dockets were consolidated for the purpose of a joint hearing record.[1] By its applications, Ammonite is requesting that the Commission enter orders creating five (5) force-pooled units in Dimmit County to include five (5) Chesapeake wells and surrounding leasehold with contiguous Ammonite leases on portions of the riverbed of the Nueces River owned by the State of Texas.

Protestant Chesapeake asserts that Ammonite failed to meet its statutory burden to demonstrate that: (1.) Ammonite has an ownership interest in the proposed tracts to be pooled into the Chesapeake tracts, as required pursuant to MIPA §102.012; (2.) Ammonite has made a reasonable offer to voluntarily pool the tracts; (3.) Ammonite provided proof that forced pooling of the riverbed acreage is necessary to avoid the drilling of unnecessary wells, to protect correlative rights, or to prevent waste; and (4.) the Chesapeake wells and the subject Nueces River riverbed acreage "embrace a common reservoir." Chesapeake asks that the Commission deny the Ammonite applications for failing to meet statutory requirements (2.), (3.) and (4.).

The Administrative Law Judge and Technical Examiner recommend:

- **approval** of the proposed units for the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H and

- **denial** of the proposed units for the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H.

[1] See Notice of Hearing and Joint Record, July 21, 2015

APPLICABLE LAW

Subject to limitations found elsewhere in the act, **Section 102.011 of the MIPA** provides that "[w]hen two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the Commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the Commission, on the application of an owner specified in Section 102.012 of [the MIPA] and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance."

Section 102.014 provides,

"(a) The Commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily.

"(b) If the conditions specified in Subsection (a) of this section exist, the Commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir."

DISCUSSION OF THE EVIDENCE

Ammonite's Applications and Proposed Units

All five of the proposed MIPA units in these three dockets are in the Briscoe Ranch (Eagleford) Field, Dimmit County.

The proposed MIPA Unit for the Chesapeake Butterfly Dim J4H well contains 663 total acres comprised of 650 acres of the Chesapeake Marrs McLean Lease and 13 acres of the Nueces River.

The proposed MIPA Unit for the Chesapeake Ivey Ranch A-6H well contains 210 total acres comprised of 207 acres of the Chesapeake Ivey Ranch Lease and 3 acres of the

Nueces River.

The proposed MIPA Unit for the Chesapeake Ivey Ranch B-1H well contains 353 total acres comprised of 351 acres of the Chesapeake Ivey Ranch Lease and 2 acres of the Nueces River. It should be noted, however, that since filing of this MIPA application, another well, the Ivey Ranch B-3H well,[2] has been drilled and such well crosses this proposed unit.

The proposed MIPA Unit for the Chesapeake Ivey Ranch B-5H well contains 430 total acres comprised of 427 acres of the Chesapeake Ivey Ranch Lease and 3 acres of the Nueces River. As with the previous proposed unit, it should be noted that since filing of this MIPA application, another well, the Ivey Ranch B-3H well,[3] has been drilled and such well also crosses this proposed unit.

The proposed MIPA Unit for the Chesapeake Gingrita Dim A-3H well contains 226 total acres comprised of 214 acres of the Chesapeake Gingrita Dim Lease and 12 acres of the Nueces River.

Field Discovery Date, State of Texas Ownership and Common Reservoir

The MIPA does not apply in fields discovered and produced before March 8, 1961, and it does not apply to land in which the State of Texas has an interest unless the State has given consent.[4] These exceptions do not apply in this case—the proposed MIPA units lie within the productive limits of the Briscoe Ranch (Eagleford) Field, which was discovered in 2007 and had field rules established in 2011,[5] and while leases covering State-owned minerals exist within the proposed MIPA units, the General Land Office consented to the applications.[6] Because all five proposed MIPA units are located in, and all five Chesapeake wells are completed in, the Briscoe Ranch (Eagleford) Field, Ammonite contends that they are in a common reservoir for purposes of forming the five units in accordance with the language of the MIPA.[7]

The Voluntary Pooling Offers

On or about November 22, 2013, Ammonite sent voluntary pooling offers to counsel for Chesapeake.[8] Ammonite offered Chesapeake the formation of five specifically described units, subject to a mutually acceptable Joint Operating Agreement with Chesapeake as

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[2] App. Ex. 18 and App. Closing Argument @ pg 4

[3] *Id.*

[4] MIPA §§ 102.003, 102.004.

[5] Tr. Pg.62 ln 11 to pg 65 ln 24, App. Exs. 33-38

[6] Applicant's Exs. 15 and 16.

[7] MIPA §§ 102.011

[8] Applicant's Exs. 20, 21 and 22.

Operator and a ten percent (10%) risk penalty.[9] Ammonite asserts that the terms included in its voluntary offer were fair and reasonable because they contained terms approved by the Commission in other MIPA cases in resource plays.[10] Chesapeake never responded to these offers with any counteroffer.[11] Ammonite also offers to reconfigure the proposed units for the Ivey Ranch wells so as not to include any portion of the Ivey Ranch B-3H well drilled on two of the proposed units since filing of the applications, but no such re-configured unit plats are in evidence.[12]

Need for MIPA Wells

Ammonite contends that, absent MIPA approval of the proposed units, the reserves underlying the Nueces River could not be recovered from unconventional wells and would therefore be wasted.[13] Mr. Osborn testified that MIPA approval was necessary to prevent reserves underlying the riverbed from being stranded and wasted, while also giving all unit owners a reasonable opportunity to recover their fair share of the oil and gas underlying the proposed units.[14]

Charge for Risk

Ammonite's applications requested that the Commission's MIPA pooling orders for these three dockets include a 10% charge for risk attached to the working-interest component, as authorized under Section 102.052 of MIPA.[15] Its contention is that a 10% charge for risk is reasonable in an unconventional resource play such as the Briscoe Ranch (Eagleford) Field and that such a 10% charge for risk has been approved by the Commission in similar resource-play situations.[16]

Chesapeake's Contentions and Evidence

Chesapeake contends that there must be a showing of drainage as proof of a common reservoir, as proof that the voluntary pooling offers were fair and reasonable and as a prerequisite for forced pooling to protect correlative rights. Such contentions are based on several Proposals for Decision in prior cases where protection of correlative rights was the sole basis for MIPA pooling.[17] Chesapeake further contends that the offers on two of the proposed units were not fair and reasonable because of a subsequently drilled well. Chesapeake also contends that limited permeability and the use of unconventional drilling and completion techniques on wells in the Eagle Ford Shale trend results in a

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[9] Id.

[10] Tr. Pg. 47, lns. 19-22.

[11] Tr. Pg 97, ln 15

[12] Ammonite Ex. 50 and Tr. Pg. 77:14-79:22

[13] Tr pg 86, lns 8-17

[14] Tr., pg. 102, lns. 7 - 10.

[15] Applicant's Exs. 2A, 2H, 2I, and 2J.

[16] Tr., pg. 47, lns. 19-22.

[17] Tr., pg. 136, ln.1-Pg. 137, ln 11; Protestant's Exs. 2, 3 and 4

substantial portion of such wells not reaching payout or being commercially successful and that, based on such analysis, a 100% risk penalty is more appropriate.[18]

Well Spacing in the Eagle Ford, Drainage and Common Reservoir Requirement

Chesapeake presented testimony and documentary evidence from Tim Smith, a petroleum engineer, on its contentions. Mr. Smith testified and presented exhibits to show that the Eagle Ford Shale is a resource play, that the reservoir rock has extremely limited permeability and that the current stimulated reservoir volumes and drainage areas of the five wells do not include any of the Nueces riverbed tracts owned by Ammonite.[19] Stimulated reservoir volume may only extend 180 feet or less from a horizontal wellbore completed in the Eagle Ford Shale in this area.[20] He also testified (1) that, while there is currently no drainage of the Nueces riverbed tracts at issue from the five existing Chesapeake wells as they are currently drilled and completed, the Eagle Ford Shale is a continuous hydrocarbon system and (2) that the Eagle Ford Shale within the Briscoe Ranch (Eagleford) Field is a "continuous hydrocarbon system"[21] and a "continuous hydrocarbon accumulation throughout the reservoir."[22]

Substantial Risk of Individual Wells Not Being a Commercial Success

Mr. Smith presented exhibits to show that the Eagle Ford Shale, while extensive, is a very heterogenous reservoir and that development of the Eagle Ford Shale in this area may be commercially successful overall even though a substantial portion of such wells may not reach payout or achieve a commercial return on capital expenditures.[23] Based on this evidence, Mr. Smith expressed his opinion that a reasonable risk penalty would be 100%.[24]

ADMINISTRATIVE LAW JUDGE OPINION

The Railroad Commission is a creature of the Legislature and has no inherent authority.[25] 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.[26] 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.

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[18] Tr., pg. 223, ln 13-15

[19] Tr., pg. 183, pg 21-24; pg. 184, lns 8-15; Protestant's Exs. 14, 15, 16, 17 and 18

[20] Tr., pg. 154, ln 3- pg. 155, ln 1; pg. 157, lns 20-23

[21] Tr., pg. 191, lns 8-9; pg. 192, lns 15-17; pg. 196, lns 22-23; pg. 198, lns 20-25

[22] Tr., pg. 192, lns 15-17; pg. 250, lns 19-20

[23] Tr., pg. 196, ln 21- pg. 197, ln 8; Protestant's Ex. 20,21

[24] Tr, Pg, 223 lns 13-15

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

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

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.[27]

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 authorized by the MIPA, which is a limited compulsory pooling statute unique to Texas.[28] Outlining a general theme in interpretation of the MIPA, Smith & Weaver state:

> "Its legislative history has played a key role in the Texas Supreme Court's subsequent interpretation of the act. The courts have consistently construed MIPA as limited in function to protecting small-tract lessees rather than as a broad act designed to protect correlative rights generally..." [29]

The Administrative Law Judge and Technical Examiner are of the opinion that the Ammonite application should be granted as to the proposed units for the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, because (1) Ammonite's leases are in a common reservoir with the Chesapeake wells, (2) Ammonites's offers to voluntarily pool were fair and reasonable, and (3) compulsory pooling is necessary to prevent waste. Ammonite met its burden in demonstrating the statutory requirements.

As to the proposed units for the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H, denial is recommended.

Authority to Apply for and Approve MIPA

As required by MIPA § 102.003, the Field in this case was discovered after March 8, 1961. Testimony and exhibits show that the Briscoe Ranch (Eagleford) Field was discovered in 2007. [30] Ammonite proved that the proposed MIPA units fall within such field and that such field constitutes a common reservoir, per MIPA § 102.011. This fact was corroborated by Protestant's expert witness, Tim Smith, who testified repeatedly (4 times) that the Eagle Ford Shale in the area is a "continuous hydrocarbon system." [31]

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 Nueces River riverbed tracts, Ammonite leased such tracts from the State of Texas, such leases confer

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

[28] Smith and Weaver, Texas Law of Oil and Gas, Vol. 3, Chapter 12, §12.1(B) at page 12-4 (LexisNexis Matthew Bender 2015).

[29] Smith and Weaver, Texas Law of Oil and Gas, Vol. 3, Chapter 12, §12.1(B) at page 12-5 (LexisNexis Matthew Bender 2015).

[30] Tr. Pg.62 ln 11 to pg 65 ln 24, App. Exs. 33-38

[31] Tr., pg. 191, lns 8-9; pg. 192, lns 15-17; pg. 196, lns 22-23; pg. 198, lns 20-25

authority upon Ammonite to bring the applications and the General Land Office consented to such applications. [32]

Fair and Reasonable Offer

The Administrative Law Judge and Technical Examiner conclude that Ammonite's offer to voluntary pool was fair and reasonable as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, but not as to the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H.

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.[33] 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 pooling voluntarily and has been rebuffed.[34] 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.[35] 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,[36] the facts of each MIPA application will determine whether an offer was fair and reasonable to all parties.[37] Here, Ammonite made an initial voluntary offer to pool five separate proposed MIPA units as described in these three dockets and the record. Chesapeake refused to respond to Ammonite's offers with counteroffers. As 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 *Mulvey*[38], 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

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[32] Applicant's Exs. 15 and 16.

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

[34] *See* Smith and Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.3(B-1) at pg. 12-24.1 (LexisNexis Matthew Bender 2015).

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

[36] *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).

[37] *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).

[38] *Id*

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*,[39] 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. . .'"[40]

When judged from the standpoint of the parties being forced to pool, Ammonite's voluntary pooling offers to Chesapeake as to the Butterfly Dim Well No. J-4H, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H were fair and reasonable. These voluntary offers presented by Ammonite did not substantially dilute Chesapeake's share of the production from the common reservoir. Here, Ammonite's proportionate share of the pooled interest would be relatively small: less than 2% of the MIPA units in four of the five units and less than 6% in the remaining Gingrita unit.[41] These Ammonite voluntary offers, including and in light of the proposed risk penalty and common reservoir issues discussed below, were fair and reasonable under the circumstances and were the exact type of offers contemplated in the creation of the MIPA as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H.[42]

As a result of the subsequent drilling of the Ivey Ranch B-3H well, the voluntary pooling offers with respect to the Ivey Ranch B-1H well and the Ivey Ranch B-5H well cannot be considered to be fair and reasonable. The Commission therefore has no jurisdiction to approve these two units, and further discussion of such units is not necessary.

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 percent of the drilling and completion costs."[43] 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.

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[39] 744 S.W.2d 149, 154 (Tex. App.–Houston [14th Dist.] 1987), *writ denied.*

[40] *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 all" or "leave it all" offer was not fair and reasonable).

[41] Applicant's Exs. 20, 21 and 22.

[42] *See Carson*, at 317.

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

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."[44] 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 Commission has concluded that a nominal risk penalty (e.g. 10%) is appropriate.[45]

While many wells in the Briscoe Ranch (Eagleford) Field do not payout or achieve commercial success, virtually all of them become commercially producible and recover a substantial portion of the capital expenditures. There is almost no possibility of a dry hole, which greatly reduces one of the main risks the MIPA penalty is designed to address. In addition, it should be noted that if a MIPA applicant such as Ammonite is pooled with a well that does not reach payout, that applicant will not be allocated any production, thereby sharing the misery and mitigating to some extent the need for a risk penalty. In its voluntary pooling offers presented to Chesapeake, Ammonite proposed a charge for risk of 10%, which would be taken out of its share of production from and after the effective date of the pooled unit or payout of the existing well, whichever is later. Such a penalty is supported by precedent and the evidence. 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 § 102.017 of the MIPA.

Common Reservoir

The Eagle Ford Shale is a resource play being developed with unconventional drilling and completion techniques. Although heterogenous with localized sweet spots, it is a continuous hydrocarbon system, as Tim Smith repeatedly points out. All five proposed MIPA units in these three dockets are within the correlative interval and the geographic parameters of the Briscoe Ranch (Eagleford) Field. Within the Briscoe Ranch (Eagleford) Field, the Eagle Ford Shale is a "continuous hydrocarbon accumulation throughout the reservoir" [46], constitutes a "continuous hydrocarbon system" [47] and is therefore a "common reservoir" for purposes of MIPA.

Protestant's reliance on the PFD's from prior cases before the Railroad Commission is unpersuasive since those cases relied on existing drainage as the predominant factor in establishing a common reservoir and on protecting correlative rights as the sole basis for MIPA pooling therein. Drainage can be relevant, but it is not mentioned in the MIPA and is not an essential element of a successful application if all the other requirements are met. The PFD's cite Smith & Weaver for the proposition that a showing of drainage is

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[44] 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.)

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

[46] Tr., pg. 192, lns 15-17; pg. 250, lns 19-20

[47] Tr., pg. 191, lns 8-9; pg. 192, lns 15-17; pg. 196, lns 22-23; pg. 198, lns 20-25

necessary for MIPA pooling. [48] Smith & Weaver cites the case of *Railroad Commission v. Broussard, 755 S.W.2d 951, (Tex. App.-Austin 1988, writ denied)*, and states, "It is unfair to let an applicant share in production from a well that does not drain any oil or gas from the applicant's tract." [49] Chesapeake also cites this case for the same proposition in its Closing Argument. While this statement may reflect an accurate conclusion in the context of the facts in *Broussard*, it is important to note that it was made in connection with the reasonableness of an offer to pool in a conventional reservoir. Such case did not involve a resource play like the Eagle Ford Shale, which is a continuous hydrocarbon system with permeability and drainage areas so low that many wells cannot even drain their proration unit. The case is easily distinguishable on that basis. While the existence of drainage may be some evidence of a common reservoir and of a fair and reasonable offer, especially in a conventional reservoir context, there is ample evidence in the record to show that the absence of drainage should not be one-dimensional litmus test for the success of a MIPA pooling application in the Eagle Ford Shale trend or the Briscoe Ranch (Eagleford) Field.

Compulsory Pooling Required

Ammonite demonstrated that the proposed MIPA units as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H will prevent waste of the State's mineral reserves. Testimony demonstrated that Ammonite is unable to drill a well on the meandering Nueces River riverbed acreage. Therefore, it is not possible for the State's Nueces River riverbed oil and gas reserves to be produced without pooling.[50] 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. Here, by denying the 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 causing waste by stranding the Eagle Ford Shale reserves underlying the Nueces River riverbed tracts.

Due to the location and the meandering configuration of the riverbed tracts, there is no feasible way for the mineral reserves in the Briscoe Ranch (Eagleford) Field underlying these tracts to be developed and recovered without pooling.[51] Because of limited permeability, this is also true of the currently undrained acreage within Chesapeake's existing leases and units. The testimony and Exhibits presented by Tim Smith demonstrate that none of the Chesapeake wells are likely to drain all of the acreage included within their respective leases, the existing proration units or the proposed MIPA units. It is clear from his testimony that future drilling, workovers, completions or stimulation operations will ultimately be required to recover reserves from Chesapeake's undrained acreage included in the existing proration units and the proposed MIPA units. Formation of the units will therefore not result in the drilling of unnecessary wells. Compulsory pooling as proposed by Ammonite, enabling such current or future wells to

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[48] Smith & Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.3[A][6] at pg. 12-18-12-39

[49] Smith & Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.3[B] at pg. 12-30

[50] Tr. Pg. 86, lns 8-17

[51] *Id.*

produce from such undrained acreage, both on Chesapeake's acreage and the Nueces riverbed tracts, is the only way to prevent waste and to permit all owners to have their fair share of hydrocarbons produced from the common reservoir in this case. Chesapeake, as operator of the proposed MIPA units, will then be able to formulate and execute an appropriate plan to reasonably develop each of the units.

The Administrative Law Judge and Technical Examiner believe that as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H (1) the separately owned tracts fall within a common reservoir, (2) Ammonite's voluntary pooling offer was fair and reasonable and (3) pooling under MIPA is necessary to prevent waste.

Therefore, based on the record in this case, adoption of the following Findings of Fact and Conclusions of Law is recommended:

FINDINGS OF FACT

1. Notice of the 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. In addition, notice was published in the *Carrizo Springs Journal* on June 10, June 17, June 24 and July 1, 2015.[52]

3. On or about November 22, 2013, Ammonite sent a voluntary pooling offer to Chesapeake for each of the five proposed MIPA units in these three dockets.

4. The basic terms, including the 10% risk penalty, outlined in the voluntary pooling offer made by Ammonite have been found to be fair and reasonable in other cases and are fair and reasonable in each of these dockets as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H.

5. Due to the subsequent drilling the Ivey Ranch Well No. B-3H on portions of the units, the offers were not fair and reasonable as to the Ivey Ranch Well No. B-1H or the Ivey Ranch Well No. B-5H

6. The tracts within each proposed MIPA unit are within a common reservoir. They are embraced within a continuous hydrocarbon system and are all within the Briscoe Ranch (Eagleford) Field, for which the Commission has established the size and shape of proration units. The Briscoe Ranch (Eagleford) Field is a "continuous hydrocarbon system" and constitutes a "continuous hydrocarbon accumulation throughout the reservoir," which is present and reasonably productive in the area covering all of the proposed units.[53]

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[52] Applicant's Ex. 25.

[53] Tr., pg. 192, lns 15-17; pg. 196, lns 22-23; pg. 198, lns 20-25

7. The Briscoe Ranch (Eagleford) Field was discovered in 2007, and field rules were first established in 2011. This field has special field rules providing for 330-foot lease-line spacing, and there is no between-well spacing requirement. The standard drilling and proration unit for the Briscoe Ranch (Eagleford) Field is now 80 acres. An operator is permitted to form optional drilling units of 40 acres.[54]

8. Formation of the proposed MIPA units is the only option for accessing and producing reserves under the riverbed tracts and the contiguous undrained acreage within the existing leases and units so as to prevent waste.[55]

9. Compulsory pooling as requested by Ammonite will prevent waste in the proposed units. Without compulsory pooling, Ammonite will not be able to drill any wells, Ammonite and its lessees will not have a reasonable opportunity to recover their fair share of hydrocarbons from the reservoir and the underlying hydrocarbons will be left unrecovered.

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 and, in the case of parties whose whereabouts were unknown, by publication of notice for 4 consecutive weeks in a newspaper of general circulation in the county where the proposed unit is located at least 30 days before the hearing.

2. As to as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, the Commission has jurisdiction over the parties and the subject matter and has authority to issue a compulsory pooling order pursuant to Texas Natural Resources Code § 102.011.

3. Ammonite made fair and reasonable offers to pool voluntarily to Chesapeake, as required by Texas Natural Resources Code § 102.013, as to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, but not as to the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H.

4. The tracts within each proposed MIPA unit are within a common reservoir because they are all within the Briscoe Ranch (Eagleford) Field and are all within a continuous hydrocarbon system, which is being developed as an unconventional resource play.

5. As to the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, the terms and conditions of the Commission's Final Order in this proceeding are fair and reasonable, will afford the owner of each tract or interest in each respective unit the opportunity to produce or receive a fair share of, and will prevent waste of, produced hydrocarbons.

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[54] Applicant's Exs. 34 ,35, 36, 37, 38, 39 and 40.

[55] Tr., pg. 86, lns 8-18

6. As to the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H, the application must be denied for Ammonite's failure to make a fair and reasonable offer to voluntarily pool.

RECOMMENDATION

It is recommended that Ammonite's applications be approved as to the proposed units for the Butterfly Dim Well No. J-4H Well, the Ivey Ranch Well No. A-6H and the Gingrita Dim Well No. A-3H, subject to conditions, as set forth in the attached Final Orders.

It is further recommended that Ammonite's applications be denied as to the proposed units for the Ivey Ranch Well No. B-1H and the Ivey Ranch Well No. B-5H.

Respectfully Submitted,

Ryan M. Lammert
Administrative Law Judge

Peggy Laird
Technical Examiner

Clayton J. Hoover
Administrative Law Judge