RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0302160

APPLICATION OF AMMONITE OIL & GAS CORP. PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE APACHE BLUE JAY UNIT, WELL NO. 101H, PHANTOM (WOLFCAMP) FIELD, LOVING COUNTY, TEXAS

OIL & GAS DOCKET NO. 08-0302168

APPLICATION OF AMMONITE OIL & GAS CORP. PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE APACHE BLUE JAY UNIT, WELL NO. 102H, PHANTOM (WOLFCAMP) FIELD, LOVING COUNTY, TEXAS

OIL & GAS DOCKET NO. 08-0302169

APPLICATION OF AMMONITE OIL & GAS CORP. PURSUANT TO THE MINERAL INTEREST POOLING ACT FOR THE APACHE BLUE JAY UNIT, WELL NO. 103H, PHANTOM (WOLFCAMP) FIELD, LOVING COUNTY, TEXAS

PROPOSAL FOR DECISION

EXAMINERS:	Jennifer Cook – Administrative Law Judge Richard Eyster, P. G. – Technical Examiner
PROCEDURAL HISTORY:	
Prehearing Conference Dates:	Jan. 18, Feb. 7, April 28, 2017
Hearing Dates:	June 7-8, 2017
Completion of Post-Hearing Briefing and Close of Record:	September 8, 2017
Proposal for Decision Issued:	November 29, 2017

APPEARANCES:

For Ammonite Oil & Gas Corp. -
Robert G. Hargrove
Osborn, Marsland & Hargrove

For APACHE CORPORATION -
Brian R. Sullivan, Sandra B. Buch and Eno Peters
McElroy, Sullivan, Miller, Weber & Olmstead, LLP

For the McGary Living Trust, the McGary Family Trust and the Mary Jane McGary Trust
Karen Bogisch
Goldsmith, Bogisch & Chaires

Table of Contents

I. Statement of the Cases

Three docketed cases are presented together in this Proposal for Decision ("PFD") because they have common facts, parties and legal issues.

Ammonite Oil & Gas Corp. ("Applicant" or "Ammonite") filed three applications ("Applications") under the Mineral Interest Pooling Act ("MIPA"),[1] each requesting the Railroad Commission ("Commission") to pool its leased acreage into a unit for an already drilled horizontal well on Apache Corporation's ("Apache" or "Respondent's") Apache Blue Jay Unit ("Apache Unit") in the Phantom (Wolfcamp) Field in Loving County. The three wells at issue are Well Nos. 101H, 102H and 103H (referred to as "101H," "102H," "103H" and collectively as "Wells"). Apache requests the Applications be denied. The McGary Living Trust, the McGary Family Trust and the Mary Jane McGary Trust ("Protestants"), mineral interest owners of one of the two tracts comprising the Apache Unit, also participated in this proceeding protesting the Applications and requesting the Applications be denied.

Ammonite asserts the proposed pooling will prevent waste and protect correlative rights. Ammonite claims its leased riverbed tract should be pooled with the Wells on the Apache Unit such that the Apache Unit will be divided into three approximately equal units, one for each of the Wells, and each pooled with one-third of Ammonite's riverbed tract. The riverbed tract at issue traces the boundary of the Apache Unit facing the river. It meanders and consequently is nonlinear. The tract begins at one side of the Pecos riverbed and ends at the other, such that the tract is relatively narrow. Ammonite argues, due to the shape of the tract, it is not technologically or economically feasible to drill a well to produce the underlying minerals and the tract must be pooled for the tract's mineral interest owners to obtain their fair share of minerals and prevent waste.

Apache asserts there should be no forced pooling in this case. Apache claims the Wells do not produce minerals from Ammonite's riverbed tract. There is no drainage and Ammonite's acreage provides no contribution to production. Apache claims Ammonite's voluntary pooling offer was not fair and reasonable; it provided no benefit to Apache, would cause Apache to incur additional costs for additional equipment, would cause lease line spacing problems and unfairly dilute the Apache Unit mineral interest owners' portion. Apache further asserts pooling will not prevent waste or protect correlative rights. Apache claims the Wells are already drilled and do not drain minerals from the Ammonite tract. Pooling will not impact the amount of hydrocarbons produced or lost, so waste is not at issue. Apache also asserts pooling will not protect correlative rights because the Ammonite tract minerals are still in place beneath the Ammonite tract. In fact, Apache asserts, pooling will negatively impact the Apache Unit mineral interest owners' correlative rights by taking minerals produced solely from under the Apache Unit and giving a portion to Ammonite.

Protestants own an interest in one of the two tracts which comprise the Apache Unit. Protestants express concern regarding Ammonite's proposal to split the Apache Unit

[1] TEX. NAT. RES. CODE §§ 102.001-102.112.

into three units, one for each of the Wells. Protestants claim their correlative rights will be impacted. Protestants are currently being paid on production from all three Wells, per agreement of the interest owners of the unit. If the Apache Unit were forcibly split into three separate units and pooled with Ammonite's tract, Protestants would not be paid on the same basis.

The Administrative Law Judge and Technical Examiner ("Examiners") find insufficient evidence a fair and reasonable offer was made by Ammonite to Apache, which is required by the MIPA. Further, the Examiners find Ammonite has failed to demonstrate establishing the proposed pooled units will prevent waste, protect correlative rights or prevent the drilling of unnecessary wells.

The Examiners respectfully submit this PFD and recommend the Commission dismiss and deny the Applications.

II. Jurisdiction and Notice[2]

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. The MIPA grants the Commission authority to pool mineral interests into a unit under certain conditions.[3]

On December 16, 2016, the Hearings Division of the Commission sent an initial Notice of Hearing on the Applications via first-class mail to all interested parties setting a hearing date of January 18, 2017. The notice contained (1) a statement of the time, place and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.[4]

Applicant, Respondent and Protestants appeared at the hearing on January 18. At that hearing, preliminary matters were raised primarily relating to discovery such that the hearing on the merits did not go forward at that time. On dates agreed to by the participating parties, the hearing on the merits was rescheduled to June 7-8, 2017. The Hearings Division sent a notice of the rescheduled hearing date on February 24, 2017 to all interested parties. Consequently, all parties received more than 30 days' notice.[5] Applicant, Respondent and Protestants appeared at the hearing on June 7-8 and presented evidence and argument.

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[2] The transcript for the hearing on the merits on June 7-8, 2017 is referred to as "Tr. Vol. [volume no(s).] at [pages:lines]." Applicant's exhibits are referred to as "Applicant Ex. [exhibit no(s).]." Respondent's exhibits are referred to as "Respondent Ex. [exhibit no(s).]." Protestants' exhibits are referred to as "Protestants Ex. [exhibit no(s).]."

[3] *See* TEX. NAT. RES. CODE § 102.011.

[4] *See* TEX. GOV'T CODE §§ 2001.051, 2001.052; 16 TEX. ADMIN. CODE §§ 1.41, 1.42, 1.45.

[5] *See* TEX. NAT. RES. CODE § 102.016.

III. Applicable Legal Authority

At issue in these cases is whether Ammonite's mineral interests should be pooled into units for the Wells under the MIPA and involuntarily as to Apache and the other mineral interest owners of the proposed pooled units.

Pertinent sections of the MIPA at issue in this case are as follows:

> Sec. 102.011. AUTHORITY OF COMMISSION. When 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 this code 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.
>
> Sec. 102.012. OWNERS AUTHORIZED TO APPLY FOR POOLING. The following interested owners may apply to the commission for the pooling of mineral interests:
> (1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;
> (2) the owner of any working interest; or
> (3) any owner of an unleased tract other than a royalty owner.
>
> Sec. 102.013. REQUIRED VOLUNTARY POOLING OFFER. (a) The applicant shall set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit.
> (b) 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.
> (c) An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.[6]

According to the MIPA, for an applicant to prevail, the following must be established:

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[6] TEX. NAT. RES. CODE §§ 102.011, 102.012, 102.013.

1. There are two or more separately owned tracts of land;
2. They are embraced in a common reservoir of oil or gas;
3. The commission has established the size and shape of proration units for the reservoir;
4. There are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir;
5. The owners have not agreed to pool their interests;
6. 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;
7. An application for the Commission to pool has been made by one of the following:
   (1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;
   (2) the owner of any working interest; or
   (3) any owner of an unleased tract other than a royalty owner.
8. The applicant made a fair and reasonable offer to pool voluntarily; and
9. A pooled unit will avoid the drilling of unnecessary wells, protect correlative rights, or prevent waste.

If these criteria are met, the Commission must establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which cannot exceed 160 acres for an oil well plus ten percent tolerance.

IV. Discussion of Evidence

Applicant provided the testimony of one witness and 24 exhibits. Respondent provided the testimony of four witnesses and 46 exhibits. Protestants provided one exhibit.

A. Summary of Applicant's Evidence and Argument

Ammonite asserts the proposed pooling will prevent waste and protect correlative rights. Ammonite claims its leased riverbed tract should be pooled with the Wells on the Apache Unit. The riverbed tract at issue traces the boundary of the Apache Unit facing the river. It meanders and consequently is nonlinear. The tract begins at one side of the Pecos riverbed and ends at the other, such that the tract is relatively narrow. Ammonite argues that, due to the shape of the tract, it is incapable of drilling a well to produce the minerals and the tract must be pooled for the tract's mineral interest owners to obtain their fair share of minerals and prevent waste.

Ammonite's only witness was Mr. William Osborn. Mr. Osborn testified as a fact witness and not as an expert.[7] He is the president of Ammonite and co-owns the company with his wife. He has a Bachelor of Science in Geology, and a law degree from the University of Texas School of Law. In the past, he worked as a law clerk and examiner

[7] Tr. Vol. 1 at 21:23 to 22:13; Applicant Ex. 1.

for the Commission. He left the Commission in 1989 and has been in private practice since, with a focus on oil and gas regulatory issues.[8]

Mr. Osborn founded Ammonite in 2010 after he realized there were horizontal wells drilled to the river but the leases did not include the riverbed. He approached the General Land Office ("GLO"), which manages the mineral rights of the riverbeds that are owned by the State of Texas. He testified that while no one case has a significant financial impact, the cumulative impact does. He has worked on approximately 200 similar situations with this issue.[9]

Mr. Osborn testified that on weekends he looks at horizontal drilling permits issued for wells that border the State's riverbeds. As he locates them, he compiles a list and nominates tracts at the January State lease sale. At the last January lease sale, he nominated 17 different tracts in the Pecos River. Several years ago, he nominated, as a tract, the section of the Pecos River that borders the Apache Unit; Ammonite was the successful bidder. Consequently, Ammonite is currently the lessee of an oil and gas lease with the GLO for this particular stretch of river. The contractual lease with GLO is now past its primary term, but the GLO agreed in writing to suspend the primary term while these cases are pending. Ammonite is asking that this tract of river it has under lease with the GLO be pooled under the MIPA with three proposed Apache units, one unit for each of the Wells.[10]

Ammonite provided printouts from the Railroad Commission GIS mapping system showing the area of interest in this case. It is about four miles northwest of a small town in Loving County called Mentone. It's about 26 miles northwest of the town of Pecos in Reeves County.[11]

Ammonite provided Commission records relating to the Wells, including completion reports, plats and acreage designation. The Wells were all completed in the Commission's designated Phantom (Wolfcamp) Field. Apache has designated 320 acres to the Apache Unit. Apache splits the 320 designated acreage into thirds, one third for each of the Wells. 106.6 acres is designated for the 101H. 106.7 acres is designated for the 102H. 106.6 acres is designated for the 103H. The 103H completion report was certified by an Apache representative on July 25, 2016. The 102H completion report was certified on April 3, 2017. The 101H completion report was certified on April 18, 2017. Ammonite proposes the Commission create three separate units, one for each of the Wells, each with acreage similar to the acreage Apache has designated for each of the Wells plus a proportionate share of Ammonite's acreage.[12]

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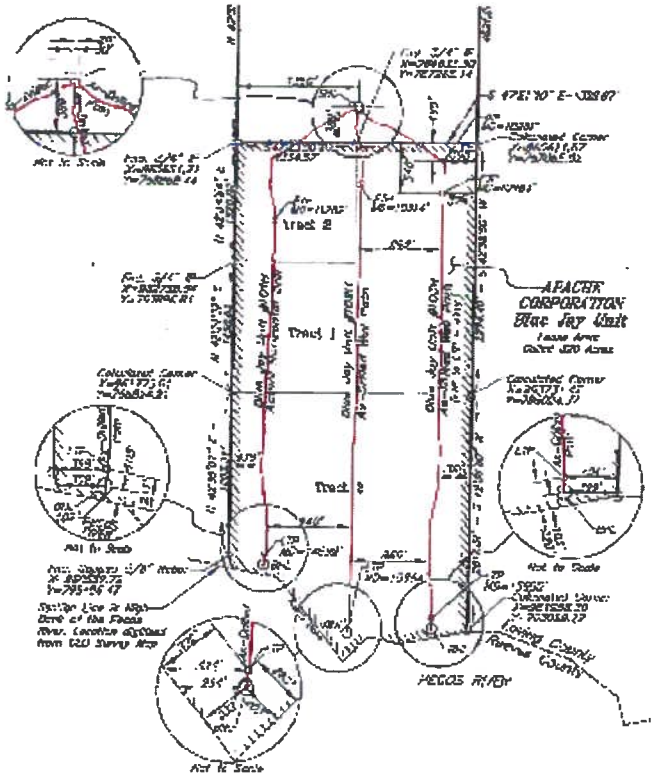
[8] Tr. Vol. 1 at 22:22 to 24:15.
[9] Tr. Vol. 1 at 24:16 to 26:4.
[10] Tr. Vol. 1 at 26:6 to 27:17.
[11] Tr. Vol. 1 at 27:18 to 29:3; Applicant Ex. 2, 3.
[12] Tr. Vol. 1 at 29:4 to 35:20; Applicant Ex. 4, 5, 6, 7, 8, 9, 10, 11.

A cropped copy of the plat depicting the Apache Unit is below:[13]



The riverbed boundary is the nonlinear boundary depicted at the bottom of the plat.

Mr. Osborn provided the voluntary pooling offer Ammonite sent to Apache in a letter dated May 10, 2016.[14] The purpose of the letter was to make the voluntary pooling offer required by the MIPA. It is a form offer Ammonite uses in other Ammonite MIPA cases and has used in cases before the Commission. The offer proposes three separate units, one for each of the 101H, 102H and 103H wells. For each of the Wells, Ammonite proposes Apache contribute approximately 106.66 acres and Ammonite contribute approximately one acre of the river. Mr. Osborn believes the offer is fair and reasonable.[15]

Ammonite seeks a risk penalty of 10%, and that is the risk penalty Ammonite proposed in its voluntary pooling offer. Mr. Osborn believes a ten percent risk factor is reasonable based on public statements made by Apache. Mr. Osborn reviewed statements made by Apache during recent investor presentations. Mr. Osborn provided a document with some quotes by Apache and generally described the statements as stating that the type of wells at issue are profitable, low-cost and very good wells.[16] He testified that since the offer, Apache has drilled more successful wells such that he feels even more strongly that 10% is an appropriate risk factor.[17]

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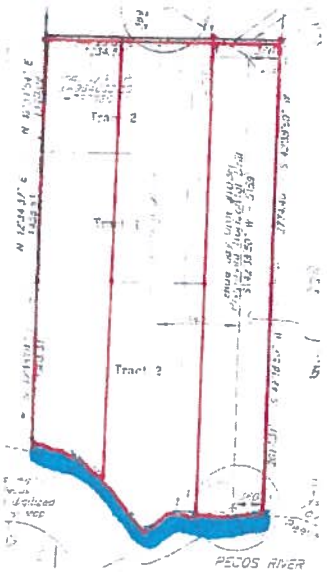
[13] Respondent Ex. 15.
[14] Applicant Ex. 12.
[15] Tr. Vol. 1 at 35:21 to 38:5, 102:23 to 103:16; Applicant Ex. 12.
[16] Tr. Vol. 1 at 53:16 to 56:3; Applicant Ex. 18.
[17] Tr. Vol. 1 at 38:6 to 39:3; Applicant Ex. 12.

An attachment to the offer is Apache's plat of the Apache Unit, on which Mr. Osborn marked in blue the acreage to be contributed by Ammonite. The description for the proposed units describing the acreage to be contributed by Ammonite is:

> Acreage to be contributed by Ammonite: that portion of the Pecos riverbed directly adjacent to the southern boundary of the Apache tract mentioned above, being 1 acre, more or less, being the [westernmost, easternmost, or central—depending on the proposed unit being described] acre of State Lease M-116702.[18]

Mr. Osborn testified he attempted to describe what the units would be for these three wells and he was open to "any other proposal or outcome if something could be worked out."[19] A cropped copy showing the hand-marked Apache Unit plat attached to the offer[20] and depicting the proposed pooled units is below:



Mr. Osborn testified Apache did not accept the voluntary pooling offer and there have been no further negotiations. He further testified if Apache had provided any counter-offer Ammonite would have been willing to negotiate and has settled most of these types of cases.[21] Mr. Osborn's understanding is the Wells are currently pooled into one Unit.[22]

Mr. Osborn testified that after it became clear voluntary pooling was not possible, Ammonite requested a hearing with the Commission for forced pooling. He obtained a list of all owners of interest in the Wells from Apache to provide a service list for the notice of

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[18] Applicant Ex. 12 at 1, 2.
[19] Tr. Vol. 1 at 39:4 to 40:5.
[20] Ammonite Ex. 12 at Exhibit A.
[21] Tr. Vol. 1 at 41:13 to 42:20, 59:7 to 60:17.
[22] Tr. Vol. 1 at 42:21 to 43:6.

hearing in this case. The notice of hearing issued in this case was sent to all the owners of interest in the Wells.[23]

The Commission designated field at issue is the Phantom (Wolfcamp) Field. The field was discovered in July 1986.[24]

GLO has consented to the pooling that Ammonite is requesting, as reflected in a memorandum signed by GLO's Commissioner. The memorandum also suspends the primary terms of the applicable contractual leases pending resolution of these cases, referencing the force majeure clause in the leases.[25]

Mr. Osborn testified as to the applicability of the MIPA in this case and discussed MIPA requirements. The Apache Unit tracts of land have different owners than the tract proposed to be pooled by Ammonite, which is owned by the State of Texas and managed by the GLO. Mr. Osborn testified and submitted a map showing wells in the area on both sides of the Pecos River are completed in the Phantom (Wolfcamp) Field. Based on this information, Mr. Osborn asserted he believes the Apache Unit and the tract proposed to be pooled are embraced in a common reservoir of oil or gas. He also bases this belief on his analysis of recent Commission MIPA cases.[26]

Mr. Osborn testified Ammonite's concern with Apache not including Ammonite's riverbed tract in the Apache Unit is there will be an unproduced area under the river.[27]

During cross examination, Mr. Osborn acknowledged it is his opinion the MIPA does not require the tract being forcibly pooled to be draining the minerals from the tract the applicant proposes to pool. Ammonite has done no drainage study and provided no evidence of drainage of its tract by the Apache Unit.[28]

Mr. Osborn acknowledged that recently (after January 2017) Anadarko completed wells on the other side of the river from the Apache Unit. He testified Ammonite did not make Anadarko a voluntary pooling offer because the Anadarko wells were not drilled at the time. He acknowledged Anadarko had contractual leases even though it had not yet drilled wells. He could not recall if he was aware of the leases before Anadarko drilled the wells. He testified as to Ammonite's strategy as follows:

> We're trying to send a signal or message to those who approach the river and leave it out to think about including the river.[29]

He acknowledged the Wells had already been drilled and did not include the riverbed portion. He acknowledged that since Anadarko had not yet drilled the other side of the

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[23] Tr. Vol. 1 at 43:7 to 45:5; Applicant Ex. 13.
[24] Tr. Vol. 1 at 45:6 to 47:1; Applicant Ex. 14-15.
[25] Tr. Vol. 1 at 47:2 to 48:18; Applicant Ex. 16.
[26] Tr. Vol. 1 at 48:19 to 53:15; Applicant Ex. 17.
[27] Tr. Vol. 1 at 56:4 to 57:14.
[28] Tr. Vol. 1 at 60:18 to 63:12.
[29] Tr. Vol. 1 at 70:6 to 70:9.

river at the time Ammonite made its offer, it was possible for wells to be drilled to include the riverbed area within an Anadarko unit. To explain why no offer was made to Anadarko before it drilled wells, Mr. Osborn testified:

> We had no idea when Anadarko might drill, and the [GLO] lease has a finite term. So we took the picture as it existed then.[30]

Mr. Osborn testified the State's ownership of the riverbed ceases upstream from the proposed units approximately half-way between the proposed units and New Mexico. He testified that the State claims its Pecos River property includes numerous tracts subject to forced pooling. He did not know how many acres or how long the State's Pecos River riverbed property is.[31]

According to a status report from Ammonite to the GLO, and prepared by Mr. Osborn, for the period of time between 2011 and 2013, it shows 21 Pecos River tracts have been included in units and estimates Ammonite has 10 more Pecos River tracts it is working on since that time. He also testified other operators have leases with the GLO and he does not know how many other Pecos River tracts the State is pooling with other operators.[32]

Mr. Osborn provided no calculations or other evidence of the recoverable hydrocarbons under Ammonite's leased tract, the proposed units or the State's Pecos River riverbed. Regarding an analysis of Ammonite's fair share of reserves, Mr. Osborn testified:

> Right now the State is receiving nothing in these cases where it's being stranded. So that seems to me not a fair share.[33]

Mr. Osborn acknowledged its applicable GLO leases are dated July 1, 2014 and contain a primary term of three years, but Ammonite did not make a voluntary pooling offer to Apache until May 10, 2016. Mr. Osborn explained it did not make an offer to Apache earlier because the Wells did not exist in July 2014; it waited until the Wells existed to make the offer. The applicable GLO leases state the tract is approximately three acres, but there is no survey of boundaries giving the actual metes and bounds of Ammonite's tract. Mr. Osborn explained the riverbed moves so the metes and bounds change over time.[34]

Mr. Osborn acknowledged that by forming the Apache Unit, Apache in effect removed the between-well lease lines caused by the underlying contractual leases. Consequently, as long as wells are drilled 330 feet from the outside lines of the Apache Unit and 200 feet parallel to the wellbore, wells within the Apache Unit will not require Statewide Rule 37 exception permits. He stated he is aware if Ammonite's request for the

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[30] Tr. Vol. 1 at 70:14 to 70:16.
[31] Tr. Vol. 1 at 69:10 to 74:8, 107:8 to 108:5.
[32] Tr. Vol. 1 at 74:25 to 77:5.
[33] Tr. Vol. 1 at 77:6 to 80:16.
[34] Tr. Vol. 1 at 80:18 to 84:10.

three proposed pooled units were granted, the ownership in each of the three units would be different. He acknowledged Apache would have to obtain Rule 37 exceptions to drill infill wells if the Apache Unit were divided into the proposed three units.[35] Mr. Osborn agreed if the Apache Unit were divided into three units and pooled as proposed, Apache would be required to have one separator and one set of tanks for each well such that Apache would have to have three separators and three sets of tanks instead of one. The requirement could be waived by the royalty and working interest owners, but currently waivers have not been obtained. These issues were not addressed in Ammonite's voluntary pooling offer.[36]

Mr. Osborn acknowledged if the Apache Unit were divided into three units, the ownership in each well would be different and affect the interest owners, including Protestants, who only own an interest in one of the two tracts comprising the Apache Unit.[37]

In discussing the MIPA's application to horizontal wells, Mr. Osborn states:

> And one problem when we referred this case was it's -- it's mostly old law, before horizontal drilling, before resource plays, and so we're a little bit of stumbling toward a new world here.[38]

Mr. Osborn testified Ammonite proposed three separate units instead of one unit because the MIPA only allows single well units to be proposed. He stated if the MIPA allowed for multi-well units, Ammonite could have proposed a single unit. He acknowledged if the parties entered into a voluntary pooling agreement, the agreement could have included one unit containing all three Wells.[39]

Mr. Osborn admitted if the Commission orders the forced pooling of the Wells as proposed by Ammonite, there would be no change in production; no more or less hydrocarbons will be recovered from the Wells if the proposed pooling were ordered as requested.[40]

Mr. Osborn acknowledged Ammonite's voluntary pooling offer provided no benefit to Apache.[41]

B. Summary of Respondent's Evidence and Argument

Apache asserts there should be no forced pooling in this case. Apache claims the Wells do not produce minerals from Ammonite's riverbed tract. There is no drainage and Ammonite provides no contribution. Apache claims Ammonite's voluntary pooling offer

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[35] Tr. Vol. 1 at 88:2 to 90:8.
[36] Tr. Vol. 1 at 94:25 to 95:19.
[37] Tr. Vol. 1 at 96:7 to 98:16.
[38] Tr. Vol. 1 at 103:23 to 104:1.
[39] Tr. Vol. 1 at 103:17 to 107:7.
[40] Tr. Vol. 1 at 84:7 to 84:15.
[41] Tr. Vol. 1 at 84:16 to 84:20.

was not fair and reasonable; it provided no benefit to Apache, would cause Apache to incur additional costs for additional equipment, would cause lease line spacing problems, and would unfairly dilute the Apache Unit mineral interest owners' portions. Apache further asserts pooling will not prevent waste or protect correlative rights. Apache claims the Wells are already drilled and do not drain minerals from the Ammonite tract. Pooling will not impact the amount of hydrocarbons produced or lost, so waste is not at issue. Apache also asserts pooling will not protect correlative rights because the Ammonite tract minerals are still in place beneath the Ammonite tract. In fact, Apache asserts, pooling will negatively impact the Apache Unit mineral interest owners' correlative rights by taking minerals produced solely from under the Apache Unit and giving a portion to Ammonite.

Apache's first witness was Randy Earley. He is employed with Apache as a Regulatory Manager. He has a mechanical engineering degree from Texas A&M University. He worked at the Commission from 1978 to 2005, when he retired as District Director in the Kilgore District Office. He then worked as a consultant before becoming employed by Apache in 2015. At the hearing he was offered, without objection, and designated as an expert witness in regulatory matters.[42]

The portion of the Pecos River bordering the Apache Unit also serves as the county border between Reeves and Loving Counties. The Apache Unit is shaped similar to a rectangle—tracing from the northeast to the southwest—with the Pecos River providing a serpentine border on the southwest.[43]

Apache provided a series of Commission records, such as the drilling applications and permits for the Wells. The Wells were permitted as part of the "Blue Jay Unit" consisting of 320 acres. The "Blue Jay Unit" is the Apache Unit in this case. The permits for the Wells were all issued on November 24, 2015. There are two tracts in the Apache Unit, which are combined to form the 320-acre unit. One of the two tracts forming the Apache Unit is L-shaped on the top half of the unit, as depicted on the plat. The second tract consists of approximately the two quadrants in the bottom half, which border the Pecos River and the remaining portion of the top quadrant.

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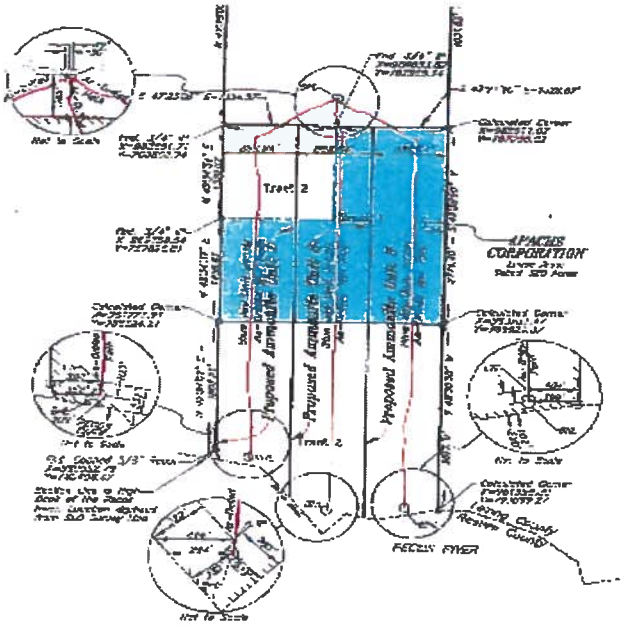
[42] Tr. Vol. 1 at 120:18 to 123:3.
[43] Tr. Vol. 1 at 124:1 to 125:9; Respondent Ex. 7, 8.

A diagram of the Apache Unit showing the two tracts and the dividing lines for the proposed three pooled units is:[44]



All of the Wells have last take points over 200 feet from the lease line, including the lease line that is the Pecos River. The 101H has a last take point 231 feet from the riverbed property. The 102H has a last take point 283 feet from the riverbed property. The 103H has a last take point 220 feet from the riverbed property.[45]

The field rules for the Phantom (Wolfcamp) Field designate the field as an Unconventional Fracture Treated Field and contain lease line spacing limits of 330 feet with zero between well spacing. There is a first and last take point requirement of 200 feet and perpendicular spacing for all take points of 330 feet. The standard proration unit size for the field is 320 acres.[46]

Mr. Earley provided graphical representations of the production from 103H in relation to the Commission's allowable production for each well. He provided both a monthly and daily analysis. According to the analysis and Mr. Earley's testimony, the wells are at full capability and are not meeting their allowable and will not benefit from any additional allowable acreage obtained by pooling Ammonite's tract. He testified the same is true for the 101H and 102H.[47]

Mr. Earley testified there would be additional burden to Apache due to Statewide Rule 26[48] if the Apache Unit were divided into the three pooled units proposed by Ammonite. He said each well would be in a different unit, and each would require

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[44] Respondent Ex. 18.
[45] Tr. Vol. 1 at 125:10 to 133:15; Respondent Ex. 9, 10, 10A.
[46] Tr. Vol. 1 at 135:25 to 138:5; Respondent Ex. 12.
[47] Tr. Vol. 1 at 138:6 to 140:22; Respondent Ex. 13.
[48] 16 TEX. ADMIN. CODE § 3.26.

individual separation equipment and standard equipment. If there were three pooled units as proposed instead of the current one pooled unit containing the Wells, three facilities would be needed instead of one, such that Apache would need two additional separators and two additional tank batteries. He estimates the cost for the additional equipment to be between $250,000 and $750,000 per well. [49]

Mr. Earley discussed the risks of drilling the Wells and wells in general. He testified there are more risks than just whether the well will be a dry hole. There are risks associated with costs in a drilling operation. He stated even in a well-established field, there are still drilling risks. By way of example, he testified Apache has had jobs in which it was unable to drill the wellbore through the surface casing and had to spend $850,000 to plug such a well from the surface casing back; then Apache would have to drill a well to replace the plugged one and there were associated added costs. Another example provided was that weather-related incidents can occur and increase costs.[50]

Apache's second witness was Casey Cadenhead. He is employed as a landman for Apache. He has a degree from Texas A&M University and has been an independent landman since 2008. He is a registered professional landman and started working for Apache in 2014. Mr. Cadenhead testified as an expert witness.[51]

Mr. Cadenhead discussed the composition of the Apache Unit and the complications that would arise if the unit were split into the three units proposed. There are two tracts comprising the Apache Unit. The southern half and a northwest portion makes up one tract, referred to as Tract 2; Tract 2 is a non-contiguous lease. The remainder of the Apache Unit is Tract 1. The tracts do not go uniformly across the unit. He testified there are two main issues for developing Apache facilities. By having one unit, Apache can save cost by having one facility service multiple wells. Having one unit also facilitates infill development, without concern regarding internal lease lines. It allows Apache flexibility to place the wells where the operator believes is optimal. He testified if the Apache Unit were divided into three units, there would not be identical working and royalty interests and each unit would have differing interests. He testified this would implicate Statewide Rule 37[52] spacing limits, requiring spacing exceptions to drill additional wells. Apache would also have to build two more facilities if the Apache Unit was divided into three units, because there would be facilities needed for each unit as required by Statewide Rule 26. He testified currently the potential problems with Statewide Rules 26 and 37 do not exist because there is one unit encompassing both tracts and all three Wells.[53]

Mr. Cadenhead discussed Ammonite's offer to voluntarily pool with Apache. He testified he does not have and Ammonite's offer did not contain a survey depicting the metes and bounds description of the riverbed tract Ammonite proposes to pool. He testified that is an important consideration for Apache and that Apache would need a

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[49] Tr. Vol. 1 at 140:24 to 141:22.
[50] Tr. Vol. 1 at 141:23 to 143:10.
[51] Tr. Vol. 1 at 145:1 to 146:16.
[52] 16 TEX. ADMIN. CODE § 3.37.
[53] Tr. Vol. 1 at 147:13 to 150:20; Respondent Ex. 15.

"valid legal description," which was not provided by Ammonite. He noted Ammonite's offer contains no discussion of how to address the problems that would arise due to Statewide Rules 26 and 37. He testified the offer is not fair and reasonable from Apache's perspective.[54]

Mr. Cadenhead provided charts showing a breakdown of the different interest types in the Apache Unit and how the interests would be impacted if the Ammonite tract were pooled with the Apache Unit tracts. He stated the proposed pooling would cause a dilution of the Apache Unit interest owners' portion and the only beneficiary would be the riverbed interest owners. The pooling would also cause the total acres pooled to be 323, assuming Ammonite's assertion that the riverbed tract is approximately three acres. Mr. Cadenhead testified one of the contractual leases does not allow Apache to pool more than 320 acres. He stated Apache does not believe the river is being drained by the Wells, and it is his opinion if Apache were to pool undrained acreage, Apache would be vulnerable to lawsuits and liability for bad faith pooling.[55] According to Mr. Cadenhead's calculation, if Ammonite's applications are granted, Ammonite would become entitled to approximately one percent (0.93 percent) of the interest in the pooled units.[56]

On cross examination, Mr. Cadenhead testified he believes Apache intends to drill more wells on the Apache Unit. He was unsure how many. No funds have been allocated for additional wells, no drilling applications have been submitted to the Commission and he is unaware of any Authority for Expenditure, aka "AFE," being developed.[57]

Apache's third witness was Lauren Kirik. Ms. Kirik is a geologist employed by Apache. The geological area at issue in this case is an area of focus for her at Apache. She has testified as an expert witness in other Commission proceedings. She testified, without objection, as an expert witness in geology.[58]

Ms. Kirik provided a map of the area at issue. It shows the location of wells used to develop a cross section covering approximately 20 miles.[59] She provided a depositional schematic of the area. She testified the target interval is composed of the organic source rock. The target interval of the Wells ranges between 10,000 to 11,000 feet. She testified it is a tight rock and described the drilling as, in essence, a mining operation. The only method to produce hydrocarbons is through hydraulic fracture stimulation. The hydrocarbons are not mobile; it is rock which must be broken in order to extract the hydrocarbons. Apache provided a core sample from a well drilled in a similar depositional environment. The core sample is solid and consistent with Ms. Kirik's explanation.[60]

Ms. Kirik provided well logs of vertical wells The vertical well logs are used to identify target intervals. The target interval for all three Wells is within a 30-foot interval at

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[54] Tr. Vol. 1 at 150:21 to 154:1; Respondent Ex. 16.
[55] Tr. Vol. 1 at 154:14 to 160:22, 230:7 to 232:20; Respondent Ex. 17, 18, 20.
[56] Tr. Vol. 1 at 242:3 to 244:12.
[57] Tr. Vol. 1 at 233:18 to 234:25.
[58] Tr. Vol. 1 at 161:1 to 162:10.
[59] Tr. Vol. 1 at 162:14 to 164:4; Respondent Ex. 19.
[60] Tr. Vol. 1 at 164:5 to 166:2; Respondent Ex. 20, 44, 45.

the top of the Phantom (Wolfcamp) Field. Within the 30-foot target interval, the rock itself contains discrete heterogeneous sediment packages.[61] She stated Apache plans to drill additional wells in the Apache Unit as part of its long term plan to develop the unit, but no additional development is budgeted for 2017.[62]

Apache's fourth witness is Mazher Ibrahim. He is an expert in reservoir engineering for Apache. He has a bachelor's and master's degree in petroleum engineering. He has been working in this industry for 26 years, including teaching more than 10 years. He testified, without objection, as an expert witness in reservoir engineering.[63]

Mr. Ibrahim provided diagrams of both conventional and unconventional reservoirs.[64] This case involves an unconventional shale reservoir developed with horizontal wells. The only technique in industry to extract the hydrocarbons from this kind of deposit is by a hydraulic fracture of the shale to liberate the hydrocarbon from the shale. He testified it is a type of mining. A conventional reservoir is a continuous accumulation, and hydrocarbons are communicating with each other. But in the type of reservoir at issue in this case, the communication occurs through the hydraulic fracture stimulation.[65]

Mr. Ibrahim described the process of hydraulic fracturing as the process of using hydraulic pressure to create an artificial fracture in a reservoir. The fracture grows in length, height and width by pumping a mixture of fluid and proppant at high pressure.[66] Mr. Ibrahim testified Apache orients its horizontal wells in such a manner to provide minimum stress perpendicular to the wellbore. This way, the fractures will efficiently propagate perpendicular to the wellbore.[67]

He testified in industry there are three models to evaluate hydraulic fractures currently being used.[68] He provided examples of the mathematical equations used. Using one of these equations, he estimated the fracture half-length of the 103H to be approximately 310 feet perpendicular to the wellbore. The parameter inputs utilized in these models is non-proprietary information.[69]

He provided examples of one technique used by industry to record hydraulic fracture stimulation events, by using microseismic data. The fractures in the examples are perpendicular to the wellbore.[70]

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[61] Tr. Vol. 1 at 166:3 to 172:23, 250:3 to 252:3; Respondent Ex. 22.
[62] Tr. Vol. 1 at 252:4 to 254:11.
[63] Tr. Vol. 1 at 173:2 to 174:8.
[64] Tr. Vol. 1 at 174:12 to 182:2; Respondent Ex. 23.
[65] Tr. Vol. 1 at 182:3 to 185:5.
[66] Tr. Vol. 1 at 191:7 to 192:5, 194:6 to 195:16.
[67] Tr. Vol. 1 at 192:9 to 193:24, 216:10 to 217:17, 269:16 to 271:5.
[68] Tr. Vol. 1 at 195:17 to 198:8.
[69] Tr. Vol. 1 at 218:12 to 223:6; Respondent Ex. 39, 40-43.
[70] Tr. Vol. 1 at 198:9 to 218:11; Respondent Ex. 37.

Mr. Ibrahim provided testimony the fractures for the Wells and the area of production or drainage is perpendicular to the Wells' wellbores and cannot and will not drain or produce from Ammonite's tract.[71]

C. Summary of Protestants' Evidence and Argument

Protestants own an interest in one of the two tracts which comprise the Apache Unit. Protestants expressed concern regarding Ammonite's proposal to split the Apache into three units, one for each of the Wells. Protestants claim their correlative rights will be impacted because they will no longer own an interest in all three Wells.[72] Protestants are currently being paid on production from all three Wells. This was accomplished via a private agreement. If the Apache Unit were broken into three separate units and pooled with Ammonite's tract, Protestants would not be paid on same basis. The status quo would change and it would affect the correlative rights of Protestants and other interests in Apache Unit.[73]

Protestants note Ammonite provides no prior Commission orders where an existing pooled unit containing multiple wells is divided into smaller units. Protestants maintain that under Texas law regarding unitization, they currently own undivided interests in all the tracts within the Apache Unit, which would change if the Commission divides the unit into three separate units. Protestants would lose their undivided interests in Tract 2 of the Apache Unit. Protestants assert the pooling requested by Ammonite would redistribute vested property interests between all the interest owners of the Apache Unit, which is beyond the intended scope of the MIPA.[74] Protestants argue Ammonite's offer to split the Apache Unit into three separate units is not fair and reasonable; this is more true since Ammonite could have approached the lessee/operator of the undeveloped tract on the other side of the riverbed.[75]

V. Examiners' Analysis

Ammonite requests its State riverbed tract be pooled into three proration units, one unit for each of the Wells.[76] The Examiners recommend the Commission dismiss and deny the Applications.

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[71] Tr. Vol. 2 at 7-48.
[72] Tr. Vol. 1 at 19:24 to 20:7.
[73] *Closing Argument by Protestants Kelly McGary, Trustee of the McGary Family Trust – Kelly Separate Property, Brian McGary, Trustee of the McGary Living Trust – SPH, and Mary Jane McGary, Trustee of the Mary Jane McGary Trust* (filed July 24, 2017).
[74] *Id.*
[75] *Id.*
[76] *Ammonite Oil & Gas Corporation's Closing Argument in Support of its MIPA Applications* ("Ammonite Closing") at 1.

A. The Examiners find sufficient evidence Applicant has standing and recommend that Apache's motion to dismiss for lack of standing be denied.

On August 17, 2017, Apache filed *Apache Corporation's Motion to Dismiss for Lack of Standing* ("Motion"). In the Motion, Apache states Ammonite's contractual leases have terminated such that Ammonite lacks standing to pursue these MIPA Applications.

The MIPA allows the following interest owners to apply for the pooling of mineral interests:

(1) The owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;
(2) The owner of any working interest; or
(3) Any owner of an unleased tract other than a royalty owner.[77]

Apache claims Ammonite does not qualify as an interest owner allowed to apply for pooling. Apache claims the primary term of the contractual lease ("Contractual Lease") Ammonite relies on ended July 1, 2017, and there has never been production in paying quantities, which is required after the primary term of the Contractual Lease terminates.

Ammonite claims a memorandum[78] issued by the lessor, the GLO, on January 4, 2017, agreeing to suspend the primary term to allow Ammonite to pursue the MIPA claims, prevents termination of the Contractual Lease.[79]

The memorandum states that the suspension is pursuant to the Contractual Lease's force majeure provision. Apache argues the force majeure clause is not applicable in this situation, and even if so, Ammonite did not make delay rental payments necessary to perpetuate the suspension. Ammonite asserts all delay rental payments required to be paid in the primary term have been paid and because the primary term has been suspended, no additional delay rental payments are due.

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.[80] For other permit applications, such as drilling permit applications, it is sufficient for an applicant to make "a reasonably satisfactory showing of a good faith claim," and another's good faith dispute of title or possessory interest will not alone defeat an applicant.[81] A showing of a good faith claim does not require an applicant to prove title or a right of possession. Ammonite argues a "good faith claim" standard is the appropriate standard for this case and the Examiners agree. A

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[77] TEX. NAT. RES. CODE § 101.012.
[78] Applicant Ex. 16.
[79] *Ammonite Oil & Gas Corporation's Response to Apache Corporation's Motion to Dismiss* (filed August 28, 2017).
[80] *Magnolia Petroleum Co. v. R.R. Comm'n*, 170 S.W.2d 189, 191 (Tex. 1943); *see also Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied) (mem. op.).
[81] *Id.*

"good faith claim" standard is used for other permit applications, and there is no precedent provided for a different standard for a MIPA application.

Ammonite provides documentation that both the lessor and lessee agree the Contractual Lease is still in effect. Only Apache, a third party, takes a position that the Lease has terminated. It is unclear Apache would have standing to raise this issue in the court system. Even if there is a *bona fide* lease dispute, the court system is the appropriate forum to resolve it, and it does not defeat Ammonite's claim that it is an interest owner as contemplated by the MIPA.

The ALJ finds Ammonite has provided a reasonably satisfactory showing of a good faith claim and it is a mineral interest owner as contemplated by the MIPA.

The only precedent Apache provides pertaining to Commission interpretation of lease provisions is another MIPA case involving Ammonite and the Holler (18134) Lease, Well Nos. 1H and 2H ("Holler Case").[82] The Holler Case is distinguishable. In the Holler Case, there was no suspension letter and the examiners found the applicable contractual lease "appears to have expired."[83] After the proposal for decision was issued with this language, Ammonite requested to withdraw its MIPA application. In the Final Order, the application was remanded for withdrawal and dismissal. Because the application withdrawal is the stated basis in the Final Order, there is no indication as to what the Commission's ultimate position was as to the termination of the applicable contractual lease. In other prior Ammonite MIPA cases involving Chesapeake wells and in which the suspension documentation was provided, the examiners recommended the MIPA applications be approved. In the Final Order for those cases, the Commission denied the applications for reasons other than lease termination.[84]

For these reasons, the Examiners recommend the Motion be denied.

B. The Examiners find Ammonite did not provide Apache a fair and reasonable offer to pool, which is a prerequisite to filing a MIPA application.

In order for the Commission to force pool under the MIPA, the applicant must make a "fair and reasonable offer to pool voluntarily."[85] If no such offer has been made, the MIPA application should be dismissed.[86]

The only offer Ammonite made to Apache is in a letter dated May 10, 2016 ("Offer Letter").[87] The Offer Letter contains a proposal to split the Apache Unit into three units, one for each well, include the Ammonite riverbed tract and provide Ammonite compensation. When asked what, if any, benefit would there be to Apache to enter into

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[82] Attachments 1 (Proposal for Decision) and 2 (Final Order) to the Motion.
[83] Exhibit 3 at 3, Finding of Fact 9.
[84] *See* Commission Oil & Gas Docket Nos. 01-0290024, 01-0290026 and 01-0290029.
[85] TEX. NAT. RES. CODE § 102.013.
[86] *Id.*
[87] *See* Ammonite Closing at 5.

such an agreement, Ammonite's witness testified there would be no benefit to Apache in entering into a voluntary pooling agreement regarding the Wells. Specifically, Ammonite's witness, Mr. Osborn, stated:

> Question: And if Apache -- whether or not Apache builds more wells or not, if they don't, the contract that you provided, Apache gets no benefit. Is that correct?
>
> Answer: I agree.[88]

In order for an offer to be fair and reasonable, it would seem the offeree would need to get some benefit as part of the agreement. A problem with this offer is Ammonite provides nothing of benefit to Apache, including not contributing any of the minerals produced by the Wells—as demonstrated by a lack of drainage. Yet Ammonite requests to share an interest in those minerals. It is a challenge for the Examiners to see how this is fair and reasonable from Apache or anyone's perspective. In Ammonite's offer, Ammonite gets something, Apache gets nothing. If there were evidence of drainage by the Wells, then Ammonite would be contributing minerals and Apache would be getting a benefit from Ammonite. In this case, Ammonite provided no evidence of drainage (or other benefit to Apache), and Apache provided evidence drainage was not occurring. Ammonite does not dispute drainage is not occurring and claims it is not necessary. The Examiners find the offer in the Offer Letter, in which Ammonite provides no consideration or contribution and Apache obtains no benefit, is not fair and reasonable.

Ammonite's admission there is no benefit to Apache is consistent with the scientific evidence and expert testimony in the record. Ammonite provided no scientific evidence or expert testimony showing that its tract was being drained by the Wells or that Ammonite was providing any benefit to Apache or otherwise contributing. In contrast, Apache provided evidence the Wells are not and cannot drain from Ammonite's tract and Ammonite would not be contributing production to the Wells. The reservoir at issue is an unconventional shale reservoir commonly developed with horizontal wells. They are tight formations with low permeability; production is achieved only through hydraulic fracture stimulation. Apache's experts testified it was analogous to mining. According to Ammonite's offer, the interest of the Apache Unit owners would be diluted and a portion provided to Ammonite, since Ammonite contributes none of the minerals produced. The evidence in the record also shows Apache would not benefit from any additional allowable to be gained from the additional acreage provided by Ammonite since the Wells, producing at maximum capability, are producing below the current allowable.[89]

The offer must be 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.[90] A fair and

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[88] Tr. Vol. 1 at 84:16 to 84:20.
[89] Tr. Vol. 1 at 138-139, Respondent Ex. 13.
[90] *R.R. Comm'n of Texas v. Pend Oreille Oil & Gas Co.*, 817 S.W.2d 36, 41 (Tex. 1991); *Carson v. R.R. Comm'n of Texas*, 669 S.W.2d 315, 318 (Tex. 1984).

reasonable offer must be fair and reasonable from the standpoint of the party being force pooled.[91]

The offer was made after the Wells were drilled with take points in compliance with lease line spacing so as not to include Ammonite tract minerals. The time the offer was made can be an important factor to be considered in determining if an offer was fair and reasonable.[92] Moreover, at the time Ammonite made the offer to Apache the other side of the riverbed was not yet developed but leased; Ammonite chose not to make an offer to that lessee/operator. Since there were no wells drilled on the other side, wells to be drilled on the other side could have potentially incorporated Ammonite's riverbed tract and produced from that tract.

In addition to providing no benefit to Apache, Apache asserts and Ammonite acknowledges the offer in the Offer Letter would subject Apache to additional burdens and costs.[93] According to Apache and acknowledged by Ammonite, Statewide Rule 26(a)(2)[94] would require each of the proposed pooled units to have a separate tank battery and separator. Currently, since there is one Apache Unit, there is only one tank battery and separator for the entire unit. If the Apache Unit were to be split into three units, Apache would have to bear the cost of two additional tank batteries and separators, unless it obtained an exception to the rule requirement. According to Apache and acknowledged by Ammonite, splitting the Apache Unit into three units would cause problems with the lease line spacing limits in Statewide Rule 37.[95] Splitting the Apache Unit into three units would create lease lines between the three units; Apache would have to comply with the lease line spacing 330 feet minimum or obtain an exception to this rule when drilling future wells. Having one Unit encompassing the Wells minimizes lease lines, allowing Apache the greatest flexibility in determining well placement to most effectively produce the Apache Unit tracts. None of these problems, which are relevant facts in considering a fair and reasonable offer, were addressed by Ammonite's offer. These problems created by Ammonite's proposed units in its voluntary offer further demonstrate it is unfair and unreasonable. The Examiners did not find compelling Ammonite's assertion it was Apache's responsibility to address these problems.

Ammonite describes the Offer Letter as a form letter it uses as its voluntary pooling offer in all instances, no matter what the specific facts. Ammonite's reasoning is the format and terms in its form have worked before the Commission in the past. It does not appear Ammonite's offer considered the facts relevant to this particular offer.

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[91] *See, e.g., Windsor Gas Corp. v. R.R. Comm'n of Tex.*, 529 S.W.2d 834, 837 (Tex. Civ. App.—Austin 1975, writ dism'd); *see also R.R. Comm'n of Tex. v. Pend Oreille Oil & Gas Co.*, 817 S.W.2d 36, 41 (Tex. 1991); *Carson v. R.R. Comm'n of Tex.*, 669 S.W.2d 315, 318 (Tex. 1984); Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 12.3(B) (2d. ed. 2016).

[92] *See Carson v. R.R. Comm'n of Tex.*, 669 S.W.2d 315, 318 (Tex. 1984); Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 12.3(B) (2d. ed. 2016).

[93] *Ammonite Oil & Gas Corporation's Reply Closing Argument in Support of its MIPA Applications* at 7 (filed August 7, 2017) ("Ammonite Reply").

[94] 16 TEX. ADMIN. CODE § 3.26(a)(2).

[95] 16 TEX. ADMIN. CODE § 3.37.

Ammonite's assertion that Apache failed to negotiate is inconsequential. It is unclear Ammonite's submission of a form offer to Apache amounts to anything more than a *de minimis* effort to negotiate on its part. It is Ammonite's burden to provide a fair and reasonable offer even if Apache fails to negotiate. Ammonite's only offer was not fair and reasonable, and the Examiners do not agree Apache had an obligation to negotiate in such instance. Ammonite's willingness to negotiate further, without providing a fair and reasonable offer, is equally inconsequential.

Ammonite offers no authority for its claim it was required to break the units up in its voluntary pooling offer because the MIPA only applies to applications regarding one well. However, Ammonite acknowledged if it entered into a voluntary pooling agreement, the restrictions in the MIPA would not be applicable—those restrictions only apply to compulsory pooling by the Commission. In fact, there appears to be support for the notion that the limitations in the MIPA do not define or constrain what would be considered a fair and reasonable voluntary offer.[96]

Ammonite failed to provide survey data. Apache provided expert testimony from a landman that the description of the proposed units and Ammonite's acreage to be included is insufficient. While Mr. Osborn said he thought the information provided was sufficient and he generally referred to documentation including a patent and past examples, Ammonite did not provide expert testimony about the sufficiency of the description or provide a connection from the patent to the description of the proposed units.

Recent Commission orders support a finding Ammonite's offer was not fair and reasonable. Recently, the Commission has issued two orders in similar cases involving Ammonite riverbed tracts ("Recent Orders"), concluding Ammonite's voluntary offer was not fair and reasonable.[97]

For all reasons discussed, the Examiners find Ammonite's voluntary pooling offer was not fair and reasonable.

C. The Examiners find there is insufficient evidence pooling the proposed units will prevent waste, protect correlative rights or prevent the drilling of unnecessary wells.

Ammonite alleges the requested pooling will prevent waste and protect correlative rights.

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[96] *See* Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 12.3(B) (2d. ed. 2016).

[97] *See* Tex. R.R. Comm'n, *Consolidated Final Order Denying the Applications of Ammonite Oil & Gas Corp Pursuant to the Mineral Interest Pooling Act for the State Lease M-117248 for the Naylor Jones Unit 11, Well No. 1 H, Eagleville (Eagle Ford-1) Field, McMullen County, Texas et al.*, Oil and Gas Docket No. 01-0302640 et al. at 2 (Nov. 7, 2017) (Conclusion of Law 2) ("November 7, 2017 Order"); Tex. R.R. Comm'n, *Final Order Denying the Applications of Ammonite Oil and Gas Corporation Pursuant to the Mineral Interest Pooling Act for the Formation of a Pooled Unit for the Butterfly Dim (16437) Lease, Well No. J 4H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas et al.*, Oil and Gas Docket No. 01-0290024 et al. (September 19, 2017) (Conclusion of Law 2) ("September 19, 2017 Order").

In a recent decision by the Commission with a similar fact pattern and evidence, the Commission found Ammonite did not prove its case and Ammonite failed to provide any scientific expert testimony regarding how pooling will prevent waste, protect correlative rights or prevent unnecessary drilling.[98] In this case, Ammonite also provided no expert testimony from a geologist or engineer, or other scientific evidence.[99]

For this reason and the reasons discussed below, the Examiners find Ammonite failed to prove its case.

i. There is insufficient evidence forced pooling will prevent waste.

The term "waste" generally means the ultimate loss of oil.[100] Prevention of waste occurs if hydrocarbons are produced that otherwise would be lost.[101] Ammonite failed to provide evidence the requested pooling will prevent waste. Moreover, Ammonite acknowledged pooling the Wells in this case as requested will not impact waste in that no more or less hydrocarbons will be recovered from the Wells.

Ammonite provided no evidence—scientific, expert testimony or otherwise—that pooling Ammonite's tract will prevent waste.[102] There was no evidence as to any amount of hydrocarbons that would be wasted if the Applications are not granted. For example, Ammonite had no geologic study, no drainage analysis, no engineering expert testimony, no fracture stimulation evidence and no volumetric calculations, such as of hydrocarbons in place under Ammonite's tract. Ammonite's only witness was a fact witness. Ammonite failed to provide any waste analysis regarding the pooling of the Wells.

In addition to providing no scientific evidence pooling Ammonite's tract will prevent waste, Ammonite's witness agreed pooling the Wells with Ammonite's tract will have no impact on whether there is waste. Specifically, Mr. Osborn testified as follows:

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[98] Nov. 7, 2017 Order at 4 (Finding of Fact 10).

[99] *See, e.g.,* Ammonite Reply at 1-2 (Ammonite agrees it did not provide scientific or expert evidence and claims it is not necessary).

[100] *See, e.g.,* TEX. NAT. RES. CODE § 85.046; *Gulf Land Co. v. Atl. Ref. Co.*, 131 S.W.2d 73, 80 (Tex. 1939).

[101] *Id.*

[102] Ammonite's suggestion that it did not present scientific evidence in part because Apache was not required to disclose fracture stimulation trade secret information is without merit. In discovery, Ammonite requested Apache stimulation data regarding the Wells. Apache asserted it was trade secret information and provided expert testimony establishing so. Apache also provided expert testimony that, according to the current state of the science of well fracture stimulation, it would be impossible for the fractures to result in production from Ammonite's riverbed tract. For example, the fractures result in production from acreage perpendicular to the wellbore, and the riverbed tract is not located perpendicular to the wellbore. Thus, Apache argued that providing Ammonite (a competitor operator) trade secret fracture stimulation procedures or recipes that Apache uses is unnecessary. Apache also provided testimony that the data it has about its fracture stimulation for the Wells would be useless to assess the drainage area of the Wells without additional highly expensive analysis of that data. In contrast, Ammonite provided no testimony, so there was no testimony that in fact it is scientifically possible for the Wells to drain the Ammonite tracts, such that data specific to the Wells might be pertinent. Ammonite also acknowledged it did not know what it would do with the data if it were provided the data. It had not hired an expert and was unable to provide any explanation as to how the fracture stimulation data would be used to calculate or otherwise indicate a drainage area of the Wells. Consequently, Ammonite's request for the information was denied with the caveat that if it did provide evidence that such drainage was even possible and information as to how the requested data would be utilized to provide relevant information, its request could be reconsidered. Ammonite consistently has taken the position in this case that evidence of drainage and expert testimony is not required. *See, e.g.,* April 28, 2017 Transcript of Prehearing Conference at 84:1 to 85:2.

JUDGE COOK: We all agree, whether there's a pool or not, these three wells there's not going to be any additional waste regarding these three wells, pooling or no pooling. Is that correct?

MR. SULLIVAN: We think that's correct.

JUDGE COOK: I would like the witness to answer.

MR. OSBORN: I agree.[103]

The Wells are already drilled and do not produce from Ammonite's tract. Pooling Ammonite's tract with these Wells will have no impact on the amount of hydrocarbons produced.

Ammonite's reliance on the potential benefit of future wells is misplaced. The MIPA applications at issue pertain only to Wells already drilled, which do not produce from the riverbed tracts. While the MIPA does contain provisions that allow applications regarding proposed wells, Ammonite's applications in this case contain no proposed wells. Ammonite provided no evidence, other than general comments by lay witness Mr. Osborn, substantiating any benefit regarding future development. Because the Applications regard only the Wells, the Examiners find immaterial Ammonite's discussion of possible future wells.

Notably, Ammonite only sought to pool the Wells after the Wells were drilled in compliance with lease line limits. However, on the other side of the riverbed, at the time Ammonite made its offer to Apache, the land was leased but undeveloped, and pooling with the tracts on the other side may have prevented waste by allowing for longer productive horizontal wellbores and recovering hydrocarbons from the riverbed tract that would otherwise not be recovered. Ammonite did not choose that approach.

Further, Apache did provide evidence pooling will not prevent waste. Apache provided the testimony of an expert geologist and expert reservoir engineer that pooling will not enable recovery of any hydrocarbons under Ammonite's tract. According to the evidence in the record, the Wells cannot drain or otherwise produce the minerals under Ammonite's tract. The Wells will only produce hydrocarbons under the Apache Unit tracts.

The Recent Orders support a finding Ammonite's proposed pooling will not prevent waste. In them, the Commission concludes there is insufficient evidence the pooling will prevent waste.[104]

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[103] Tr. Vol. 1 at 84:7 to 84:15.

[104] November 7, 2017 Order at 4-5 (Finding of Fact 11, Conclusions of Law 3, 5); September 19, 2017 Order at 2-3 (Finding of Fact 12, Conclusions of Law 3, 5).

For these reasons, the Examiners find there is insufficient evidence the requested pooling will prevent waste.

ii. There is insufficient evidence forced pooling will protect correlative rights.

According to Texas law, every owner or lessee of land is entitled to a fair chance to recover the oil and gas in or under his land, or their equivalents in kind.[105] As the Texas Supreme Court stated in *Elliff v. Texon Drilling Co.*:

> In our state the landowner is regarded as having absolute title in severalty to the oil and gas in place beneath his land. ... The only qualification of that rule of ownership is that it must be considered in connection with the law of capture and is subject to police regulations. ... The oil and gas beneath the soil are considered a part of the realty. [106]

Generally, protection of this right in relation to other mineral interest owners with interest in a common reservoir is protection of an owner's correlative rights. As the Texas Supreme Court further stated:

> Thus it is seen that, notwithstanding the fact that oil and gas beneath the surface are subject both to capture and administrative regulation, the fundamental rule of absolute ownership of the minerals in place is not affected in our state. In recognition of such ownership, our courts, in decisions involving well-spacing regulations of our Railroad Commission, have frequently announced the sound view that each landowner should be afforded the opportunity to produce his fair share of the recoverable oil and gas beneath his land, which is but another way of recognizing the existence of correlative rights between the various landowners over a common reservoir of oil or gas. ... This reasonable opportunity to produce his fair share of the oil and gas is the landowner's common law right under our theory of absolute ownership of the minerals in place.[107]

Notably, the discussion is in the context of a continuous reservoir in which hydrocarbons flow and have a fugitive nature. The evidence in this case is there is no real flow of hydrocarbons due to low permeability of the tight shale reservoir and the only way to move the hydrocarbons is via fracture stimulation. As Mr. Osborn stated, the MIPA was written before horizontal drilling and applying them to horizontal drilling is "a little bit of stumbling toward a new world."[108]

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[105] *Gulf Land Co. v. Atl. Ref. Co.*, 131 S.W.2d 73, 80 (Tex. 1939); *R.R. Comm'n v. De Bardeleben*, 305 S.W.2d 141, 143 (Tex. 1957).

[106] 210 S.W.2d 558, 561 (Tex. 1948).

[107] *Elliff v. Texon Drilling Co.*, 210 S.W.2d 558, 562 (Tex. 1948); *see also Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 63–64 (Tex. 2016); *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 830 (Tex. 2012); *Coastal Oil & Gas Corp. v. Garza Energy Tr.*, 268 S.W.3d 1, 15 (Tex. 2008); *Gregg v. Delhi-Taylor Oil Corp.*, 344 S.W.2d 411, 418 (Tex. 1961).

[108] Tr. Vol. 1 at 103:23 to 104:1.

Since Apache produces only minerals under its Apache Unit, it cannot be said that it is taking an undue proportion of the minerals in a common reservoir such that the Ammonite tract mineral interest owners correlative rights need protection or are at risk. Moreover, due to the nature of the reservoir, Apache is only going to capture hydrocarbons under its unit from the Wells. According to the evidence, the minerals in place under Ammonite's tract are still in place and will not be produced by the Wells. Pooling will not protect Ammonite's correlative rights. However, if the requested pooling were ordered, Ammonite would get a portion of the proceeds from minerals produced solely from beneath the Apache Unit tracts; such pooling would not protect the Apache Unit mineral interest owners and their right and ownership of the minerals under their tracts. The MIPA requires any forced pooling offer to protect all interest owners and afford each the opportunity to produce or receive his fair share.[109] Taking production from the Apache Unit mineral interest owners and giving a portion to Ammonite would prevent the Apache Unit mineral interest owners from receiving their fair share.

Ammonite argues that since the area around the riverbed is productive, the area under the riverbed is productive. Yet, Ammonite provides no evidence, such as drainage, that the Ammonite acreage is contributing to the production from the Wells. Apache provides evidence to the contrary—fracture stimulation is required for production, production occurs only from the fractured area, the fractures are perpendicular to wellbore, and cannot reach the riverbed.

Ammonite asserts drainage is not required for approval of the Applications because it is not a word in the statute. The word "drainage" does not have to be in the statute to be a relevant factor. For example, drainage is a method to show the tract to be pooled is contributing or an offer is fair and reasonable because the offeror is contributing value. A case on this issue is *Broussard*,[110] in which the court found the offer unfair and unreasonable because the offeree was being asked to share the proceeds of production with a tract that could not be drained by the well in question. This is similar to the situation in this case.

The Recent Orders support a finding that Ammonite's proposed pooling will not protect correlative rights. In them, the Commission concludes there is insufficient evidence the pooling will protect correlative rights.[111]

For these reasons, the Examiners find there is insufficient evidence the requested pooling will protect correlative rights.

iii. There is insufficient evidence pooling will prevent the drilling of unnecessary wells.

While Ammonite asserts pooling will prevent waste and protect correlative rights, Ammonite makes no assertion or argument that pooling will prevent unnecessary drilling.

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[109] TEX. NAT. RES. CODE § 102.017(a).
[110] *R.R. Comm'n of Tex. v. Broussard*, 755 S.W.2d 951, 954 (Tex. App.—Austin 1988, writ denied).
[111] November 7, 2017 Order at 4-5 (Finding of Fact 11, Conclusions of Law 3, 5); September 19, 2017 Order at 2-3 (Finding of Fact 12, Conclusions of Law 3, 5).

According to the evidence, the minerals under Ammonite's tract are still in place and unaffected by the Wells. In order to produce the minerals under Ammonite's tract, additional wells will need to be drilled. Consequently, pooling the Wells is immaterial as to whether additional wells will be drilled to produce the minerals under Ammonite's tract. The Examiners find insufficient evidence pooling will prevent the drilling of unnecessary wells.

The Recent Orders support a finding Ammonite's proposed pooling will not prevent drilling of unnecessary wells. In them, the Commission concludes there is insufficient evidence the pooling will prevent drilling of unnecessary wells.[112]

For these reasons, the Examiners find there is insufficient evidence the requested pooling will prevent drilling of unnecessary wells.

D. Ammonite failed to provide survey data or a metes and bounds description of its tracts to establish the acreage to be pooled.

The information provided by Ammonite as to the boundaries of the three proposed pooled units and the boundaries and acreage of Ammonite's riverbed tract is imprecise. Ammonite relies on the description and graphic of the proposed units and the Ammonite tract that it provided in its voluntary offer. In the offer, Ammonite provided a hand-marked version of Apache's Apache Unit plat—basically the plat with Mr. Osborn's hand-marking showing an approximation of the three proposed units. The size of the riverbed tract is not to scale and based on the thickness of the marker, and there is no precise identification of the new boundaries created, including the riverbed boundaries and the boundary lines dividing the Apache Unit in three.

In describing the three units, Ammonite refers to the riverbed tract portion of the unit as:

> Acreage to be contributed by Ammonite: that portion of the Pecos riverbed directly adjacent to the southern boundary of the Apache tract mentioned above, being 1 acre, more or less, being the [westernmost, easternmost, or central—depending on the proposed unit being described] acre of State Lease M-116702.[113]

While the description states the riverbed portion of each unit is to be "1 acre, more or less," no survey data, no metes and bounds description of the riverbed tract, or other evidence as to any relatively recent measurement of the acreage was provided. While Mr. Osborn testified a patent is material to this issue and provided ten pages of documents dated between approximately 1872 and 1888, Ammonite failed to show how this information translates into a sufficient description for its voluntary offer or provides

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[112] *Id.*
[113] Applicant Ex. 12 at 1, 2.

information to include a sufficient description of the proposed units as required by the MIPA.[114]

While Ammonite only provided lay testimony from a fact witness, Apache provided expert witness testimony from a petroleum landman that the description provided by Ammonite is not a valid legal description because no survey data or metes and bounds description was provided.

The Recent Orders support a finding Ammonite did not provide survey data or a metes and bounds description of the riverbed tract to establish the precise acreage to be force pooled.[115]

For these reasons, the Examiners find there is insufficient evidence to establish the precise acreage to be force pooled.

E. Because Ammonite has failed to establish some of the requirements for MIPA pooling, the issue as to whether Ammonite satisfies the remaining requirements is moot.

There are other requirements that must be satisfied before forced pooling under the MIPA can occur. Because Ammonite failed to satisfy some requirements, the issue of whether it met other requirements is immaterial and moot. The Examiners decline to opine as to the remaining elements, since doing so would be merely advisory or hypothetical.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the Examiners find Ammonite failed to provide Apache a fair and reasonable voluntary offer to pool, which is required under the MIPA. The Examiners find insufficient evidence pooling the proposed units will prevent the drilling of unnecessary wells, protect correlative rights or prevent waste. The Examiners recommend the Commission dismiss and deny the Applications, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Ammonite Oil & Gas Corp. ("Applicant" or "Ammonite") filed three applications ("Applications") under the Mineral Interest Pooling Act ("MIPA"), each requesting the Railroad Commission ("Commission") to pool its acreage into a unit for an already drilled horizontal well on Apache Corporation's ("Apache" or "Respondent's") Apache Blue Jay Unit ("Apache Unit") in the Phantom (Wolfcamp) Field in Loving County. The three wells at issue are Well Nos. 101H, 102H and 103H (referred to as "101H," "102H," "103H" and collectively as "Wells"). Apache requests the Applications be denied. The McGary Living Trust, the McGary Family

[114] TEX. NAT. RES. CODE § 102.017(b)(1).
[115] November 7, 2017 Order at 4-5 (Finding of Fact 6); September 19, 2017 Order at 2-3 (Finding of Fact 7).

Trust and the Mary Jane McGary Trust ("Protestants"), mineral interest owners of one of the two tracts comprising the Apache Unit, also participated in this proceeding protesting the Applications and requesting the Applications be denied.

2. On December 16, 2016, the Hearings Division of the Commission sent an initial Notice of Hearing for the Applications via first-class mail to all interested parties setting a hearing date of January 18, 2017. The notice contained (1) a statement of the time, place and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted. Applicant, Respondent and Protestants appeared at the hearing on January 18. At that hearing, preliminary matters were raised primarily relating to discovery such that the hearing on the merits did not go forward at that time. On dates agreed to by the participating parties, the hearing on the merits was rescheduled to June 7-8, 2017. On February 24, 2017, the Hearings Division sent a notice of the rescheduled hearing date to all interested parties. Consequently, all parties received more than 30 days' notice. Applicant, Respondent and Protestants appeared at the hearing on June 7-8 and presented evidence and argument.

3. On August 17, 2017, Apache filed *Apache Corporation's Motion to Dismiss for Lack of Standing* ("Motion"). In the Motion, Apache states Ammonite's contractual leases have terminated such that Ammonite lacks standing to pursue these MIPA Applications.

4. Ammonite has a contractual lease ("Contractual Lease") conveying an interest in the mineral estate of the tract Ammonite proposes to pool ("Riverbed Tract"), in which the General Land Office ("GLO") is the lessor and Ammonite is the lessee.

5. In a memorandum issued by the GLO on January 4, 2017, the GLO agrees to suspend the primary term to allow Ammonite to pursue these MIPA Applications.

6. Both the GLO as lessor and Ammonite as lessee agree that the Contractual Lease is still in effect. Only Apache, a third party, takes a position that the Contractual Lease has terminated.

7. Ammonite provided a reasonably satisfactory showing of a good faith claim of a continuing possessory right in the mineral estate of the Ammonite Riverbed Tract. Ammonite is a mineral interest owner as contemplated by the MIPA.

8. At most, Apache has provided evidence of a *bona fide* lease dispute, which will not defeat Ammonite's good faith claim.

9. The only voluntary pooling offer Ammonite made to Apache is in a letter dated May 10, 2016 ("Offer Letter"). The Offer Letter contains a proposal to split the Apache

Unit into three units, one for each well, to include the Ammonite Riverbed Tract, and to provide Ammonite compensation.

10. Ammonite's witness testified there would be no benefit to Apache in entering into the voluntary pooling agreement regarding the Wells.

11. Ammonite offers nothing of benefit to Apache, including not contributing any of the minerals produced by the Wells.

12. Ammonite provided no scientific evidence or expert testimony showing its tract was being drained by the Wells or that Ammonite was providing any benefit to Apache or otherwise contributing.

13. Apache provided evidence the Wells are not and cannot drain from Ammonite's Riverbed Tract and Ammonite would not be contributing production to the Wells. The reservoir at issue is an unconventional shale reservoir commonly developed with horizontal wells. They are tight formations with low permeability and production is achieved only through hydraulic fracture stimulation. The wellbores are oriented such that the fractures are perpendicular to the wellbore. Ammonite's Riverbed Tract is not perpendicular to the Wells' wellbores.

14. Ammonite's voluntary pooling offer was made after the Wells were drilled with take points in compliance with lease line spacing, with a last take point more than 200 feet from the Riverbed Tract.

15. At the time Ammonite made the offer to Apache the other side of the riverbed was not yet developed but leased; Ammonite chose not to make an offer to that lessee/operator. Since there were no wells drilled on the other side of the riverbed, wells to be drilled on the other side could have potentially incorporated Ammonite's Riverbed Tract and produce from that tract.

16. Ammonite describes the Offer Letter as a form letter that it uses as its voluntary pooling offer.

17. Ammonite acknowledges its offer in the Offer Letter would subject Apache to additional burdens and costs. These additional burdens and costs were not addressed in the offer.

18. Unless an exception were granted, Statewide Rule 26(a)(2)[116] would require each of the proposed pooled units to have a separate tank battery and separator. Currently only one tank battery and separator are used on the Apache Unit. If the Apache Unit were divided into three units, two additional tank batteries and separators would be required. This additional cost to Apache was not addressed in Ammonite's offer.

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[116] 16 TEX. ADMIN. CODE § 3.26(a)(2).

19. Splitting the Apache Unit into three units would cause problems with the lease line spacing limits in Statewide Rule 37.[117] Splitting the Apache Unit into three units would create lease lines between the three units; Apache would have to comply with the lease line spacing 330 feet minimum or obtain an exception to this rule when drilling future wells. Having one Unit encompassing the Wells minimizes lease lines, allowing Apache the greatest flexibility in determining well placement to most effectively produce the Apache Unit tracts. Ammonite's offer did not address these spacing problems caused by dividing the Apache Unit into three units as proposed in the offer.

20. Ammonite's offer did not take 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.

21. In its voluntary offer and in the Applications, Ammonite did not provide survey data or a metes and bounds description of the riverbed tract to establish the precise acreage to be pooled.

22. Ammonite's voluntary pooling offer was not fair and reasonable.

23. Ammonite failed to provide any scientific expert testimony regarding how pooling will prevent waste, protect correlative rights or prevent unnecessary drilling. Ammonite provided no expert witnesses or evidence of drainage areas for the Wells.

24. Ammonite provided no evidence—scientific, expert testimony or otherwise—that pooling Ammonite's tract will prevent waste. There was no evidence as to any amount of hydrocarbons that would be wasted if the Applications are not granted.

25. Ammonite's witness agreed that pooling the Wells with Ammonite's tract will have no impact on the amount of hydrocarbons recovered by the Wells.

26. The Wells are already drilled and do not produce from Ammonite's tract.

27. Apache provided evidence establishing pooling will not enable recovery of any hydrocarbons under Ammonite's tract. The Wells cannot drain or otherwise produce the minerals under Ammonite's tract. The Wells will only produce hydrocarbons under the Apache Unit tracts.

28. Pooling will not prevent waste.

29. The minerals in place under Ammonite's tract are still in place and will not be produced by the Wells. Pooling is not necessary to protect Ammonite's correlative rights.

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[117] 16 TEX. ADMIN. CODE § 3.37.

30. If the requested pooling were ordered, Ammonite would get a portion of the proceeds from minerals produced solely from beneath the Apache Unit tracts; such pooling would not protect the Apache Unit mineral interest owners' correlative rights.

31. Pooling will not protect correlative rights.

32. Ammonite provided no evidence or assertion that pooling will prevent the drilling of unnecessary wells.

33. The minerals under Ammonite's tract are still in place and unaffected by the Wells.

34. In order to produce the minerals under Ammonite's tract, additional wells will need to be drilled.

35. Pooling the Wells is immaterial as to whether additional wells will be drilled to produce the minerals under Ammonite's tract.

36. Pooling will not prevent the drilling of unnecessary wells.

Conclusions of Law

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. *See, e.g.,* TEX. GOV'T CODE §§ 2001.051, .052, TEX. NAT. RES. CODE § 102.016, 16 TEX. ADMIN. CODE §§ 1.41, 1.42, 1.45.

2. Ammonite failed to make a fair and reasonable offer to voluntarily pool as required by the MIPA. TEX. NAT. RES. CODE § 102.013.

3. Because Ammonite failed to make a fair and reasonable offer to voluntarily pool, the Applications should be dismissed.

4. Force pooling will not prevent waste, protect correlative rights or avoid the drilling of unnecessary wells as required by the MIPA. TEX. NAT. RES. CODE § 102.011.

5. Because force pooling will not prevent waste, protect correlative rights or avoid the drilling of unnecessary wells, the Applications should be denied.

Recommendations

The Examiners find Ammonite failed to provide Apache a fair and reasonable voluntary offer to pool, which is required under the MIPA. The Examiners find insufficient evidence pooling the proposed units will prevent the drilling of unnecessary wells, protect correlative rights or prevent waste. The Examiners recommend the Commission dismiss and deny the Applications.

Respectfully,

Jennifer Cook
Administrative Law Judge

Richard Eyster, P. G.
Technical Examiner