

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL & GAS DOCKET NO. 08-0305330

COMPLAINT OF MONROE PROPERTIES, INC., ET AL. THAT DEVON ENERGY PRODUCTION CO, L.P. DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE N I HELPED 120 (ALLOC) LEASE, WELL NO. 6H, PHANTOM (WOLFCAMP) FIELD, WARD COUNTY, TEXAS

ORDER OF DISMISSAL

The Railroad Commission of Texas ("Commission") finds that after notice, a prehearing conference was heard by a Commission Administrative Law Judge on November 9, 2017, to consider a motion to dismiss filed by respondent Devon Energy Production Co, L.P. ("Devon"). Complainants—Monroe Properties, Inc., SRO Land & Minerals, L.P. and the Lee M. Stratton Living Trust, Mary Elizabeth Stratton, Trustee ("Complainants")—and Devon appeared, and presented evidence and argument. After considering the evidence and argument of the parties, the Commission finds the motion to dismiss should be granted and adopts the following findings of fact and conclusions of law.

Findings of Facts

1. On March 7, 2017, Devon filed an application for a permit to drill the N I Helped 120 (Alloc) Lease, Well No. 6H (the "Well"), in Ward County, Texas. The Well is a horizontal well that would cross multiple tracts. Devon does not intend to form a pooled unit that encompasses all tracts crossed by the Well.
2. The proposed Well is an allocation well, which is commonly known as a horizontal well that is drilled across multiple leases and/or pooled units without pooling of all leases traversed by the well.
3. On March 10, 2017, Complainants protested Devon's permit application for the Well, claiming Devon does not have a good faith claim to drill the well. The basis for Complainants' assertion is that in order for Devon to have authority to drill an allocation well, either the applicable contractual lease relied on by Devon must contain pooling authority or Devon must have a production sharing agreement. Complainants assert because Devon has neither, it does not have a good faith claim to drill the Well as the proposed allocation well.
4. On September 24, 2013, the Commission entered a final order in Oil and Gas Docket No. 02-0278952 ("the Klotzman case") concluding that an operator with an oil and gas lease had a sufficient good faith claim to drill an allocation well. (Devon

Exhibit 17). The Commission rejected the argument that an applicant must show it has pooling authority or a production sharing agreement to establish it has a good faith claim to drill an allocation well.

5. On March 14, 2017, Lorenzo Garza, Manager, Drilling Permits, sent an email to Complainants regarding Complainants' protest of the Well permit application, stating: "The Commission has previously ruled on the matter of Allocation Wells in Oil and Gas Docket 02-0278952. As the circumstances appear similar to that case I will not hold up the permitting of this well. As you stated, Devon has the mineral interests in the tract under lease. They have met the minimum threshold in the issuance of a drilling permit." Mr. Garza notified Complainants that they could file a complaint with the Hearings Division if they wished to pursue the protest.
6. On June 14m 2017, Complainants filed this complaint challenging Devon's good faith claim to drill and operate the Well, resulting in this case before the Hearings Division.
7. A drilling permit was issued to Devon for the Well on September 13, 2017.
8. There is no dispute in this proceeding that Complainants are successor lessors/royalty interest owners under leases that are the subject of the complaint in this case.
9. There is no dispute in this proceeding that Devon is the lessee and operator for the oil and gas Commission designated leases that are the subject of the complaint in this case.
10. There is no dispute in this proceeding that Devon holds leases on the tracts crossed by the Well.
11. There is no dispute in this proceeding that certain leases crossed by the Well have been pooled for gas only pursuant to the applicable oil and gas leases, because the leases limit pooling to gas. There is no dispute in this proceeding about the validity of these pooled units.
12. Since the decision in the Klotzman case, the Commission has permitted a significant number of allocation wells.
 - a. The Proposal for Decision in the Klotzman case states that the evidence in that hearing indicated there were fewer than 100 allocation wells permitted as of the December 3, 2012 hearing in that case.
 - b. Excluding amended permits, as of November 9, 2017, the Commission had issued permits to 3,324 wells classified as allocation wells.
13. It has been Commission practice to allow the drilling of allocation wells.

- a. Page two of the Commission's Form P-16 specifically applies to Allocation Wells.
 - i. Section V of the Form P-16 is entitled "LISTING OF ALL TRACTS CONTRIBUTING ACREAGE TO AN RRC DESIGNATED DRILLSITE DEVELOPMENTAL UNIT THAT IS NOT A SINGLE LEASE, POOLED UNIT, OR GROUP OF TRACTS UNITIZED BY CONTRACT FOR PURPOSES OF SECONDARY RECOVERY."
 - ii. Section V of the Form P-16 requires operators of Allocation Wells to list each lease or pooled unit the Allocation Well will traverse to show acreage assignment for each such lease or pooled unit crossed by the well.
 - iii. Section VI of the Form P-16 is entitled "LISTING OF ALL WELLS IN THE APPLIED FOR FIELD ON THE SAME ACREAGE AS THE LEASE OR POOLED UNIT DESIGNATED FOR THE TRACTS LISTED IN SECTION V BY FILER."
- b. The Commission's Form W-1, Application for Permit to Drill, Recomplete or Reenter, specifically addresses Allocation Wells as a type of horizontal well eligible for a drilling permit. Item No. 9 on the Form W-1 asks the operator to specify whether the horizontal well completion type is Allocation, PSA, or Stacked Lateral.
- c. The Commission's drilling permit seminars and online publications instruct operators how to file drilling permit applications and completion filings for Allocation Wells that cross multiple pooled units, like the N I Helped Well.
 - i. Railroad Commission of Texas publication "PSA Wells, Allocation Wells and Stacked Laterals" specifically instructs operators how to file allocation well permits that cross multiple pooled units.
 - ii. Railroad Commission of Texas publication "PSA Wells, Allocation Wells, Stacked Laterals and Use of Form P-16 Data Sheet, August 2017" specifically instructs operators how to file Allocation Well permits that cross multiple pooled units.
- d. The Commission issues electronic notices to the public that address Allocation Wells and other types of horizontal wells.
 - i. The day prior to the hearing on the motion to dismiss in this docket, the Commission issued emails to the public advising of enhancements to its electronic completions screen to indicate when a horizontal well is an allocation well, which the email indicated will provide oil and gas operators

with information necessary to file a well completion more quickly and accurately.

- ii. The day of the hearing on the motion to dismiss in this docket, the Commission issued emails to the public to advise that the file format for the online completions data subscription will be modified to include values for wells that are both Stacked Laterals and Allocation Wells.
14. In the Klotzman case, the Commission has previously decided that it does not require proof of pooling authority for an applicant to show a good faith claim necessary to obtain a permit for an allocation well. There has been no change in the law since the decision in the Klotzman case. This issue has been previously decided by the Commission. To relitigate this issue would be an unnecessary duplication of proceedings.
15. While the Complainants may have a bona fide lease dispute with Devon, the determination of whether there has been a breach and the appropriate remedy is outside the jurisdiction of the Commission.
16. Complainants' reliance on *Browning Oil Co. v. Luecke*, 38 S.W.3d 625 (Tex. App.—Austin 2000, pet. denied) ("Browning case") is misplaced.
- a. The Browning case was decided prior to the Klotzman case and considered in the Klotzman case.
 - b. The Browning case does not establish that pooling authority is required for authority to drill an allocation well. For example, Ernest Smith, Professor of Law at the University of Texas School of Law and co-author of the *Texas Law of Oil & Gas* treatise, has written an article on the issue and concludes that pooling authority is not required to drill an allocation well. Ernest E. Smith, *Applying Familiar Concepts to New Technology: Under the Traditional Oil and gas Lease, A Lessee Does Not Need Pooling Authority to Drill a Horizontal Well that Crosses Lease Lines*, TEX. J. OF OIL, GAS, AND ENERGY LAW Vol. 12:1 (2017). Regarding the Browning case, he states:

Browning does not hold that, where a lease is silent on pooling, a lessee is required to obtain pooling authority before the lessee can drill a horizontal well that crosses lease lines. And the result that Browning dictates—i.e. that each lessor whose tract is traversed by the horizontal well should be paid the royalties due under his or her lease—is exactly the result that should obtain for the horizontal allocation well. *Id.* at 10.
17. Neither pooling authority nor a production sharing agreement is required to establish a good faith claim for a permit to drill an allocation well.

18. Consistent with the Commission's order in the Klotzman case, Devon has a good faith claim to drill and operate the Well as an allocation well.

Conclusions of Law

1. Devon's motion to dismiss should be granted as unnecessary duplication of proceedings and moot because the Commission has previously decided that pooling authority is not required to show a good faith claim for a permit to drill an allocation well. See 16 TEX. ADMIN. CODE § 1.107(2) and (4).
2. Devon's motion to dismiss should be granted because the complaint amounts to a lease dispute, which is outside the jurisdiction of the Commission. See 16 TEX. ADMIN. CODE § 1.107(5).

Ordering Provisions

Devon's motion to dismiss is **GRANTED**. Complainants' complaint is **DISMISSED**. Consequently, the above captioned and docketed case in the Hearings Division is **DISMISSED**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE § 2001.147, or by written Commission order issued pursuant to TEX. GOV'T CODE § 2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date the parties are notified of this order in accordance with TEX. GOV'T CODE § 2001.144.

Done this 18th day of December 2017.



Randall Collins, Director
Hearings Division