RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

Oil and Gas Docket No. 08-0319997

Application of Sinclair Oil & Gas Company (784548) and Four Sevens Operating Company (280617) Pursuant to the Mineral Interest Pooling Act for the Washington Unit, Spraberry (Trend Area) R 40 EXC Field, Howard County, Texas

Oil and Gas Docket No. 08-0310001

Application of Sinclair Oil & Gas Company (784548) and Four Sevens Operating Company (280617) Pursuant to the Mineral Interest Pooling Act for the Moss Unit, Spraberry (Trend Area) R 40 EXC Field, Howard County, Texas

Oil and Gas Docket No. 08-0310003

Application of Sinclair Oil & Gas Company (784548) and Four Sevens Operating Company (280617) Pursuant to the Mineral Interest Pooling Act for the Steers Nation Unit, Spraberry (Trend Area) R 40 EXC Field, Howard County, Texas

Oil and Gas Docket No. 08-0310004

Application of Sinclair Oil & Gas Company (784548) and Four Sevens Operating Company (280617) Pursuant to the Mineral Interest Pooling Act for the Goliad Unit, Spraberry (Trend Area) R 40 EXC Field, Howard County, Texas

Oil and Gas Docket No. 08-0310005

Application of Sinclair Oil & Gas Company (784548) and Four Sevens Operating Company (280617) Pursuant to the Mineral Interest Pooling Act for the Bauer Unit, Spraberry (Trend Area) R 40 EXC Field, Howard County, Texas

PROPOSAL FOR DECISION

EXAMINERS: Kristi M. Reeve – Administrative Law Judge
Robert Musick, P. G. – Technical Examiner

PROCEDURAL HISTORY:

Application Filed Date -	March 16, 2018
Notice of Hearing Date -	March 29, 2018
Hearing on the Merits Date -	May 18, 2018
Post-Hearing Conference -	July 23, 2018
Close of Record -	August 1, 2018
Proposal for Decision Issued -	October 4, 2018

APPEARANCES:

For Sinclair Oil & Gas Company and
Four Sevens Operating Company -
William S. Osborn, Attorney, *Osborn, Marsland & Hargrove*
Robert G. Hargrove, Attorney, *Osborn, Marsland & Hargrove*

Witnesses for Applicants -
Brad Cunningham, Managing Partner, Four Sevens Operating Company
Chad Loudermilk, Senior Landman, Four Sevens Operating Company
Angela Isaacs, Exploration Manager/Geologist, Sinclair Oil & Gas Company
Donna Chandler, P.E., FTI Platt Sparks, Consulting Petroleum Engineer

Non-Witness Appearances for Applicant Sinclair Oil & Gas Company –
Dave Donegan, Senior Vice President
Robert Taylor, Vice President - Operations
Marilyn J. Haberstick, Land Manager
Jonathan Baker, Landman

Non-Witness Appearances for Applicant Four Sevens Operating Company –
Dick Lowe, Managing Partner
Cody Hix, Senior Landman

Observers –
Flip Whitworth, Scott Douglass & McConnico
Margo Wrightsil (Alma)
Richard Pilon

Table of Contents

I. Statement of the Cases

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

Sinclair Oil & Gas Company and Four Sevens Operating Company ("Applicants" or "Sinclair and Four Sevens") filed five applications ("Applications") under the Mineral Interest Pooling Act ("MIPA").[1] These applications were assigned separate docket numbers, but heard simultaneously. The Applications request the Railroad Commission of Texas ("Commission") to create five (5) force-pooled units covering approximatly 3,150 acres within the city limits and urban core of the City of Big Spring, Texas. These units, named after local schools and the high school mascot, are proposed as Moss (676.8 acres), Bauer (535.75 acres), Goliad (557.26 acres), Washington (678.7 acres), and Steers Nation (701 acres). The Applicants were successful in leasing and/or purchasing the mineral rights to approximately 6,000 of the approximate 8,000 tracts located in the subject area. If the Applications are approved, Applicants intend to drill and complete five (5) unit wells in the Spraberry (Trend Area) Rule 40 EXC Field (Field Id. No. 85280301), Howard County, Texas.

The Applications are unprotested. Letters in support of approving the Applications were received from: Larry McLellan, Mayor, City of Big Spring; Kathryn G. Wiseman, Howard County Judge; Johnny Tubb, Superintendent, Big Spring Independent School District; Thomas W. Kendall, Deputy General Counsel, COG Operating, LLC, Karla Butler, Sr. Landman, CPL, SM Energy; G. Brint Ryan, owner of Hotel Settles and resident of Big Spring.

Applicants assert forced pooling is necessary to prevent waste and protect correlative rights given the complexity of the urban location. To that end, Applicants argue that the Commission may extend the acreage limitations of the MIPA to allow for wells to be drilled in compliance with current field rule spacing requirements, in recognition of advanced technology, and within the constraints of reserves stranded by surrounding development.

While the Administrative Law Judge and Technical Examiner ("Examiners") find Applicants' arguments compelling, based on the Commission's discussions and resulting order in its most recent MIPA case where unit size was in excess of Section 102.011, the Examiners recommend the Applications be denied.

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

---

[1] Tex. Nat. Res. Code §§ 102.001-102.112.

[2] The audio file for the hearing in this case is in two parts and is referred to as either "Tr. Part 1 at [hour;minute:second]" or "Tr. Part 2 at [hour:minute:second]." Applicants' exhibits are referred to as "Applicants' Ex. [exhibit no.]."

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 March 29, 2018, the Hearings Division of the Commission sent a Notice of Hearing on the Applications via first-class mail to all unleased mineral owners setting a hearing date of May 18, 2018.[4] The Applicants published the Notice of Hearing four (4) times in the *Big Spring Herald* on March 30, 2018; April 6, 2018; April 13, 2018; and April 20, 2018.[5] 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.[6] The hearing was held on May 18, 2018, as noticed. Consequently, all parties received more than 30 days' notice.[7] Applicant appeared at the hearing on May 18th and presented evidence and argument. No one appeared in protest.

III. Applicable Legal Authority

At issue in these cases is whether Applicants can create pooled units consisting of both leased and force-pooled unleased mineral interests into units for the Wells under the MIPA.

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.

---

[3] *See* Tex. Nat. Res. Code § 102.011.
[4] Tr. Part 1 at 48:10 to 50:10; Applicant Ex. 20-22.
[5] Publisher's affidavit and newspaper tear sheets.
[6] *See* Tex. Gov't Code §§ 2001.051, 2001.052; 16 TEX. ADMIN. CODE §§ 1.41, 1.42, 1.45.
[7] *See* Tex. Nat. Res. Code § 102.016.

> 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.
>
> Sec. 102.014. PRODUCTIVE ACREAGE EQUAL TO STANDARD PRORATION UNIT. (a) The commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily.
> (b) If the conditions specified in Subsection (a) of this section exist, the commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir.[8]

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

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:

[8] Tex. Nat. Res. Code §§ 102.011, 102.012, 102.013, 102.014.

(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 the interests in the unit within an area containing the approximate acreage of the proration unit.

Applicants' also rely on Tex. Nat. Res. Code § 85.046 to show that the Commission has broad authority and may, in order to prevent waste, extend the acreage limitations of the MIPA without use of the "muscle-in provision".

> Sec. 85.046 Waste. (a) The term "waste," among other things, specifically includes:
> (6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;[9]

IV. Preliminary Overview

The MIPA is a unique act forged by the legislature largely to protect small tract owners and operators in the wake of the *Normanna* decision[10] which invalidated prorationing formulas with large per well allowable factors allowing substantial uncompensated drainage by wells on small tracts. Traditionally, MIPA had been construed as limited in function to protect small tract lessees or owners rather than as a broad act designed to protect correlative rights generally, or as an act allowing large tract lessees or owners more flexibility in development.[11]

The Commission first approved compulsory pooling of the unleased interests of small residential lot owners due to the owner's silence, nonresponsiveness or refusal to participate, at the request of Finley Resources, Inc. which had leased numerous other residential lots in the same area and had the right to pool such lots into a voluntary unit containing sufficient acreage to drill a horizontal well under the applicable field rules.[12]

The present case is much like that of *Finley*, where the positioning of unleased tracts within the area of the proposed units precludes the feasibility of drilling any horizontal wells at regular locations. Applicants have leased or obtained mineral rights to

---

[9] Tex. Nat. Res. Code § 85.046(a)(6).

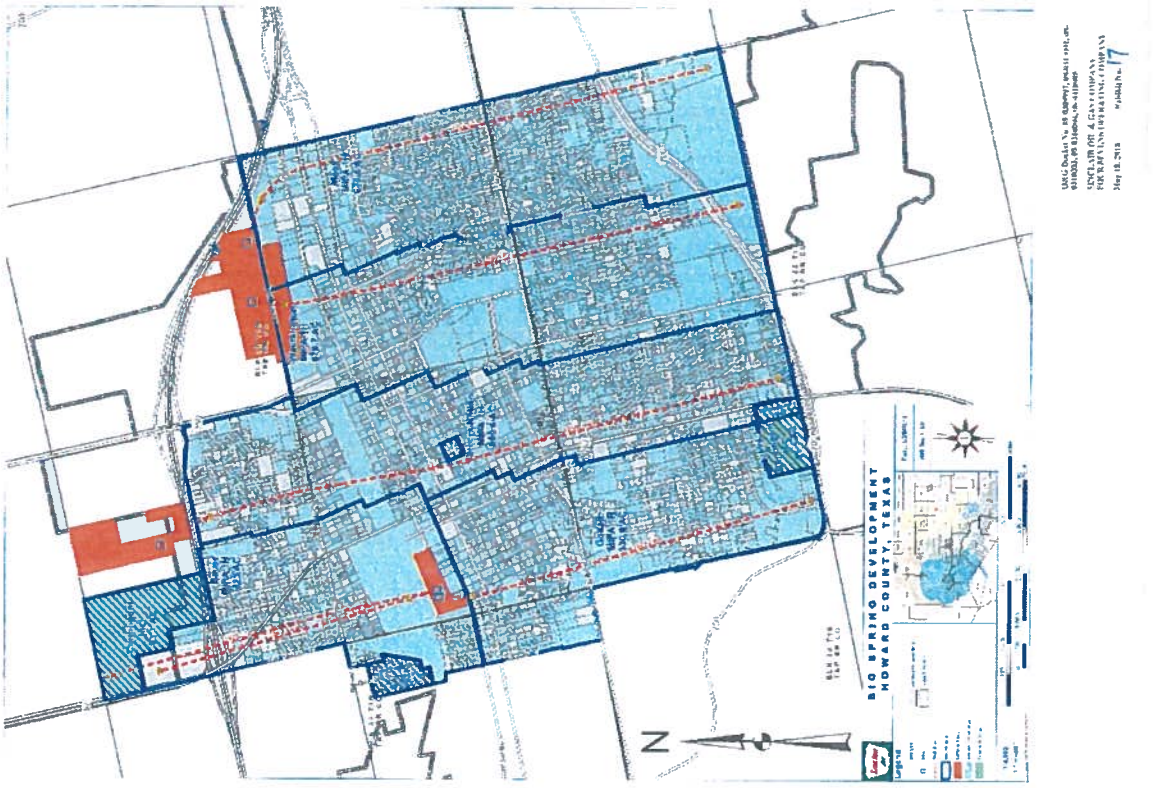
[10] *Atlantic Refining Co. v. Railroad Commission,* 346 S.W.2d 801 (Tex. 1961).

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

[12] *See* Oil & Gas Docket No. 09-0252373; Application of Finley Resources, Inc., for the Formation of a Unit Pursuant to the Mineral Interest Pooling Act for the Proposed East Side Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas (Final Order served August 26, 2008).

approximately 80% of the roughly 8,000 tracts within the City of Big Spring. Those tracts are sprinkled amongst the unleased tracts, most with lot sizes of less than .25 acres, making it impossible to drill horizontal wells without causing trespass.

Applicants's Exhibit No. 17, showing the proposed units and the subject City of Big Spring lots.



The MIPA was passed in 1966, before horizontal wells were invented and long before current technology, which is now seeing horizontal wells drilled to lateral lengths of 15,000 feet.[13] Technology and field rules designed to accommodate unconventional technology have led to discussion and differing interpretations as to whether MIPA units may be created in accordance with such special field rules and the proration units they permit.

There are conflicting views on the interpretation of Section 102.011, where field rules have prescribed or allowed proration units in excess of 176 acres for oil and 704 acres for gas. One view is that these statutory maximums cannot be exceeded under any circumstances, but another view is that interpretation makes subsection (b) of Section 102.014 totally meaningless and would therefore contradict established canons of construction. Notwithstanding the language in Section 102.011, Section 102.014

[13] Tr. Part 2 at 0:56:30 to 1:00:26.

seems to contemplate MIPA units in excess of 176 acres for oil and 704 acres for gas. Furthermore, it is unlikely that the intent of the MIPA statute is to prevent the formation of units of a size permitted under applicable special field rules for a particular field (such as the case here).

Two recent cases see the Commission extending the unit size allowed by the MIPA, then restricting the unit size to that strictly stated in the MIPA. In 2016, the Commission signed an order allowing for the formation of an oil unit pursuant to the MIPA for a 324.8 acre unit.[14] In 2017, the Commission signed an order denying an application that would require the Commission to extend the oil unit size to that of over 600 acres, in excess of the 160 acres plus 10% tolerance strictly stated in the MIPA.[15] Applicants' argue the present case is vastly different than the previous two, as the present case is a reverse MIPA, a construct of the statute and without the MIPA the minerals would either be unrecoverable or the recovery of those minerals would necessitate the drilling of unnecessary wells, which the MIPA sought to avoid.

Applicants believe the legislature contemplated larger unit sizes, so long as the adjoining smaller interests are being pooled into a proration unit permitted under the applicable special field rules. Applicants urge the Commission to view the MIPA size limitations as expandable in occasions such as this, when the Commission applies the "muscle-in" provision[16] and when viewed with the Commission's statutory authority for this approach found in Section 85.046(a)(6) of the Texas Natural Resources Code, which gives the agency broad powers to act for the prevention of waste and protection of correlative rights, with particular reference to the avoidance of physical waste caused by "locating spacing or operating wells in a manner that reduces or tends to reduce the ultimate recovery of oil or gas from any pool."

---

[14] *See* Oil & Gas Docket No. 08-0282996: Application of Ammonite Oil and Gas, Inc. Pursuant to the Mineral Interest Pooling Act for the Energen Elmer 33-67 Well, Two Georges (Bone Spring) Field, Ward County, Texas and the Energen Kath "A" 3-11 Well, Two Georges (Bone Spring) Field, Reeves County, Texas (Final Order signed March 29, 2016, MFRH Denial Order signed June 7, 2016).

[15] *See* Oil & Gas Docket No. 01-0290024: Application 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 (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290026: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Ivey Ranch Dim (18018) Lease, Well Nos. A 6H, B 1H, and B 5H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290029: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Gringita Dim (16908) Lease, Well No. A 3H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017).

[16] Tex. Nat. Res. Code § 102.014.

V. Discussion of Evidence - Applicants' Evidence and Argument

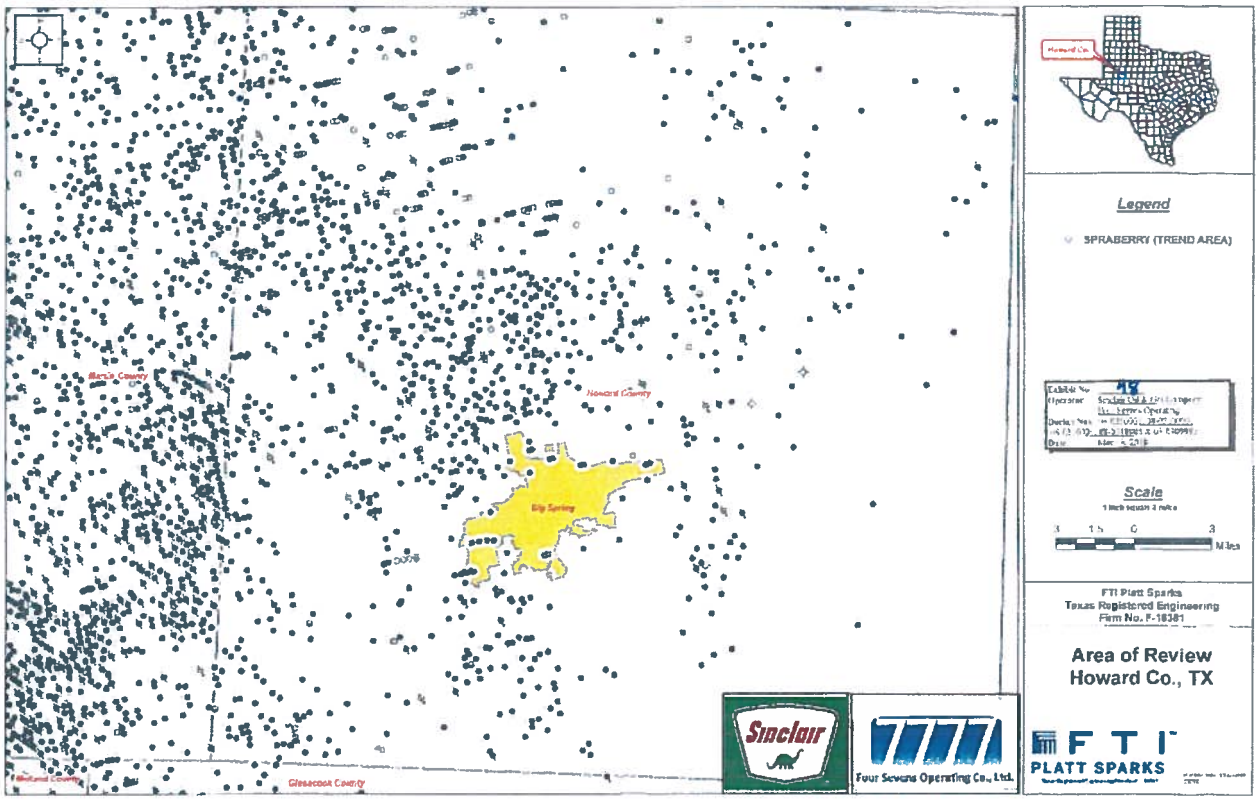
A. Background

Applicants, Sinclair and Four Sevens, are partners in these applications for 5 pooled units, all within the city limits of Big Spring, Texas. The City of Big Spring is completely surrounded by similar developments, mostly horizontal wells drilled in the Spraberry (Trend Area) Field.[17] The urban and residential core of the city has been completely stranded from participation in field production, due to the complexity of the necessary leasing program within this urban area.[18] There are approximately 8,000 separate tracts to be dealt with, the majority of them being residential lots of less than 0.25 acres in size. The 5 proposed units have been named for the schools in

[17] Applicants' Exs. 2, 38, 48, 49, and 50.
[18] *Id.*

Big Spring, Washington, Moss, Goliad, and Bauer, and one for the mascot of the one high school, Steers Nation.[19]

Applicants' Exhibit No. 48 depicting the City of Big Spring and development in the Spraberry (Trend Area) Field.



[19] Tr. Part 1 at 0:16:52 to 0:25:00.

Applicants' Exhibit No. 38 depicting the City of Big Spring "donut hole" surrounded by horizontal well development.

Drilling Units In and Around Big Spring

Applicants' Exhibit No. 39 depicting the above with the proposed MIPA units in green.

Drilling Units In and Around Big Spring + Sinclair/7777 Proposed Pooling Units

Applicants' first witness was Mr. Brad Cunningham.[20] Mr. Cunningham testified as a fact witness. Mr. Cunningham is a graduate of TCU, with a Bachelor of Business Administration degree. He began work at Four Sevens Operating Company in 1995, working for his father, Dick Lowe, and his father's business partner. Mr. Cunningham testified that twenty-three years later he was a partner in the business, with his father still making frequent trips into the office and offering his opinions.

Mr. Cunningham stated that Four Sevens has previous experience, also in partnership with Sinclair, with a "rooftop play" of this nature in the City of Fort Worth and surrounding suburbs in Tarrant and Johnson counties for a Barnett Shale resource play. Applicants resolved to take on the challenge of acquiring a leasehold position in the City of Big Spring sufficient to sustain an application to the Railroad Commission for reverse MIPA authority, to secure all remaining gaps.[21]

Mr. Cunningham described various mechanisms employed by Applicants in their pursuit of the mineral rights within the City. Applicants have spent 2 years, and north of $20 million on land and leasing, setup a local office, created a website (bigspringwells.com), advertised on billboards and in the local newspaper, many things, up to and including knocking on doors. Applicants also reached out to community leaders. The ALJ read into the record at the beginning of the hearing the names of the parties who filed letters of support for the Applications with the Commission. These came from: Larry McLellan, Mayor, City of Big Spring; Kathryn G. Wiseman, Howard County Judge; Johnny Tubb, Superintendent, Big Spring Independent School District; Thomas W. Kendall, Deputy General Counsel, COG Operating, LLC, Karla Butler, Sr. Landman, CPL, SM Energy; G. Brint Ryan, owner of Hotel Settles and resident of City of Big Spring.

Applicant's second witness was Chad Loudermilk.[22] Mr. Loudermilk testified as an expert oil and gas landman. Mr. Loudermilk grew-up in Stephenville, Texas. Received a dual degree from Texas Tech in finance and economics. Mr. Loudermilk then took advantage of an opportunity offered by Tech to be part of the petroleum landman degree program. In 2009 Mr. Loudermilk went to work with Four Sevens as a landman. Today, Mr. Loudermilk is a senior landman for Four Sevens and one of two senior landmen for this project.

Mr. Loudermilk described how Applicants opened a field office in Big Spring in a well-known location (across from the Wal-Mart) and placed a team of fifteen landmen in the field to secure leases, beginning in the Spring of 2016, the office is still open today. Community outreach and leasing efforts were made in the form of postcards, multiple billboard advertisements, radio advertisements, newspaper advertisements, social media interaction through community Facebook pages, High School football halftime sponsorships, and other efforts.[23] Applicant established a project website at www.bigspringwells.com, as additional outreach, and ran multiple

---

[20] *See, e.g*, Tr. Part 1 at 0:7:40 to 0:11:32.
[21] *See* Applicants' Ex. 39 (map demonstrating the manner in which Applicant's proposed units fill these gaps).
[22] Tr. Part 1 at 0:26:38 to 0:29:43.
[23] Applicants' Exs. 4, 6-14.

half page color ads in the local newspaper informing residents about the leasing effort, and the website.[24]

Mr. Loudermilk stated that over the past two years, about 75% of the 8,000 lots proposed for inclusion in drilling units were placed under lease or other control (by purchase of the underlying minerals, or by assignment from other lessees). Another 5% of these lots were leased or acquired as a result of the formal pooling offer letters sent as a precursor to this proceeding, such that by the time of the hearing, Applicant had reached an acreage commitment level of about 80%. This hearing was requested so that the Commission could consider relief by compelled inclusion of the remaining 20%, which were simply unresponsive to all efforts of communication. By way of partial explanation of this phenomenon, Applicants noted that hundreds of lots within the city limits are vacant and have been completely abandoned with delinquent taxes, in some cases for the last 25 consecutive years.[25] Applicants have paid the back taxes on those properties.[26]

B. Threshold Qualification

Applicants presented its technical case via two witnesses. The first technical witness was Angela Isaacs, the second technical witness was Donna Chandler.

Ms. Isaacs testified as an expert in petroleum geology. Mr. Isaacs received both her Bachelor and Master of Science in Geology from Utah State University. Ms. Isaacs has worked as a geologist in the industry since 2006. Ms. Isaacs testified regarding the target reservoir, geological fractures within the reservoir and reservoir variability.

Ms. Chandler testified as an expert in petroleum engineering. Ms. Chandler received her Bachelor of Science in Petroleum Engineering in 1982. After receiving her degree, Ms. Chandler worked at the Commission for 29 years. Ms. Chandler has worked as a consultant for the past 6 years. Ms. Chandler testified regarding the field and field history, wells currently on the proration schedule for the field and drilling permits in the field, decline curves, BOE, risk penalty, and the necessity of MIPA approval to prevent waste.

Ms. Chandler stated it is the Commission's practice, stretching back for the last 70 years (albeit by unwritten rule) that applications for collective development of drainage for unification by secondary recovery will not be considered unless the application has secured the consent of at least 65% of the royalty owners. The Commission has adopted this same 65% threshold in more recent years for production sharing agreement drilling permits.[27]

---

[24] Applicants' Exs. 3, 15.
[25] Tr. Part 1 at 0:58:06 to 1:04:12 and Applicants' Ex. 23, video of surface path of Steers Nation Unit, along with narrative in response to questions by Applicants counsel.
[26] Tr. Part 1 at 0:29:43 to 0:58:06.
[27] Tr. Part 2 at 1:06:19 to 1:07:04.

i. Field, Discovery Date, State of Texas and Federal Ownership

Applicants seek pooling into proration units for the Spraberry (Trend Area) R 40 EXC Field.[28] Ms. Chandler testified that this field, created in late 2013, is a variant of the Spraberry (Trend Area) Field, which is to be used in cases where horizontal severance of ownership exists. Its correlative interval is the same as for the Spraberry (Trend Area) Field, and encompasses all reservoirs from the Clearfork (at the top) down to, and including, the Wolfcamp. The Spraberry (Trend Area) Field, until about 2010, was developed almost entirely by vertical wells, and the Spraberry formation was the primary focus.[29] The Railroad Commission designated field was created in 1952, as a consolidation of numerous Spraberry reservoir fields.[30] It has grown enormously during subsequent years, both laterally, and by consolidation of fields containing additional reservoirs into the Spraberry (Trend Area) Field.[31] The correlative interval for the Spraberry (Trend Area) Field now includes the Clearfork, Spraberry, Dean and Wolfcamp reservoirs.[32]

Ms. Isaacs pointed out that most horizontal wells surrounding the City of Big Spring are being completed in the Wolfcamp formation.[33] Ms. Chandler stated the first instance in which a Wolfcamp reservoir field was consolidated into the Spraberry (Trend Area) Field took place in 1993, when the Spraberry (Trend Area Dean-Wolfcamp) Field was consolidated into the Spraberry (Trend Area) Field.[34]

Applicants intend to drill their initial wells as completions in the Wolfcamp reservoir. Ms. Chandler testified that Applicants' wells could normally have been assigned to the Primero (Wolfcamp) Field, located about two miles from the city limits.[35] That field was discovered in 1986.[36] Yet in 2015, by order in Docket No. 08-0296409, the Primero (Wolfcamp) field was consolidated into the older Spraberry (Trend Area) Field, and therefore also into the Spraberry (Trend Area) R 40 EXC Field.

---

[28] While certain parts of the MIPA refer to reservoirs, the authority delegated by the Legislature to the Commission, if an applicant's burden of proof is met, is to "establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit." Tex. Nat. Res. Code §102.011 ("Authority of Commission"). The reference to "proration unit" invokes the Commission-designated field. In some situations involving modern fields, like this one, the Commission-designated field encompasses multiple reservoirs. In those situations, care must be given to the distinction between a "field" and a "reservoir," depending on which provision in the MIPA is at issue.

[29] Tr. Part 2 at 0:32:43 to 0:38:37 and Applicants' Ex. 44, p. 4.

[30] Tr. Part 2 at 0:35:19 to 0:38:37 and Applicants' Ex. 45.

[31] Tr. Part 2 at 0:32:43 to 0:38:37 and Applicants' Ex. 44, pp. 4-5.

[32] *Id.*

[33] Applicants' Exs. 34 and 35.

[34] Tr. Part 2 at 0:35:19 to 0:38:37 and Applicants' Ex. 45.

[35] Tr. Part 2 at 0:38:37 to 0:40:10 and Applicants' Exs. 46 and 47.

[36] Tr. Part 2 at 0:35:19 to 0:38:37 and Applicants' Ex. 45.

On its own terms, the MIPA does not apply "to any reservoir discovered and produced before March 8, 1961."[37] For purposes of these applications, Applicants argue that the reservoir discovery year should be considered to be 1986, which is the discovery date for the reservoir in the Primero (Wolfcamp) Field, rather than 1952, which is the date when certain Spraberry reservoirs were consolidated into the Spraberry (Trend Area) Field.

Applicants suggest that the Primero (Wolfcamp) Field was not artificially aged back to the birthdate of the original Spraberry field in 1952 because of this action; in other words, that time never runs backward. For this reason, Applicants suggest that the "discovery date" for the Spraberry (Trend Area) Field, for MIPA eligibility, rolls forward to the most recent discovery date for new fields consolidated therewith, and will continue to do so. Ms. Chandler disclosed at the hearing that other operators have advised Applicants that they are considering rooftop development in other West Texas cities, and the Commission's recognition of the complex range of discovery dates for the numerous reservoirs that have been consolidated, over many years, into the Spraberry (Trend Area) Field would enable the avoidance of waste, by stranded reserves, in other cities and communities in Railroad Commission Districts 7C, 8 and 8A.[38]

The actual field of completion designated by the Applicants is the Spraberry (Trend Area) R 40 EXC Field (Field ID 85280301), which carries a discovery date in 2013.[39] This field was created for use in cases where there was a severance of interest between formations in the Spraberry (Trend Area) Field correlative interval.[40] Applicants testified that in all of its proposed units, there were severed Clear Fork formation interests, requiring designation of this field as a proper field of completion.

Ms. Isaacs offered geological testimony, including a cross section, demonstrating that the tracts within the pooled units are all embraced in a common reservoir. Specifically, Ms. Isaacs stated that Applicant's study shows that all of the reservoirs included within the Spraberry (Trend Area) Field and the Spraberry (Trend Area) R 40 EXC Field are expected to be present at the location of the proposed units.[41]

The State of Texas owns mineral interests within the City of Big Spring, in the form of State, road and highway tracts, and also state office building tracts. Applicant's exhibit 25 is a memo from GLO Commission George P. Bush consenting to these pooling applications and use of the MIPA to accomplish pooling.[42]

---

[37] Tex. Nat. Res. Code §102.003. Note the use of the term "reservoir" here.
[38] Tr. Part 2 at 0:35:19 to 0:38:37.
[39] Ex. 42.
[40] Tr. Part 2 at 0:32:43 to 0:34:06 and Applicants' Ex. 43.
[41] Tr. Part 2 at 0:17:13 to 0:18:47 and Applicants' Ex. 36.
[42] Applicants' Ex. 25.

Mr. Loudermilk testified that the United States of America owns mineral interests within the City of Big Spring. These are large tracts, in the form of Veteran's Administration Hospital and a U.S. Department of Agriculture experimental farm station. There are also smaller federal tracts, for instance the main U.S. Post Office and mail distribution truck parking lot located in the downtown area. Applicant testified that the various federal government agencies with which it is having to deal to acquire leases have been quite slow to respond, in some cases at first denying they even owned the minerals.[43]

Applicants advised the Examiners at this hearing that Federal courts in Louisiana and Oklahoma have held that states lack the power to force pool unleased federal mineral acreage for oil and gas resources development without federal consent. For this reason, Applicants propose a contingent inclusion of the federal acreage, colored green in its offering letter maps, in its proposed units. The offer letters advised recipients of this situation and its proposed resolution.

ii. The Voluntary Pooling Offer

Mr. Loudermilk testified that on March 8, 2018, Applicants sent a voluntary pooling offer to all mineral owners of unleased tracts within the five proposed units.[44] Applicants offered these unleased mineral owners three options for inclusion of their interests in the proposed units: a lease option, a working-interest participation option, and a farm-out option. It also proposed a fourth alternative, the purchase of their mineral interests.[45] In recognition of the large Hispanic population of Big Spring, Applicants offer letters were in both Spanish and English, as were the letters on their website.[46]

The lease option included a 25% royalty, a bonus of $2,500 per net mineral acre, and a primary term of three years.[47] The oil, gas and mineral lease attached to the offer letter provided that applicant was authorized to pool the tract owner's mineral interest into a pooled unit.

The participation option provided each unleased owner an opportunity to participate as a working interest owner in the proposed units. By electing this option, the owner would be responsible for a proportionate share of the costs of drilling and completing the well or wells in the unit and would share proportionately in the production from the well.[48] Each offer letter had as an attachment an AFE (Authorization for Expenditure) indicating the estimated cost to complete and drill the proposed wells, which ranged from $5.7 million to $8.4 million.[49] Applicants represented to each owner that the proposed JOA would not contain any of the

---

[43] Tr. Part 1 at 0:41:22 to 0:46:27.
[44] Tr. Part 1 at 0:39:40 to 0:40:10 and Applicants' Ex. 16.
[45] *Id.*
[46] Tr. Part 1 at 0:38:04 to 0:42:00.
[47] Tr. Part 1 at 0:48:33 to 0:58:06 and Applicants' Ex. 19.
[48] Tr. Part 1 at 0:48:33 to 0:58:06 and Applicants' Ex. 20 (proposed JOA).
[49] Tr. Part 1 at 0:48:33 to 0:58:06 and Applicants' Ex. 22.

following: (1) a preferential right of the operator to purchase mineral interests in the unit; (2) a call on or option to purchase production from the unit; (3) operating charges that may include any part of district or central office expenses other than reasonable overhead charges; or (4) a prohibition against non-operators questioning the operation of the unit. In its offer letter, applicant advised it would provide in the JOA for the escrow of funds necessary to fund the eventual plugging and abandonment of the wells.

The farm-out option proposed to each unleased owner that he or she convey to Applicants an 80% net revenue interest attributable to his or her mineral interest and retain an overriding royalty interest equal to 20% of 8/8ths, proportionately reduced to the extent that each owner's mineral interest bears to all of the mineral interests in the unit, until payout of all well costs (to drill, test, fracture stimulate, complete, equip, and connect the well for production).[50] At payout, the electing owner would have the option to convert the retained override to a 25% working interest, proportionately reduced. Out of 2,000 plus offers transmitted, only one party selected this option.[51]

Applicants conclude that the lease terms included in its voluntary offer were fair and reasonable. Applicants state the terms offered matched similar terms found acceptable by the Commission previously in another West Texas City MIPA case, in 2017, for the City of Pecos, Texas (Oil & Gas Docket No. 08-0302755).[52]

iii. Need for MIPA Wells

Applicants, via Ms. Chandler, offered into evidence a model to predict recovery from wells completed in the Spraberry (Trend Area) R 40 EXC Field - all with varying drainhole lengths. Applicants also presented a map showing other Spraberry (Trend Area) Field wells within an approximate 10-mile radius of its proposed units.[53] Applicants proffered a cross-section over that area showing the various formations now consolidated into the Spraberry Field. From the location of existing wells and the study of the cross-section, Applicants concluded that the reservoirs consolidated into the Spraberry (Trend Area) Field are present throughout the proposed unit areas and expected to be productive over the entirety of the area.

For every well within the study area with sufficient data (11 wells), Ms. Chandler studied the estimated drainhole length of the well versus the well's estimated ultimate BOE recovery ("EUR").[54] Ms. Chandler then calculated the estimated ultimate recoveries (the "EURs") by decline curve analysis.[55] Ms. Chandler focused on wells having laterals of at least 10,000 feet, as a proxy for the use of the most recent

---

[50] Tr. Part 1 at 0:48:33 to 0:58:06 and Applicants' Ex. 21.
[51] Tr. Part 1 at 0:41:22 to 0:42:00.
[52] Tr. Part 1 at 0:40:10 to 41:22.
[53] Tr. Part 2 at 0:40:10 to 0:40:50 and Applicants' Ex. 48.
[54] Tr. Part 2 at 0:50:46 to 0:53:00 and Applicants' Ex. 53.
[55] Tr. Part 2 at 0:50:46 to 0:55:13 and Applicants' Exs. 53 and 54.

completion technology. Ms. Chandler calculate that the average well within the area could, by its proposed units, recover 135 BOE for each foot of drainhole length.[56]

Applicants' plats showed that, in spite of the percentage of acreage under lease, there was no path for the planned wellbores that would not encounter some unleased, unpooled interest. Applicants contend that, absent MIPA-based approval of the proposed wells, the underlying reserves could not be recovered and would therefore be wasted. Applicants argued that MIPA approval was necessary to protect correlative rights by giving the Applicants and its lessors a reasonable opportunity to recover their fair share of the oil and gas underlying the proposed units as well as providing the sale alternative to the mineral owners.

iv. Charge for Risk

Applicants requested that the Commission's MIPA pooling order include a 100% charge for risk, attached to the working interest component, as authorized under Section 102.052 of the MIPA.[57] Its offer letter gave notice of this request, and no party protested.

Applicants assert that the risk incurred by these applications is not solely the risk of technical wellbore failure, or a dry hole, but also one of regulatory agency disapproval. Applicants believe this is the most complex MIPA case ever to come before the Commission, in terms of number of town lots (8,000+ tracts). For the first time in the history of the Commission, approval is being sought for a lateral so long (the Steers Nation Unit well, at about 12,500 ft) that the MIPA statute "breaks down" or fails, and if narrowly interpreted, will not allow the creation of a proration unit compliant with field rules. Applicants' exhibit 58 is a geometric illustration of the statutory failure.[58] Applicants testified it has spent more than $20 million in lease and acreage acquisition cost simply to reach the Commission's hearing room, with a novel request to extend the applicability of the MIPA to wells with super long laterals, longer than the 10,360-foot distance failure point. Applicants assert these longer laterals are the wave of the future. In exhibits 56 and 57, Applicant submitted copies of forms recently approved by the Commission for the SM Willie Scott and Taggert units, adjacent to the east side of the Big Spring City limits.[59] Ms. Chandler testified that these wells have been very recently drilled, with permitted laterals of 15,166 feet[60] and 15,009 feet,[61] respectively. Such long wells massively exceed the limits at which the MIPA will allow creation of pooled units at a size which satisfies recent precedent observed by the Commission, presenting the agency with a fork in the road, at least in MIPA

---

[56] Tr. Part 2 at 0:55:13 to 0:56:30 and Applicants' Ex. 55.
[57] Tr. Part 2 at 1:07:04 to 1:08:48.
[58] Tr. Part 2 at 1:00:26 to 1:03:19 and Applicants' Ex. 58.
[59] Tr. Part 2 at 0:56:30 to 1:00:26 and Applicants' Exs. 56 and 57.
[60] Tr. Part 2 at 0:56:30 to 1:00:26 Applicants' Ex. 56 (Taggert A Well).
[61] Tr. Part 2 at 0:56:30 to 1:00:26 Applicants' Ex. 57 (Willie Scott B Well).

cases. Applicants argue that unless the agency will allow use of the MIPA for oil units longer than 160 acres, the innovation represented by new super long laterals will be choked off, and urban reserves will be wasted.

Applicants point out that the Commission in 2016 approved a MIPA oil until larger than 160 acres in Oil and Gas Docket No. 08-0282996,[62] and that Applicants are asking the Commission to do so again. Applicants point out that all surrounding Spraberry Field units for horizontal wells are considerably larger than 160 acres. Applicants' exhibit 59 listed surrounding unit sizes.[63] The smallest unit is 361.82 acres, the largest is 1,340 acres, and the average unit size exceeds 640 acres.[64]

Applicants contend they have gambled a considerable amount of money and effort in the hope that the Commission will approve these applications, as a matter of first impression, and it considers a 100% risk penalty appropriate under the circumstances.

VI. Examiners' Analysis

Sinclair and Four Sevens filed Applications pursuant to the MIPA for five (5) pooled units comprised of mostly residential tracts of less than .25 acres, all within the city limits of the City of Big Spring, Texas. The Applications are unprotested and supported by community leaders of the City of Big Spring, as well as by the Texas General Land Office.

A. Authority to Apply for and Approve MIPA.

Section 102.003 of the MIPA requires a field discovered date after March 8, 1961. The designated field for the Applications is the Spraberry (Trend Area) R 40 EXC Field. This field was created in 2013 as a variant of the Spraberry (Trend Area) Field and is used where horizontal severance of ownership exists. Since 1952, when the Spraberry (Trend Area) Field ("Field") was first created, numerous reservoirs have been consolidated within the Field. As such, the Field contains a range of discovery dates for the various consolidated reservoirs within. Applicants argued through testimony and exhibits that the discovery date of the Field should be that of the most recent discovery date for new fields consolidated therewith.[65] Applicants presented evidence to show that the Primero (Wolfcamp) Field was the most recent discovery date for new fields consolidated therewith, with a discovery date of 1986. Applicants argued the "once legal, always legal" and "the child doesn't become illegitimate because of adoption" theories to show that, but for a field consolidation in 2015,[66] their wells, which they intend to drill in

---

[62] Applicants' Ex. 60.
[63] Applicants' Ex. 59.
[64] *Id.*
[65] Tr. Part 2 at 0:32:43 to 0:38:37.
[66] *See* Oil & Gas Docket No. 08-0296409: The Application of Sharp Image Energy Inc. to Consider Field Consolidation of the Primero (Wolfcamp, Lower) and Pimero (Wolfcamp, Upper) Fields into the Spraberry (Trend Area) Field, Howard County, Texas (Final Order signed August 25, 2015).

the Wolfcamp reservoir and would have sought permits for in the Primero (Wolfcamp) Field, would have had a discovery date that unquestionably qualified under the MIPA.[67]

The Examiners find this issue to be one of first impression. Thus, for the purposes of the MIPA, the Examiners recommend the Commission find that the discovery date for a field should be the more recent discovery date for new fields consolidated therewith. Thus, for the present case, the discovery date of the Spraberry (Trend Area) R 40 EXC Field is 1986.

Section 102.012 of the MIPA requires that the applicant must be the owner of any interest in oil and gas with respect to the existing or proposed unit, the owner of working interest; or any owner of unleased tracts other than a royalty owner.[68] As owners of 80% of the mineral interests for the proposed units, the Examiners find Applicants have adequately demonstrated that they have authority to apply for pooling pursuant to Section 102.012.

B. Fair and Reasonable Offer.

For the Commission to force pool under the MIPA, the applicant must make a "fair and reasonable offer to pool voluntarily."[69] Section 102.013 of the MIPA requires that the applicant for forced pooling "set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit." This section also provides that the Commission shall dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant. The Commission does not have jurisdiction under the MIPA unless a fair and reasonable offer to pool voluntarily has been made.[70] The MIPA has thus been characterized by scholars as a "compulsory voluntary pooling act," because a force pooling order will not issue unless the applicant has made a strong effort to secure pooling voluntarily and has been rebuffed.[71] A fair and reasonable offer to pool voluntarily is one which takes into consideration those relevant facts, existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties.[72] While it is true that authority exists for the position that whether an offer to pool voluntarily is "fair and reasonable" is to be judged from the standpoint of the party being forced to pool,[73] the facts of each MIPA application will determine whether an offer was fair and reasonable to all parties.[74] Here, Applicants made an offer to unleased mineral owners that included

---

[67] Tr. Part 2 at 0:35:19 to 0:38:37.
[68] Tex. Nat. Res. Code § 102.012.
[69] Tex. Nat. Res. Code § 102.013.
[70] *Carson v. Railroad Com'n of Texas*, 669 S.W.2d 315, 316 (Tex. 1984).
[71] *See* Smith and Weaver, *Texas Law of Oil and Gas*, Vol. 3, Chapter 12, §12.3(B-1) at pg. 12-24.1 (LexisNexis Matthew Bender 2015).
[72] *Carson v. Railroad Com'n of Texas*, *supra* at page 318.
[73] *Windsor Gas Corp. v. Railroad Com'n of Tex.*, 529 S.W.2d 834, 837 (Tex.Civ.App.-Austin 1975, writ dism'd as moot); *Pend Orielle Oil & Gas Co., Inc. v. Railroad Com'n of Texas*, 788 S.W.2d 878 (Tex.App.-Austin 1990, *writ granted*), *affirmed in part, reversed in part on other grounds* 817 S.W.2d 36 (Tex. 1991).
[74] *See* Oil & Gas Docket No. 2-97041: Application of Michael R. Mulvey pursuant to the Mineral Interest Pooling Act to Pool into the Pecos Development Corporation's Block 71 Unit, Well No. 2, Clayton (Wilcox 7360) Field, Live Oak County, Texas. (Final Order issued April 6, 1992).

four options to voluntarily pool their interests: a lease option, a working-interest participation option, a farm-out option, or, as an alternative to those, the purchase of their mineral interests. Applicants testified that the lease terms included matched similar terms found acceptable by the Commission in 2017.[75]

The Examiners believe that Applicants' voluntary pooling offers were fair and reasonable. Applicants' offers followed the framework-providing a lease, participation, farm-out options-that the Commission has determined to be fair and reasonable in recent approved MIPA applications.

C. Prevent Waste, Protect Correlative Rights and Prevent the Drilling of Unnecessary Wells.

Applicants provided expert testimony from a petroleum geologist and a petroleum engineer regarding how pooling will prevent waste and protect correlative rights and prevent unnecessary drilling. For the reasons discussed below, the Examiners find Applicants have proven compulsory pooling is necessary to prevent waste, protect correlative rights and prevent the drilling of unnecessary wells.

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

The term "waste" generally means the ultimate loss of oil.[76] Prevention of waste occurs if hydrocarbons are produced that otherwise would be lost.[77] Applicants provided evidence the requested pooling will prevent waste.

The present case is very similar to *Finley*, in that the proposed units are made up of small tracts all contained within an urban environment.[78] Applicants have leased or obtained mineral rights to approximately 80% of the roughly 8,000 tracts within the City of Big Spring. Those tracts are sprinkled amongst the unleased tracts, most with lot sizes of less than .25 acres, making it impossible to drill horizontal wells without causing trespass. Due to the locations of the unleased tracts within the proposed units, the wells cannot be drilled as proposed without compulsory pooling. Applicant cannot drill the wells, as proposed, unless compulsory pooling is ordered because of the impracticality of drilling around the unleased tracts. Therefore, in the absence of compulsory pooling, no mineral interest owners within these proposed units would be afforded a reasonable opportunity to recover their fair share of hydrocarbons, and Spraberry (Trend Area) Field resources beneath the City of Big Spring would forever be stranded.

---

[75] *See* Oil & Gas Docket No. 08-0302755: The Application of Colgate Operating, LLC Pursuant to the Mineral Interest Pooling Act for the Formation of a Pooled Unit for the Cantaloupe MIPA Unit, Well No. 1H, Phantom (Wolfcamp) Field, Reeves County, Texas (Final Order signed April 25, 2017).

[76] *See, e.g.,* Tex. Nat. Res. Code § 85.046; *Gulf Land Co. v. Atl. Ref. Co.*, 131 S.W.2d 73, 80 (Tex. 1939).

[77] *Id.*

[78] *See* Oil & Gas Docket No. 09-0252373; Application of Finley Resources, Inc., for the Formation of a Unit Pursuant to the Mineral Interest Pooling Act for the Proposed East Side Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas (Final Order served August 26, 2008).

ii. There is sufficient 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.[79] 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. [80]

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.[81]

Compulsory pooling as proposed by Applicants, wherein the proposed horizontal wells will extend the length of the units, protects correlative rights because all tract owners, whether leased or unleased, will have their fair share of hydrocarbons produced. Furthermore, the wells and units proposed by Applicants would allow the Commission to fashion an order in compliance with Section 102.017 of the MIPA, which requires that a MIPA order be made on terms that are fair and reasonable and will afford the owner of each tract in the unit the opportunity to produce and receive their fair share.

---

[79] *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).

[80] 210 S.W.2d 558, 561 (Tex. 1948).

[81] *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).

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

Applicants argued that pooling will prevent the drilling of unnecessary wells.[82] Applicants pointed out that two years ago, 10,000-foot wells were considered amazing and today we are seeing 15,000-foot wells. Applicants testified that with the increase in lateral length, wells are more efficient for covering reserves, as there is a better chance of encountering more fractures within the reservoir. The longer laterals provide for less surface obstructions (the avoidance of unnecessary drilling pads and surface locations) and help to reduce interference with city dwellers.

D. Charge for Risk.

Section 102.052(a) of the MIPA provides that, "As to an owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the Commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs."

Applicant's unprotested application requested a 100% charge for risk be applied to the working interest portion of an owner who elects not to pay his proportionate share of the drilling and completion costs in advance. Historically, the Commission does not generally approve a 100% risk penalty in typical reverse MIPA cases. Applicants argue this is an extraordinary case that calls for a 100% charge for risk. Development over the years has shown significate drilling operations around the City of Big Spring. Applicants argued that due to the complexity of the leasing and drilling efforts in the City of Big Spring, those hydrocarbons have remained unproduced. The land title situation presented a veritable nightmare, as described by Applicants' landman. Applicants contend the uncertainty of Railroad Commission approval, given the novelty of various aspects of the case, has unfortunately clouded the prospects of a successful outcome. Applicants feel it is fair and reasonable that Applicants be compensated by a 100% risk penalty, in recognition of their tenacity, the length and cost of their effort, and their willingness to gamble that success might even be achieved at all. If they could not have secured at least 65% of the acreage, the entire effort would have been doomed to regulatory failure. Applicants have spent two (2) years and $20 million to secure 80% of the minerals. Applicants continue a presence in the City of Big Spring today in an effort to lease or otherwise obtain the unleased minerals. In recognition thereof, the Examiners recommend approval of a 100% risk penalty.

---

[82] Tr. Part 2 at 0:56:30 to 1:00:26.

E. The MIPA and Unit Size.

Even considering the Examiners' above findings and recommendations, approval of the Applications rests on one remaining issue - unit size. Applicants' proposed units are in excess of Section 102.011, which states in part, "for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, [the Commission] 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." Most recently, the Commission has denied MIPA applications for units in excess of the acreages listed in Section 102.011.[83]

The proposed units are the Moss (676.8 acres), Bauer (535.75 acres), Goliad (557.26 acres), Washington (678.7 acres), and Steers Nation (701 acres). All wells are proposed as horizontal oil wells per Applicants' offer letter.[84]

Applicants argued that their wells may ultimately be completed as gas wells. Applicants provided exhibits and testimony regarding gas production in the Wolfcamp and Spraberry formations in and around Howard County.[85] Most of the gas production is from the Signal Peak Field, yet there are some other scattered gas wells in the area, mostly vertical. Applicants' stated that some of the gas wells are completed in intervals corellative with the field Appliants are targeting in the Applications. Applicants stated this is why its drilling permits, if the MIPA Applications are approved, will be for "oil or gas wells." Applicants cited to recent drilling permits approved for the area immediately surrounding the City of Big Spring, all of which are permitted as for "oil or gas." The Examiners conclude that it may be inferred based on Applicants' testimony and exhibits, that Applicants believe there is a possibility these wells are gas wells, all of which would be within the allowed unit acreage of Section 102.011. A review of Applicants's exhibits show few gas wells and a review of Commission records for completions in the Sprayberry (Trend Area) Field, show no wells on schedule classified as gas wells within a 4.5 mile radious of the City of Big Spring. As such, it appears to the Examiners highly unlikely Applicants' wells will be classified as gas wells upon completion.

By the Examiners calculations, should the Applicants pursue drilling within the City of Big Spring within the narrow confines of Section 102.011, Applicants would need to

---

[83] *See* August 1, 2017 Conference Discussing Denial of Applications in Oil & Gas Docket No. 01-0290024: Application 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 (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290026: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Ivey Ranch Dim (18018) Lease, Well Nos. A 6H, B 1H, and B 5H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290029: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Gringita Dim (16908) Lease, Well No. A 3H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017).

[84] Applicants' Ex. 16.

[85] Tr. Part 2 at 0:25:27 to 0:27:03 and Applicants' Exs. 41 and 56-57.

drill at least eighteen (18) wells - a feat that isn't realistic or feasible and isn't supported by the purpose of the MIPA.

Applicants' other argument for approval is one that has been heard before, yet one of unsettled law and conflicting views. There are conflicting views on the interpretation of Section 102.011 of the MIPA where field rules have prescribed or allowed proration units in excess of 176 acres for oil and 704 acres for gas. Looking at the field rules for the Spraberry (Trend Area) Field and Statewide Rule 86,[86] Applicants can drill a lateral so long (the Steers Nation Unit well at 12,500 feet, unit size of 701 acres), that, if narrowly interpreted, the MIPA statute fails, as it will not allow the creation of a proration unit compliant with field rules and Statewide Rule 86. One view is that these statutory maximums cannot be exceeded under any circumstances, but another view is that interpretation makes subsection (b) of Section 102.014 totally meaningless and would therefore contradict established canons of construction. Notwithstanding the language in Section 102.011, Section 102.014 seems to contemplate MIPA units in excess of 176 acres for oil and 704 acres for gas.

The stated purpose of the MIPA is the avoiding of drilling unnecessary wells, protecting correlative rights, or preventing waste. Given this, it seems unlikely to the Examiners that the Legislature intended the MIPA statute to prevent the Commission from forming units of a size permitted under Commission created applicable special field rules (such as the case here). It seems even more unlikely that the Legislature intended the statute to be so restrictive as to frustrate its very purpose. This appears especially true in light of the Commissions broad powers granted by the Legislature to act for the prevention of waste and protection of correlative rights.[87]

The MIPA was passed in 1966, before horizontal wells were invented and long before current technology, which is now seeing horizontal wells drilled to lateral lengths of 15,000 feet.[88] At the time the MIPA was passed, the Legislature could never have contemplated a scenario such as the one presented in this case.

At the time the MIPA was passed, the limitation in Section 102.011 was contemplated for vertical wells. The standard proration unit for the field at issue is eighty (80) acres. For a horizontal well, an additional forty (40) acres is allowed for every 827 feet of drainhole length per the field rules by utilizing Statewide Rule 86(d)(1).[89] The Examiners ponder that perhaps the acreage limitation in Section 102.011 should be considered in light of the additional acreage provisions for horizontal wells. For example, if the well is within the limitations within the rules, the Commission might consider the 160-acre limitation satisfied.

Unlike recent MIPA cases, with small mineral owners applying to force pool themselves into already existing units, with wells already permitted and often drilling or

---

[86] *See* 16 Tex. Admin. Code § 3.86.
[87] *See* Tex. Nat. Res. Code § 85.046.
[88] Tr. Part 2 at 0:56:30 to 1:00:26.
[89] *See* 16 Tex. Admin. Code § 3.86(d)(1).

producing,[90] this case is unique. This case is more closely related to *Finley*, which saw, for the first time, the Commission approving compulsory pooling of the unleased interests of small residential lot owners due to the owner's silence, nonresponsiveness or refusal to participate, at the request of an operator which had leased numerous other residential lots in the same area and had the right to pool such lots into a voluntary unit containing sufficient acreage to drill a horizontal well under the applicable field rules.[91]

There is an unusual challenge in leasing within the City of Big Spring, which has a substantial number of vacant, long-abandoned lots. In some cases, property taxes have been delinquent for up to 25 years. Many town lots are quite small, being only 0.16 acres in size. It seems that many lot owners are owners by intestate succession, which will take additional effort to resolve. Applicants argue that the development approach most likely to lead to maximization of wellbore laterals is to form MIPA units of the acreage size of the surrounding units and the small tracts within the City of Big Spring, thus completely filling the donut hole of undeveloped acreage caused by surrounding units outside the city. This approach will secure the future of drilling for whoever owns even the tiniest town lots, and lead to the most efficient and effective wellbore spacing, in compliance with the field rules. More importantly, this approach will ensure the purpose of the MIPA is achieved, as it will prevent waste, protect correlative rights, and prevent the drilling of unnecessary wells. Applicants feel this is a "now or never" moment for the City of Big Spring with regard to development of its hydrocarbon reserves, and the letters of support filed by local political and community leaders indicate a strong preference for "now" as opposed to "never". Applicants urge the Commission to encourage this development by approval of Applicants' MIPA Applications, and in so doing, send a signal to other West Texas towns and cities facing the same hydrocarbon stranding problem, that the State will fully support such endeavors.

Most recent Commission precedents indicate to the Examiners that they should recommend denying the Applications. The Examiners have found that the approval of the Applications will prevent waste, protect correlative rights and prevent the unnecessary drilling of wells. Yet the fact remains that all of the proposed units are for acreage in excess of that stated in Section 102.011. The facts established by the evidence support a significant distinction between this and other recent MIPA cases. Therefore, should the

---

[90] *See* Oil & Gas Docket No. 08-0282996: Application of Ammonite Oil and Gas, Inc. Pursuant to the Mineral Interest Pooling Act for the Energen Elmer 33-67 Well, Two Georges (Bone Spring) Field, Ward County, Texas and the Energen Kath "A" 3-11 Well, Two Georges (Bone Spring) Field, Reeves County, Texas (Final Order signed March 29, 2016, MFRH Denial Order signed June 7, 2016). *See also,* Oil & Gas Docket No. 01-0290024: Application 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 (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290026: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Ivey Ranch Dim (18018) Lease, Well Nos. A 6H, B 1H, and B 5H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017); Oil & Gas Docket No. 01-0290029: Application of Ammonite Oil and Gas Corporation pursuant to the Mineral Interest Pooling Act for the formation of a pooled unit for the Gringita Dim (16908) Lease, Well No. A 3H, Briscoe Ranch (Eagleford) Field, Dimmit County, Texas (Final Order signed September 19, 2017, MFRH Denial Order signed November 7, 2017).

[91] *See* Oil & Gas Docket No. 09-0252373; Application of Finley Resources, Inc., for the Formation of a Unit Pursuant to the Mineral Interest Pooling Act for the Proposed East Side Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas (Final Order served August 26, 2008).

Commission choose to approve the Applications, this case will be easily distinguished. The Examiners believe the Commission has the flexibility to increase the unit sizes using the "muscle-in" provision in Section 102.014 when the facts are appropriate and so long as the increase is within in the purpose of the MIPA "of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste."[92] Allowing for larger units in this case will ensure the pooling of all small interests whose resources would otherwise be unrecoverable. Applicants went to exceptional and unique efforts to ensure anyone of interest was noticed and given the opportunity to participate. Yet despite these efforts, some 20% of the 8,000, for whatever reason, failed to respond or lease.

The Examiners recommend the Commission deny the Applications based on the most recent Commission precedents.

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

Based on the record in this case, evidence presented, and Commission precedent, the Examiners find Sinclair Oil & Gas Company and Four Sevens Operating Company's Applications do not meet the requirements of the MIPA. The Examiners recommend the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Sinclair Oil & Gas Company and Four Sevens Operating Company ("Applicants" or "Sinclair and Four Sevens") filed five applications ("Applications") under the Mineral Interest Pooling Act ("MIPA"), requesting the Railroad Commission ("Commission") approve pooling of all eligible mineral interests in approximately 8,000 total tracts of land into five (5) units, the Washington Unit, Moss Unit, Steers Nation Unit, Goliad Unit, and Bauer Unit, Spraberry (Trend Area) Field, Howard County, Texas.

2. On March 29, 2018, the Hearings Division of the Commission sent a Notice of Hearing on the Applications via first-class mail to all interested parties setting a hearing date of May 18, 2018. 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.

3. Notice of the hearing was also published in the *Big Spring Herald* on March 30, 3018; April 6, 2018; April 13, 2018; and April 20, 2018.

4. The hearing was held on May 18, 2018, as noticed. Consequently, all parties received more than 30 days' notice.

5. Applicants appeared at the hearing and presented evidence and argument.

---

[92] Tex. Nat. Res. Code § 102.011.

6. No one appeared at the hearing in opposition of Applicants' Applications.

7. On or about March 8, 2018, Applicants sent a voluntary pooling offer to all mineral owners of unleased tracts within the boundaries of the proposed MIPA units. The unleased mineral owners were offered three options for inclusion of their interests in the proposed units: a lease option, a working-interest participation option, and a farm-out option.

    a. The lease option included a 25% royalty and a bonus offer of $2,500 per net mineral acre, for a three-year primary term. The oil, gas, and mineral lease attached to the offer letter provided Applicants were authorized to pool the tract owner's mineral interest into a pooled unit and drill a horizontal well beneath the surface of the leased premises.

    b. The participation option provided each unleased owner an opportunity to participate as a working interest owner in the respective proposed unit. By choosing this option, the owner would be responsible for his or her proportionate share of the costs of drilling and completing the well or wells in the unit and would share proportionately in the production from the well. Each offer letter had as an attachment an AFE (Authorization for Expenditure) indicating the estimated cost to complete and drill the relevant well.

    c. The estimated cost for each of the five wells ranges from $5.7 million to $8.4 million. The participation option stated that if the owner failed to fully pay his or her proportionate share of costs to Applicants within 15 days prior to commencement of actual drilling operations, then the owner would be subject to the non-consent penalties set forth in the standard Joint Operating Agreement (the "JOA") proposed by Applicant.

    d. Applicants represented to each owner that the proposed JOA would not contain any of the following: (1) a preferential right of the operator to purchase mineral interests in the unit; (2) a call on or option to purchase production from the unit; (3) operating charges that may include any part of district or central office expenses other than reasonable overhead charges; or (4) a prohibition against non-operators questioning the operation of the unit.

    e. The farm-out option proposed to each unleased owner that he or she convey to Applicants an 80% net revenue interest attributable to his or her mineral interest and retain an overriding royalty interest equal to 20% of 8/8ths, proportionately reduced to the extent that each owner's mineral interest bears to all the mineral interests in the unit, until payout of all well costs (to drill, test, fracture stimulate, complete, equip, and connect the well for production). At payout, the electing owner would

have the option to convert the retained override to a 25% working interest, proportionately reduced. Only one owner, out of 2,000+ receiving this, accepted this proposition.

8. Applicant provided the essential terms of the participation option and the farm-out option in its offer letter. Applicant offered to provide a copy of its participation agreement and farm-out agreement to any mineral owner who was interested in one or both of those options, and posted them on its project website.

9. Of the 8,000 offers made to mineral interest holders, 80 percent have accepted, the remaining 20 percent have failed to respond.

10. Applicants' offer was fair and reasonable.

11. The proposed units are all within the city limits of Big Spring, Texas.

12. The tracts within the proposed MIPA units are embraced in all of the reservoirs which have been consolidated into the Spraberry (Trend Area) Field, a common reservoir of oil or gas for which the Commission has established the size and shape of proration units. The Spraberry (Trend Area) Field is present and reasonably productive in the area covering all the proposed units.

13. The Spraberry (Trend Area) R40 EXC Field was discovered in 2013. This field has special field rules providing for 330-foot lease-line spacing, and there is no between-well spacing requirement. But for a 2015 field consolidation, an appropriate field of assignment for these applications would have been the Primero (Wolfcamp) Field, discovered in 1986.

14. Applicant estimated the EUR for the five proposed unit wells totaled 6,339,416 BOE in place beneath the proposed MIPA units.

15. Applicant cannot drill the proposed wells unless compulsory pooling is ordered as requested. The proposed wells cannot be drilled to their full planned length without traversing one or more unleased tracts.

16. There are no regular locations within the proposed unit where a feasible horizontal well could drain the proposed units.

17. Compulsory pooling within the proposed units as requested by Applicants will protect correlative rights and prevent waste. Without compulsory pooling, Applicant will not be able to drill the proposed wells, Applicants and its lessors will not have a reasonable opportunity to recover their fair share of hydrocarbons from the reservoir, and the underlying hydrocarbons will be left unrecovered.

18. Evidence supports a charge for risk of 100 percent of the drilling and completion costs of the proposed well.

19. Applicants stated on the record that it waived issuance of a Proposal for Decision and Applicants requested on the record that, so long as the order is not adverse, pursuant to Tex. Gov't Code §2001.146(e), the Final Order would become effective on the date that the Final Order is issued by the Commission.

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. The Commission has jurisdiction over the parties and the subject matter and has authority to issue a compulsory pooling order. Tex. Nat. Res. Code § 102.011.

3. Applicants made a fair and reasonable offer to pool voluntarily the mineral owners of the unleased tracts within each of the proposed units, as required by Texas Natural Resources Code § 102.013.

4. Compulsory pooling of the owners of the unleased tracts within each of the proposed proration units as owners of a 25% royalty and 75% working interest, proportionately reduced, with these owners' share of expenses, subject to a charge for risk of 100%, payable only from the owners' working-interest component, and subject to a no-surface-use restriction, is fair and reasonable within the meaning of Texas Natural Resources Code §102.017.

5. Force pooling will prevent waste, protect correlative rights or avoid the drilling of unnecessary wells as required by the MIPA. Tex. Nat. Res. Code § 102.011.

6. The Applications must be denied due to the proposed unit sizes containing more acreage than allowed by Tex. Nat. Res. Code 102.011.

Recommendations

The Examiners find Applicants' provided a fair and reasonable voluntary offer to pool, which is required under the MIPA. The Examiners find sufficient evidence pooling the proposed units will prevent the drilling of unnecessary wells, protect correlative rights or prevent waste. The Examiners conclude that but for the size of the units, the Examiners would recommend approval of the Applications. However, based on recent Commission action, the Examiners recommend the Commission deny the Applications.

Respectfully submitted,

Kristi M. Reeve
Administrative Law Judge

Robert Musick, P. G.
Technical Examiner