

## Kellie Martinec

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**From:** Bill Hayenga <BHayenga@msmtx.com>  
**Sent:** Wednesday, December 4, 2019 3:36 PM  
**To:** Rules Coordinator  
**Cc:** Krystal Schmidt  
**Subject:** Henry Rule 40 Comments  
**Attachments:** 2019-12-04\_Henry Proposed SWR Rule 40 Comments.pdf

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Good Afternoon Rules Coordinator,

Please find the attached comments from Henry Resource's LLC to the Statewide Rule 40 proposed rulemaking.

Thank you,  
Bill



December 4, 2019

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*Via E-Mail: [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)*  
Ms. Haley Cochran  
*Rules Coordinator*  
Mr. Jason Clark  
*Agency Projects Director*  
Railroad Commission of Texas  
Office of General Counsel  
P.O. Drawer 12967  
Austin, TX 78711-2967

**Re: Henry Resources LLC's comments to Proposed Amendments to 16 Texas Administrative Code §3.40.**

Dear Ms. Cochran and Mr. Clark:

Henry Resources LLC appreciates the time and effort the Staff has taken to propose revisions to Statewide Rule 40. Henry Resources supports changes to Rule 40 designed to clear regulatory hurdles associated with horizontal well development. However, as currently proposed, elements of the revised rule may be counterproductive to efficient implementation and may unreasonably increase the burden on operators without a corresponding benefit to the public. To assist the Staff in its efforts, we offer the following comments:

**Introduction to Comments:** Statewide Rule 40 governs the assignment of acreage to a well for the purposes of assigning an allowable to produce the well. Statewide Rule 37 governs a well's location in relation to a property line or wells in the same field. Statewide Rule 37 has a lengthy notice provision to provide affected persons notice of a well location that may impact correlative rights through drainage. Statewide Rule 37 is not the subject of this rule proposal.

**Comment (1) Proposed Rule §3.40(e)(2)(B):** The 15-day notice requirement prior to seeking a drilling permit to all operators within ½ mile is unnecessary and potentially burdensome to the point of being impractical. Drainage concerns are already addressed by Statewide Rule 37 and need not be duplicated by additions to Rule 40. Additionally, the ½ mile area proposed for notice

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substantially exceeds the area of concern for potential wellbore collision. The ½ mile notice requirement is excessive and unnecessary, and this section should be revised or eliminated. An alternative to striking the provision is to adopt the notice provisions for an exception to Statewide Rule 37 relating to lease line spacing in the applicable special field rules and/or Statewide Rule 86(b)(2).

**Comment (2)** Proposed Rule §3.40(e)(2)(B): If the 15-day notice requirement in §3.40(e)(2)(B) is struck, this section should also be removed.

**Comment (3)** Proposed Rule §3.40(e)(3): The law in this State is settled that the Commission does not have the authority to adjudicate title. However, the Commission may determine if a party has a minimum good faith claim of title in relation to the requirement to plug a well when a complaint is filed under Statewide Rule 15. The same standard should apply with respect to §3.40(e)(3), such that the Commission should only review title when a complaint is filed to determine a good-faith claim.

**Comment (4)** Proposed Rule §3.40(g)(2): As proposal, the rule would require an operator to determine title on offset tracts and on its own tract far in excess of the standard required by Statewide Rule 37. Statewide Rule 37 protects correlative rights, whereas Statewide Rule 40 governs an operator's ability to obtain an allowable. Statewide Rule 40 should not require notice and title work that significantly exceeds the requirements of Statewide Rule 37. Offset tracts and owners in the correlative interval are likely not affected by the Rule 40 exception, so notice should be reasonably limited or not required at all. To the extent that any notice is required, the standard should not impose a requirement for title information that is guaranteed to cause unreasonable delays and expense without providing any measurable increase in benefit.

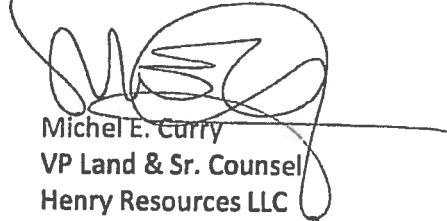
There are numerous title scenarios where a well in a UFT field would be required to comply with §3.40(g)(2). In those situations, the rule amendment is substantially more arduous than what is currently required by Statewide Rule 40. Because of the time and expense required to determine increasingly complex land titles and to notice a hearing, Rule §3.40(g)(2) would likely have the unintended consequence of chilling drilling activity and increasing the regulatory burden on operators. Currently, only affected persons are noticed for a Statewide Rule 40 exception.

§3.40(g)(2) should be stricken from the proposed rule amendments. In the alternative, the notice provision in §3.40(g)(2) should be limited to operators of leases within 600 feet from the take points on the relevant wellbore, which is similar to the administrative Rule 38 exception provision found in Statewide Rule 86(k).

The Spraberry (Trend Area) special field rules currently have a Rule 40 exemption that does not include the arduous requirements proposed in the Statewide Rule 40 rulemaking. Statewide Rule 40 should mirror the special field rules that have worked for years. The additional notice appears similar to the prior proposed change to the Spraberry (Trend Area) Field rules rejected by the Commissioners that would have resulted in breaking the field into numerous files and requiring unnecessary notice.

Thank you for taking the time to review our comments and thank you for your hard work in drafting the proposed amendments.

Respectfully submitted,



Michel E. Curry  
VP Land & Sr. Counsel  
Henry Resources LLC