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From: Henkhaus, Mark <Mark.Henkhaus@apachecorp.com>
Sent: Monday, December 9, 2019 9:07 AM
To: Rules Coordinator
Cc: Thompson, Matthew
Subject: Comments Rule 40
Attachments: Apache comments R40 12-9-2019.pdf; Apache comments R40 12-9-2019.docx

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Attached please find the comments for Apache Corporation regarding the proposed Rule 40 revisions.

I've attached in pdf and doc format for your convenience.

Thanks,
Mark

MARK HENKHAUS, P.E.

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December 5, 2019

Railroad Commission of Texas
Attention: Ms. Haley Cochran, Rules Coordinator
Office of the General Counsel
PO Box 12967
Austin, TX 78711

Re: Proposed amendments to
Title 16 Texas Administrative Code §3.40,
Relating to Assignment of Acreage of
Pooled Development and Proration Units.

Dear Ms. Cochran:

Apache thanks the Commission and Commission staff for their willingness to consider these important revisions to Statewide Rule 40. Apache also appreciates the opportunity to comment on the proposed revisions.

The current rule is unnecessarily hampering Apache's development in the resource-fields of West Texas, including the Spraberry (Trend Area) field and the Delaware Basin trend fields. The proposed changes to this rule would positively affect Apache and companies like Apache across Texas.

Although the process of reaching a consensus about the proposed revisions to §3.40 has been a long, detailed journey, Apache, in general, supports the proposed changes to §3.40 as a positive step in removing certain impediments to full field development. While supporting these changes in the aggregate, Apache appreciates your consideration of the following concerns related to the proposed rule revisions.

Comments regarding specific proposals:

- §3.40(e)(2)(B), as proposed, requires providing a notice to an offset operator "...that is located within one-half mile of the applicant's proposed wellbore between the first and last take points..." This notice requirement is burdensome and unnecessary. This notice is not required by existing Commission rule or by law. The Commission's current rules and practice do not require notice for wells that are regular, non-exception permits. If this proposed section is to remain in the revised rule, the notice should only be made to

those offset operators who could actually be affected by the proposed well. §3.37 currently defines this and requires notice to affected parties when an operator requests a spacing exception. Therefore, Apache recommends that this proposed section be changed to "...that is located within the distance specified by applicable field rules or by §3.37 for lease line spacing of the applicant's proposed wellbore between the first and last take points..."

- Additionally in §3.40(e)(2)(B), the language "Within 15 days prior to filing..." is somewhat ambiguous. Apache recommends that the language be modified to clearly indicate the intent, which is believed to be that notice should be provided no more than 15 days prior to filing with the Commission.
- Proposed §3.40(e)(2)(F) states the Commission will not consider field rules revisions until after a two-year moratorium following revision of §3.40. Because consequences may not always be predicted, Apache recommends that this provision be removed, and the concerns about field rule amendments be limited to the rule's preamble so as to allow revised field rules in cases where these consequences may arise.
- Proposed §3.40(e)(3) states "Upon request by the Commission, an operator shall provide non-confidential information supporting its right to drill or produce in the interval indicated on its drilling permit application." Putting Commission staff in a position to interpret and analyze land documents, leases, and title opinions, may not be in the best interest of the Commission nor the operator. Commission staff generally are not oil and gas land experts, nor should they be expected to be land experts. Another issue is that much of this information is truly exclusive and the product of internal legal work. Determining what is non-confidential is not an insignificant issue. Based on current Commission rules, in §3.15(a)(5) is a definition for the Commission accepted good faith claim. It is "...A factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate." Therefore, the existing "good-faith" definition allows the operator to determine what information is necessary to support its right to develop minerals, while avoiding requiring Staff to interpret land documents. Furthermore, the use of the word "shall" in this section indicates compliance is mandatory and not optional. It would be appropriate to consider "may" is more fitting since there are numerous paths to resolve rights issues other than providing defined non-confidential information.
- In proposed §3.40(g)(2), if an operator desires an exception to Rule 40 in a non-UFT field, there is a requirement for notice to all mineral interest owners within the "drilling unit" and all tracts adjacent to the drilling unit. "Drilling unit" is not defined. The notice requirement is onerous in that the notice is provided to parties that will not be affected

by such exception. The Commission might consider adopting the language provided in §3.38 or applicable field rules, that more accurately describes an affected party in cases of increased density. §3.38 specifically defines affected parties and would more closely align with the Commission intent in the notice for exceptions under this proposed section.

Section §3.40(f), allowing an administrative solution to the issues of existing multiple assignment of acreage instances, is forward thinking in many respects. In the existing consolidated trend fields, there are often grandfathered cases of what appears, at first look, to be “double assignment” and which are, in fact, not multiply assigned acreage. The inclusion of an administrative solution is ideal, and this is appreciated by Apache.

Again, Apache would like to express its support for the revisions of §3.40 and respectfully submits these modifications for your consideration. We would like to express our appreciation to the Commission and Commission staff for their efforts over the last two years in working with the oil and gas industry to address the issues of acreage assignment. This proposed revision will further the development of the vast resources in the horizontal resource fields across Texas, making systematic development more efficient and more economical. This is good policy, and is good for the Permian Basin and for Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Henkhaus", written in a cursive style.

R. Mark Henkhaus, PE
Regulatory Manager
Permian Region