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From: Stephen Robertson PBPA <Stephen@PBPA.info>
Sent: Monday, December 9, 2019 11:15 AM
To: Rules Coordinator
Cc: Ben Shepperd PBPA; Michael Lozano PBPA
Subject: PBPA Comments on proposed revisions to 16 TAC §§ 3.40
Attachments: PBPA Comments on Revisions to 16 TAC 3.40.pdf

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Railroad Commission of Texas Rules Coordinator,

Attached, please find the Permian Basin Petroleum Association's comments concerning the Commission's recent proposed revisions to 16 Texas Administrative Code §§ 3.40, relating to assignment of acreage of pooling development and proration units. If you have any questions, please let us know.

Thank you,

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December 9, 2019

Rules Coordinator
Office of the General Counsel
Railroad Commission of Texas
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 Coordinator:

The Permian Basin Petroleum Association (“PBPA”) appreciates the opportunity to comment on the proposed revisions to Title 16 of the Texas Administrative Code §3.40, relating to Assignment of Acreage of Pooled Development and Proration Units (“§3.40”). The PBPA represents the men and women who work in the oil and gas industry in the Permian Basin of west Texas and eastern New Mexico. Formed in 1961 and based in Midland, Texas, the PBPA’s mission is to promote the safe and responsible development of Permian Basin oil and natural gas resources. The PBPA membership includes some of the largest exploration and service companies with world-wide operations as well as all sizes of independent operators and support companies.

The proposed changes to §3.40 are very important to PBPA’s membership in order to provide clarity in the development of the resource-trend field areas of west Texas, including the Spraberry (Trend Area) field and the several Delaware Basin trend fields.

In general, PBPA supports the proposed changes to §3.40 in an effort to remove certain obstacles to full field development and appreciates the opportunity to work with the Railroad Commission of Texas (the “Commission”) in the development of these proposed changes. While supporting these changes, PBPA membership has concerns about specific revisions being proposed and respectfully requests the Commission consider the comments provided herein.

§3.40(e)(2)(B), as proposed, requires providing 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...” PBPA is very concerned this new notice requirement is onerous and unnecessary. Under current rules and statutes, similar notice is not required to be provided for a permitted well not seeking an exception. If such a new notice is required when a well not seeking any exception is being permitted, then the notice should only be made to those offset operators who could actually be affected by the proposed well. Title 16 of the Texas Administrative Code §3.37, Statewide Spacing Rule, perfectly defines this and requires notice to affected parties when an operator requests a spacing exception. Therefore, PBPA suggests that this proposed section, and

specifically the above quoted language, 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..."

There is additional language in §3.40(e)(2)(B) that PBPA members suggest needs to be clarified. In this section, the language "Within 15 days prior to filing..." is unclear, and PBPA suggests that the language be modified to indicate the intent. It is our understanding that the intent is 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. PBPA would like to express concern that an absolute prohibition to consider field rules may have consequences that are not known at this time. PBPA would suggest that this provision be removed, and the concerns about field rule amendments be addressed in the rule's preamble to allow such revisions should an unforeseen situation 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." Much of this information is truly proprietary, and a determination of what is non-confidential, unless defined, is likely to vary from operator to operator. PBPA would suggest a revision to this language that is similar to language found in Title 16 Texas Administrative Code §3.15(a)(5) where a "good faith claim" is defined as, "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." The use of "good-faith" terminology allows the operator to determine what information is necessary to support its right to develop minerals without introducing the need of a confidentiality determination and without putting Commission staff in a position to interpret land documents. Additionally, the use of the word "shall" in this section makes compliance mandatory rather than optional, and PBPA feels that "may" is more appropriate since there are numerous paths to resolve rights issues other than providing defined non-confidential information.

With regard to §3.40(f), PBPA fully supports this revision as proposed. The revision allows an administrative solution to the resolution of existing multiple assignment of acreage instances. There are many existing instances of multiple assignment in the resource fields, due to the consolidation of older regulatory fields, development of different formations or depths under different leases within a field, and in other instances. This administrative solution provides common-sense resolution to these cases, if at all possible. PBPA appreciates the inclusion of this provision in the proposal.

Finally, in proposed §3.40(g)(2), if an operator desires an exception (for a non-UFT field, most likely) there is a requirement for notice to all mineral interest owners within the "drilling unit" and all tracts adjacent to the drilling unit. Additionally, PBPA can see scenarios where wells in UFT fields may be required to obtain an exception, even under the revised rule. This requirement is onerous in that the notice is provided to parties that will not necessarily be affected by such exception. Here PBPA would suggest that the Commission mirror language in Title 16 Texas Administrative Code §3.38 ("§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.

PBPA would like to express its appreciation to the Commission and Commission staff for their efforts in working with stakeholders 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 for Texas and the Permian Basin.

On behalf of our members, we respectfully submit these comments to the Commission and request they be taken into consideration in the further development of revisions to §3.40. The PBPA appreciates your time in reviewing and considering these comments.

Regards,



Ben Shepperd
President
Permian Basin Petroleum Association