Kellie Martinec

From: Kristin Gragg <KGragg@DiamondbackEnergy.com>
Sent: Monday, December 9, 2019 11:28 AM
To: Marc Dingler
Cc: Rules Coordinator; Betsy Madru
Subject: RE: SWR 40 comments
Attachments: SWR 40 Comments.pdf

Please see the updated version

Thanks
Kristin

From: Marc Dingler <MDingler@DiamondbackEnergy.com>
Sent: Monday, December 9, 2019 11:22 AM
To: Kristin Gragg <KGragg@DiamondbackEnergy.com>
Cc: rulescoordinator@rrc.texas.gov; Betsy Madru <betsy@betsymadru.com>
Subject: Re: SWR 40 comments

Can you get that on letterhead?

W. Marc Dingler IV
Sr. Vice President
Govt. Affairs
Deputy General Counsel
Diamondback Energy
500 W. Texas, Suite 1200
Midland, TX 79701

Office 432.221.7412 | Mobile214.629.2917

> On Dec 9, 2019, at 11:20 AM, Kristin Gragg <KGragg@diamondbackenergy.com> wrote:
>
> Afternoon,
> Please see the attached comments on SWR 40 from Diamondback Energy.
> Thank you,
> Kristin
>
> *Kristin Gragg, Regulatory Manager*
> *Diamondback E&P LLC*
> <image001.jpg>

500 W. Texas, Ste. 1200
Midland, TX 79701
Off: (432) 245-6031
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kgragg@diamondbackenergy.com

<Diamondback SWR 40 comments.pdf>

DIAMONDBACK
Energy

December 9, 2019

By electronic mail: rulescoordinator@rrc.texas.gov

Rules Coordinator
Railroad Commission of Texas
Office of General Counsel
P.O. Drawer 12967
Austin, TX 78711-2967

Re: Amendments to §3.40 to allow multiple assignment of acreage in certain situations

Dear Rules Coordinator:

Thank you for taking comment on §3.40 relating to Assignment of Acreage to Pooled Development and Proration Units – herein referred to as Statewide Rule 40 (SWR 40). Diamondback E&P LLC (Diamondback Energy) would like to commend Railroad Commission staff for their continued work with stakeholders and all parties in the interest of proposing a rulemaking that is fair and well-grounded in industry practice and practicality. While Diamondback Energy is a member and has participated in numerous trade organizations' work and interface with the commission and staff, we would appreciate the opportunity to weigh in on the following matters which are of specific importance to the company.

Supersession – *(F) Field rules that allow assignment of acreage to more than one well in UFT fields are superseded by this rule amendment, as of the effective date of this amendment.*

Diamondback Energy understands staff's intent to make SWR 40 supersede individual field rules that are currently in place so as not to create confusion over which rules are controlling. We would ask that the preamble clarify that while SWR 40 is intended to supersede specific field rules already in place, it would not apply to specific field rules having yet to be promulgated. We understand that is the staff's intent and believe explicit language in the preamble would provide clarity.

Notice – Preamble: *The proposed amendments in §3.40(e)(2)(B) require that within 15 days prior to filing its drilling permit application, an applicant for multiple assignment of acreage shall locate any well, including wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points. The applicant must use all available resources, including but not limited to the Commission's GIS well database, to find wells within the one-half mile radius. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of those wells.*

In the situation of a double assignment of acreage, staff's intent for notice to be provided to affected parties in pooled development and proration units is outlined in this rule as more than the previously discussed "good neighbor notice." The pre-amble to SWR 40 says that an applicant must "*use all available resources, including but not limited to the Commission's GIS well database...*" but the rule itself does not specify how an "*applicant shall locate any well, including any wells permitted but not*

yet drilled or completed, that is located within one-half miles of the applicant's proposed wellbore between the first and last take points." This vague description does not provide clear intention or instruction for the applicant, but rather sets up a situation where "*(C) If any person entitled to notice under this subsection did not receive notice, that person may request a hearing. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.*"

A lack of clarity for who is required to receive notice sets up a situation whereby staff is arbitrarily determining compliance – which, depending on various permit examiners' personal determination, could result in the denial of an application that the operator has presented to the commission and noticed in good faith by using their "best available resources." Diamondback Energy requests that the commission, at a minimum, clarify the notice requirement, and suggests that the rule indicate exactly what standard an applicant will be measured against.

More specifically, the introduction of a new notice standard at "one half mile" is inconsistent with the notification standard that already exists at 330 feet. The "one half mile" standard is extensive and too wide to actually provide the intended public notice that the commission is seeking to ensure. It is fraught with opportunities to inadvertently miss notifying a potential affected person. Existing practice of a 330' requirement is not only just but expected by both the public and the notifying operator, and certainly meets any anti-collision concerns.

Non-confidential information - *(3) 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.*

The implication of this provision is that the Commission will engage in preliminary title examination and evaluation of an operator's good faith claim to drill and produce in the interval indicated in the permit application. The Commission has in the past refused to engage in an investigation of an operator's good faith claim to operate in the permitted depths outside of a hearing resulting from a complaint against a permit, and Diamondback Energy believes that process is sufficient to protect the rights of parties who would challenge an operator's good faith claim to drill or produce. Diamondback Energy believes the provision is unnecessary and proposes it be deleted. As an the alternative of deletion, Diamondback Energy proposes the foregoing provision is replaced with "*(3) In its drilling permit application, an operator shall be deemed to have asserted it has a good faith claim to drill or produce in the interval indicated on its drilling permit application.*"

Again, we appreciate the opportunity to provide these comments. Please do not hesitate to contact me at 432-250-4322 with questions.

Sincerely,

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