

## Kellie Martinec

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**From:** Mari Ruckel <mruckel@txoga.org>  
**Sent:** Monday, December 9, 2019 11:38 AM  
**To:** Rules Coordinator  
**Cc:** Wei Wang; Danny Sorrells; Travis McCormick; jason.modglin@gmail.com; Jared Craighead; Weldon Pierson; Heather Barcia; Cory Pomeroy  
**Subject:** TXOGA Comments Amendments to 3.40 Multiple Assignment of Acreage in Certain Situations  
**Attachments:** TXOGA Cover letter.pdf; TXOGA FORMAL Comments RRC SWR 40 12 09 19.docx

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Dear Rules Coordinator,

Attached please find comments submitted on behalf of the Texas Oil and Gas Association regarding proposed amendments to §3.40 relating to Assignment of Acreage to Pooled Development and Proration Units.

Please let me know should you have any questions.

Best,

Mari

**Mari Ruckel**

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TEXAS OIL & GAS ASSOCIATION | SINCE 1919

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Submitted to: [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov)

Re: Proposed Amendments to §3.40 relating to Assignment of Acreage to Pooled Development and Proration Units

Dear Coordinator:

The Texas Oil and Gas Association (“TXOGA”) is a non-profit corporation representing the interests of the oil and natural gas industry in the state of Texas. The membership of TXOGA produces in excess of 90 percent of Texas’ crude oil and natural gas, operates over 80 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. In fiscal year 2018, the oil and natural gas industry supported more than 348,000 direct jobs and paid just over \$14 billion in state taxes and local taxes and state royalties, funding our state’s schools, roads and first responders.

TXOGA appreciated participating in the informal process regarding §3.40 and welcomes the opportunity to submit formal comments.

To seek clarity and avoid ambiguity, our members would like a definition of “divided horizontally” added to §3.40(e)(2) to state that a division of ownership occurs when working interest and royalty interest ownership are not identical in identical percentages. It would mirror the SWR 26 language so an operator can determine when a severance is authorized to be used.

Our members continue to have reservations regarding the notice provision in §3.40(e)(2)(B) and believe the correct process for addressing disputes is provided in §3.40(h). However, should the Commission decide to move forward with the notice language, it is important that there is a clear understanding that it is a “good neighbor” notice to be provided to specified operators only for planning purposes with no implied path to protest. In the attached table, our membership has made some suggested edits to help clarify this point.

Our membership is asking for the term “all available resources” to be stricken from the preamble. As currently worded, “all available” could have no practical limit and operators would have no confidence in their ability to comply with the rule. This is

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particularly concerning given the fact that well permits could be canceled if the notification requirements are not met. We would like the language of the rule brought back to the August 23, 2019, draft which said the applicant shall use the Commission's GIS well database to determine who is afforded the "good neighbor" notice.

Our membership continues to have concerns with §3.40 (e)(2)(F). The membership appreciates and understands that the RRC will need to make major software modifications to be able to handle the multiple assignment of acreage and understands that to be the primary reason for this moratorium. However, we believe the Commission should not yield its statutory duties for administrative inconvenience.

TXOGA outlines additional comments and recommendations in the attached document. Should you have questions, please contact me at [cpomeroy@txoga.org](mailto:cpomeroy@txoga.org) or 512.478-6631.

Sincerely,

A handwritten signature in black ink, appearing to read "Cory Pomeroy". The signature is fluid and cursive, with the first name "Cory" and last name "Pomeroy" clearly distinguishable.

Cory Pomeroy  
Vice President and General Counsel  
Texas Oil and Gas Association

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<b>Citation</b>	<b>Concern</b>	<b>Suggestion</b>
3.40 (e)(2)	Add a definition of "divided horizontally"	Add definition of "divided horizontally" to state that "a division of ownership occurs when working interest and royalty interest ownership are not identical in identical percentages" which mirrors SWR 26 to clarify when a severance is authorized to be used.
3.40(e)(2)(B)	"Within 15 days Prior" is a bit confusing. We would like to modify the language where it clearly conveys that the 15-day time period is intended to define the time period for determining offset operators and is not an advance notice period before permit filing.	To make clear the timing requirement, consider explicitly stating "no more than 15 days." The important action to be taken no more than 15 days prior to filing the W-1 is to check the GIS system for wells within ½ mile, so consider making that clear. The drilling permit application can then be filed within 15 days, including simultaneously, which expedites permitting.
3.40(e)(2)(B)	Clarification requested to notice "the P-5 address of record of each Commission designated operator of the wells determined to fall within the one-half mile radius"	Remove the word "each" and after " ... Commission designated operator add "in the same regulatory field ..."
3.40(e)(2)(B)	Concern the word "Notice" may draw unnecessary protests	Consider replacing the word "Notice" with "courtesy notice" the notice is intended to be informational only. We have continued to advocate that this is a "Good Neighbor" and should not have the ability to protest and hold up issuance of permits. This notice is intended for safety and operational planning purposes only. TXOGA believes the complaint process currently in 3.40(h) provides the correct process for addressing disputes.
3.40(e)(2)(B)	TXOGA members request they work with the RRC staff to create a standard form of courtesy notice to be sent out to operators of record clarifying this is a "Good Neighbor Notice"	Have standard language for operators to use when sending out notice of SWR40 severances to clarify good neighbor notice.
3.40(e)(2)(B)	The use of the term "all available resources" in the preamble regarding notice provision is concerning	Operators are concerned this broad term could be interpreted in a way that operators would never have confidence they have complied with the "locate" requirement. Revert language back to August 23, 2019 draft saying "...the applicant shall use the Commission's GIS well database to find any well, including wells permitted but not

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3.40(e)(2)(F)	Seeking Clarification of rules that are superseded	<p>yet drilled or completed, that is within one-half mile of any take point along the applicant's proposed wellbore.”</p> <p>TXOGA members would like to seek a clarification that the superseding language would only apply to field rules in affect at the time of the revised SWR40 adoption and specific only to the application of double assignment of acreage. Additional clarification is needed to insure the superseded language is not intended to void any other special field rules, addressing rules other than SWR 40, or any other double assignment of acreage order the commission has granted on a Lease basis. And confirm that all individual permits already granted under existing field rules are and will remain valid.</p>
3.40(e)(2)(F)	Concern with “The commission will not consider any application for field rules regarding multiple assignment of acreage in UFT field until two years after the effective date of this amendment”	<p>TXOGA appreciates and understands major software modifications are needed to be able to handle the multiple assignment of acreage and as such is the primary reason for Staff requesting this moratorium. However, we would like to see some sort of appeal process that matches statutory duties in the event an operator was to request adoption of a field rule amendment that is based on conservation, waste prevention, or correlative right protection that is not addressed in this version of the rule and is recognized after this rule takes effect.</p>
3.40(g)	<p>“If an operator does not qualify for multiple assignment of acreage under subsection (e) of this section, acreage cannot be assigned to more than one well unless the operator is granted an exception after a public hearing held after notice to all persons described in paragraph (2) of this subsection.</p> <p>(1) An operator applying for an exception must show:</p>	<p>(g) was collectively added to address SWR 40 Issues in non-UFT field that were created by the same or similar lease provision as are occurring in UFT field. As worded the only exception to SWR40 in such field would be in cases where ownership under the tract is divided horizontally as defined in subsection (e) of this section” when in fact there could be other circumstances creating conflicts with SWR 40 that do not involve horizontal subdivision and which the latest amendment was not meant to address. To resolve this conflict TXOGA members request removing (B) &amp; (C)</p>

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	<p>(A) an exception is necessary to prevent waste, prevent confiscation, or protect correlative rights;</p> <p>(B) ownership under the tract is divided horizontally as defined in subsection (e) of this section; and</p> <p>(C) the wells are not completed in the same ownership interval."</p>	
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