

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 02-0322699: COMPLAINT OF ELSIE OPIELA AND ADRIAN OPIELA, JR. REGARDING EOG RESOURCES, INC. AND ITS PERMITS FOR THE MACARONI A LEASE, WELL NO. 1H, MACARONI B LEASE, WELL NO. 2H, AND MACARONI C LEASE, WELL NO. 3H, EAGLEVILLE (EAGLE FORD-2) FIELD, KARNES COUNTY, TEXAS

ORDER OF DISMISSAL

After consideration of a motion, filed by EOG Resources, Inc., to dismiss the above-referenced complaint, the Commission finds the motion should be granted and adopts the following findings of fact and conclusions of law.

Findings of Fact

1. On or about August 27, 2019, Elsie Opiela and Adrian Opiela, Jr. ("Complainants") filed a complaint ("Complaint") against EOG Resources, Inc. ("EOG") regarding the following permits ("Permits") for wells ("Wells") in the Eagleville (Eagle Ford-2) Field in Karnes County, Texas:
 - a. Well No. 1H on its Macaroni A Lease (Permit No. 848616), permit issued on January 16, 2019;
 - b. Well No. 2H on its Macaroni B Lease (Permit No. 848621), permit issued on January 18, 2019; and
 - c. Well No. 3H on its Macaroni C Lease (Permit No. 848622), permit issued on January 18, 2019.

The Wells are horizontal wells that would cross multiple tracts. EOG has not formed a pooled unit that encompasses all tracts crossed by the Wells. The Complaint alleges that EOG lacks a good faith claim to operate the Wells and requests that the Permits be revoked.

2. The permitted Wells are horizontal wells that are drilled across multiple leases and/or pooled units without pooling of all leases traversed by the wells, commonly known as allocation wells.
3. Complainants served the Complaint to EOG on August 27, 2019. On September 18, 2019, the Hearings Division sent the parties a letter requesting that EOG file a response to the Complaint and that Complainants set the matter for hearing. On September 23, 2019, Complainants set a hearing date of January 15, 2020.

4. On October 7, 2019, EOG filed a response to the Complaint and motion to dismiss the Complaint ("Motion").
5. On October 16, 2019, Complainants filed a response ("Response") to the Motion.
6. There is no dispute in this proceeding that Complainants are mineral interest owners under leases that are the subject of the complaint in this case.
7. There is no dispute in this proceeding that EOG has contractual oil and gas leases for the tracts crossed by the Wells.
8. EOG has contractual oil and gas leases giving it the right to operate wells on the tracts crossed by the Wells.
9. Complainants assert the Commission does not have authority to issue drilling permits for allocation wells.
10. Complainants maintain that at least one of the underlying oil and gas leases does not grant pooling authority, and as mineral interest owners they have not consented to pool; thus, EOG does not have a good faith claim.
11. The Commission has already rejected Complainants' arguments in the *Klotzman* case ("*Klotzman*")¹ and the *Monroe* case ("*Monroe*")². Both resulted in Commission final orders. The issues in *Klotzman* and *Monroe* are whether the Commission can issue permits for allocation wells and whether having contractual leases for all tracts to be traversed by the allocation well is sufficient for a good faith claim. In those cases, the Commission concluded that it does have authority to issue permits for allocation wells and that obtaining contractual oil and gas leases for each tract traversed is sufficient to show a good faith claim. The Commission rejected the argument that an applicant must show it has pooling authority or a production sharing agreement to establish it has a good faith claim to drill an allocation well.
12. There has been no change in the law since the decisions in *Klotzman* and *Monroe*. This issue has been previously decided by the Commission. The Commission rejected the argument that an applicant must show it has pooling authority or a production sharing agreement to establish it has a good faith claim to drill an allocation well. To relitigate this issue would be an unnecessary duplication of proceedings.

¹ Tex. R.R. Comm'n, *Application of EOG Resources, Inc. for its Klotzman Lease (Allocation), Well No. 1H, (Status No. 744730), Eagleville (Eagleford-2) Field, Dewitt County, as an Allocation Well Drilled on Acreage Assigned from Two Leases*, Oil and Gas Docket No. 02-0278952 (Final Order issued Sept. 24, 2013).

² Tex. R.R. Comm'n, *Complaint of Monroe Properties, Inc., et al. that Devon Energy Production CO, L.P. Does Not Have a Good Faith Claim to Operate the N I Helped 120 (Alloc) Lease, Well No. 6H, Phantom (Wolfcamp) Field, Ward County, Texas*, Oil and Gas Docket No. 08-0305330 (Order of Dismissal issued Dec. 18, 2017) and (order denying motion for rehearing issued Feb. 13, 2018).

13. EOG has a good faith claim to operate the Wells.
14. While Complainants may have a bona fide lease dispute with EOG, that is insufficient to defeat EOG's good faith claim.
15. While the Complainants may have a bona fide lease dispute with EOG, the determination of whether there has been a breach and the appropriate remedy is outside the jurisdiction of the Commission.

Conclusions of Law

1. This Order of Dismissal is issued under the authority of section 1.107 of the General Rules of Practice and Procedure of the Railroad Commission of Texas. 16 Tex. Admin. Code § 1.107.
2. The Commission has jurisdiction in this case. *See, e.g.*, Tex. Nat. Res. Code § 81.051.
3. According to section 81.051 of the Texas Natural Resources Code:

The [C]ommission has jurisdiction over all . . . oil and gas wells in Texas . . . and . . . persons owning or engaged in drilling or operating oil or gas wells in Texas.

Tex. Nat. Res. Code § 81.051(a)(2), (a)(4); *see also, e.g.*, Tex. Nat. Res. Code ch. 85.

4. Commission rules require a permit to drill "any oil well." *See, e.g.*, 16 Tex. Admin. Code § 3.5(a). The Commission has adopted rules providing a process for obtaining drilling permits for wells. *See, e.g.*, 16 Tex. Admin. Code § 3.5. The standard for determining whether the operator can get a permit is whether the operator has a "good faith claim" to operate. This is in Commission rule and has been acknowledged by the Texas Supreme Court. *See, e.g., Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943); 16 Tex. Admin. Code § 3.15(a)(5); *see also Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946).
5. Complainants' reliance on *Browning Oil Co. v. Luecke*,³ ("*Browning case*") is misplaced. The *Browning* case was decided prior to the *Klotzman* case and considered in the *Klotzman* case. The *Browning* case does not establish that pooling authority is required for authority to drill an allocation well. For example, Ernest Smith, Professor of Law at the University of Texas School of Law and co-author of the *Texas Law of Oil & Gas* treatise, has written an article on this issue

³ 38 S.W.3d 625 (Tex. App.—Austin 2000, pet. denied).

and concludes that pooling authority is not required to drill an allocation well.⁴ Regarding the *Browning* case, he states:

Browning does not hold that, where a lease is silent on pooling, a lessee is required to obtain pooling authority before the lessee can drill a horizontal well that crosses lease lines. And the result that *Browning* dictates—i.e. that each lessor whose tract is traversed by the horizontal well should be paid the royalties due under his or her lease—is exactly the result that should obtain for the horizontal allocation well.⁵

6. Pursuant to the Natural Resources Code and Commission rules, the Commission has jurisdiction to authorize drilling permits for allocation wells.
7. EOG provided a reasonably satisfactory showing of a good faith claim to operate the Wells. 16 Tex. Admin. Code § 3.15(a)(5).
8. EOG's motion to dismiss should be granted and the Complaint dismissed as unnecessary duplication of proceedings and moot because the Commission has previously decided that pooling authority is not required to show a good faith claim for a permit to drill an allocation well. See 16 Tex. Admin. Code § 1.107(2) and (4).
9. EOG's motion to dismiss should be granted because the Complaint amounts to a lease dispute, which is outside the jurisdiction of the Commission. See 16 Tex. Admin. Code § 1.107(5).

Ordering Provisions

The motion of EOG Resources, Inc. to dismiss the subject complaint is **GRANTED**.

The above captioned and docketed case in the Hearings Division is **DISMISSED WITH PREJUDICE**.

The hearing scheduled for January 15, 2020, is **CANCELED**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code § 2001.142, by agreement under Tex. Gov't Code § 2001.147, or by written Commission order issued pursuant to Tex. Gov't Code § 2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission.

⁴ Ernest E. Smith, *Applying Familiar Concepts to New Technology: Under the Traditional Oil and Gas Lease, A Lessee Does Not Need Pooling Authority to Drill a Horizontal Well that Crosses Lease Lines*, TEX. J. OF OIL, GAS, AND ENERGY LAW Vol. 12:1 (2017).

⁵ *Id.* at 10.

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Pursuant to Tex. Gov't Code § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 100 days from the date the parties are notified of this order in accordance with Tex. Gov't Code § 2001.144.

Signed on November 21, 2019.

A handwritten signature in black ink, appearing to read 'Dana Avant Lewis', written over a horizontal line.

Dana Avant Lewis, Director
Hearings Division