RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL AND GAS DOCKET NO. 03-0316625

COMPLAINT OF DONNA VENABLE ET AL., INDEPENDENT CO-EXECUTORS OF THE ESTATE OF BOBBIE JEAN VENABLE, REGARDING MD AMERICA ENERGY, LLC'S (556481) APPLICATION FOR THE ALAMO (ALLOCATION) LEASE, WELL NO. 1H, DRILLING PERMIT NO. 846980, MADISONVILLE, W. (WOODBINE-A) FIELD, MADISON COUNTY, TEXAS

ORDER OF DISMISSAL

After consideration of a motion, filed by MD America, LLC, 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 November 28, 2018, Donna Venable, David Grimmer, and Donna Venable and Lorrie Jean Simoneaux in their capacity as independent co-executors of the Estate of Bobbie Jean Venable ("Complainants") filed a complaint ("Complaint") against MD America Energy, LLC ("MD America") regarding its permit ("Permit") for the Alamo (Allocation) Lease, Well No. 1H, Drilling Permit No. 846980 ("Well"), in the Madisonville, W. (Woodbine-A) Field in Madison County, Texas. The drilling permit was originally issued under another lease name on November 27, 2018. The permit was amended to change the lease name to the current name on January 28, 2019.

   The Well is a horizontal well that would cross multiple tracts. MD America has not formed a pooled unit that encompasses all tracts crossed by the Well. The Complaint alleges that MD America lacks a good faith claim to operate the Well. Additionally, the Complaint alleges the Well will cause waste and harm Complainants' correlative rights, as the Well is to be drilling under other wells.

2. The permitted Well is a horizontal well that is drilled across multiple leases and/or pooled units without pooling of all leases traversed by the well, commonly known as an allocation well.

3. Complainants are the owners of mineral interests in one of the proposed tracts across which the Well would travers.

4. Complainants served the Complaint to Drilling Permits Staff, copying MD America, on November 28, 2018. On November 30, 2018, the Hearings Division sent the parties a letter requesting that MD America file a response to the Complaint or

request the matter be set for hearing. On January 15, 2019, MD America set a prehearing conference date of March 22, 2019.

5. On December 20, 2018, MD America filed a response to the Complaint and motion to dismiss the Complaint ("Motion").

6. On March 11, 2019, Complainants filed a response ("Response") to the Motion.

7. On March 18, 2019, MD America filed its reply to Complainants' Response to Motion.

8. On March 22, 2019, the prehearing conference convened. MD argued its motion and Complainants argued its response.

9. 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.

10. There is no dispute in this proceeding that MD America has contractual oil and gas leases for the tracts crossed by the Well.

11. MD America has contractual oil and gas leases giving it the right to operate wells on the tracts crossed by the Well.

12. Complainants assert the Commission does not have authority to issue drilling permits for allocation wells.

13. 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, MD America does not have a good faith claim.

14. Complainants assert they have standing to protest the Permit as the Well will cause waste and harm their correlative rights.

15. The Commission already has rejected Complainants' standing to protest the Permit argument. Statewide Rule 37 (spacing rule adopted to prevent waste and protect correlative rights) was amended in part to "remove an unnecessary regulatory burden associated with well spacing exceptions by reducing the class of persons presumed to be affected."[1] In the preamble to the 1997 amendment of Statewide Rule 37, the Commission declined to expand the class of affected persons to persons such as Complainants, as "royalty owners (who do not own a possessory interest) and nonoperating mineral interest owners are considered, by virtue of their contracts or leases, to be represented by the designated operator of the tract."[2] The duty a lessee owes to a lessor is contractual.

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[1] 22 Tex. Reg. 8973, 8973 (1997).

[2] *Id.* and cited in *H.G. Sledge, Inc. v. Prospective Investment and Trading Company, Ltd.*, 36 S.W.3d 579, 603-05 (Tex. App.--Austin 2000, pet. denied) (relying on the preamble to Statewide Rule 37 amendment

16. There has been no change to the definition of affected person.

17. The Commission already has rejected Complainants' arguments in the *Klotzman* case ("*Klotzman*")[3] and the *Monroe* case ("*Monroe*")[4]. 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.

18. 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.

19. MD America has a good faith claim to operate the Well.

20. There is no dispute that Complainants have leased their minerals and MD America is the lessee.

21. Complainants are not affected persons as that term is defined in 16 Tex. Admin. Code §3.37(a)(2)(A).

22. While Complainants may have a bona fide lease dispute with MD America, that is insufficient to defeat MD America's good faith claim.

23. While the Complainants may have a bona fide lease dispute with MD America, the determination of whether there has been a breach and the appropriate remedy is outside the jurisdiction of the Commission.

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in 1997, finding that a person with a nonpossessory interest is not considered an affected person, as their interests are considered, "by virtue of their contracts or leases, to be represented by the designated operator of the tract," quoting 22 Tex. Reg. 8973, 8973 (1997)).

[3] 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).

[4] 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).

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*,[5] ("*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 and concludes that pooling authority is not required to drill an allocation well.[6] 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

[5] 38 S.W.3d 625 (Tex. App.—Austin 2000, pet. denied).
[6] 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).

lease—is exactly the result that should obtain for the horizontal allocation well.[7]

6. Pursuant to the Natural Resources Code and Commission rules, the Commission has jurisdiction to authorize drilling permits for allocation wells.

7. MD America provided a reasonably satisfactory showing of a good faith claim to operate the Wells. 16 Tex. Admin. Code § 3.15(a)(5).

8. MD America's reliance on the preamble to the 1997 amendment of Statewide Rule 37 and on *Sledge*[8] is reasonable. Complainants, by virtue of granting leases, have conveyed their standing to protest to their designated operator, MD America, the mineral lessee. By virtue of those leases, Complainants are not affected persons as that term is defined in 16 Tex. Admin. Code §3.37(a)(2)(A) and discussed in the 1997 amendments' preamble.[9]

9. Dismissal of Complainants protest of the Permit due to waste or injury to correlative rights is just and reasonable. *See* 16 Tex. Admin. Code § 1.107.

10. MD America's motion to dismiss should be granted and the Complaint dismissed as unnecessary duplication of proceedings and moot because the Commission 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).

11. MD America'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 MD America Energy, LLC to dismiss the subject complaint is **GRANTED**.

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

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[7] *Id.* at 10.

[8] 22 Tex. Reg. 8973, 8973 (1997), *H.G. Sledge, Inc. v. Prospective Investment and Trading Company, Ltd.*, 36 S.W.3d 579, 603-05 (Tex. App.--Austin 2000, pet. denied) (citing to and relying on the preamble to Statewide Rule 37 amendment in 1997, finding that royalty owners or nonoperating mineral interest owners are not considered affected persons, as their interests are considered, "by virtue of their contracts or leases, to be represented by the designated operator of the tract," quoting 22 Tex. Reg. 8973, 8973 (1997)).

[9] 16 Tex. Admin. Code §3.37(a)(2)(A) and 22 Tex. Reg. 8973, 8973 (1973).

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. 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 January 2, 2020.

Dana Avant Lewis, Director
Hearings Division