



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS CASE NO. 0299507 / STATUS NO. 853353

APPLICATION OF DOUBLE PLAY OIL & GAS, INC. (224880) FOR AN EXCEPTION TO STATEWIDE RULE 37 FOR THE MCNEILL (BROOKS) LEASE, WELL NO. 2, WILDCAT FIELD, LIVE OAK COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Kristi M. Reeve, Administrative Law Judge
Robert Musick, P.G., Technical Examiner

PROCEDURAL HISTORY:

Application Filed:	May 21, 2019
Notice of Application:	June 4, 2019
Notice of Intent to Protest Filed:	June 21, 2019
Notice of Hearing Date:	October 10, 2019
Hearing Date:	November 1, 2019
Record Closed and	
Transcript Received:	November 13, 2019
Proposal for Decision Issued:	February 3, 2020

APPEARANCES:

For Applicant, Double Play Oil & Gas, Inc.:

Christian Dohse, Geologist

For Protestant, McGuffin Family:

David Nelson, Attorney, *Gross and Nelson Attorneys at Law*
Joe McGuffin, Jr., Landowner

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I. Statement of the Case¹

Double Play Oil & Gas, Inc. ("Double Play" or "Applicant") filed a second application ("Application") with the Railroad Commission ("Commission" or "RRC") seeking another 2-year lease line spacing exception permit under the provisions of 16 Tex. Admin. Code § 3.37 ("Statewide Rule 37"). Double Play originally filed for and received a 2-year lease line spacing exception permit approved by the Commission on February 28, 2017.² As with its prior application, Double Play seeks an exception to drill a well closer than the 467 feet minimum lease line distance limit in Statewide Rule 37 for the McNeill (Brooks) Lease ("Lease"), Well No. 2 ("Well") in the Wildcat Field, Live Oak County, Texas because the proposed location of the Well is closer than allowed by rule to tracts external and adjacent to the Lease. The Application is protested by the McGuffin Family, ("the McGuffin Family" or "Protestant"), who are undivided interest owners in the unleased acreage adjacent of the proposed Well, which would be located approximately 102 feet from their property line.³

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission once again approve the Application and grant the Statewide Rule 37 exception. There are unusual local conditions—namely two water drive fault trap reservoirs at the lease line—such that the proposed Well location is necessary to prevent waste.

II. Background

Double Play filed the Application seeking a spacing exception permit under the provisions of Statewide Rule 37. Double Play seeks an exception to the minimum lease line distance requirement in Statewide Rule 37 because the Well as proposed will be closer than allowed to tracts external to the Lease; the proposed Well is 102 feet from the McGuffins' adjacent external tract. A copy of the drilling plat showing the Lease, Well and tracts is attached to this PFD as Attachment A.⁴

The Well will be a new vertical well in the Field located in the Jane Curry Survey, Abstract No. A-143 ("Survey") in Live Oak County, approximately 2.2 miles in a southwest direction from the town of Dinero, Texas. The surface location of the Well is 102 feet from the northwest line of the Lease boundary and 587 feet from the southwest line of the Lease boundary. It is 102 feet from the northwest line of the Survey boundary and 13,411 feet from the southwest line of the Survey boundary.⁵

¹ The hearing transcript in this case is referred to as "Tr. at [pages]." Double Play's exhibits are referred to as "Applicant Ex. [exhibit no.]." The McGuffin Family's exhibit is referred to as "Protestant Ex. [exhibit no.]."

² Tr. at 63. Official notice taken of the entire record in prior case, including the PFD, Orders, Commissioners' conversations at Conference, et cetera. On October 6, 2016, the Commission approve the application, but limit the exception to the Upper Hockley. On February 28, 2017, the Commission granted a Motion for Rehearing for the limited purpose of removing the limitation.

³ Tr. at 9.

⁴ Attachment A is a copy of Applicant Ex. 3.

⁵ Applicant Ex. 3.

The permit states the Well is to be drilled in the Wildcat Field. This is a field designation/placeholder for completions in other productive intervals which do not have designated field names or for which there is no known zone of production, i.e. a new field. As such, the Statewide Rule 37 requirement of 467 feet minimum lease line spacing distance applies.⁶ Double Play does not know for certain there is oil trapped against these faults, as they have not seen any physical evidence of oil, but they anticipate there will be hydrocarbons based on site-specific geologic conditions. For this reason, Double Play has applied for the Well using the Wildcat designation.⁷

The McGuffin Family owns an undivided unleased mineral interests in the tract directly north of the proposed Well.⁸ While it was not specified at the hearing, the only tract directly north of the Well is identified as Tract 3 in the J. Poitevent Survey, Abstract No. A-508.⁹ Double Play states there are hydrocarbons trapped by two faults, one in the Main Hockley reservoir and another in the Yegua reservoir, which are located directly on the property line.¹⁰ The McGuffin Family contends the fault (Main Hockley) may be just over their property line, making the McGuffin Family's property, or at least a small portion of the property, productive.¹¹

III. Jurisdiction and Notice

Statewide Rule 37 is authorized pursuant to sections 81.051 and 81.052 of the Texas Natural Resources Code, which provide the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.¹²

Statewide Rule 37 contains provisions regarding notice of the application for a spacing exception and notice of any hearing on an application.¹³ Regarding notice of the application, Statewide Rule 37 requires:

When an exception to only the minimum lease line spacing requirement is desired, Applicant shall file a list of the mailing addresses of all affected persons, who, for tracts closer to the well than the greater of one-half of the prescribed minimum between-well spacing distance or the minimum lease line spacing distance, include:

- (i) the designated operator;

⁶ 16 Tex. Admin. Code § 3.37(a)(1).

⁷ Tr. at 56.

⁸ Tr. at 9 and Applicant Ex. 3.

⁹ Applicant Ex. 3.

¹⁰ Tr. at 18, 19, 37, 66, 68, 89.

¹¹ Tr. at 11:4 to 11:13.

¹² Tex. Nat. Res. Code §§ 81.051 and 81.052; see, e.g., 29 Tex. Reg. 8271 (August 27, 2004).

¹³ Rule 37 exception provisions apply whether the spacing limits are in Rule 37 or special field rules. See, e.g., Vol. 2 Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 9.4 (2d. ed. 2016).

- (ii) all lessees of record for tracts that have no designated operator; and
- (iii) all owners of record of unleased mineral interests.¹⁴

Notice of the Application was provided as required.¹⁵

After notice of the Application was provided, the Commission received the protest by the McGuffins, thereby necessitating a hearing on the Application. Statewide Rule 37 requires that notice of hearing be given to the same persons who were provided notice of the Application.¹⁶ On October 10, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Double Play and the McGuffins, setting a hearing date of November 1, 2019.¹⁷ The Notice contains: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.¹⁸ The hearing was held on November 1, 2019. Consequently, the parties received more than 10 days' notice. Both Double Play and the McGuffins, who filed the only protest of the Application, appeared at the hearing.

IV. Applicable Legal Authority

Statewide Rule 37 provides statewide well spacing limits for all fields that do not have special field rules. In this case, Double Play requests an exception for multiple fields, some of which have special field rules and some which do not. Statewide Rule 37 applies to applications for an exception to spacing limits whether the Statewide Rule 37 spacing limits apply or there are spacing limits in the Field Rules.¹⁹

Statewide Rule 37 provides that the Commission may grant an exception to the Statewide Rule 37 as follows:

[T]he commission, in order to prevent waste or to prevent the confiscation of property, may grant exceptions to permit drilling within shorter distances than prescribed in this paragraph when the commission shall determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of property.²⁰

Statewide Rule 37 further provides:

¹⁴ 16 Tex. Admin. Code § 3.37(a)(2)(A).

¹⁵ Tr. at 113; Official notice taken of Notice of Hearing. Other than Double Play, the McGuffin Family was the only persons required to receive notice because the lease-line at issue is internal, the McGuffin Family is the only owner of an unleased mineral interest, and Double Play has leased the remaining Lease.

¹⁶ 16 Tex. Admin. Code § 3.37(a)(3).

¹⁷ See Notice of Hearing issued October 10, 2019.

¹⁸ See Tex. Gov't Code §§ 2001.051, .052; 16 Tex. Admin. Code §§ 1.42, 1.45.

¹⁹ Vol. 2 Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* § 9.4 (2d. ed. 2015).

²⁰ 16 Tex. Admin. Code § 3.37(a)(1).

At any such hearing, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to prevent the confiscation of property.²¹

In sum, in order for Double Play to obtain an exception to the minimum lease line distance limit, Double Play has the burden to prove the exception is necessary to either prevent waste or prevent the confiscation of property.

V. Discussion of Evidence

A. Summary of Applicant's Evidence and Argument

Double Play maintains that the proposed Well is necessary to prevent waste and to protect correlative rights.²² The Well is a conventional vertical well to be drilled to a total depth of 5,400 feet.²³ Double Play provided evidence that the target reservoirs for the Well are water drive fault lock reservoirs. In order to maximize the recovery of hydrocarbons it is imperative to drill at the highest structural position within the fault locks, which is approximately 100 feet from the faults. Double Play believes there are two faults, one in the Main Hockley and another in the Yegua. The faults reside underneath the lease line of the McGuffin Family's adjacent tract.²⁴

Double Play's representative and witness for the hearing, was Christian Dohse, who was Double Play's witness for the prior application. Mr. Dohse is a geologist. He attended the University of Texas at Austin and received a degree in geology in August 2007. He has since worked as a petroleum geologist almost exclusively regarding the Gulf of Mexico Basin, which is where the proposed Well is to be located. He prepared a study of the reservoirs at issue in this case.²⁵

Mr. Dohse had 10 exhibits. Mr. Dohse's first two exhibits consisted of the Final Order and the Case Summary prepared by counsel for Double Play in the prior application.²⁶ Mr. Dohse stated he was presenting the same case as before, but with more information regarding the Yegua, as the previous exception to Statewide Rule 37 had expired before the Well could be drilled.²⁷ With these two exhibits, Mr. Dohse provided an overview of the reservoir traits Double Play is interested in pursuing. If approved, the Well will be drilled in Live Oak County. The Well will be located 102 feet from the northwest lease line. Double Play proposes to drill into the Main Hockley Sand, which is about 180 feet below the Upper Hockley Sand. In this area the Main Hockley Sand is a water drive reservoir. Double Play has offset production in the area to support this contention. Additionally, Double Play is also targeting the Yegua formation, which

²¹ 16 Tex. Admin. Code § 3.37(a)(3).

²² Tr. at 8:13 to 8:14.

²³ W-1 Application.

²⁴ Tr. at 8:14 to 8:21 and at 17:8 17:11.

²⁵ May 2, 2016 Hearing, Tr. at 10:24 to 12:17.

²⁶ Tr. at 12:24 to 13:10, 16:14 to and Applicant Ex. 1 and 2.

²⁷ Tr. at 13:11 to 13:19 and at 57.

intersects another fault and is also a water drive reservoir. Mr. Dohse stated due to the faults being just far enough apart within the two reservoir intervals, Double Play can target both sands in an upthrown manner.²⁸ Double Play contends in order to prevent waste it needs to drill at the highest structural position in the fault blocks. Double Play is targeting the upthrown fault block portion of the reservoir. Mr. Dohse testified these fault traps are upthrown three-way closures up to the coastal faults. Thus, the down-thrown block does not trap the oil, as the water pushes the hydrocarbons into the trap. Mr. Dohse argued it is more efficient for Double Play to take the wellbore through these shallow reservoir intervals which include the Hockley and the Yegua, to a depth of 6,000 feet.²⁹ Double Play estimates 212,500 barrels of oil from the traps in the reservoirs would otherwise be unrecoverable if the well was drilled down dip.

Mr. Dohse's third exhibit was a plat showing the location of the proposed Well in relation to the McGuffin Family's property. The plat shows the proposed Well 102 feet from the northwest lease line, which is also the property line, and the Double Play's McNeill Brooks No. 1 well which is 502 feet southeasterly from the Well.³⁰ Mr. Dohse stated the McGuffin Family's property is on the other side of the fault, and is not productive in the target reservoirs because "they are on the down-thrown side of the faults, that's not trapping in this case."³¹

Double Play's fourth exhibit was a 1 inch well log for its McNeill Brooks No. 1 well and its fifth exhibit was a close-up, five-inch log of the Main Hockley interval.³² Mr. Dohse pointed out the Upper Hockley formation, which is very thin in this area, from which the McNeill Brooks No. 1 well is producing. The Main Hockley sand which is about 200 feet deeper, at a depth of 4,360 feet, and is a thicker sand of about 30 feet and is a water drive reservoir. This is Double Play's main objective.³³ Mr. Dohse believes that by moving up-dip from the McNeill Brooks No. 1 well, which is below the oil/water contact, Double Play will be "faulting out the Upper Hockley formation [...] coming just right upthrown into the Main Hockley."³⁴ Mr. Dohse concludes this is where oil is trapped against the fault.³⁵ Continuing down the wellbore, Mr. Dohse pointed out another small fault cut, below which is the Yegua formation at about 5,170 feet. Double Play's secondary target would be this sand at 5,175 feet. Mr. Dohse stated that when faulted it will be juxtaposed against shale on the small faults and that's where there will more than likely be trapping of hydrocarbons.³⁶ Mr. Dohse described how the faults are dipping, considered antithetic fault switches in reaction to big growth faults, with the upthrown side toward the coast (up-to-the-coast faults), the deeper these faults are moving toward the northwest and the shallower are moving in the subsurface toward the southeast. Thus, the Well being northwest of the McNeill Brooks No. 1 well, the faults will come in much deeper because

²⁸ Tr. at 25.

²⁹ Tr. at 14 to 20.

³⁰ Applicant Exhibit No. 3.

³¹ Tr. at 18:3 to 18:6.

³² Applicant Exhibit Nos. 4 and 5.

³³ Tr. at 21.

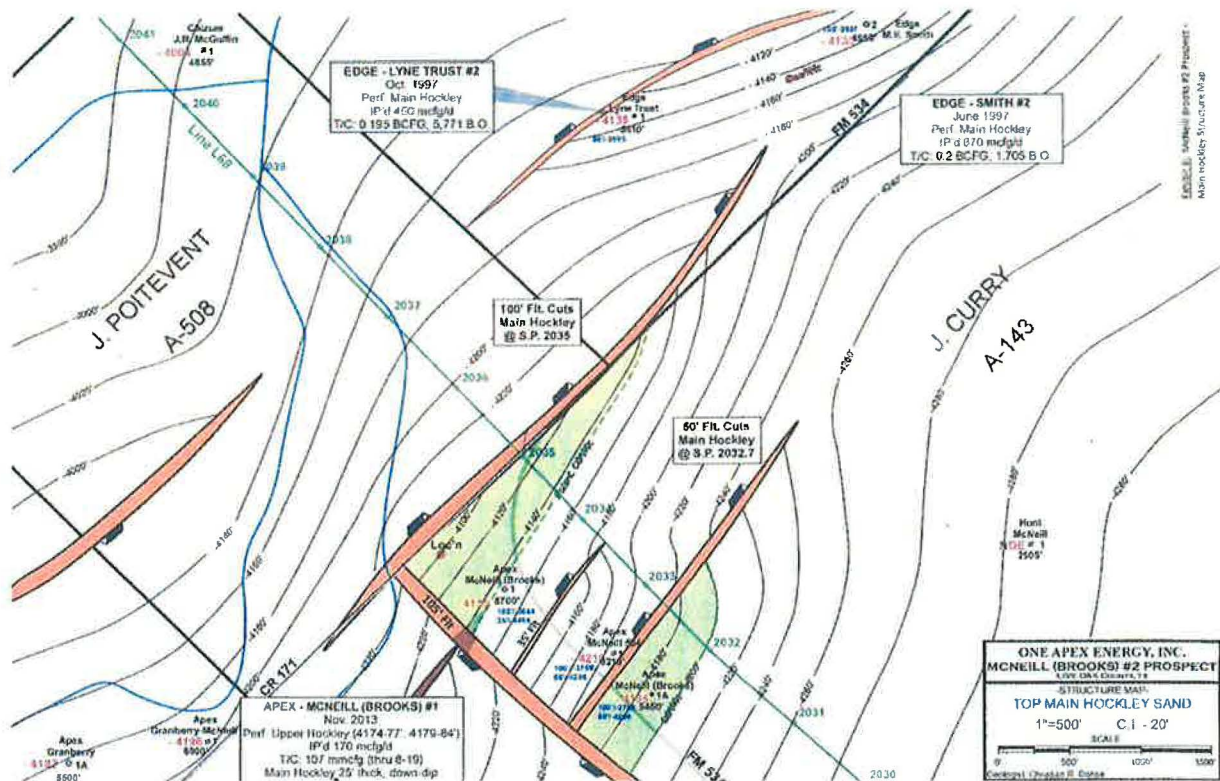
³⁴ Tr. at 21:23 to 22:2.

³⁵ Tr. at 28.

³⁶ Tr. at 22.

these faults are about 45 degrees to be right around the lease line.³⁷ Mr. Dohse testified that these are clean sands and in a clean sand the down-dip water acts as a sort of sweep and will push oil to the top of the structure.

Mr. Dohse continued with a subsurface map he created of the Main Hockley sand with the faults designated in orange and oil accumulation in green.³⁸ The map shows the location of the proposed Well with a red circle and the McNeill Brooks No. 1 and the McNeill Brooks No. 1A wells in relation to faults and oil accumulation. The McGuffin Family's property line runs along the fault just northwest of the proposed location, along CR 171.³⁹ Mr. Dohse described where two faults are coming together and the stratigraphy is going up-dip. He stated regional dip would be going down toward the coast, meaning that they [i.e., the reservoirs] are getting shallower up toward the northwest away from the coast. Hydrocarbons tend to migrate into these formations and get pushed up and trapped in the upthrown side by the impermeable shale. "The regional dip is just kind of funneling up the hydrocarbons into these up-to-the-coast traps. So that's why these traps are shaped like this, that the hydrocarbons come in and migrate to these fault traps."⁴⁰



Mr. Dohse stated the McNeill Brooks No. 1 well was wet, but based on his research, by moving up the contours to the northwest to the proposed location, Double Play would gain

³⁷ Tr. at 25.

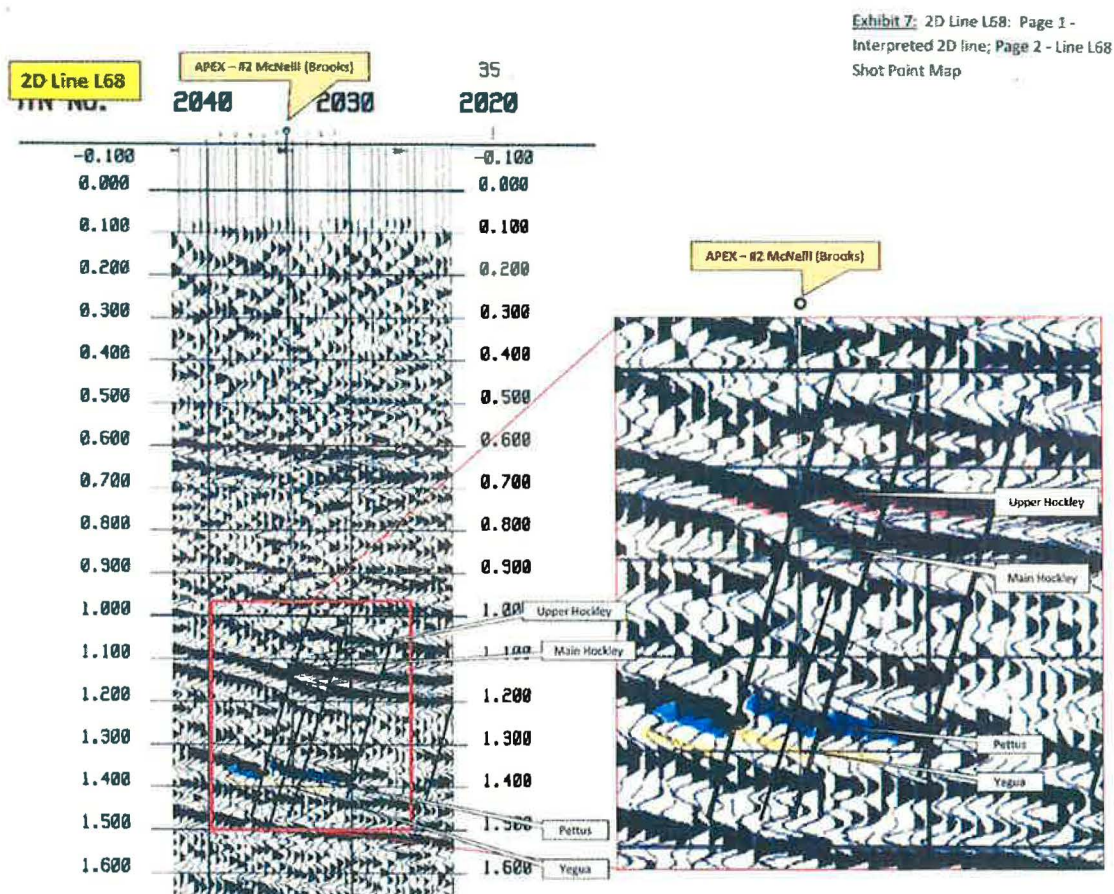
³⁸ Applicant Ex. No. 6 and Tr. at 33.

³⁹ Tr. at 37.

⁴⁰ Tr. at 34.

55 feet of structure versus the McNeill Brooks No. 1 well location. Mr. Dohse believes this is where the hydrocarbons are trapped in the Main Hockley sand.⁴¹ Mr. Dohse stated Double Play found an analogue field several years ago just southeast of the proposed location in the McNeill Brooks No. 1A, where the well was drilled structurally high and a small oil reservoir was found.⁴² Mr. Dohse stated the McNeill Brooks No. 1A well could have been drilled closer to the fault, but was drilled in that location, and with the intent to target the Upper Hockley as well, based on information they had at the time.⁴³

Mr. Dohse presented a “shot point” map of seismic data of Line L68 depicted on Applicant Ex. 6 to support the locations of the faults depicted in the subsurface map and to show those faults in relation to the Upper Hockley, Main Hockley, Pettus and Yegua sands. The 2D Line L68 is an old Exxon line that was shot back in the 1950s.⁴⁴



⁴¹ Tr. at 30-33.

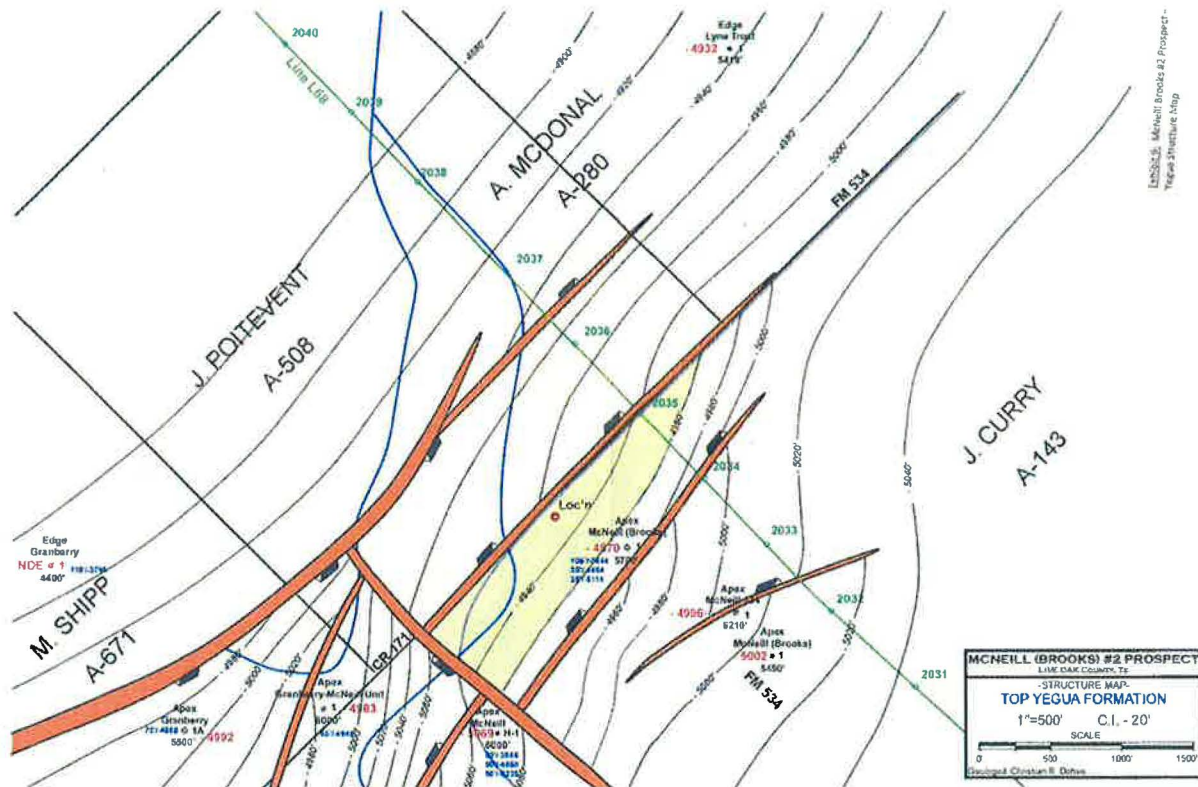
⁴² Tr. at 31.

⁴³ *Id.*

⁴⁴ Tr. at 37-38. See Applicant Ex. 6, the green line running from the top left corner diagonally across the page is labeled as Line L68. Applicant Ex. 7 is the 2D shot point map of this line.

The shot point map shows where the Well will intersect with the Main Hockley sand. The Well is designed to come in just right in the upthrown side of the fault block of the Main Hockley (depicted in green shading).⁴⁵ Mr. Dohse stated that if Double Play were to drill the well on the McGuffin property, the well would be down-thrown of this fault. The well needs to be upthrown in a high structural location. The fault intersects the Main Hockley around Shot Point 2,035, which is right at the McGuffin Family's property line. Continuing deeper is another smaller fault, then deeper to the Yegua shaded in yellow on the exhibit around 5,170 [feet].⁴⁶

The Yegua formation is a deeper potential objective. The Yegua sand in this location is approximately 10 feet, a clean sand with high permeability and porosity and typically water drive.⁴⁷ Mr. Dohse stated there are additional faults in the Yegua, with a fault located again just under the McGuffin property line. The faults are spaced at the same distance as the sands are spaced, roughly 850 feet apart.⁴⁸ Therefore, the proposed well will cut a shallow fault at the Hockley, then another at the Yegua.⁴⁹



⁴⁵ Tr. at 40.

⁴⁶ Tr. at 42.

⁴⁷ Tr. at 45; Applicant Ex. 8.

⁴⁸ Tr. at 46.

⁴⁹ *Id.*

Mr. Dohse provided calculations of the potential reserves in the target reservoirs. The estimate was based on a typical formula use by geologist along the Gulf Coast of the structural closure in acres x the recovery factor (barrels of oil per acre foot, "BO/Acre Foot") x the number of feet of average oil column. In the calculation for the Main Hockley, Mr. Dohse assumed 25 acres of potential reservoir area, 500 BO/Acre Foot with a 12-foot average oil column thickness resulting in 150,000 barrels of oil ("B.O."). In the calculation for the Yegua, Mr. Dohse assumed 25 acres of potential reservoir area, 250 BO/Acre Foot with a 10-foot average oil column thickness resulting in 62,500 B.O.⁵⁰

In conclusion, Mr. Dohse stated nothing had changed since Double Play last requested the Statewide Rule 37 exception, only this time he presented more evidence regarding the Yegua to alleviate concerns or questions regarding that formation. Mr. Dohse urged the granting of the exception again, "in order to pursue this prospect we need another permit – renewed permit for another two-year time line which should be sufficient enough time for me to be able to pull the partners together in order to drill this well."⁵¹

B. Summary of Protestant's Evidence and Argument

The McGuffin Family had one witness, Joe McGuffin, Jr., and one exhibit admitted on cross of Mr. Dohse.

Mr. McGuffin testified he and his family are concerned the Well would cause drainage from under the McGuffin lands, as the Well is too close to their property.⁵² This belief is based on the fact that individuals on behalf of Double Play⁵³ visited the McGuffin Family several years ago and explained that a portion of the reservoir that was being targeted was under the McGuffin Family property.⁵⁴ At that time Double Play and the McGuffin Family attempted to come to an agreement regarding an oil and gas lease and unit but were unsuccessful. Mr. McGuffin express confusion over the fact that when the McGuffin Family attempted to question Double Play about the acreage contained in the agreement, Double Play's representative, its landman Ms. Adams, ceased communication with the family.⁵⁵ Mr. McGuffin requested the Well be drilled at a regular location or that something amicably be worked out that would be fair to the McGuffin Family "if the risk of it being that close to our fence was going to go forward. Either one. We want to you know, co-exist and be good partners."⁵⁶

On cross examination of Mr. Dohse, counsel for the McGuffin Family questioned Mr. Dohse regarding the attempt by Double Play to initially form a unit which would have

⁵⁰ Applicant Ex. 10; Tr. at 51-53.

⁵¹ Tr. at 54.

⁵² Tr. at 96.

⁵³ Reference was made at the hearing of conversations with One APEX. Double Play is the contract operator for One APEX. To alleviate confusion, One APEX will be referenced as Double Play.

⁵⁴ Tr. at 97.

⁵⁵ Tr. at 96-100.

⁵⁶ Tr. at 100:20 to 101:2.

included a portion of the McGuffin Family property.⁵⁷ The McGuffin Family provided a map that was provided during those discussion of the proposed unit location and acreage.⁵⁸ Mr. Dohse asserted the map was created by their landman, as a plat showing the kind of acreage they were looking for.⁵⁹ Mr. Dohse stated he started studying this area around 2013.⁶⁰ When asked about the representation Double Play made to the McGuffin Family regarding the location of hydrocarbons and evidence in this and the prior hearing regarding the location of the fault and trapping, Mr. Dohse stated that he may have originally had the fault located a little off the lease line on the McGuffin Family property, but was unable to recall his earlier interpretations exactly.⁶¹ However, upon studying the 2D Line in more detail, Mr. Dohse adjusted his map to be more accurate with the more data he gathered. Mr. Dohse went on to say that even if the fault is located slightly on the other side of the lease line, that would be up-dip of the wellbore, therefore those minerals could not be drained, as the well could not drain up-dip acreage from the down-dip location in a water drive reservoir.⁶²

In closing, citing the significant presumptions made by Double Play regarding the location of the faults and the assumption of water drive reservoirs, the McGuffin Family urged denial of the application. The McGuffin Family argued the only evidence Double Play provided of a water drive reservoir is that other fields are, therefore these must be as well. The McGuffin Family challenged if the reservoirs are not water drive, then Double Play does not need the exception and the Well could be drilled in a regular location. The McGuffin Family contends the proposed location is not sustainable under Statewide Rule 37 to either prevent waste or protect correlative rights.⁶³

VI. Examiners' Analysis

The Examiners recommend granting Double Play's application for an exception to Statewide Rule 37 such that the Well can be drilled at the proposed location.

A. There is sufficient evidence that the Well is necessary to prevent waste.

Statewide Rule 37 authorizes exceptions to prevent waste or prevent confiscation.⁶⁴ Double Play maintains that the Well is necessary to prevent waste. In order for Double Play to prevail, Double Play must show: (1) localized unusual conditions exist such that an exception to spacing limits is necessary to recover hydrocarbons that would

⁵⁷ Tr. at 66.

⁵⁸ Protestant Ex. 1.

⁵⁹ Tr. at 66.

⁶⁰ Tr. at 65.

⁶¹ Tr. at 67.

⁶² *Id.*

⁶³ Tr. at 112 to 113.

⁶⁴ 16 Tex. Admin. Code § 3.37(a)(1).

otherwise not be recovered by a regular well, and (2) the amount of hydrocarbons that would otherwise not be recovered is substantial.⁶⁵

The evidence in this case was sufficient to show that localized unusual conditions exist, there is no regular location that can recover the hydrocarbons the Well is anticipated to recover, and if the exception is not granted, there will be waste of a substantial volume of hydrocarbons. Double Play met its burden of proof to show that drilling the Well at the proposed location is necessary to prevent waste and protect correlative rights.

The term 'waste' means the ultimate loss of oil; if a substantial amount of oil will be saved by the drilling of a well that otherwise would ultimately be lost, the permit to drill such well may be justified under the exception provided in Statewide Rule 37 to prevent waste.⁶⁶

In order to obtain an exception to Statewide Rule 37, Double Play must demonstrate localized unusual conditions not common with the rest of the Field. As stated by the Texas Supreme Court:

The waste exception clause in Statewide Rule 37 has no application where ordinary or usual conditions prevail. To justify an exception under that clause it is necessary to show that the conditions affecting the drainage of wells on a particular tract are so peculiar, unusual and abnormal that it is removed from the same category of the surrounding area to which the general rule applies. When those peculiar and unusual conditions are found to exist in a localized area, exceptions may then be granted for the drilling of additional wells to the extent necessary to offset the abnormality and place it on parity, from the standpoint of efficient drainage, with other areas where the ordinary and usual reservoir conditions prevail.⁶⁷

There is precedent for determining that unusual subsurface reservoir conditions warrant an exception; in fact, unusual subsurface reservoir conditions is perhaps the most typical situation warranting an exception.⁶⁸

⁶⁵ *Hawkins v. Texas Company*, 209 S.W.2d 388, 342-348 (1948); *Wrather v. Humble Oil & Refining Company*, 214 S.W.2d 112, 117 (Tex. 1948); *Gulf Land Co. v. Atlantic Refining Co.*, 131 S.W.2d 73, 70 and 80 (Tex. 1939) ; see also *Exxon Corporation v. R.R. Comm'n of Tex.*, 571 S.W.2d 497 (1978); *Schlachter v. R.R. Comm'n of Tex.*, 825 S.W.2d 737 (Tex. App.—Austin 1992, writ denied); Tex. R.R. Comm'n, *Discussions of Law, Practice and Procedure* 32 (April 1991); Vol. 2 Ernest E. Smith and Jacqueline Lang Weaver, *Texas Law of Oil and Gas* §§ 9.5 (LexisNexis Matthew Bender 2015).

⁶⁶ *Gulf Land Co. v. Atlantic Refining Co.*, 131 S.W.2d 73, 80 (Tex. 1939).

⁶⁷ *Wrather v. Humble Oil & Refining Co.*, 214 S.W.2d 112, 117 (Tex. 1948).

⁶⁸ See, e.g., *Letwin v. Gulf Oil Corp.*, 164 S.W.2d 234, 236 (Tex. Civ. App.—Austin 1942, writ ref'd) (citing *R.R. Comm'n v. Shell Oil Co.*, 161 S.W.2d 1022 (Tex. 1942) and requiring unusual subsurface conditions to prove waste); but see also *Exxon Corporation v. R.R. Comm'n of Tex.*, 571 S.W.2d 497 (Tex. 1978) (court finds economic conditions can be considered stating, "[E]conomic factors were relevant to BTA's application and were properly considered by the commission in determining whether a Rule 37 exception was necessary to prevent the waste of oil."); *Anadarko E & P Co., L.P. v. R.R. Comm'n of Tex.*, 2009 WL 47112 (Tex. App.—Austin 2009, no pet.) (mem. op.) (court affirms Commission's consideration of local lease geometry in Rule 37 waste analysis).

Double Play provided sufficient evidence to establish unusual localized conditions exist such that an exception to spacing limits is necessary to recover hydrocarbons that would otherwise not be recovered by a regular well location. Double Play provided evidence that faults coincide with the lease line between the Lease and the McGuffin Family's adjacent tract. Double Play provided evidence of potential water drive fault trap reservoirs and showed the necessity of drilling at the structurally highest location in the reservoirs so as to recover the maximum amount of hydrocarbons and any hydrocarbons located up-dip of the drilled well will be unable to be recovered.

The McGuffin Family's only evidence that the Well would drain their minerals was the testimony of Mr. McGuffin regarding early representations made by Double Play to them and Double Play's initial attempt to include a portion of the McGuffin Family property in a unit. On cross examination, the McGuffin Family questioned if the reservoirs where the Well is to be located are water drive reservoirs. In response to how he knows the reservoirs are water drive, Mr. Dohse stated:

The basis would be the analogue production that we have found over the years to the southwest on the McNeill Ranch -- and it's been on the McNeill Ranch -- it has shown that when you drill a structural high location that's where you can find it. You really want to be hugging that fault right upthrown in the fault, and you can find it. If you're down-dip -- meanwhile there are down-dip wells that carry no show and were wet. When we produce the sand we're making a certain percentage of water which is fairly significant, and as the well diminishes over time, in an oil cut your water cut is increasing which are all signs of a water drive reservoir. So the pressure maintains pretty well throughout. It's not decreasing like a pressure depletion reservoir would. It's staying fairly consistent. So it's -- we noticed, based off of it, our production just a long trend right here directly to the southwest water drive reservoirs in the main Hockley but also in the Yegua, too.⁶⁹

Mr. Dohse admitted that not all of the reservoirs in this area are water drive, but in this five-mile radius area the Main Hockley and the Yegua are water drive reservoirs. The McGuffin Family did not provide any evidence to contradict Mr. Dohse's testimony.

The Examiners find that Double Play's descriptions of the reservoir conditions to be persuasive.

In addition to proving localized unusual conditions, Double Play must prove that the Well is necessary to prevent waste of a substantial quantity of hydrocarbons. The Examiners conclude that there is sufficient evidence that failing to grant the requested exception will result in a substantial volume of waste. Based on Double Play's calculations, there is 150,000 barrels of oil in place in the Main Hockley reservoir and 62,500 barrels of oil in place in the Yegua reservoir. At a regular location, the majority of

⁶⁹ Tr. at 75-76.

these hydrocarbons would go unrecovered, as evidenced by the McNeill Brooks No. 1 well located 582 feet from the lease line. Without the requested exception the Lease mineral owners and lessees would not obtain their fair share⁷⁰ of hydrocarbons if the Well were not drilled. The McGuffin Family did not present any evidence or otherwise contradict Double Play's evidence as to the amount of hydrocarbons that would be unrecoverable.

The Examiners conclude that the Well is necessary at the proposed location to prevent waste of a substantial amount of hydrocarbons and protect correlative rights.

B. The Examiners recommend granting Applicant's application for an exception to Statewide Rule 37 of the 467-foot minimum lease line spacing distance as proposed.

The Examiners recommend granting Double Play's request for a Statewide Rule 37 exception of the lease line spacing distance to allow the Well to be drilled at the proposed location as shown on Applicant's Exhibit No. 3 of the drilling plat, which is attached to this PFD⁷¹, and described as follows:

- A new vertical well in the Wildcat Field located in the Jane Curry Survey, Abstract No. A-143 ("Survey") in Live Oak County, approximately 2.2 miles in a southwest direction from the town of Dinero, Texas;
- The surface location of the Well is 102 feet from the northwest line of the Lease boundary and 587 feet from the southwest line of the Lease boundary;
- It is 102 feet from the northwest line of the Survey boundary and 13,411 feet from the southwest line of the Survey boundary; and
- The Well is 102 feet from the McGuffins Family's adjacent external tract.

VII. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

The Examiners recommend that the application of Double Play Oil & Gas, Inc. for an exception to Statewide Rule 37 for its McNeill (Brooks) Lease, Well No. 2, Wildcat Field, Live Oak County, Texas be approved. The Examiners recommend the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. On or about May 21, 2019, Double Play Oil & Gas, Inc. ("Double Play") filed a Commission Form W-1 *Application for Permit to Drill, Recomplete or Re-enter*

⁷⁰ See, e.g., *Texaco, Inc. v. R.R. Commission*, 583 S.W.2d 307 (Tex. 1979) (discussing the "elementary rule of property that a landowner is entitled to an opportunity to produce his fair share of oil from a common reservoir").

⁷¹ Attached to the PFD as Attachment A.

("Application") for the McNeill (Brooks) Lease ("Lease"), Well No. 2 ("Well") in the Wildcat Field, Live Oak County, Texas. The proposed well location necessitated an exception to the 467-foot minimum lease distance limit.

2. Double Play holds Form P-5 *Organization Report* Operator No. 224880.
3. Notice of the Application was sent by mail to the addresses of the designated operator, all offset operators, all lessees of record for tracts that have no designated operator, and all owners of record of unleased mineral interests.
4. On June 21, 2019, the Commission received a protest to the Application from the McGuffin Family necessitating a hearing.
5. On October 10, 2019, the Hearings Division of the Commission sent a Notice of Hearing on the Application setting the hearing for November 1, 2019. The Notice of Hearing was sent by mail to the addresses of the designated operator and protestants.
6. The McGuffin Family and Double Play appeared at the hearing on this matter. The McGuffin Family are undivided interest owners in the unleased acreage due north of the proposed Well.
7. The Well will be a new vertical well located in the Jane Curry Survey, Abstract No. A-143 ("Survey") in Live Oak County, approximately 2.2 miles in a southwest direction from the town of Dinero, Texas.
8. The surface location of the Well is 102 feet from the northwest line of the Lease boundary and 587 feet from the southwest line of the Lease boundary. It is 102 feet from the northwest line of the Survey boundary and 13,411 feet from the southwest line of the Survey boundary.
9. The proposed Well is designed to be drilled to a total depth of approximately 5,400 feet. The intent is to be produced from the Main Hockley and Yegua sands.
10. There are no field rules for the Wildcat Field. The Wildcat Field is a field designation/placeholder for completions in other productive intervals which do not have designated field names or for which there is no known zone of production, i.e. a new field. As such, the Statewide Rule 37 requirement of 467 feet minimum lease line spacing distance applies. See 16 Tex. Admin. Code § 3.37(a)(1).
11. There are unusual localized conditions affecting drainage in the reservoirs where the Well is to be drilled. A fault coincides with the lease line between the Lease and the McGuffin Family's adjacent tract in both the Main Hockley and Yegua reservoirs. The reservoirs are water drive fault trap reservoirs. It is necessary to drill at the structurally highest location in the reservoirs to recover the maximum amount of hydrocarbons, any hydrocarbons located up-dip of the drilled Well would be unable to be recovered. The Well's proposed location penetrates into the

structurally highest geologic segment of the reservoirs. A regular well location would not be capable of producing all of the hydrocarbons that the Well is expected to produce at the proposed location.

12. There are estimated to be 150,000 barrels of oil in place in the Main Hockley reservoir and 62,500 barrels of oil in place in the Yegua reservoir where the proposed Well is to be located. Barrels of oil that would otherwise be unrecoverable if a well were drilled at a location 467 feet from the lease line. If the exception were not granted, a significant amount of hydrocarbons would not be produced, causing waste.
13. The exception is necessary to prevent waste. Additionally, the operator and leased interests in the Lease would not be able to achieve their fair share of production if the exception is not granted; the exception is necessary to protect correlative rights.

Conclusions of Law

1. Proper notice was issued in accordance with all applicable statutes and regulatory codes. See 16 Tex. Admin. Code §§ 3.37(a)(2) and (a)(3), and 1.46.
2. The Commission has jurisdiction in this matter. See, e.g., Tex. Nat. Res. Code §§ 81.051 and 81.052.
3. An exception is needed because the Well is closer than allowed to external tracts of the Lease, pursuant to 16 Tex. Admin. Code § 3.37.
4. Double Play has met its burden of proof and satisfied the requirements of Statewide Rule 37. 16 Tex. Admin. Code § 3.37.
5. Granting the Application and approving the requested exception to Statewide Rule 37 is necessary to prevent waste and protect correlative rights.

Recommendations

The Examiners recommend that the Commission grant Double Play's application for an exception to Statewide Rule 37 for the proposed well location in the McNeill (Brooks) Lease, Well No. 2, in the Wildcat Field of Live Oak County, Texas.

The proposed location is shown on the attached drilling plat, in the Application and described as follows:

- Being a new vertical well in the Wildcat Field located in the Jane Curry Survey, Abstract No. A-143 ("Survey") in Live Oak County, approximately 2.2 miles in a southwest direction from the town of Dinero, Texas;

- Having a surface location of 102 feet from the northwest line of the Lease boundary and 587 feet from the southwest line of the Lease boundary;
- Being 102 feet from the northwest line of the Survey boundary and 13,411 feet from the southwest line of the Survey boundary; and
- Being no less than 102 feet from The McGuffins' adjacent external tract.

Respectfully Submitted,



Kristi M. Reeve
Administrative Law Judge



Robert Musick, P.G.
Technical Examiner

Attachment A
 Double Play Oil & Gas, Inc.
 Oil and Gas Case No. 0299507 / Status No. 853353

