RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL & GAS DOCKET NO. 06-0321223

COMPLAINT BY DWAYNE MCQUEEN, TRUSTEE OF THE TERRY LYNN SMITH TRUST AND KINGDOM OF GOD RESOURCES E&P COMPANY LLC THAT ZARVONA ENERGY LLC (OPERATOR NO. 950523) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE WHEAT MINERALS TRUST LEASE (RRC GAS ID NO. 207709), WELL NO. 1, BROOKELAND (AUSTIN CHALK, 8800) FIELD, TYLER COUNTY, TEXAS.

OIL & GAS DOCKET NO. 06-0321407

COMPLAINT BY DWAYNE MCQUEEN, TRUSTEE OF THE TERRY LYNN SMITH TRUST THAT ANADARKO E&P ONSHORE LLC (OPERATOR NO. 020528) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE WHEAT MINERAL TRUST LEASE (RRC GAS ID NO. 212598), WELL NO. 2, BROOKELAND (AUSTIN CHALK, 8800) FIELD, TYLER COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY: Ezra A. Johnson, Administrative Law Judge
Ashley Correll, Technical Examiner

PROCEDURAL HISTORY:

Complaint Filed -	June 27, 2019
Amended Complaint Filed -	August 8, 2019
Joint Notice of Hearing Issued -	December 17, 2019
Hearing Date -	January 10, 2020
Close of Record -	January 10, 2020
Transcript Received -	February 18, 2020
Proposal for Decision Issued -	March 25, 2020

APPEARANCES:

COMPLAINANTS:

Dwayne McQueen, Trustee of the Terry Lynn Smith Trust and Kingdom of God Resources E&P Company, LLC

Dwayne McQueen, Representative
Clara Mae Segrest, Witness

RESPONDENTS:

Zarvona Energy LLC

Mickey Olmstead, Attorney
Josh Karim, Title Attorney

Anadarko E&P Onshore LLC (now OXY)

Ana Maria Marsland, Attorney
Christopher Cucchiara, Land Professional

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I. Statement of the Case[1]

Dwayne McQueen, Trustee of the Terry Lynn Smith Trust, and Kingdom of God Resources E&P Company, LLC ("Complainants" or "McQueen") previously filed with the Railroad Commission ("Commission") several complaints against Zarvona Energy LLC ("Zarvona") and Anadarko E&P Onshore LLC ("Anadarko") alleging these parties did not have a good faith claim right to operate the subject lease and wells. These previous complaints were dismissed by the Hearings Division without prejudice for want of prosecution.

The present complaint ("Complaint") in this matter seeks all available relief within the Commission's jurisdiction for alleged knowingly false statements included in the drilling permit applications for the Wheat Mineral Trust Unit Well Nos. 1 and 2 ("Wells"). The Complaint alleges that Anadarko knew or should have known that it did not have the effective consent of Clara Mae Segrest, Trustee of the Trust established under the will of Lottie Mae Smith, to pool certain mineral interests within the Wheat Mineral Trust Unit ("Unit") in Tyler County, Texas, at the time Anadarko filed Form W-1s and Form P-12s for the Wells. McQueen further argues that Anadarko's alleged intentional failure to disclose Clara Mae Segrest's unleased interest in the Unit in the permit applications resulted in illegal wells that do not conform with the applicable spacing rules under Statewide Rule 37.[2] No application for a spacing exception was filed by Anadarko as to the Wells and no compulsory pooling order was ever issued by the Commission for the Unit.

In their responses to the Complaint, Zarvona and Anadarko[3] ("Respondents") argue that all of McQueen's claims should be dismissed because the Commission lacks jurisdiction to resolve the mineral title dispute that is the basis for all relief sought in the Complaint. In the alternative, Respondents would show that they currently hold, and have held at all relevant times, a good faith claim right to drill and operate the Wells.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission find that Respondents provided a reasonably satisfactory showing of a good faith claim right to drill and operate the subject wells. The examiners further recommend that the Complaint and all of McQueen's requests for relief should be denied.

II. Jurisdiction and Notice

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating

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[1] The hearing transcript in this case is referred to as "Tr. at [page(s):line(s)]." Complainant's exhibits are referred to as "Complainant Ex. [exhibit no(s).]." Anadarko's exhibits are referred to as "Ank Ex. [exhibit no(s)]." Zarvona's exhibits are referred to as "Zar. Ex. [exhibit no(s)]."

[2] "Statewide Rule 37" refers to 16. Tex. Admin. Code §3.37

[3] Prior to the hearing on the merits, Anadarko Petroleum Corporation was acquired by Occidental Petroleum Corporation ("OXY"). OXY proceeded in this matter as "Anadarko/OXY." *See* Tr. at 9:12-14. Because Anadarko was the prior operator of record for the Wells at all times relevant to this matter, Anadarko/OXY will be referred to throughout this proposal for decision as "Anadarko."

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.

On December 17, 2019, the Hearings Division of the Commission sent a Joint Notice of Hearing ("Notice") to Complainants and Respondents setting a hearing date of January 10, 2020. Consequently, the parties received more than 10 days' notice. 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.[4] The hearing was held on January 10, 2020, as noticed. Complainants and Respondents appeared at the hearing.

III. Applicable Legal Authority

A. Chapter 91 of the Texas Natural Resources Code

McQueen seeks all available remedies within the Commission's jurisdiction, including criminal penalties, for alleged violations of Section 91.143 of the Texas Natural Resources Code ("Chapter 91").[5] In pertinent part, Chapter 91 provides that a person may not make or subscribe any application, report, or other document required or permitted to be filed with the Commission, knowing that the application, report, or other document is false or untrue in a material fact.[6] Further, a person may not aid or assist in, or procure, counsel, or advise the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter.[7] A person commits a felony offense punishable by imprisonment and fine if that person violates the statute.[8] That person is also subject to administrative penalties levied by the Commission.[9]

Chapter 91 grants to the Commission the express authority to assess administrative penaties for false and fraudulent filings. The Commission also has implied authority to rescind or revoke fraudulently induced administrative approvals as a necessary adjunct to its other expressly delegated powers and duties.[10] As has been noted in previous proceedings before the Commission, however, the Hearings Division does not make determinations concerning criminal liability for violations of Commission

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[4] *See* Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

[5] McQueen seeks relief under Tex. Nat. Res. Code §§ 91.143, 91.456, 91.459, 91.458, 91.403, 91.404, 91.260, 91.181, 91.061, 91.058,91.003, and 91.002. Other than Tex. Nat. Res. Code § 91.143, it does not appear from the record that any of these sections of the code are specifically applicable in this matter. McQueen further complains of a failure to provide notice under Tex. Nat. Res. Code § 91.054. Because that section of the code is concerned solely with determining field average gas temperatures, the Examiners have disregarded this allegation as not relevant to circumstances presented by this case.

[6] Tex. Nat. Res. Code §91.143(a)(1).

[7] Tex. Nat. Res. Code §91.143(a)(2).

[8] Tex. Nat. Res. Code §91.143(b).

[9] Tex. Nat. Res. Code §91.143(e).

[10] *See* Oil and Gas Docket No. 7B-0249737, *Complaint of Charles G. Justis, Jr.*, Examiners' Proposal for Decision (1-26-2007) p. 8-12.

rules or state law, but may refer such matters to the appropriate authority if referral is warranted.[11]

B. Statewide Rule 37

The Complaint further states that Anadarko failed to apply for an exception to the well-spacing rules outlined in Statewide Rule 37. Unless altered by special field rule, no well is to be drilled nearer than 1,200 feet to any other well completed in or drilling to the same horizon on the same tract, and no such well is to be drilled nearer than 467 feet to any property line, lease line, or subdivision line.[12] When an exception to Statewide Rule 37 is desired, application shall be made by filing the proper fee and the appropriate forms.[13] A person acquainted with the facts pertinent to the application shall certify that all facts stated in it are true and within the knowledge of that person.[14]

When an exception to the minimum lease-line spacing requirement is desired, the applicant must file with the Commission 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 all owners of record of unleased mineral interests.[15] For an exception to the minimum between-well spacing requirement, unleased mineral owners in each adjacent tract and each tract nearer to the well than the greater of one-half the prescribed minimum between-well spacing distance or the minimum lease-line spacing are also entitled to notice.[16]

If the Commission receives a protest from an interested person, an exception to Statewide Rule 37 may be granted after a public hearing held after at least 10 days notice.[17] No well drilled in violation of Statewide Rule 37 without a permitted exception is allowed to produce oil or gas and is immediately subject to plugging upon Commission order.[18]

C. The Mineral Interest Pooling Act

McQueen also alleges that Anadarko failed to file an application for compulsory pooling under Chapter 101 of the Texas Natural Resources Code, also known as the Mineral Interest Pooling Act ("MIPA"). MIPA vests authority with the Commission to order compulsory pooling when two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the Commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit

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[11] *See id*. *See also* Oil and Gas Docket No. 10-0208856, *Complaint of Char-Will Corp. Inc*., Examiners' Proposal for Decision (1-3-1996), p. 6.
[12] *See* 16. Tex. Admin. Code §3.37(a).
[13] *Id*. at (a)(2).
[14] *Id.*
[15] *Id.* at (a)(2)(A).
[16] *Id.* at (a)(2)(B).
[17] Tex. Admin. Code §3.37(a)(3).
[18] *See id.* at (e).

in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir.[19] Such order may issue following notice and opportunity for hearing to the other owners in the unit upon application by at least one of the owners of the right to drill.[20]

IV. Matters Officially Noticed

After providing all parties with notice and an opportunity to respond, the Examiners take official notice of the following facts, materials, records and documents:

1. All documents on file for Oil and Gas Docket No. 06-0315624, including, but not limited to:
    a. The pleadings and motions filed in Cause No. 24,219, District Court, Tyler County, Texas, styled *Clara Mae Segrest, Trustee, et al. v. Anadarko E&P Co. Onshore LLC, et al.*; and
    b. The drilling permit applications for the subject wells.

2. McQueen's amended complaint and documents attached thereto.

3. The Designation of Unit for the Wheat Mineral Trust Unit, recorded in Volume 800, page 232, Official Public Records, Tyler County, Texas.

4. The Supplement to Designation of Unit for the Wheat Mineral Trust Unit, recorded in Volume 855, page 131, Official Public Records, Tyler County, Texas.

5. That certain Lease Ratification dated October 8, 2004, from Clara Mae Segrest, Trustee, to Anadarko E & P Company LP, as Lessee.

6. That certain Oil, Gas and Mineral Lease dated January 17, 2005, from Clara Mae Segrest, Trustee, as Lessor, to Anadarko E & P Company LP, as Lessee.

7. Facts recited, noticed, approved or included in these materials, records and documents, including, but not limited to:

    a. Anadarko is the prior operator of record for the Wells and filed the drilling permit applications for the Wheat Mineral Trust Well Nos. 1 and 2 with the Commission on November 17, 2004, and January 26, 2005, respectively.
    b. The Wheat Mineral Trust Well No. 1 was plugged and abandoned by Anadarko on or about December 16, 2016.
    c. Zarvona is the present operator of record for the Unit and the Wheat Mineral Trust Well No. 2.

In that certain suit filed in Cause No. 24,219, District Court, Tyler County, Texas, styled *Clara Mae Segrest, Trustee, et al. v. Anadarko E&P Co. Onshore LLC, et al.,* Clara

[19] Tex. Nat. Res. Code §102.011.
[20] *Id.*

Mae Segrest, among others, filed claims against Anadarko and Zarvona for breach of "express implied contract and implied covenants." Anadarko and Zarvona obtained summary judgment orders from the Tyler County District Court dismissing all claims asserted in this suit.

V. Discussion of Evidence Submitted

In addition to the information included with the Complaint, McQueen provided witness testimony from Dwayne McQueen and Clara Mae Segrest at the hearing. Respondents Anadarko and Zarvona provided witness testimony from Christopher Cucchiara and Josh Karim, together with five exhibits.

At the hearing, Respondent Anadarko provided the Examiners with detailed evidence concerning the ownership history of certain lands within the Wheat Mineral Trust Unit once held by Merfa Scott and Sarah Scott. As a full understanding of this ownership history is vital to understanding the underlying basis for the claims made in the Complaint, the Examiners consider it necessary to first summarize the evidence submitted by Anadarko and Zarvona before proceeding to a synopsis of McQueen's argument and evidence.

A. Summary of Respondents' Evidence and Argument

Anadarko submitted all of the title documents Respondents rely upon in responding to the Complaint as a single exhibit. As part of this exhibit, Anadarko provided copies of the following title documents:

1. Warranty Deed dated April 16, 1945, recorded in Volume 109, page 261, Deed Records Tyler County, Texas ("Hanks Warranty Deed").[21] The Hanks Warranty Deed is granted by Ralph Hanks and wife, Emma Hanks, and purports to convey to Merfa Scott two tracts of land in the George Kirkwood Survey, Tyler County, Texas ("Lands").[22] As part of this purported conveyance, it appears that Ralph and Emma Hanks reserved an undivided royalty interest in and under the Lands.[23]

2. Mineral Deed dated April 17, 1945, recorded in Volume 109, page 265, Deed Records, Tyler County, Texas ("Smith Mineral Deed").[24] The Scott Mineral Deed is granted by Merfa Scott and wife, Sarah Scott, and purports to convey to Emson Smith three-fourths of the mineral rights under the Lands. In this deed, the Lands are described as two tracts out of the George Kirkwood Survey, A-418, Tyler County, Texas, being first a tract of 50.0 acres, and second, a tract of 31.0 acres, less and except 5.4 acres previously conveyed to Grant Gilders.[25] This purported mineral conveyance is made subject to the royalty previously reserved by Ralph

[21] Ank. Ex. 1.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

and Emma Hanks in the Hanks Warranty Deed.[26] The Smith Mineral Deed contains an apparent agreement between Merfa and Sarah Scott and Emson Smith concerning mineral and royalty ownership of the Lands. Merfa and Sarah Scott stated in the Smith Mineral Deed that Emson Smith would own three fourths of the mineral rights under the Lands and the Scotts would own one fourth of the minerals without royalty.[27] The Scotts ostensibly conceded any remaining royalty interests in the Lands to Ralph and Emma Hanks.[28] The Smith Mineral Deed does not expressly mention executive rights.

3. Mineral Deed dated May 11, 1945, recorded in Volume 109, page 390, Deed Records, Tyler County, Texas, from Emson Smith.[29] This document purports to convey the three-fourths mineral interest described in the Scott Mineral Deed to William Seale.[30]

4. Oil, Gas and Mineral Lease, dated December 8, 1950, recorded in the Deed Records of Tyler County Texas ("Scott Lease").[31] In the Scott Lease, Merfa and Sarah Scott purport to convey a one-fourth mineral interest in the Lands to M. L. O'Bannon for a term of five years and so long thereafter as oil and gas is produced from the leased premises.[32] Because the Scotts did not claim any royalty interest in the Lands (due to the prior conveyance to Emson Smith), the Scott Lease grants back to the Scotts an overriding royalty interest "payable out of the seven-eighths (7/8ths) interest in such oil, gas and minerals as is obtained by lessee from Lessor *under and by virtue of the terms of the lease to which this sheet is attached*."[33]

5. Warranty Deed dated January 18, 1957, recorded in Volume 151, page 527, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 3.75 acres out of the Lands to Grant and Gertrude Gilder ("Gilder Tract").[34] There does not appear to be any express exception or reservation of executive rights in this conveyance other than those rights previously conveyed in the Scott Mineral Deed. Mr. Cucchiara testified that Anadarko's legal advisors interpreted the reservation language in this to mean that the Scotts conveyed all of their mineral rights in the Gilder Tract to Grant and Gertrude Gilder.[35]

6. Warranty Deed dated January 18, 1957, recorded in Volume 159, page 528, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 4.5 acres out of the Lands to Jesse and Polly Ann Barlow ("Barlow Tract").[36] There does not appear to be any express exception or reservation of executive rights in

[26] Ank. Ex. 1.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.* (emphasis added).
[34] *Id.*
[35] Tr. at 51:14-25.
[36] Ank. Ex. 1.

this conveyance other than those rights previously conveyed in the Scott Mineral Deed. Mr. Cucchiara testified that Anadarko's legal advisors interpreted the reservation language in this conveyance to mean that the Scotts conveyed all of their mineral rights in the Barlow Tract to Jesse and Polly Ann Barlow.[37]

7. Warranty Deed dated January 31, 1963, recorded in Volume 201, page 249, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 5.5 acres out of the Lands to O. B. Rudd and wife, Eloise Rudd ("Rudd Tract").[38] According to the express terms of the grant set forth in this instrument, the Scotts reserved all of the minerals they owned in the Rudd Tract and excepted all interests previously reserved by "original grantors."[39]

8. Warranty Deed with Vendors Lien, dated November 30, 1972, recorded in Volume 305, page 538, Deed Records, Tyler County, Texas, from Merfa and Sarah Scott to Jesse Tolar and Bill Tolar ("Tolar Warranty Deed").[40] In the Tolar Warranty Deed, the Scotts purport to convey all of the Lands, less and except the 4.5-acre Barlow Tract, the 3.75-acre Gilder Tract, and the 5.5-acre Rudd Tract.[41] As part of this conveyance, the Scotts expressly excepted, "all minerals heretofore reserved by previous Grantors" from the grant of the remaining portion of the Lands.[42] Mr. Cucchiara testified that Anadarko's legal advisors interpreted this reservation language to mean that the Scotts conveyed to the Tolars all remaining rights to the minerals under the Lands except for the 5.5-acre Rudd Tract.[43]

Respondents further offered the following contractual oil and gas leases and ratifications as part of Anadarko's first exhibit:

1. Oil, Gas and Mineral Lease dated November 4, 2002, recorded in Volume 746, page 522, Official Public Records, Tyler County, Texas, from Eugenia Seale Meyer, as Lessor, to Amarado Oil Company, as Lessee ("Meyer Lease"). The property described in the Meyer Lease includes a tract of 75.6 acres, more or less in the George Kirkwood survey, "being more particularly described as an 81-acre tract in Deed dated October 1, 1934 from W.F. Boykin et ux., to L. W. Hanks . . . save and except 5.4 acres described in Volume 98, page 304, from Ralph Hanks to Grant Gilder dated April 23, 1942, in the Deed Records of Tyler County Texas."[44]

2. Oil, Gas and Mineral Lease dated October 18, 2002, recorded in Volume 730, page 793, Deed Records, Tyler County, Texas, from Jesse and Bill Tolar (and their spouses), as Lessor, to ETOCO, Inc., as Lessee ("Tolar Lease"). The property described in the Tolar Lease is 61.25 acres of land, more or less, out of the George Kirkwood survey, "being the same lands described in that certain warranty deed

[37] Tr. at 51:14-25.
[38] Ank. Ex. 1.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] Tr. at 51:14-25. *See also* Tr. at 67:9-14.
[44] Ank. Ex. 1.

dated November 30, 1972 from Merfa Scott and wife, Sarah Scott to Jesse Tolar and Bill Tolar and recorded in Volume 305, page 538 of the Deed Records of Tyler County, Texas."

3. Lease Ratification dated October 8, 2004, recorded in Volume 791, page 779, Official Public Records, Tyler County, Texas ("Smith Trust Ratification") from Clara Mae Segrest, as Trustee of the Trust Established u/w/o Lottie Mae Smith, to Anadarko, as Lessee, purporting to ratify the Meyer Lease, but only to the extent that the Meyer Lease included the Gilder Tract and the Barlow Tract.

4. Oil, Gas and Mineral Lease dated January 17, 2005, recorded in Volume 796, page 11, Official Public Records, Tyler County, Texas ("Smith Trust Lease), wherein Clara Mae Segrest, as Trustee of the Trust Established u/w/o Lottie Mae Smith, purports to convey the minerals under the 5.5-acre Rudd Tract to Anadarko for a primary term of three years and so long thereafter as oil and gas are produced from the lease.

Anadarko's second exhibit consists of two maps showing the approximate location of the Lands and the 5.5-acre Rudd Tract in relation to the Wheat Mineral Trust Wells. These maps purport to show that the Rudd Tract is located 2,127 feet from the Wheat Mineral Trust Well No. 1 and 1,519 feet from the Wheat Mineral Trust Well No. 2. The wellbores of these wells do not cross any part of the Lands. Given all of the foregoing, Mr. Cucchiara further testified that Anadarko reasonably believed that all relevant mineral interests were under lease at the time drilling permits were obtained to drill the Wheat Mineral Trust Well Nos. 1 and 2.[45]

Zarvona's first exhibit is a copy of the Tolar Lease. The second Zarvona exhibit is a printed copy of the Commission's online oil and gas data query for the Unit showing that Zarvona is the current operator of record. The third exhibit for Zarvona is a copy of the 1950 Scott Lease. Josh Karim testified on behalf of Zarvona as an expert in mineral title that Zarvona considered the Tolar Lease to be a valid and subsisting contractual lease covering one-fourth of the minerals under all of that part of the Lands transferred to Jesse and Bill Tolar by the Scotts in the Tolar Warranty Deed.[46] Mr. Karim further expressed his expert opinion that the Scott Lease expired on December 8, 1955, and that any interest carved out of that lease, including any overriding royalty conveyed to Merfa Scott as a part of that agreement, also expired as of that date. According to the research conducted by Mr. Karim, no production of oil or gas was obtained from the Scott Lease prior to the expiration of its primary term.[47] He was also unaware of any mineral production from the Lands occurring at any time prior to the drilling and completion of the Wheat Mineral Trust No. 1 Well.[48] In summing up his direct testimony, Mr. Karim argued that persons reasonably well-versed in oil and gas mineral title would conclude that the

[45] Tr. at 52:11-19.
[46] Tr. at 61:2-22.
[47] Tr. at 65:6-21.
[48] Tr. at 65:6-21.

documents admitted into the record of this case showed a good faith claim right to obtain drilling permits for the Wells.[49]

B. Summary of Complainants' Evidence and Argument

In their Amended Complaint, McQueen alleges that Anadarko knowingly provided false information to the Commission in applying for drilling permits on the Wheat Mineral Trust Unit in violation of Section 91.143 of the Texas Natural Resources Code. This allegation appears to be based upon McQueen's belief that the Scott family and the Smith Trust own mineral and development rights in the Lands. McQueen complains that Anadarko knew or should have known of these rights prior to the formation of the Wheat Mineral Trust Unit. Because McQueen believes that Anadarko filed documents with the Commission that intentionally failed to acknowledge the Smith Trust's alleged mineral rights, McQueen complains that the drilling permit applications for the subject wells were fraudulently executed.

In addition, McQueen complains that Anadarko failed to request an exception to Statewide Rule 37[50] for the subject wells, and that no application was made under the Mineral Interest Pooling Act concerning the alleged unleased interests. Due to the alleged violations of Commission rules and Section 91.143 of the Texas Natural Resources Code, the Complaint requests all available relief within the jurisdiction of the Commission.

Several documents were attached to the Complaint, including a letter from the Hearings Division dated June 3, 2009. The letter provides notice to Anadarko of a complaint filed by Clara Mae Segrest concerning the drilling permit for the Wheat Minerals Trust Well No. 1. Ms. Segrest apparently alleged in her complaint that Well No. 1 was drilled closer to her unleased mineral rights than was permitted by the applicable field rules and that she did not get notice of the permit application as required by Statewide Rule 37. McQueen concedes in the pleadings that this complaint was later dismissed by the Hearings Division.

At the hearing, Mr. McQueen testified to his belief that Eugenia Seale Meyer did not have any executive rights to lease the Lands to Amarado Oil Company when she signed the Meyer Lease, which was subsequently assigned to Anadarko.[51] For this reason, Mr. McQueen claimed that the Meyer Lease was void and that the Smith Trust Ratification was fraudulently obtained.[52] Mr. McQueen further argued that the Smith Lease remains valid and the subject property cannot be leased again while the prior lease remains in effect.[53] Mr. McQueen also stated his belief that Anadarko's failure to disclose the existence of the Smith Lease to Ms. Segrest was a covert effort to deprive his family of their leasehold rights and that this would constitute sufficient additional grounds to void the Smith Trust Ratification and Lease.[54] There was also some indication that Mr.

[49] Tr. at 66:14-22.
[50] 16. Tex. Admin. Code §3.37.
[51] Tr. at 16:19 – 17:10.
[52] Tr. at 21:10-22.
[53] Tr. at 23:18 – 24:13.
[54] Tr. at 25:13-21.

McQueen questioned the validity of the Tolar Lease, either because the Tolars allegedly do not own mineral rights or because the acreage values for the tracts in the Unit assigned to the Tolars by Anadarko in the drilling applications do not match the acreage values listed in any of the relevant title documents.

Upon questioning by the Examiners, Mr. McQueen explained that his belief concerning the continuing validity of the Smith Lease is based on the signature blocks shown on the second page of that document.[55] These signature blocks list Merfa Scott as Lessor and Sarah Scott as Lessee.[56] Mr. McQueen interpreted this to mean that Merfa Scott leased or assigned seven-eighths of his mineral rights in the Lands to Sarah Scott, effective upon the termination of the Smith Lease, and that this lease or assignment remained effective between husband and wife after 1955.[57] Upon further questioning from the Examiners, Mr. McQueen conceded that he was not aware of any oil and gas production on the Lands prior to the drilling and completion of the Wheat Mineral Trust Well No. 1.[58]

Clara Mae Segrest next took the stand on behalf of Complainants. Ms. Segrest testified that she was approached by a contract landman for Anadarko in 2005.[59] Ms. Segrest was informed by the Anadarko representative that she was successor to a mineral interest in the Unit previously owned by Merfa and Sarah Scott. As she was not previously aware of this interest, Ms. Segrest attempted to get additional information from Anadarko as well as assistance from an attorney.[60] She testified that she and her son (Mr. McQueen) commenced their own search of the mineral title after being unsuccessful in obtaining additional information or help.[61] During the title search, Ms. Segrest testified that she was approached by several third parties to purchase the mineral interest identified by Anadarko.[62] A representative from one of these companies informed Ms. Segrest that she might be entitled to a substantially larger interest than that identified by Anadarko and that she should search the public records of Taylor County for more information.[63] At some point during this process, Ms. Segrest signed the Smith Trust Ratification and Lease at the request of a contract landman for Anadarko.[64]

VI. Examiners' Analysis

McQueen alleges in the Complaint that Anadarko knew or should have known that Eugenia Seale Meyer did not own any executive rights in the Lands and that the Smith Lease remained in effect when it approached Ms. Segrest for a ratification and lease. For this reason, McQueen argues that Anadarko knew or should have known that it had no right to designate the Unit without the consent of Ms. Segrest when it filed the drilling

[55] Tr. at 28:5-13.
[56] Tr. at 28:5-13.
[57] Tr. at 28:14–29:7.
[58] Tr. at 30:13-17.
[59] Tr. at 71:12-15.
[60] Tr. at 71:15–72:6
[61] Tr. at 72:7-10.
[62] Tr. at 72:10-13.
[63] Tr. at 72:17 – 73:1.
[64] Tr. at 74:9-15.

permit applications for the subject wells. According to McQueen's theory of mineral estate ownership, therefore, Anadarko's assertions of authority to designate the unit and develop the minerals set forth in the application forms are intentionally false statements subject to Section 91.143 of the Texas Natural Resources Code. This theory of ownership is also the apparent basis for McQueen's notice claims under Statewide Rule 37 and the Mineral Interest Pooling Act. Consequently, the primary issue before the Commission in this matter is whether Anadarko had the right to submit the drilling permit applications for the Wells without disclosing or otherwise acknowledging to the Commission the opposing claims of Ms. Segrest.

In *Magnolia Petroleum Co. v. Railroad Commission of Texas*,[65] the Commission's exercise of the authority to grant a drilling permit was described as follows:

> The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.[66]

The *Magnolia* court went on to state:

> If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy.[67]

A good faith claim is defined in Commission rule as:

> A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.[68]

To obtain a drilling permit from the Commission, therefore, the applicant need not prove it holds good title to the mineral estate free from competing claims. It is sufficient for the applicant to make a reasonably satisfactory showing of a factually supported claim, based on a recognized legal theory, to a continuing possessory right in the mineral estate that is the subject of the application. A competing good faith claim to the same lands is not grounds for denying a permit. If Anadarko had its own good faith claim right to the Lands, Commission practice would not require disclosure or acknowledgment of the competing claims of Ms. Segrest in order to obtain valid drilling permits for the subject

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[65] *Id.; see Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943); *see also Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied); *Pan Am. Petroleum Corp. v. R.R. Comm'n of Tex.*, 318 S.W.2d 17 (Tex. Civ. App.—Austin 1958, no writ).

[66] *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

[67] *Id*. at 191 (emphasis added).

[68] 16 Tex. Admin. Code § 3.15(a)(5).

wells. Based on the record and evidence presented, the Examiners conclude that Anadarko provided a reasonably satisfactory showing of a good faith claim to a continuing possessory right in the mineral estate under the Lands and the Unit at the time the drilling permit applications for the Wells were filed.

A. Executive Rights

McQueen's claim of executive rights in and to the Lands (and the corresponding allegation that the Meyer Lease is void) appears to be based upon the terms of the Smith Mineral Deed. McQueen alleges that the executive rights to the Lands did not pass with the conveyance of three-fourths of the minerals in the Smith Mineral Deed and were thus retained by the Scott family. Anadarko claims that the Smith Mineral Deed passed three-fourths of the executive rights in the Lands to Emson Smith, which later passed to Eugenia Seale Meyer.

Texas law holds that a written grant of real property transfers to the grantee every right of the grantor in that property unless there are reservations or exceptions which reduce the interest conveyed.[69] This is typically referred to as the "greatest possible estate" rule.[70] Pursuant to this "rule," when land or minerals are granted in a deed, any executive rights held by the grantor pass to the grantee unless specifically excepted or reserved.[71]

The Smith Mineral Deed does not specifically mention "executive rights," but does include the following language:

> **SAVE AND EXCEPT** 5.4 acres out of the First Tract mentioned, heretofore conveyed to Grant Gilder by deed recorded in Vol. 98 page 304.
>
> ***Subject also to reservation*** of a 1/32nd royalty interest made by Ralph Hanks and wife in their deed to Merfa Scott, dated April 16, 1945, and now filed for record. (To the end that this grantee shall own 3/4ths of the oil, gas and minerals; Merfa Scott and wife shall own 1/4th of the oil, gas and minerals without royalty interest therein; and that said Ralph Hanks and wife shall own 1/4th of the royalty or a 1/32nd royalty interest.)
>
> Together with the ***right of ingress and egress*** at all times for the purpose of mining, drilling, and exploring said land for oil, gas and other minerals, and removing the same therefrom.
>
> Said land being now under an oil and gas lease executed in favor of any and all lessees of record, it is understood and agreed that the sale is made ***subject to*** the terms of said lease and/or any other valid lease covering same, but covers and includes three fourths of all of the oil royalty and gas

[69] *Cockrell v. Texas Gulf Sulphur Co*., 299 S.W.2d 672, 675 (Tex. 1956).
[70] *Day & Co., Inc. v. Texland Petro. Inc*. 786, S.W.2d 667, 668 (Tex. 1990).
[71] *Id.* at 669-70.

> rental or royalty due and to be paid under the terms of said lease, insofar as it covers the above described land.
>
> It is understood and agreed that three fourths of the money rentals, which may be paid on the above described land, to extend the term within which a well may be begun under the terms of said lease, is to be paid to the said grantee; and in the event of the above described lease for any reason becomes canceled or forfeited, then and in that event, grantee shall own three-fourths of all oil, gas and other minerals in and under said lands, together with a like three fourths interest in all bonuses paid, and all royalties and rentals provided for in future oil, gas and mineral leases covering the above described lands.[72]

Texas courts have repeatedly held that the "right of ingress and egress" to enter the land and remove the minerals includes the exeutive rights.[73] Texas courts have further repeatedly held that making a deed "subject to" a earlier exception or reservation from a prior deed or lease does not create a new or separate exception or reservation.[74]

Anadarko and Zarvona argue that they are entitled to rely on the lack of an express exception or reservation of executive rights in the Smith Mineral Deed and the legally recognized "greatest possible estate" rule. The only expressly stated exception in the Smith Mineral Deed is of a 5.4 acre tract previously conveyed and not included in the Lands. The Smith Mineral Deed is "subject to" the royalty interest previously reserved by the Hankses, but this does not appear to except or reserve any new interest to the Scotts. McQueen argues that the "exisiting lease" language in the Smith Mineral Deed also prevented the transfer of any the executive rights to Emson Smith. Again, however, the grant in the Smith Mineral Deed is made "subject to" the terms of an existing lease. This would not appear to be a specific exception or reservation of exeutive rights or any other rights resulting from that then-existing lease, if any, under Texas law.

Anadarko is entitled to rely on the "greatest possible estate" rule and the legal theory recognized by Texas courts that the term "subject to" is not a separate reservation or exception in a deed or lease. In addition, Complainants do not identify any recognized legal theories that support McQueen's interpretation of the Smith Mineral Deed.[75] Anadarko and Zarvona's interpretation of the Smith Mineral Deed, and Anadarko's consequent reliance upon the Meyer Lease in applying for the drilling permit applications for the Wells, is therefore reasonable.

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[72] Ank. Ex. 1 (emphasis added).

[73] *See Lesley v. Veteran's Land Bd*.352 S.W.3d 479, 492 (Tex. 2011) (citing *French v. Chevron U.S.A. Inc*., 896 S.W.2d 795, 797 n. 1 (Tex. 1995); *Day & Co., Inc., v. Texland Petro., Inc*., 786 S.W.2d 667, 669 n. 1 (Tex. 1990)); *see also Altman v. Blake*, 712 S.W.2d 117, 118-9 (Tex. 1986).

[74] *See Cockrell v. Texas Gulf Sulphur Co*., 299 S.W.2d 672, 676 (Tex. 1956).

[75] In a prior complaint, McQueen cited *Altman v. Blake*, 712 S.W.2d 117 (Tex. 1986) and other cases referenced here to claim that the Smith family retained all executive rights in the Lands following execution of the Smith Mineral Deed. None of these opinions hold, so far as the Examiners can determine, that executive rights are retained by the grantor in the absence of an express exception or reservation of those rights in the applicable mineral deed or conveyance.

B. The Smith Lease

Complainants further base their false filing and other claims on the continuing validity of the agreement outlined in the first paragraph of the 1950 Smith Lease to M. L. O'Bannon. McQueen argues that the overriding royalty agreement stated in the first paragraph of the Scott Lease is an agreement between Merfa and Sarah Scott that exists independently from the operation of the remainder of the lease agreement. Anadarko and Zarvona argue that the Scott Lease is an "ordinary" oil and gas lease with an overriding royalty agreement that terminated in 1955. In making this argument, Anadarko and Zarvona rely on the general rule recognized by Texas courts that overriding royalty interests terminate at the end of the oil and gas lease to which they are attached.[76]

The express language of the alleged independent agreement between Merfa and Sarah Scott in the first paragraph of the Scott Lease is limited to benefits obtained "under and by virtue of the terms of the lease to which this sheet is attached." This suggests that the arrangement between the Scotts, if any, is dependent upon the continuing validity of the "lease to which this sheet is attached." The lease to M. L. O'Bannon appears to be the only lease attached to the alleged agreement between Merfa and Sarah Scott. Indeed, the alleged agreement between Merfa and Sarah Scott is incorporated into the first paragraph of the Scott Lease itself. Anadarko and Zarvona argue that this makes the overridring royalty agreement in the first paragraph subject to the same general rule as all other overriding royalty agreements – it terminated when the Scott Lease to M. L. O'Bannon expired in 1955.

Mr. McQueen conceded at the hearing that there was no drilling or production on the Lands prior to the completion of the Wheat Mineral Trust No. 1 Well.[77] He further appeared to concede at the hearing that the rights granted to M. L. O'Bannon in the Scott Lease expired in 1955.[78] Accordingly, Anadarko and Zarvona's interpretation of the first paragraph of the Scott Lease is consistent with the facts presented and the applicable legal theories recognized under Texas law. By contrast, Complainants do not identify any legal theory recognized in Texas that supports McQueen's interpretation of the first paragraph of the Scott Lease.[79] Because Anadarko and Zarvona have provided reasonably sufficient evidence of a factually supported claim to a continuing possessory right in the mineral estate underlying the Lands at all times relevant to this matter, it cannot be said that the drilling permit applications for the Wells are or where known by Anadarko to be false, fraudulent, or untrue in any material manner.

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[76] *See Sunac Petro. Corp. v. Parkes*, 416 S.W.2d 798, 804 (Tex. 1967).

[77] Tr. at 27:19-25.

[78] *Id.*

[79] McQueen also fails to identify any facts or recognized legal theories concerning the continuation or retention of this alleged interest of Merfa and Sarah Scott following the later conveyances to the Gilders, Barlows, and Tolars. In prior complaints, McQueen argued that the Tolars obtained surface rights to the Lands only. That allegation does not appear in the current Complaint. For the reasons outlined above, Anadarko and Zarvona's interpretation of the Tolar Warranty Deed as not reserving any mineral rights in the Scotts would also be reasonable under the circumstances.

C. Statewide Rule 37 and MIPA.

It is not immediately apparent to the Examiners whether McQueen's notice claims under Statewide Rule 37 and MIPA are asserted as separate matters or as additional factors for consideration in determining whether Anadarko failed to comply with Chapter 91.143 of the Texas Natural Resources Code. In either case, however, it is clear that all of Complainants' notice claims are inextricably linked to (and dependent upon) the validity of McQueen's title claims to the Lands. If McQueen is correct and Ms. Segrest was an unleased mineral owner, and if her alleged interest in the Lands was located within the minimum spacing distance specified by the applicable field rule, she would be entitled to notice of an application for an exception to Statewide Rule 37. If Anadarko was unable to obtain this exception (assuming it was necessary) prior to drilling the Wells, McQueen argues that Anadarko should then have filed an application and provided notice under MIPA to force-pool Ms. Segrest's alleged interest into the Unit.

It is true that the Commission has voided drilling permits in circumstances where failure to give notice under Statewide Rule 37 was inadvertent, unintentional or the result of a mistake made in good faith. In each of those prior cases, however, it appears that there was no dispute among the parties that such notice was due at the time the drilling permit applications were filed. Consistent with the ruling in *Magnolia Petroleum Co. v. Railroad Commission of Texas*,[80] the Commission is *not* in the practice of cancelling or suspending drilling permits for lack of notice under Statewide Rule 37 when the permittee makes a reasonably satisfactory showing of a good faith claim right to the permit. To do otherwise would bootstrap an adjudication of title into a dispute over the sufficiency of notice under Statewide Rule 37. The notice requirements of Statewide Rule 37 are thus triggered only when the drilling permit applicant cannot make a satisfactory showing of a good faith claim right to the permit.

Here, Anadarko and Zarvona do not agree that Ms. Segrest was entitled to notice under Statewide Rule 37 as an unleased mineral owner within the applicable mininum spacing distance. Instead, Anadarko and Zarvona rely upon a reasonably satisfactory showing of an independent good faith claim right to obtain the drilling permits for the Wells. In the apparent absence of a title determination by a Texas district court, McQueen's complaint concering Statewide Rule 37 is premature and not presently justicable before the Commission.[81] Complainants must confirm their disputed title claims with a final order to that effect from the appropriate Texas state district court before

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[80] *Id.; see Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943); *see also Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied); *Pan Am. Petroleum Corp. v. R.R. Comm'n of Tex.*, 318 S.W.2d 17 (Tex. Civ. App.—Austin 1958, no writ).

[81] Anadarko and Zarvona argue that the final order of summary judgment in Cause No. 24,219, District Court, Tyler County, Texas, styled *Clara Mae Segrest, Trustee, et al. v. Anadarko E&P Co. Onshore LLC, et al*., ("Summary Judgment Order") disposes of all claims raised in the Complaint, including McQueen's title claims, with prejudice. It does not appear that the Summary Judgment Order expressly quiets title to the Lands in favor of Anadarko or Zarvona. The Examiners provided Respondents with an opportunity to submit additional information concerning the effect of the Summary Judgment Order on the allegations in the Complaint. Respondents did not provide any such additional information. The Examiners take no position, therefore, on whether the Summary Judgment Order dismissed all of McQueen's *title* claims with prejudice such that they cannot be asserted in this matter.

returning to the Commisison for a determination on possible failures by Anadarko to comply with Statewide Rule 37.

In addition, McQueen's notice claims under MIPA are also premature. Unleased mineral owners are entitled to notice of a MIPA application when it is filed.[82] However, no Commission rule or order requires compulsory pooling authority under MIPA as a remedy for an adjudicated failure to comply with the applicable spacing and density rules. In this case, no notice was due to McQueen under MIPA at the time Anadarko filed the drilling permit applications for the Wells because no forced-pooling application was filed. Further, even if McQueen ultimately prevails in state district court as to the disputed title claims, Zarvona would not be required to file an application under MIPA. Unless and until Zarvona files an application for a complusory pooling order, no violation of MIPA can be shown for failure to give notice to Complainants.

D. The Tolar Lease

There was some indication at the hearing that McQueen questioned the validity of the Tolar Lease. This appears to be based in part upon discrepancies between the number of acres covered by the Tolar Lease and the number of acres attributed to the Tolars in the drilling permit applications and the certified plats of the Unit. A careful review of the record shows however, that the 61.25 acres described in the Tolar Lease roughly corresponds to the number of acres originally included in the Lands (76.6 acres), less and except the 4.5-acre Barlow Tract, the 3.75-acre Gilder Tract, and the 5.5-acre Rudd Tract.

McQueen further suggested in the Complaint and at the hearing that the Tolars do not own any mineral rights in the 61.25 acres conveyed in the Tolar Warranty Deed. The Tolar Warranty Deed expressly excepts from the conveyance, "all minerals heretofore reserved by previous Grantors." Other than the royalty interest reserved by Ralph and Emma Hanks in the Hanks Warranty Deed, it does not appear that the previous grantors of interests in the Lands reserved any mineral rights. Under the "greatest possible estate" rule, it could reasonably be argued in a Texas state district court that the Tolar Warranty Deed did not reserve any mineral or executive rights to Merfa and Sarah Scott. Accordingly, Anadarko and Zarvona's reliance upon the Tolar Lease as a valid and subsisting contractual lease covering one-fourth of the minerals under that part of the Lands conveyed in the Tolar Warranty Deed is reasonable.

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

McQueen frames the Complaint primarily as a claim under Section 91.143 of the Texas Natural Resources Code, but also as claims for breach of the notice requirments of Statewide Rule 37 and the Mineral Interest Pooling Act. Based upon the record and evidence presented in this matter, however, the underlying basis for all of these claims is a mineral title dispute that falls outside of the Commission's jurisidicion. The Examiners

[82] *American Operating Co. v. Railroad Commission*, 744 S.W.2d 149, 154-55 (Tex. App. –Houston [14th Dist.] 1987, writ denied).

recommend the Commission find Anadarko and Zarvona provided a reasonably satisfactory showing of a good faith claim to operate the subject wells and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. On June 27, 2019, Dwayne McQueen, Trustee of the Terry Lynn Smith Trust, and Kingdom of God Resources E&P Company, LLC ("Complainants" or "McQueen") filed a complaint in this matter claiming Zarvona Energy LLC ("Zarvona") and Anadarko E&P Onshore LLC ("Anadarko") did not have a good faith claim to operate the Wheat Mineral Trust Well Nos. 1 and 2 ("Wells").

2. Anadarko is the prior operator of record for the Wells and filed the drilling permit applications for the Wheat Mineral Trust Well Nos. 1 and 2 with the Commission on November 17, 2004, and January 26, 2005, respectively. On or about March 8, 2005, Anadarko caused to be filed that certain Designation of Unit for the Wheat Mineral Trust Unit ("Unit"), in Volume 800, page 232, Official Public Records, Tyler County, Texas, which covered and included the Lands. The Wells are located on the Unit.

3. The Wheat Mineral Trust Well Unit No. 1 was plugged and abandoned on December 16, 2016. Zarvona is the current operator of record for the Wheat Mineral Trust Well No. 2.

4. McQueen alleges ownership of all executive rights and one-fourth of the minerals in and under 76.6 acres of land, more or less ("Lands"), included in the Wheat Mineral Trust Unit. The Lands are described in that certain Mineral Deed dated April 17, 1945, recorded in Volume 109, page 265, Deed Records, Tyler County, Texas, as two tracts out of the George Kirkwood Survey, A-418, Tyler County, Texas, consisting of 50.0 acres and 31.0 acres respectively, less and except 5.4 acres previously conveyed.

5. By letter dated July 24, 2019, an Administrative Law Judge with the Hearings Division ("ALJ") informed McQueen that, on its face, the June 28, 2019 complaint required an adjudication of legal title that the Commission did not have jurisdiction to resolve. The ALJ requested that the complaint be amended and restated to raise a claim within the Commission's jurisdiction if McQueen wished to proceed further in this matter.

6. On August 8, 2019, McQueen submitted an amended complaint ("Complaint"). McQueen asserts in the Complaint that Anadarko filed information with the Commission known to be false or untrue in material fact as to the Unit and the Wells. The Complaint further alleges that Anadarko failed to file for an exception under Statewide Rule 37 or for a compulsory pooling order under the Mineral Interest Pooling Act ("MIPA") and otherwise failed to provide notice of the subject drilling permit applications to Clara Mae Segrest as an unleased mineral or executive rights owner. McQueen requests in the Complaint all available relief

within the Commission's jurisdiction for these alleged violations of Commission rules and related enabling statutes.

7. On December 17, 2019, a Joint Notice of Hearing ("Notice") was sent by the Hearings Division to Complainants, Anadarko and Zarvona setting a hearing date of January 10, 2020. Consequently, the parties received more than 10 days' notice. 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. The hearing was held on January 10, 2020, as noticed. McQueen, Anadarko and Zarvona appeared at the hearing.

8. Texas law recognizes the legal theory known as the "greatest possible estate" rule; a written grant of real property transfers to the grantee every right of the grantor in that property unless there are expressly stated reservations or exceptions which reduce the interest conveyed.

9. Texas law further acknowledges that the term "subject to" in a deed or conveyance does not create a separate reservation or exception for the benefit of the grantor.

10. It is also recognized by Texas courts that, as a general rule, the effective term of an overriding royalty interest corresponds directly to the term of the appurtenant oil and gas lease.

11. At the hearing Anadarko presented the following materials in support of its good faith claim right to obtain drilling permits for the Wells:

    a. Warranty Deed dated April 16, 1945, recorded in Volume 109, page 261, Deed Records Tyler County, Texas ("Hanks Warranty Deed"). The Hanks Warranty Deed is granted by Ralph Hanks and wife, Emma Hanks, and purports to convey the Lands to Merfa Scott. As part of this purported conveyance, it appears that Ralph and Emma Hanks reserved in undivided royalty interest in and under the Lands.
    b. Mineral Deed dated April 17, 1945, recorded in Volume 109, page 265, Deed Records, Tyler County, Texas ("Smith Mineral Deed"). The Scott Mineral Deed is granted by Merfa Scott and wife, Sarah Scott, and purports to convey to Emson Smith three-fourths of the mineral rights under the Lands. This purported conveyance of three-fourths of the minerals is made subject to the royalty previously reserved by Ralph and Emma Hanks in the Hanks Warranty Deed. The Smith Mineral Deed contains an apparent agreement between the Merfa and Sarah Scott and Emson Smith concerning mineral and royalty ownership of the Lands. Merfa and Sarah Scott stated in the Smith Mineral Deed that Emson Smith would own three fourths of the mineral rights under the Lands and the Scotts would own one fourth of the minerals without royalty. The Scotts ostensibly conceded any

remaining royalty interests in the Lands to Ralph and Emma Hanks. The Smith Mineral Deed does not expressly mention executive rights.

c. Mineral Deed dated May 11, 1945, recorded in Volume 109, page 390, Deed Records, Tyler County, Texas, from Emson Smith. This document purports to convey the three-fourths mineral interest described in the Scott Mineral Deed to William Seale.
d. Oil, Gas and Mineral Lease, dated December 8, 1950, recorded in the Deed Records of Tyler County Texas ("Scott Lease"). In the Scott Lease, Merfa and Sarah Scott purport to convey a one-fourth mineral interest in the Lands to M. L. O'Bannon for a term of five years and so long thereafter as oil and gas is produced from the leased premises. The Scott Lease grants back to the Scotts an overriding royalty interest "payable out of the seven-eighths (7/8ths) interest in such oil, gas and minerals as is obtained by lessee from Lessor under and by virtue of the terms of the lease to which this sheet is attached." No drilling or production occurred on this lease.
e. Warranty Deed dated January 18, 1957, recorded in Volume 151, page 527, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 3.75 acres out of the Lands to Grant and Gertrude Gilder ("Gilder Tract"). It does not appear that this instrument includes any express reservation of mineral or executive rights by Merfa and Sarah Scott.
f. Warranty Deed dated January 18, 1957, recorded in Volume 159, page 528, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 4.5 acres out of the Lands to Jesse and Polly Ann Barlow ("Barlow Tract"). It does not appear that this instrument includes any express reservation of mineral or executive rights by Merfa and Sarah Scott.
g. Warranty Deed dated January 31, 1963, recorded in Volume 201, page 249, Deed Records, Tyler County, Texas, wherein Merfa and Sarah Scott purport to convey 5.5 acres out of the Lands to O. B. Rudd and wife, Eloise Rudd ("Rudd Tract"). According to the express terms of the grant set forth in this instrument, the Scotts reserved all of the remaining minerals they owned in the Rudd Tract.
h. Warranty Deed with Vendors Lien, dated November 30, 1972, recorded in Volume 305, page 538, Deed Records, Tyler County, Texas, from Merfa and Sarah Scott to Jesse Tolar and Bill Tolar ("Tolar Warranty Deed"). In the Tolar Warranty Deed, the Scotts purport to convey all of the Lands, less and except the 4.5-acre Barlow Tract, the 3.75-acre Gilder Tract, and the 5.5-acre Rudd Tract. The Tolar Warranty Deed expressly excepts from the conveyance, "all minerals heretofore reserved by previous Grantors." Other than the royalty interest reserved by Ralph and Emma Hanks in the Hanks Warranty Deed, it does not appear that previous grantors of interests in the Lands reserved any mineral rights.
i. Oil, Gas and Mineral Lease dated November 4, 2002, recorded in Volume 746, page 522, Official Public Records, Tyler County, Texas, from Eugenia Seale Meyer, as Lessor, to Amarado Oil Company, as Lessee ("Meyer Lease"). The property described in the Meyer Lease appears to include all of the Lands. Eugenia Seale Meyer appears to be a successor of William Seale as to whatever rights were conveyed in the Smith Mineral Deed.

j. Oil, Gas and Mineral Lease dated October 18, 2002, recorded in Volume 730, page 793, Deed Records, Tyler County, Texas, from Jesse and Bill Tolar (and their spouses), as Lessor, to ETOCO, Inc., as Lessee ("Tolar Lease"). The property described in the Tolar Lease is 61.25 acres of land, more or less, out of the George Kirkwood survey, "being the same lands described in that certain warranty deed dated November 30, 1972 from Merfa Scott and wife, Sarah Scott to Jesse Tolar and Bill Tolar and recorded in Volume 305, page 538 of the Deed Records of Tyler County, Texas." 61.25 acres roughly corresponds to the number of acres originally included in the Lands, less and except the 4.5-acre Barlow Tract, the 3.75-acre Gilder Tract, and the 5.5-acre Rudd Tract.

k. Lease Ratification dated October 8, 2004, recorded in Volume 791, page 779, Official Public Records, Tyler County, Texas ("Smith Trust Ratification") from Clara Mae Segrest, as Trustee of the Trust Established u/w/o Lottie Mae Smith, to Anadarko, as Lessee, purporting to ratify the Meyer Lease, but only to the extent that the Meyer Lease included the Gilder Tract and the Barlow Tract.

l. Oil, Gas and Mineral Lease dated January 17, 2005, recorded in volume 796, page 11, Official Public Records, Tyler County, Texas ("Smith Trust Lease), wherein Clara Mae Segrest, as Trustee of the Trust Established u/w/o Lottie Mae Smith, purports to convey the minerals under the 5.5-acre Rudd Tract to Anadarko for a primary term of three years and so long thereafter as oil and gas are produced from the lease.

12. Anadarko and Zarvona rely upon the title instruments described above and the above-referenced legal theories to demontrate a factually supported claim to a continuing possessory right in the mineral estate underlying the Lands at all times relevant to this matter as follows:

a. Respondents provided sufficient evidence of a factually supported claim based upon recognized legal theories that the Smith Mineral Deed conveyed three-fourths of the minerals and three-fourths of the executive rights in the Lands to Emson Smith.

b. Respondents provided sufficient evidence of a factually supported claim based upon recognized legal theories that the Scotts did not retain any mineral or executive rights in the Guilder Tract.

c. Respondents provided sufficient evidence of a factually supported claim based upon recognized legal theories that the Scotts did not retain any mineral or executive rights in the Barlow Tract.

d. Respondents provided sufficient evidence of a factually supported claim based upon recognized legal theories that the Scotts did not reserve any mineral or executive rights to that part of the Lands conveyed in the Tolar Warranty Deed.

e. Respondents provided sufficient evidence of a factually supported claim based upon recognized legal theories that all of the interests created by the Scott Lease, including the overriding royalty, expired at the end of the lease's primary term on December 8, 1955.

13. Based upon the foregoing, Respondents provided suitable evidence of a factually supported claim based upon recognized legal theories that the Meyer Lease, the Tolar Lease, the Scott Trust Ratification and the Scott Trust Lease are presently valid and subsisting contractual agreements providing Anadarko and Zarvona with sufficient authority to drill and operate the Wells and the Unit.

Conclusions of Law

1. Proper notice of hearing was timely issued to persons entitled to notice. *See, e.g.,* Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

2. The Commission has jurisdiction in this case. *See, e.g.,* Tex. Nat. Res. Code § 81.051.

3. Anadarko made a reasonably satisfactory showing that it had a good faith claim right to obtain the drilling permits for the wells. 16 Tex. Admin. Code § 3.15(a)(5).

4. Zarvona made a reasonably satisfactory showing that it has a good faith claim right to operate the Wheat Minerals Trust Unit Well No. 2. 16 Tex. Admin. Code § 3.15(a)(5).

5. McQueen presently lacks standing to bring notice claims under Statewide Rule 37 or MIPA. See Tex. Admin. Code § 3.73; Tex. Nat. Res. Code § 101.001 et seq.

Recommendations

The Examiners recommend the Commission deny the Complaint, and the relief requested therein, and find that Anadarko and Zarvona provided a reasonably satisfactory showing of a good faith claim to operate the Wells.

Respectfully,

DocuSigned by:
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Ezra A. Johnson
Administrative Law Judge

DocuSigned by:
Ashley Correll
9BA42C769073423...

Ashley Correll, P.G.
Technical Examiner