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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 06-0321371

COMPLAINT OF JAMES RUNNELS THAT 3-T EXPLORATION, INC. (OPERATOR NO. 953682) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE BOUCHER UNIT (14225) LEASE, WELL NOS. 1 & 2, LANE CHAPEL (PALUXY A SAND) FIELD, SMITH COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Ezra A. Johnson, Administrative Law Judge
Ashley Correll, P.G., Technical Examiner

PROCEDURAL HISTORY:

Complaint Filed -	July 1, 2019
Amended Complaint Filed -	August 28, 2019
Notice of Hearing Issued -	January 15, 2020
Hearing Date -	January 31, 2020
Transcript Received -	February 6, 2020
Close of Record -	May 26, 2020
Proposal for Decision Issued -	August 21, 2020

APPEARANCES:

For Complainant James Runnels -
Mr. James Runnels

For Respondent 3-T Exploration, Inc. LLC -
Mr. David Gross, Attorney
Mr. Thomas T. Thacker, President and Owner
Mr. Rick Johnston, Consulting Engineer

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I. Statement of the Case¹

Mr. James Runnels complains that 3-T Exploration, Inc. (“3-T”) drilled and continues to operate two oil and gas wells on his property without consent and requests that they be plugged. In response, 3-T states that the subject wells are not located on the property claimed by Mr. Runnels and that 3-T has a good faith claim right to operate the wells.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Railroad Commission (“Commission” or “RRC”) deny the complaint and find that 3-T provided a reasonably satisfactory showing of a good faith claim to operate the subject wells.

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 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 January 15, 2020, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to the parties setting a hearing date of January 31, 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.² The hearing was held on January 31, 2020, as noticed. As will be explained in greater detail below, Mr. Runnels and 3-T made an appearance at the offices of the Commission on the date of the hearing.

III. Applicable Legal Authority

Mr. Runnels claims that he has not consented to the drilling and operation of the subject wells and questions whether 3-T has a good faith claim right to operate without his consent. A good faith claim is defined in the Texas Natural Resources Code and 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.³

¹ The hearing transcript in this case is referred to as “Tr. at [page(s):line(s)].” Mr. Runnels did not file any evidence into the record. Accordingly, the exhibits filed by 3-T are referred to as “Exhibit” [exhibit no(s)].”

² See Tex. Gov’t Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

³ Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

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The applicable Commission rule in this case is Statewide Rule 15 (or “Rule 15”), which provides inactive well requirements.⁴ An inactive well is defined as:

An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.⁵

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(d) states:

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

- (A) restore the well to active status as defined by Commission rule;
- (B) plug the well in compliance with a Commission rule or order;
or
- (C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.⁶

So for an inactive well, an operator must either plug it, obtain a plugging extension, or restore it to active status.

Rule 15(e) allows plugging extensions only if five specified criteria are met as follows:

- (1) the Commission or its delegate approves the operator’s Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);
- (2) the operator has a current organization report;
- (3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;**
- (4) the well and associated facilities are otherwise in compliance with all

⁴ “Statewide Rule” 15 refers to 16 Tex. Admin. Code § 3.15.

⁵ 16 Tex. Admin. Code § 3.15(a)(6).

⁶ 16 Tex. Admin. Code § 3.15(d).

Commission rules and orders; and

- (5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.⁷

Thus, absent a good faith claim to operate, wells are not eligible for extensions to the plugging requirements in Statewide Rules 14 and 15 according to Statewide Rule 15(e).

IV. Matters Officially Noticed

On or about June 19, 2019, James Runnels submitted a complaint to the Commission alleging that oil and gas wells had been drilled on his property in Smith County, Texas, without his consent and asked for this to be stopped. The original complaint did not include any specific information about the well or wells allegedly located on the property or the Commission-designated operator. On or about July 1, 2019, staff with the Commission reached out to Mr. Runnels via telephone to get additional information concerning his complaint so that it could be docketed with the Hearings Division. Mr. Runnels put Commission staff in touch with his daughter, Dr. Terri Tyler, to act as his representative due to his advanced age. Based upon the additional information provided by Dr. Tyler, Commission Staff concluded that Mr. Runnels's property was part of the pooled Boucher Unit operated by 3-T Exploration, Inc. ("3-T"). The complaint was docketed by the Hearings Division on or about July 2, 2019. It did not appear to Commission staff, however, that any well was actually located on the 15.118 acres claimed by Mr. Runnels in the Isaac Renfro Survey, A-800, Smith County, Texas ("Property").

On July 22, 2019, Dr. Tyler emailed staff with the Hearings Division requesting an "open investigation" of 3-T's alleged operations on the Property. On July 26, 2019, the Administrative Law Judge mailed a request for information to Mr. Runnels asking for confirmation that a well or wells was actually located on the property. On July 30, 2019, Dr. Tyler emailed staff with the Hearings Division stating her belief that the Commission's online GIS viewer showed the two wells included in the Boucher Unit as being located on the Property. On August 14, 2019, Dr. Tyler emailed staff with the Hearings Division stating that further investigation seemed to show that the subject wells were *not* located on the Property.

On August 15, 2020, the Administrative Law Judge mailed a notice of deficiency to Mr. Runnels, asking once again to confirm the location of the two wells in relation to the Property and to amend the complaint to state a request for relief within the Commission's jurisdiction if it was possible to do so.

⁷ Emphasis added.

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On August 28, 2019, Dr. Tyler emailed staff with the Hearings Division, stating that the subject wells were located on the Property without the consent of Mr. Runnels and requesting that they be plugged. On August 30, 2019, the Administrative Law Judge mailed a notice of opportunity for hearing to 3-T. 3-T responded on September 10, 2019, with information that was not sufficient to show a good faith claim right to operate the subject wells. The parties were then instructed by the Administrative Law Judge on September 26, 2019, to set a hearing in this matter. As noted above, the hearing was then noticed for January 31, 2020.

On the date of the hearing, Mr. Runnels did not appear at the time the docket was called. The Examiners made inquiries with 3-T and Docket Services to determine whether Mr. Runnels had called to indicate that he was running late. After confirming that Mr. Runnels had not reached out to Commission staff or 3-T's representatives, the docket was called at 9:20am on January 31, 2020. Respondent 3-T proceeded to put on evidence of its good faith claim right to operate the subject wells. The hearing concluded at 9:44am.

Approximately 20 minutes after the hearing ended and before representatives of 3-T left the hearing room, Mr. Runnels appeared, stating that he had been unable to find the Commission's offices. The Examiners and the court reporter, who had left the hearing room by that time, were contacted by representatives of 3-T via Docket Services to inquire about reconvening the hearing. Ultimately, the Examiners were informed that the parties had discussed the complaint and that reopening the hearing was not necessary. A new oil and gas lease would be negotiated in settlement of the parties' dispute. The Administrative Law Judge agreed to keep the record open until a compromise was reached and the docket could be dismissed.

On February 6, 2020, staff with the Hearings Division submitted a status update request to the parties via email. Representatives of 3-T replied that they would reach out to Mr. Runnels and Dr. Tyler to confirm that Mr. Runnels wished to withdraw the complaint. When there was no subsequent communication from Mr. Runnels indicating that a settlement had been reached, staff with the Hearings Division reached out to the parties again to inquire into the status of the negotiations. Dr. Tyler responded that no agreement had been reached with 3-T and that Mr. Runnels did not intend to withdraw the complaint.

On May 15, 2020, the Administrative Law Judge sent a letter to Mr. Runnels, with a copy to Dr. Tyler, stating an intention to close the record in this matter within ten days. On May 18, 2020, Mr. Runnels filed a request for rehearing. This was denied by written order dated May 20, 2020, which gave Mr. Runnels until May 26, 2020, to submit any additional evidence he wished to have included in the record. No response to this order was received from Mr. Runnels or from Dr. Tyler.

The subject wells are listed as active in Commission records, and production was last reported from the Boucher Unit in June 2020. Records on file with the Commission show that 3-T is the operator of record for the Boucher Unit and its Form P-5 is listed as active.

V. Discussion of Evidence

Mr. Thomas T. Thacker, president and owner of 3-T, sponsored five exhibits in support of 3-T's good faith claim right to operate the subject wells. In addition to the exhibits presented by 3-T at the hearing, the Examiners requested a copy of the designation of pooled unit and contractual oil and gas lease or leases under which 3-T claimed to operate the subject wells. On February 13, 2020, 3-T submitted two additional late-filed exhibits consisting of the pooling designation for the Boucher Unit and an oil and gas lease purporting to cover several tracts in the Boucher Unit, including the Property. No objections to the late-filed exhibits were submitted by Mr. Runnels.

Mr. Thacker testified that 3-T formed the Boucher Unit and drilled the subject wells.⁸ The Boucher Unit consists of six tracts aggregating to 82.586 acres and includes the Property.⁹ The P-12 for the Boucher Unit No. 2 well shows the location of both subject wells on a tract of 50.0 acres, more or less, described as the Boucher-Cagle tract.¹⁰ Mr. Thacker testified that Mr. Runnels does not own any surface or mineral interest in the Boucher-Cagle tract.¹¹ Instead, Mr. Runnels owns the surface and 7.5% of the minerals under the tract described on the P-12 as the Leve-Levine Tract.¹² 3-T does not have a contractual lease with Mr. Runnels for his mineral interest in the Property, but does have a lease covering the other 92.5% of the minerals in that tract.¹³ The remaining tracts in the Boucher Unit are fully leased to 3-T.¹⁴

As a late-filed exhibit, 3-T provided a copy of that certain Unit Designation for the Boucher Unit dated effective April 8, 2003, recorded in Volume 7112, page 67, Official Records, Smith County, Texas, and that certain First Amendment and Correction of Unit Designation recorded in Volume 7354, page 345, Official Records, Smith County, Texas, and also that certain Second Amendment of Unit Designation recorded as Document No. 20150100018168 in the Official Records of Smith County, Texas.¹⁵ These documents purport to pool certain lands and leases to form the Boucher Unit, including the lands covered by that certain Oil, Gas and Mineral Lease dated September 3, 2000, from Rita Anne Leve, Individually and as Independent Executrix of the Estate of Mike Levine, Deceased, as Lessor, to Carla Petroleum, Inc., as Lessee, recorded in Volume 5621, Page 98, Official Records Smith County, Texas ("Leve-Levine Lease").¹⁶ Carla Petroleum, Inc., is one of the signatories to the Unit Designation.

3-T's second late-filed exhibit is a copy of the Leve-Levine Lease purporting to cover 52 acres, more or less, out of the Isaac Renfro Survey, A-800, Smith County, Texas.

⁸ Tr. at 9:1-15.

⁹ Exhibit 1.

¹⁰ Tr. at 10:15-11:5; Exhibit 1.

¹¹ Tr. at 15:7-11.

¹² Tr. at 15:12-17; Exhibit 1.

¹³ Tr. at 12:12-17.

¹⁴ Tr. at 12:18-22.

¹⁵ Exhibit 6.

¹⁶ *Id.*

Mr. Thacker testified that this covers and includes the Property.¹⁷ The Leve-Levine Lease contains a provision authorizing the pooling of all or a portion of the lands covered by the lease with other lands and leases, so long as a unit pooled for oil does not exceed 80 acres plus a 10% tolerance.¹⁸

VI. Examiners' Analysis

The issue before the Commission is whether 3-T holds a "good faith claim" to a continuing right to operate the subject wells on the Boucher Unit as that term is defined in Statewide Rule 15. 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.¹⁹

The Commission's authority to determine a good faith claim comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.²⁰ In discussing the Commission's authority to grant a drilling permit, the Court stated:

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.²¹

The Court went on to state:

Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. 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.²²

¹⁷ Exhibit 7.

¹⁸ *Id.*

¹⁹ 16 Tex. Admin. Code § 3.15(a)(5).

²⁰ *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).

²¹ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

²² *Id.* at 191 (emphasis added).

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.²³ A showing of a good faith claim does not require an applicant to prove title or a right of possession. It is sufficient for an applicant to make a reasonably satisfactory showing of a good faith claim.²⁴ In the context of the right to continue operation of a lease, the Commission looks to the applicable contractual instruments and conveyances, reported production from the relevant oil or gas wells, the operational history of those wells, and other relevant factors. To establish a good faith claim right to operate the subject wells, 3-T is entitled to rely upon any legal theory recognized in Texas reasonably showing a continuing possessory right in the mineral estate underlying the disputed property.

Texas law allows cotenants to lease their mineral rights without the effective consent of any other cotenant.²⁵ A contractual lease signed by a single cotenant grants the right to produce all of the minerals under the leased tract, including the share of production owned by the non-leasing cotenants.²⁶

The subject wells are active and continue to produce. Evidence provided by 3-T shows that Mr. Runnels is a cotenant with other mineral owners in the Property as to 7.5% of the minerals. The 52.0 acres described in the Leve-Levine Lease appears to correspond with the legal description of the Property, which is a subdivision of the 52-acre tract. Pursuant to the Leve-Levine Lease, a cotenant's share of the mineral rights in the Property has been leased and pooled into the Boucher Unit by 3-T. The Leve-Levine Lease appears to be held by continuing production from the Boucher Unit.

Given all of the foregoing, 3-T made a reasonably satisfactory showing of a valid contractual oil and gas lease presently covering an undivided mineral interest in the Property and documentation showing that 3-T had adequate authority to pool this interest into the Boucher Unit. 3-T would thus have a good-faith claim to operate the subject wells on the Property without the consent of Mr. Runnels—even if the wells were located there. As it is, however, the subject wells are not actually located on the Property. Mr. Runnels's unleased interest in the unit does not prevent 3-T from making a reasonably satisfactory showing of a good faith claim. The Examiners recommend the Commission deny the complaint and find that 3-T made a reasonably satisfactory showing of a good faith claim to operate the subject wells.

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

Based on the record and evidence presented, the Examiners recommend the Commission deny the complaint, find that 3-T made a reasonably satisfactory showing of

²³ *Magnolia Petroleum Co. v. R.R. Comm'n*, 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) (mem. op.).

²⁴ *Id.*

²⁵ *Willson v. Superior Oil Co.*, 274 S.W.2d 947, 950 (Tex. Civ. App. Texarkana 1954), writ refused n.r.e.

²⁶ *Id.*

a good faith claim to operate the Wells, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Mr. James Runnels filed a complaint ("Complaint") alleging that 3-T Exploration, Inc. (Operator No. 953682) does not have a good faith claim to operate the Boucher Unit (14225) Lease, Well Nos. 1 & 2, Lane Chapel (Paluxy A Sand) Field, Smith County, Texas.
2. Mr. Runnels claims surface and mineral rights in and under 15.118 acres of land, more or less, in the Isaac Renfro Survey, A-800, Smith County, Texas ("Property"). Mr. Runnels has not signed a contractual mineral lease with 3-T.
3. By Unit Designation dated effective April 8, 2003, recorded in Volume 7112, page 67, Official Records, Smith County, Texas, 3-T claims that the Property was pooled into the Boucher Unit.
4. The P-12 for the Boucher Unit Well No. 2 well shows the location of both subject wells on a tract of 50.0 acres, more or less, described as the Boucher-Cagle tract, which appears to be outside the boundaries of the Property.
5. The record thus shows that the subject wells are not located on the Property.
6. On January 15, 2020, the Hearings Division sent a Notice of Hearing ("Notice") to the parties setting a hearing date of January 31, 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 31, 2020, as noticed.
7. On the date of the hearing, this docket was called to order at 9:20am after Mr. Runnels failed to appear at 9:00am as noticed. Respondent 3-T proceeded to put on evidence of its good faith claim right to operate the subject wells. The hearing concluded at 9:44am on January 31, 2020.
8. On that same day, approximately 20 minutes after the hearing ended and the Examiners left the hearing room, Mr. Runnels appeared and met with representatives of 3-T who were still present. The Examiners were then informed that the parties had discussed the complaint and that reopening the hearing was not necessary. A new oil and gas lease would be negotiated in settlement of the parties' dispute. The Administrative Law Judge agreed in to keep the record open until a compromise was reached and the docket could be dismissed.
9. On February 6, 2020, staff with the Hearings Division submitted a status update request to the parties via email. Representatives of 3-T replied that they would

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reach out to Mr. Runnels to confirm that Mr. Runnels wished to withdraw the Complaint.

10. When there was no subsequent communication from Mr. Runnels indicating that a settlement had been reached, staff with the Hearings Division reached out to the parties again to inquire into the status of negotiations. Dr. Terri Tyler, daughter and representative of Mr. Runnels, responded that no agreement had been reached with 3-T and that Mr. Runnels did not intend to withdraw the Complaint.
11. On May 15, 2020, the Administrative Law Judge sent a letter to Mr. Runnels, with a copy to Dr. Tyler, stating an intention to close the record in this matter within ten days.
12. On May 18, 2020, Mr. Runnels filed a request for rehearing. This was denied by written order dated May 20, 2020, which gave Mr. Runnels until May 26, 2020, to submit any additional evidence he wished to have included in the record. No response to this order was received from Mr. Runnels or from Dr. Tyler.
13. A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) 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." 16 Tex. Admin. Code § 3.15(a)(5).
14. Texas law recognizes the right of cotenants to lease their mineral rights without the effective consent of any other cotenant. Texas law also holds that a contractual lease signed by a single cotenant grants the right to produce all of the minerals under the leased tract, including the share of production owned by the non-leasing cotenants.
15. At the hearing, 3-T presented the following documentation in support of its good faith claim right to operate the Boucher Unit and the subject wells:
 - a. That certain Unit Designation for the Boucher Unit dated effective April 8, 2003, recorded in Volume 7112, page 67, Official Records, Smith County, Texas.
 - b. That certain First Amendment and Correction of Unit Designation for the Boucher Unit recorded in Volume 7354, page 345, Official Records, Smith County, Texas.
 - c. That certain Second Amendment of Unit Designation for the Boucher Unit recorded as Document No. 20150100018168 in the Official Records of Smith County, Texas.
 - d. That certain Oil, Gas and Mineral Lease dated September 3, 2000, from Rita Anne Leve, Individually and as Independent Executrix of the Estate of Mike Levine, Deceased, as Lessor, to Carla Petroleum, Inc., as Lessee, recorded in Volume 5621, Page 98, Official Records Smith County, Texas ("Leve-Levine Lease").

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16. The subject wells are listed as active in Commission records, and production was last reported from the Boucher Unit in June 2020.
17. 3-T made a reasonably satisfactory showing that the Leve-Levine Lease is a presently valid contractual oil and gas lease covering an undivided mineral interest in the Property.
18. 3-T made a reasonably satisfactory showing that the Leve-Levine interest in the Property was validly pooled to form the Boucher Unit.
19. Records on file with the Commission show that 3-T is the operator of record for the Boucher Unit and its Form P-5 is listed as active.


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. 3-T provided a reasonably satisfactory showing of a good faith claim to operate the subject wells and the Boucher Unit. 16 Tex. Admin. Code § 3.15(a)(5).


Recommendations

The Examiners recommend the Commission deny the Complaint and find that 3-T provided a reasonably satisfactory showing of a good faith claim to operate the subject wells and the Boucher Unit.

Respectfully,

DocuSigned by:

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Ezra A. Johnson
Administrative Law Judge

DocuSigned by:

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Ashley Correll, P.G.
Technical Examiner