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RAILROAD COMMISSION UPDATE

I. Overview

This paper is an update concerning the following regulatory actions and activities at the Railroad Commission of Texas:

- Avoiding the Prohibition Against Double-Assignment of Acreage
- Force-pooling under the Mineral Interest Pooling Act
- Allocation Well Permitting
- Disposal Well Permitting
- Recent Statewide Rule Amendments

II. AVOIDING THE PROHIBITION AGAINST DOUBLE-ASSIGNMENT OF ACREAGE

Double-assignment of acreage occurs when a single tract of land is assigned to two different wells in the same RRC field for permitting, proration, and production. Historically, the RRC banned double-assignment of acreage based on the underlying premises that each well develops a single geographic tract of land and that multiple wells on that same tract might cause waste or might harm the correlative rights of operators or owners. The RRC incorporates this as a default regulatory requirement in Statewide Rule 40 to prohibit double-assignment of acreage to a “well for drilling and development, or for the allocation of allowable.”¹ Under Rule 40, if an operator had previously assigned the acreage included in a tract to a well to receive an allowable in a field, then no other well could produce from that same acreage in that same field.

For decades, the RRC’s entire system of regulation has been predicated on this one-tract-one-well concept as a means of protecting operators, owners, and reserves. It was applied to permitting, and it was engrained in the RRC’s assignment of allowables under its computerized proration system. In recent years, however, the advent of unconventional resource development with horizontal lateral wells and fracture stimulation has brought with it a recognition that the double-assignment prohibition can sometimes be an impediment to development.

The initial problem was that acreage needed for horizontal wells was already assigned to existing vertical wells. The vertical wells continued to produce, so the rule against double-assignment made it difficult, if not impossible, to permit and produce new horizontal wells on the same acreage. In Spraberry (Trend Area) Field, the rules were amended to regulate the assignment of acreage to vertical wells separately from the assignment of acreage to horizontal wells, and this approach was incorporated into the 2016 amendments to the Statewide Rules for designated unconventional fracture treated (UFT) fields. Under this approach, the same acreage can be

¹ Statewide Rule 40(d), 16 TEX. ADMIN. CODE § 3.40(d).

double-assigned simultaneously to vertical and horizontal wells in UFT fields.² Consequently, in Spraberry (Trend Area) field, and in any designated UFT field, it is as though the horizontal wells and the vertical wells do not see each other, which avoids the double-assignment problem for vertical and horizontal wells.

The second problem resulted from the need to develop depth severed ownerships within thick RRC designated field intervals. In West Texas, active fields have RRC designated field intervals that are thousands of feet thick. For example, this is the situation for Spraberry (Trend Area), Wolfbone (Trend Area), and Phantom (Wolfcamp) fields. These thick field intervals create opportunities for multiple different leasehold ownerships at different depths within a single designated RRC field. For example, an oil and gas lease might contain a requirement for continuous development after the primary term in order retain acreage and depths, and under that provision, the oil and gas leasehold covering any undrilled depths will terminate, creating a depth severance in the ownership of the right to drill within the designated RRC field. Or, an operator who has drilled some depths within a designated RRC field might elect to farmout or assign its undrilled depths to a new operator, again creating a depth severance of the right to drill in the ownership within the designated RRC field. In these situations, the new operator will need to assign acreage to a well that, although geographically on the same tract of land that the prior operator has already assigned to a well in that designated RRC field, is at different depths within the RRC field interval. It is not uncommon to find at least one depth severance creating a shallow vs. deep situation. And, some tracts in the Delaware Basin are reported to have been depth severed into more than a half-dozen different depth intervals.

Again, the Spraberry (Trend Area) field rules provided an initial solution. For that field, the RRC created a second set of field numbers for use “where the ownership of oil and gas within the designated interval for Spraberry (Trend Area) Field has been divided horizontally.”³ With these field numbers, the RRC provides a mechanism for operators with ownership that is divided into shallow and deep rights, specifying that:

Where the ownership of oil and gas is horizontally divided, the Field Rules for the Spraberry (Trend Area) Field will apply separately to wells drilled under the shallow Field Number and wells drilled under the deep Field Number, such that proration units on a tract above and below the horizontal division of ownership are independent and may overlap.⁴

One advantage to this field-number method is that it works with the RRC’s computerized allowable system, which is old and difficult to re-program. One disadvantage is that it provides for only two ownership depths, shallow and deep. (The RRC has not adopted a three-field-number system, although there is no apparent reason why it could not do that.)

² Statewide Rule 40(e)(1, (2), and (3), 16 TAC § 3.40

³ Oil and Gas Docket No. 7C-0297471, Rule 3, *Final Order Amending Field Rules for the Spraberry (Trend Area) Field*, March 8, 2016

⁴ *Id.* Rule 3(j)

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