OIL AND GAS DOCKET NO. 02-0278952

APPLICATION OF EOG RESOURCES, INC., KLOTZMAN LEASE (ALLOCATION), WELL NO. 1H, EAGLEVILLE (EAGLEFORD-2) FIELD, DEWITT COUNTY, TEXAS STATUS NO. 744730	§ § § § § § §	BEFORE THE RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL

INTERVENORS PIONEER NATURAL RESOURCES USA, INC., DEVON ENERGY PRODUCTION COMPANY, L.P., LAREDO PETROLEUM, INC., AND BP AMERICA PRODUCTION COMPANY'S REPLY TO MOTION FOR REHEARING

TO THE HONORABLE RAILROAD COMMISSION OF TEXAS:

COME NOW, Intervenors Pioneer Natural Resources USA, Inc., Devon Energy Production Company, L.P., Laredo Petroleum, Inc. and BP America Production Company (collectively, "Intervenors") and submit this Reply to the Motion for Rehearing (the "MRH"), filed by Katherine Larson Reilly and Melanie McCollum Klotzman (collectively, "Klotzman"), and in support thereof would respectfully show the Commission as follows:

I. INTRODUCTION

Klotzman's motion for rehearing raises no new facts or law that the Commission has not already considered. Instead, Klotzman's motion mischaracterizes the record, misstates the law, and rehashes arguments that the Commission has already rejected. There is nothing in Klotzman's motion that could justify reopening or oral argument in this proceeding.

Klotzman makes two principal arguments. Both of those arguments are erroneous.

First, Klotzman argues that the Commission's order somehow violates Commission Rules 26 and 40. MRH at 4–7. But Klotzman is wrong. Rule 40 relates to pooled units, but there

is no pooling involved here. Then, Klotzman argues that there is a purported violation of Rule 26's restriction on commingling. MRH at 7–9. But Rule 26 is directed to surface commingling, which, again, is not involved here.

Second, Klotzman argues that EOG lacks a good faith claim to the right to drill the well. MRH at 9–17. But the Commission's conclusion that EOG has a good faith claim to title is amply supported by (1) the evidence that EOG holds record title in the leases on both tracts and additional contractual rights to the leasehold to be traversed by the horizontal wellbore (which, in combination, constitute ownership of 100% of the rights necessary to drill and produce) and (2) the case law holding that the Commission may not deny a permit to one who makes a reasonably satisfactory showing of a good faith right to drill a well.

At bottom, Klotzman ignores the reality that the Commission must be given flexibility and discretion to adapt rules and practice to account for technological developments. The Commission's order is correct, and Klotzman's motion should be denied.

II.

ARGUMENT

A. The Klotzman Well Drilling Permit Is In Compliance With Commission Rules

Klotzman erroneously argues that the issuance of a drilling permit to the Klotzman Well violates Commission Rules 40 and 26. Klotzman points to Rule 40's requirement that the applicant file a Form P-12; Klotzman complains that EOG failed to file a Form P-12 here. MRH at 4–7. But on its face, Rule 40 applies to a situation involving pooled units. As EOG and Intervenors have explained throughout this proceeding, EOG did not create, and is not attempting to create, a pooled unit. Intervenors' Exceptions at 11–13; Intervenors' Response to

Motion to Strike at 7–9. Thus, Rule 40 is inapplicable, and EOG was not required to file a Form P-12.

EOG correctly filed the Form PSA-12, which is relevant to a production sharing agreement well and allocation wells. Form PSA-12 requires the operator to list the tracts crossed by such a well, the acreage in each tract, and the specific acreage attributed to the well. This information is equally relevant to production sharing agreement and allocation well permitting because such information allows the Commission's permitting department to analyze the acreage assignment for the proposed well and existing wells. As Intervenors have explained (*see* Exhibit H to the Intervenors' Exceptions in this docket), the Commission staff instructs operators to use Form PSA-12 to provide a listing of tracts. *See also* EOG Exhibits 15 and 16 (Form PSA-12 is the form filed and approved by the Commission in conjunction with other allocation well permit applications). Klotzman's argument that EOG was required to use Form P-12, as opposed to Form PSA-12, is incorrect and also ignores the fact that the Commission need not adopt a unique, stand-alone form for every type of well that might be drilled. The Commission's rules broadly and flexibly apply to a variety of types of wells, and the Commission has discretion to determine what form must be completed in any particular situation.

Finally, Klotzman argues that the Klotzman Well would violate Rule 26 because production from the two leases will be commingled in the wellbore. MRH at 7–9. But as Intervenors have explained, Rule 26 governs surface commingling—*i.e.*, commingling that occurs after the hydrocarbons are severed and reduced to possession at the surface. EOG has not proposed any surface commingling.

B. The Commission Properly Determined That EOG Has a Good Faith Claim to Title

As the Commission recognized in its order, the only issue for the Commission to decide is whether EOG has a good faith claim to title. Private contract disputes and title issues are properly committed to the jurisdiction of the courts—not the Commission. The Commission's order correctly recognizes that EOG has a good faith claim to title because EOG has the right to drill on, and produce from, both of the leases that will be traversed by the wellbore.

Klotzman complains about the Commission's finding that EOG "owns" 100% of the minerals under the two leases at issue. MRH at 17–18. However, as Klotzman's motion implicitly admits, as to the two leases at issue, EOG has (1) ownership of 70% of the minerals by lease and (2) contractual rights to the remaining 30% of the minerals as operator. Thus, EOG owns the right to develop (and produce) 100% of the minerals under both leases involved here.[1] To the extent that the Commission's finding of 100% "ownership" is technically inaccurate (if by ownership one is speaking of record title to 100% of the mineral estate in a single party), the Commission may wish to correct its order to clarify this fact finding. But, at the end of the day, the record fully supports EOG's ownership of the right to develop and produce 100% of the minerals under both leases. Klotzman's argument is a tempest in a teapot.[2]

Klotzman also complains that EOG would not be authorized to drill, from the surface estate of one lease, a horizontal well that traverses the minerals under two leases. MRH at 15–16.

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[1] As the record reflects, EOG is the operator of the two involved leases (Tr. 32), EOG holds record title to 70% of the leasehold under the two leases (Tr. 65-66 and EOG Exh. 12) and EOG, together with its working interest partners, own 100% of the leasehold title granted in the two involved leases (Tr. 53-57, EOG Exhs. 9 and 10).

[2] It is also unclear why Klotzman has waited to this late date to raise this "argument." The nature of EOG's ownership interest was very clearly articulated in the hearing, and Klotzman has never challenged the adequacy of EOG's right to drill based on the idea that 70% of its interest derives from record title and the other 30% from operating rights. Indeed, Klotzman acknowledges in its Motion for Rehearing that if EOG owned only part of the leasehold rights, a different case than that presented here, EOG's right to drill would be undiminished. In their words, "The Klotzmans acknowledge that not all mineral cotenants must join in a lease to give a lessor the right to drill. That is not in dispute." (MRH at 20). Intervenors agree that is not in dispute, it is well established Texas law. *BP Am. Prod. Co. v. Marshall,* 342 S.W. 3d 59 (Tex. 2011). To the extent that Klotzman's complaint is simply that the meaning of Finding of Fact no. 4 is subject to differing interpretations, that can easily be clarified (see below).

But the extent of EOG's right to use the surface estates is a matter of contract law—an issue outside the Commission's jurisdiction. If Klotzman wants to complain about allegedly "excessive" surface use, then the courts will take that up. Moreover, even if the Commission's jurisdiction allowed the Commission to adjudicate such a private contract dispute, Klotzman's complaint is negated by general principles of oil and gas law and by the express grant in the lease which conveys to EOG the right to use the surface from which it proposes to drill in ways "necessary or useful in lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby *or any other land adjacent thereto.*" (Granting language in 304.97-acre DuBose to Pierce lease, EOG Exhibit 9). In other words, EOG is legally and contractually authorized to engage in operations on the surface of the referenced lease in order to benefit another lease and, of course, conducting those operations benefits *both* leases.

Nor does Klotzman's erroneous reading of the *Browning* case demonstrate any error in the Commission's order. *Browning Oil Co v. Luecke,* 38 S.W.3d 625 (Tex. App.—Austin 2000, pet. denied). Klotzman overlooks *Browning*'s central holding that a lessee has a right to drill a horizontal well traversing leases in which the lessee holds the leasehold interest—with or without possessing valid pooling power. *Browning* demonstrates that drilling a horizontal well across multiple adjoining leases is the legal equivalent of drilling a separate well on each one of those adjoining leases. Also, Klotzman wrongly ignores the emphasis of the *Browning* court on adapting existing rules of oil and gas law to technological advances in drilling. As the *Browning* court recognized:

> We decline to apply legal principles appropriate to vertical wells that are so blatantly inappropriate to horizontal wells and would discourage the use of this promising technology. The better remedy is to allow the offended lessors to

> recover royalties as specified in the lease, compelling a determination of what production can be attributed to their tracts, with reasonable probability.

38 S.W.3d at 647.

Finally, Klotzman rehashes the contention that Professor Ernest Smith's letter does not support permitting an allocation well in this case. MRH at 18–21. But once again, Klotzman ignores the dispositive fact in the Smith letter: the well made the subject of the Smith opinion will traverse more than one unit, thus crossing property (unit) lines, in the same way that the allocation well here will cross property (lease) lines. As it relates to the question before the Commission in this matter, the allocation well that Professor Smith opined was proper in the Haynesville Hearing is indistinguishable from the Klotzman Well, and the Smith letter unequivocally supports the Commission's decision in this case to grant EOG's permit to drill.

CONCLUSION

Klotzman's motion demonstrates no new facts or new law that would suggest any need for the Commission to reconsider its order. Klotzman's motion should be denied. So that no issue will be presented in any further court proceedings based on the Commission's order, Intervenors suggest that the Commission revise its finding (Finding of Fact No. 4) to clarify the manner in which EOG's ownership is described. Intervenors agree with the language proposed by EOG which is as follows: "EOG is the operator of and, together with its working interest partners, owns 100% of the working interest rights to the Eagleville (Eagleford-2) Field interval under the Georgia Dubose-Glassell 516.569 acre lease and the Georgia Dubose-Pierce 304.97 acre lease and there are no unleased interests within 330 feet of any point on the proposed wellbore."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, 2013, a true and correct copy of the foregoing Response was provided to the following parties of record by e-mail and/or by depositing same in the United States Mail, first class postage prepaid, to the addresses listed below:

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