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, AS AN ALLOCATION WELL DRILLED ON ACREAGE ASSIGNED FROM TWO LEASE | § § § § § § § § § | BEFORE THE RAILROAD COMMISSION OF TEXAS OFFICE OF GENERAL COUNSEL |
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**REPLY CLOSING STATEMENT OF DEVON ENERGY PRODUCTION CO., L.P.**

**TO THE HONORABLE RAILROAD COMMISSION OF TEXAS:**

**COMES NOW, Devon Energy Production Co., L.P.** (hereinafter "Devon"), Intervenor herein, and submits this Reply Closing Statement, in response to the closing statements filed by Katherine Larson Reilly and Melanie McCollum Klotzman (hereinafter "Klotzmans") and the General Land Office (hereinafter "GLO").

## I.

## INTRODUCTION

Devon suggests that the arguments raised by the Klotzmans and the GLO raise no valid basis for delaying processing of the well permit application for the Klotzman (Allocation) Well No. 1H. The Klotzmans and the GLO ignore one of the most fundamental principles of Texas property law. Under Texas law, a conveyance of an estate in land, such as an oil and gas lease, is interpreted to convey the greatest estate to the grantee which is consistent with the language contained in the grant. *Day & Day Co., Inc. v. Texland Petroleum, Inc.,* 786 S.W.2d 667 (Tex. 1990). Neither the Klotzmans nor the GLO point to any lease provision which prohibits horizontal drilling across lease lines. Devon will respond specifically to the arguments below.

## II.

## GRANTING THE PERMIT FOR THE KLOTZMAN (ALLOCATION) WELL NO. 1H IS CONSISTENT WITH COMMISSION POLICY

The Klotzmans argue that issuance of the requested drilling permit would be inconsistent with Commission policy as articulated in Commission orders. The Klotzmans rely on the following four arguments, all incorrect, to support their claim that prior Commission orders have either explicitly rejected or are inconsistent with the practice of permitting allocation wells.

First, the Klotzmans argue that the Commission's decision in Oil and Gas Docket No. 06-0262000, refusing to adopt an allocation rule in the field rules for the Carthage (Haynesville Shale) Field, amounted to a decision that allocation well permits should not be granted. In support of their argument, the Klotzmans point to language in that Proposal for Decision about a lessee's ownership interest, which language is not in the Findings of Fact or Conclusions of Law and is not adopted by the Commissioners in the Final Order. The language inadvertently misstates the ownership rights of an oil and gas lessee. The language in the Proposal for Decision states that Devon is not the owner of the minerals under the various tracts it operates in the area of the proposed Carthage (Haynesville Shale) Field. This statement, of course, is inconsistent with the Texas Supreme Court's ruling on this subject. As indicated by EOG in its initial closing statement, the Texas Supreme Court has explained that an oil and gas lease is not a "lease" in the traditional sense of a lease of the surface of property; the court goes on to definitively state that an oil and gas lessee is the owner of the minerals:

> In a typical oil or gas lease, the lessor is a grantor and grants a fee simple determinable interest to the lessee, who is actually a grantee. Consequently, the lessee/grantee acquires ownership of all the minerals in place that the lessor/grantor owned and purported to lease, subject to the possibility of reverter in the lessor/grantor.

*Natural Gas Pipeline Co. of America v. Pool,* 124 S.W.3d 188, 192 (Tex. 2003).

The Klotzmans cite language in the Proposal for Decision indicating that the Smith opinion letter did not provide any substantial support for Devon's position requesting an allocation field rule. Again, the language the Klotzmans rely on is in the Proposal for Decision and not in the Findings of Fact or Conclusions of Law and is not adopted by the Commissioners. Furthermore, a reading of the opinion letter itself shows that Dean Smith concludes that Devon as lessee has the right to drill across lease lines in the absence of pooling authority and in the absence of a Production Sharing Agreement. Dean Smith states: "The absence of such an agreement will not preclude drilling." Haynesville Hearing, Devon Exhibit 34.

Third, the Klotzmans cite the Commission's requirement of 65% sign-up for Production Sharing Agreement well permitting as evidence that the Commission has decided that it will not permit wells without a Production Sharing Agreement (hereinafter "PSA"). To the contrary, the 65% requirement demonstrates the Commissioner's recognition that royalty interest agreement as to the allocation of production proceeds is not necessary to drill a well across lease lines. If the Commissioners believed that royalty interest agreement to a PSA was essential, the Commission would not approve well permits where up to 35% of the royalty owners have not agreed to the method of allocation. Thus, the Commission's procedures for the permitting of PSA wells is direct evidence that the Commission acknowledges an oil and gas lessee's right to drill wells across lease lines without royalty interest owner agreement as to the allocation of proceeds of production. The Commission has simply determined that to be called a PSA well on the Form W-1, 65% signup is required. Wells with lesser or no signup can be permitted as Allocation Wells.

Fourth, while recognizing that the April 21, 2010 letter from Director Colin Lineberry supports EOG's argument that the EOG drilling permit should be issued, the Klotzmans argue

that Mr. Lineberry's 2010 letter is irrelevant to this docket because Mr. Lineberry's letter of October 5, 2012, in this docket somehow contradicts the 2010 letter. In the 2012 letter. Mr. Lineberry merely states that because of the Klotzmans' complaint, the drilling permit will not be granted administratively and that either party may request an evidentiary hearing "to allow both parties to present evidence and argument regarding whether, on the specific facts of this case, EOG has a sufficient good faith claim to authorize issuance of an RRC drilling permit for the proposed allocation well." EOG Exhibit 7. The 2012 Lineberry letter permitting the Klotzmans' complaint to go to hearing does not contradict the fact that Mr. Lineberry in his April 21, 2010, letter determined that Devon as the owner of the mineral leases on each tract traversed by the wellbore "has met the minimal good faith claim standard necessary for issuance of a permit." Exhibit B of EOG Exhibit 3.

## III.
## GRANTING THE PERMIT FOR THE KLOTZMAN (ALLOCATION) WELL NO. 1H IS CONSISTENT WITH COMMISSION RULES

The Klotzmans take the position that EOG's Klotzman (Allocation) Well No. 1H is not consistent with Statewide Rules 40 and 26. As described below, nothing in Rules 40 or 26 prohibits the permitting of the Klotzman (Allocation) Well No. 1H.

### A. Granting the permit for the Klotzman (Allocation) Well No. 1H is Consistent with Statewide Rule 40

The Klotzmans argue that under Rule 40 EOG must file a Form P-12 to represent to the Commission that EOG has the authority to pool the tracts crossed by the Klotzman (Allocation) Well No. 1H. The Klotzmans are incorrect because Rule 40 applies to pooled units. The Klotzmans' argument is not an interpretation of Rule 40, but an argument that EOG is pooling the acreage in the leases crossed by this well, contrary to EOG's position that it is not pooling

such acreage. The Klotzmans argue on page 7 of their closing statement that commingling minerals from two leases pursuant to a claimed right to produce from both tracts constitutes pooling. The Klotzmans cite no authority for this proposition, and the proposition is directly contradicted by the decision in *Browning v. Luecke,* 38 S.W.3d 625 (Tex. App. – Austin 2000, *writ denied*). In that case the court finds that the lessee's attempt to pool failed because the lessees failed to comply with the pooling provisions in the lease. 38 S.W.3d at 642. The lessees had already drilled horizontal wells across the failed pooled unit so the court faced the very question of whether the drilling of a well across multiple tracts without pooling authority constituted pooling. The court determines that because the pooling did not comply with the lease provisions, there could be no cross-conveyance of property interest and thus the Lueckes were not entitled to production on lands they did not own. 38 S.W.3d at 646. The court determines that in this situation the royalty owners are to be paid based on their share of the production from the well as determined by the production that can be attributed to each tract with reasonable probability. 38 S.W.3d at 647.

The Klotzmans' arguments regarding Rule 40 are based on the erroneous position that drilling across lease lines somehow must involve pooling. The court in *Browning v. Luecke* explains that pooling

> results in "a cross-conveyance of interests in land by agreement among the participating parties, each of whom obtains an undivided joint ownership in the royalty earned from the land in the 'block' created by the agreement. Royalty is distributed on the basis of the proportion each party's acreage bears to the whole block." *MCZ, Inc. v. Triolo,* 708 S.W.2d 49, 52-53 (Tex. App. – Houston [1st Dist.] 1986, writ ref'd n.r.e.)(citing *Brown v. Smith,* 141 Tex. 425, 174 S.W.2d 43, 46 (1943).

38 S.W.3d at 634.

Allocation Wells do not involve pooling. There is not a cross-conveyance of the mineral interests. The interest owners will be paid based on their portion of the production from the well, not based on their share of the acreage in the pooled unit. Thus, Rule 40's requirements for pooled unit wells do not apply to allocation wells. However, it should be noted that the procedures utilized in permitting both PSA wells and allocation wells follow closely the procedures set forth in Rule 40. In both instances, the operator files a certified plat outlining the tracts traversed by the well and operators file a list of each tract, providing information similar to that provided on the Form P-12.

**B. Granting the permit for the Klotzman (Allocation) Well No. 1H is Consistent with Statewide Rule 26**

The Klotzmans argue that production from the Klotzman (Allocation) Well No. 1H would violate the commingling restrictions of Statewide Rule 26 because production from the non-surface-location lease will leave that lease without being measured. This argument is incorrect because Rule 26 regulates surface commingling, and EOG has not proposed surface commingling of production from the Klotzman (Allocation) Well No. 1H with production from wells on other leases. Rule 26 is entitled "Separating Devices, Tanks, and Surface Commingling of Oil." Consistent with its title, the rule itself also specifically refers to surface commingling in paragraphs (b), (b)(1), and (b)(4), the provisions addressing exceptions to the rule. It is Statewide Rule 10 that addresses downhole commingling, and that rule prohibits only the downhole commingling of production from two or more Commission-designated fields. 16 T.A.C. 3.10(a). Rules 10 and 26 do not apply to production from the Klotzman (Allocation) Well No. 1H.

There is good reason that Rule 26 addresses only surface commingling and that Rule 10 addresses only the downhole commingling of production from two or more Commission-

designated fields. Because allowables are assigned by well and for each field the well and field produces from, the Commission has a legitimate interest in assuring that production be reported to the well from which it is produced. Thus, to assure compliance with assigned allowables, when surface commingling is permitted, the Commission requires that the operator obtain an exception and file a Form P-17 describing the method of allocation between wells or leases. Similarly, because allowables are also field-specific, the Commission has a legitimate interest in assuring that wells not be permitted to produce in excess of their assigned allowable. Thus, when an operator downhole commingles production from more than one Commission-designated field, the Commission requires an exception to Rule 10 and the Commission assigns a single allowable to the well for production from the commingled fields. An allocation well is treated as a single well for regulatory purposes and is automatically assigned only one allowable. Thus, allocation is not required for allowable purposes.

In fact, the Commission has in the past rejected an operator's request that the Commission regulate the allocation of production to the various leases traversed by an allocation well. In 2009, Devon requested in a Carthage (Haynesville Shale) field rule hearing that the Commission adopt a field rule addressing how production would be allocated between leases for allocation wells completed under multiple leases, but the Commission rejected that proposed field rule finding that such a rule was outside the scope of the Commission's authority. (Finding of Fact 15 and Conclusion of Law 8 adopted in the Final Order in Oil and Gas Docket No. 06-0262000; Attachment A). While Devon respectfully disagrees with the Commission's decision in that matter, the Commission decided in that hearing that the requested allocation of acreage and production between leases would amount to the allocation of the proceeds of production and thus would be a determination of the ownership of oil or gas. (Conclusion of Law 6 adopted in

the Final Order in Oil and Gas Docket No. 06-0262000; Attachment A). The Commission's decision in that docket indicates that the Commission does not believe it is within its authority to regulate the allocation of production between leases crossed by an allocation well.

## IV.
## GRANTING THE PERMIT FOR THE KLOTZMAN (ALLOCATION) WELL NO. 1H IS CONSISTENT WITH TEXAS LAW GOVERNING ISSUANCE OF COMMISSION PERMITS

The Klotzmans argue that the Commission has the authority to examine and evaluate property rights in the performance of its permitting duties and that EOG must have pooling authority or some separate authority from its lessees to drill across lease lines. This issue was addressed in detail by Devon in its initial closing statement, and thus Devon will only briefly summarize here. The Klotzmans' position is contrary to the Texas case law on this subject. The wells in *Browning v. Luecke* were in this same situation – the court determined that pooling had failed and there was no separate agreement with the royalty interest owners. The court did not determine that the lessee had trespassed or drilled an illegal well. Instead, the court determined that the lessors were to be paid based on the production that can be attributed to their tracts with reasonable probability. 38 S.W.3d at 647. And the co-author of the premier oil and gas treatise in Texas has given his opinion that allocation wells may be drilled across lease and unit lines without pooling authority and without separate agreements with the royalty interest owners. Thus, the law supports at the very least a grant of permits to allocation wells on the basis of the lessee's good faith claim to title to drill across lease lines under the authority of the oil and gas lease.

## V.

## GRANTING THE PERMIT FOR THE KLOTZMAN (ALLOCATION) WELL NO. 1H IS CONSISTENT WITH TEXAS LAW ON THE GRANTING AND RESERVATION OF MINERAL RIGHTS

The Klotzmans' argument that granting this permit would violate Texas law is based on an incorrect factual premise and an incorrect legal premise. Contrary to the facts, the Klotzmans continue to base their arguments on an assumption that EOG's well is drilled on an implied pooled unit. EOG has repeatedly explained that it does not assert pooling authority in drilling this well, and that instead the well is drilled under the authority of the individual leases

The Klotzmans misconstrue the court's ruling in *Browning v. Luecke*. The Klotzmans take the position that the court found that the horizontal wells crossing leases violated the terms of the leases and the Klotzmans thus argue that an operator cannot have a good faith claim to drill such a well. What the court ruled is that Lessees failed to comply with the pooling provisions in the leases and thus the purported units were invalid. 38 S.W.3d at 642. The court then proceeds to analyze and determine what royalty the plaintiffs are entitled to <u>under the leases,</u> absent pooling:

> The proper remedy for a breach of the pooling provisions may not ignore or exceed the ownership interests conveyed under the leases.

38 S.W.3d at 643.

> The intent of the parties as evidenced by the language of these leases was to award the Lueckes royalties for one-eighth of the oil and gas produced from *their* land, not to provide a punitive remedy for a breach of the pooling provision.

38 S.W.3d at 645.

> In addition, the Lueckes' proposed measure of damages, the court's charge, and the jury's award do not provide a workable construction of the royalty provision in the leases that can be applied prospectively. Because the damages are not based on production from the Lueckes' land as mandated by the royalty provision,

> the parties have no tool by which to determine future royalties, making Lessees vulnerable to future drainage claims.

38 S.W.3d at 646.

> 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. (citations omitted) The Lueckes are entitled to the royalties for which they contracted, no more and no less.

38 S.W.3d at 647.

The court did not find that wells drilled across lease lines without pooling authority were illegal wells. Instead, the court determined that royalties must be paid under the terms of the lease.

## VI.

## THE COMMISSION DOES NOT HAVE THE AUTHORITY TO INTERPRET STATE LEASES AND HEAR TITLE DISPUTES

The GLO in its closing statement takes the position that its special lease form prescribed for Relinquishment Act leases does not authorize allocation wells without the State's consent. This lease form is not in evidence in this matter, but, even if it were, the Commission's authority to interpret leases is limited. As discussed in EOG's and Devon's closing statement, the Texas Supreme Court in *Magnolia Petroleum v. Railroad Commission* has made clear that it is not the function of the Railroad Commission to adjudicate questions of title or rights of possession. 170 S.W.2d 189 (Tex. 1943). The terms of the GLO's lease is certainly outside the scope of the Commission's authority in this case because those leases are not at issue in this docket.

The GLO asks the Commission to stop issuing allocation well drilling permits without giving notice to lessors, and an opportunity to protest. This suggestion would serve no valid purpose. First, the GLO already requires in its Rule 9.32 that its lessees file with the GLO a copy of the RRC W-1 with plat and any other supporting documentation five days before

spudding the well. 31 T.A.C. §9.32. Thus, under its own rules, the GLO receives notice from its lessees of drilling permit applications. If timing is an issue and the GLO wishes to receive these documents when filed with the Commission, it can amend its own rules to so require. Second, providing an opportunity to lessors to protest drilling permit applications simply puts the Commission in the same position as in this hearing of considering title arguments that it does not have jurisdiction to decide. Given that the Commission must grant the permit if the applicant makes a reasonably satisfactory showing of a good faith claim of ownership in the property, providing notice and opportunity for protest of allocation wells merely invites lessors to take their arguments to the wrong forum and is not a good use of the Commission's limited resources.

## VII.

## CONCLUSION

The Klotzmans' position in this case that EOG does not have a good faith claim to title to drill this well is flawed because it is built upon both factual and legal errors, as described above and in EOG's and Devon's initial closing statements. It is also an argument in the wrong forum. The title claims raised by the Klotzmans and the GLO are matters within the purview of the courts, not the Commission. The Commission is not responsible for policing the lessor-lessee relationship or deciding issues of title and accounting. The fact that the Klotzmans have chosen to expend resources presenting their argument to an agency without the authority to decide these issues suggests the Klotzmans may have determined they will be more successful in being a thorn at the Commission rather than having a court with jurisdiction decide the title issues they raise.

**Respectfully submitted,**


**Brian R. Sullivan**
**State Bar No. 19471800**
**Sandra B. Buch**
**State Bar No. 03285600**
**McElroy, Sullivan, Miller,**
**Weber & Olmstead, LLP**
**P.O. Box 12127**
**Austin, Texas 78711**
**1201 Spyglass Dr, Ste 200 (78746)**
**(512) 327-8111**
**(512) 327-6566 Fax**

**Attorneys for**
**Devon Energy Production Co., L.P.**

## CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2013, a true and correct copy of the foregoing Reply Closing Statement 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:

Doug Dashiell
Scott, Douglass & McConnico, LLP
1500 One American Center
600 Congress Avenue
Austin, Texas 78701

Mickey Olmstead
McElroy, Sullivan, Miller,
Weber & Olmstead, LLP
1201 Spyglass, Suite 200
Austin, Texas 78746

Patrick Thompson
Graves, Dougherty, Hearon & Moody
401 Congress Avenue
Austin, Texas 78701

Jamie Nielson
Attorney at Law
7000 N. Mopac Expressway, 2nd Floor
Austin, Texas 78731

Spencer Klotzman
Attorney at Law
603 E. Mesquite Lane
Victoria, Texas 77901

William Osborn
Osborn & Griffith
515 Congress Avenue, #1704
Austin, Texas 78701

Sandra B. Buch

**Sandra B. Buch**

# ATTACHMENT A

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION

OIL AND GAS DOCKET NO. 06-0262000

IN THE CARTHAGE (HAYNESVILLE SHALE) FIELD, HARRISON, NACOGDOCHES, PANOLA, RUSK AND SHELBY COUNTIES, TEXAS

FINAL ORDER
APPROVING THE APPLICATION OF DEVON ENERGY PRODUCTION CO., LP FOR A NEW FIELD DESIGNATION AND ADOPTING TEMPORARY FIELD RULES FOR THE CARTHAGE (HAYNESVILLE SHALE) FIELD AND CONSOLIDATING VARIOUS BOSSIER AND HAYNESVILLE SHALE FIELDS INTO THE CARTHAGE (HAYNESVILLE SHALE) FIELD
HARRISON, NACOGDOCHES, PANOLA, RUSK AND SHELBY COUNTIES, TEXAS

The Commission finds that after statutory notice in the above-numbered docket heard on July 28 and September 1, 2009, the presiding examiner has made and filed a report and recommendation containing findings of fact and conclusions of law, for which service was not required; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and proposal for decision, the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own Findings of Fact Nos. 1 through 22, with the exception of Nos. 7, 9, 20, 21 and 22, and Conclusions of Law Nos. 1 through 11, with the exception of Nos. 3, 10 and 11, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein. The Commission adopts the following substitute Findings of Fact and Conclusions of Law:

**Substitute Findings of Fact:**

7. Devon did not present sufficient evidence to demonstrate that a density of 640 acres with optional 40 acre density should be adopted on a permanent basis in the proposed Carthage (Haynesville Shale) Field. A density of 640 acres with optional 40 acre units should be adopted on a temporary basis.

9. For purposes of assignment of additional acreage pursuant to Rule 86, the distance between the first and last take-point in a horizontal well should be used.

20. The proposed box rule will allow operators reasonable minor deviations from the wellbore track that has been permitted.

**Substitute Conclusions of Law:**

3. Approval of the requested new field designation and adoption of temporary field rules prescribing 330 foot lease line spacing, no minimum between well spacing, and standard density of 640 acres with optional 40 acre units will prevent waste, protect correlative rights and promote the orderly development of the field.

10. The proposed "box rule" will prevent waste and protect correlative rights.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that the application of Devon Energy Production Co., LP for a new field designation for its Hull Unit A Lease, Well No. 102, is hereby approved. The new field shall be known as the Carthage (Haynesville Shale) Field (RRC Field No. 16032 300), Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas.

It is further **ORDERED** that the following Field Rules are hereby adopted for the Carthage (Haynesville Shale) Field, Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas:

**RULE 1:** The entire correlative interval from 9,568 feet to 11,089 feet as shown on the log of the Devon Energy Production Co., LP - Hull Unit A Lease, Well No. 102 (API No. 42-365-36749), Panola County, Texas, shall be designated as a single reservoir for proration purposes and be designated as the Carthage (Haynesville Shale) Field.

**RULE 2:** No well for gas shall hereafter be drilled nearer than THREE HUNDRED THIRTY (330) feet to any property line, lease line, or subdivision line. There is no between well spacing limitation. The aforementioned distances in the above rule are minimum distances to allow an operator flexibility in locating a well, and the above spacing rule and the other rules to follow are for the purpose of permitting only one well to each drilling and proration unit. Provided however, that the Commission will grant exceptions to permit drilling within shorter distances and drilling more wells than herein prescribed whenever the Commission shall have determined that such exceptions are necessary either to prevent waste or to prevent the confiscation of property. When exception to these rules is desired, application therefor shall be filed and will be acted upon in accordance with the provisions of Commission Statewide Rules 37 and 38, which applicable provisions of said rules are incorporated herein by reference.

In applying this rule, the general order of the Commission with relation to the subdivision of property shall be observed.

Provided, however, that for purposes of spacing for horizontal wells, the following shall apply:

a. A take point in a horizontal drainhole well is any point along a horizontal drainhole where oil and/or gas can be produced into the wellbore from the

reservoir/field interval. The first take point may be at a different location than the penetration point and the last take point may be at a location different than the terminus point.

b. All take points in a horizontal drainhole well shall be a minimum of THREE HUNDRED THIRTY (330) feet from any property line, lease line, or subdivision line. A permit or an amended permit is required for all take points closer to the property line, lease line, or subdivision line than the lease line spacing distance, including any perforations added in the vertical portion or the curve of a horizontal drainhole well.

A properly permitted horizontal drainhole will be considered to be in compliance with the spacing rules set forth herein if the as-drilled location falls within a rectangle established as follows:

a. Two sides of the rectangle are parallel to the permitted drainhole and 50 feet on either side of the drainhole;
b. The other two sides of the rectangle are perpendicular to the sides described in (a) above, with one of those sides passing through the first take point and the other side passing through the last take point.

Any point of a horizontal drainhole outside of the described rectangle must conform to the permitted distance of the nearest property line, lease line or subdivision line measured perpendicular from the wellbore.

In addition to the penetration point and the terminus of the wellbore required to be identified on the drilling permit application (Form W-1H) and plat, the first and last take points must also be identified on the drilling permit application (remarks section) and plat. Operators shall file an as-drilled plat showing the path, penetration point, terminus and the first and last take points of all drainholes in horizontal wells, regardless of allocation formula.

For any well permitted in this field, the penetration point need not be located on the same lease, pooled unit or unitized tract on which the well is permitted and may be located on an Offsite Tract. When the penetration point is located on such Offsite Tract, the applicant for such a drilling permit must give 21 days notice by certified mail, return receipt requested to the mineral owners of the Offsite Tract. For the purposes of this rule, the mineral owners of the Offsite Tract are (1) the designated operator; (2) all lessees of record for the Offsite Tract where there is no designated operator; and (3) all owners of unleased mineral interests where there is no designated operator or lessee. In providing such notice, applicant must provide the mineral owners of the Offsite Tract with a plat clearly depicting the projected path of the entire wellbore. In the event the applicant is unable, after due diligence, to locate the whereabouts of any person to whom notice is required by this rule, the applicant must publish notice of this application pursuant to the Commission's Rules of Practice and Procedure. If any mineral owner of the Offsite Tract objects to the location of the penetration point, the applicant may request a hearing to demonstrate the

necessity of the location of the penetration point of the well to prevent waste or to protect correlative rights. Notice of Offsite Tract penetration is not required if (a) written waivers of objection are received from all mineral owners of the Offsite Tract; or, (b) the applicant is the only mineral owner of the Offsite Tract. To mitigate the potential for well collisions, applicant shall promptly provide copies of any directional surveys to the parties entitled to notice under this section, upon request.

RULE 3: The acreage assigned to an individual gas well shall be known as a proration unit. The standard drilling and proration units are established hereby to be SIX HUNDRED FORTY (640) acres. No proration unit shall consist of more than SIX HUNDRED FORTY (640) acres; provided that, tolerance acreage of ten (10) percent shall be allowed for each standard proration unit so that an amount not to exceed a maximum of SEVEN HUNDRED FOUR (704) acres may be assigned. Each proration unit containing less than SIX HUNDRED FORTY (640) acres shall be a fractional proration unit. All proration units shall consist of continuous and contiguous acreage which can reasonably be considered to be productive of gas. No double assignment of acreage will be allowed.

An operator, at his option, shall be permitted to form optional drilling and proration units of FORTY (40) acres. A proportional acreage allowable credit will be given for a well on a fractional proration unit. There is no maximum diagonal limitation in this field.

For the determination of acreage credit in this field, operators shall file for each well in this field a Form P-15 Statement of Productivity of Acreage Assigned to Proration Units. On that form or an attachment thereto, the operator shall list the number of acres that are being assigned to each well on the lease or unit for proration purposes. When the allocation formula in this field is suspended, operators in this field shall not be required to file plats with the Form P-15. When the allocation formula is in effect in this field, operators shall be required to file, along with the Form P-15, a plat of the lease, unit or property; provided that such plat shall not be required to show individual proration units. Provided further, that if the acreage assigned to any well has been pooled, the operator shall furnish the Commission with such proof as it may require as evidence that interests in and under such proration unit have been so pooled. Operators in this field are exempt from the requirements of Rule 86(f)(4) entitled Proration Unit Plat; however operators must, for each horizontal drainhole, file a plat showing the as-drilled path, penetration point, terminus and, if applicable, perforations or external casing packer, for that horizontal drainhole and, for wells treated as stacked laterals, operators must file the plats required by paragraph number 6 of Rule 5. All plats referred to in this paragraph may be either a surveyor's plat or a certified plat, at the operator's option.

For the purpose of assigning additional acreage to a horizontal well pursuant to Rule 86, the distance from the first take point to the last take point in the horizontal drainhole shall be used in such determination, in lieu of the distance from penetration point to terminus.

**RULE 4:** For oil and gas wells, Stacked Lateral Wells within the correlative interval for the field that are drilled from different wellbores may be considered a single well for regulatory purposes, as provided below:

1. A horizontal drainhole well qualifies as a Stacked Lateral Well under the following conditions:
    a) There are two or more horizontal drainhole wells on the same lease or pooled unit within the correlative interval for the field;
    b) Horizontal drainholes are drilled from at least 2 different surface locations on the same lease or pooled unit;
    c) There shall be no more than 250 feet between the surface locations of horizontal drainholes qualifying as a Stacked Lateral Well.
    d) Each point of a Stacked Lateral Well's horizontal drainhole shall be no more than 300 feet in a horizontal direction from any point along any other horizontal drainhole of that same Stacked Lateral Well. This distance is measured perpendicular to the orientation of the horizontal drainhole and can be illustrated by the projection of each horizontal drainhole in the Stacked Lateral Well into a common horizontal plane as seen on a location plat; and
    e) There shall be no maximum or minimum distance limitations between horizontal drainholes of a Stacked Lateral Well in a vertical direction.

2. A Stacked Lateral Well, including all surface locations and horizontal drainholes comprising such Stacked Lateral Well, shall be considered as a single well for density and allowable purposes.

3. Each surface location of a Stacked Lateral Well must be permitted separately and assigned an API number. In permitting a Stacked Lateral Well, the operator shall identify each surface location of such well with the designation "SL" in the well's lease name and also describe the well as a Stacked Lateral Well in the "Remarks" of the Form W-1 drilling permit application. The operator shall also identify on the plat any other existing, or applied for, horizontal drainholes comprising the Stacked Lateral Well being permitted.

4. To be a regular location, each horizontal drainhole of a Stacked Lateral Well must comply with (i) the field's minimum spacing distance as to any lease, pooled unit or property line, and (ii) the field's minimum between well spacing distance as to any different well, including all horizontal drainholes of any other Stacked Lateral Well, on the same lease or pooled unit in the field. Operators may seek exceptions to Rules 37 and 38 for Stacked Lateral Wells in accordance with the Commission's rules, or any applicable rule for this field.

5. Operators shall file separate completion forms for each surface location of the Stacked Lateral Well. Operators shall also file a certified as-drilled location plat for each surface location of a Stacked Lateral Well showing each horizontal

drainhole from that surface location, confirming the well's qualification as a Stacked Lateral Well and showing the maximum distances in a horizontal direction between each horizontal drainhole of the Stacked Lateral Well.

6. In addition to the completion forms for each surface location of a Stacked Lateral Well, the operator must file a separate Form G-1 or Form W-2 for record purposes only for the Commission's Proration Department to build a fictitious "Record Well" for the Stacked Lateral Well. This Record Well will be identified with the words "SL Record" included in the lease name. This Record Well will be assigned an API number and Gas Well ID or Oil lease number and listed on the proration schedule with an allowable if applicable.

7. In addition to the Record Well, each surface location of a Stacked Lateral Well will be listed on the proration schedule, but no allowable shall be assigned for an individual surface location. Each surface location of a Stacked Lateral Well shall be required to have a separate G-10 or W-10 test and the sum of all horizontal drainhole test rates shall be reported as the test rate for the Record Well.

8. Operators shall report all production from horizontal drainholes included as a Stacked Lateral Well on Form PR to the Record Well. Production reported for a Record Well is the total production from the horizontal drainholes comprising the Stacked Lateral Well. Operators shall measure the production from each surface location of a Stacked Lateral Well. Operators may measure full well stream with the measurement adjusted for the allocation of condensate based on the gas to liquid ratio established by the most recent G-10 well test rate for that surface location. The gas and condensate production will be identified by individual API number and recorded and reported on the "Supplementary Attachment to Form PR".

9. If the field's 100% AOF status should be removed, the Commission's Proration Department shall assign a single gas allowable to each Record Well classified as a gas well. The Commission' s Proration Department shall also assign a single oil allowable to each Record Well classified as an oil well. The assigned allowable may be produced from any one or all of the horizontal drainholes comprising the Stacked Lateral Well.

10. Operators shall file an individual Form W-3A Notice of Intention to Plug and Abandon and Form W-3 Well Plugging Report for each horizontal drainhole comprising the Stacked Lateral Well as required by Commission rules.

11. An operator may not file Form P-4 to transfer an individual surface location of a Stacked Lateral Well to another operator. P-4's filed to change the operator will only be accepted for the Record Well if accompanied by a separate P-4 for each surface location of the Stacked Lateral Well.

**RULE 5**: The daily allowable production of gas from individual wells completed in the subject field shall be determined by allocating the allowable production, after deductions have been made for wells which are incapable of producing their gas allowables, among the individual wells in the following manner:

FIVE percent (5%) of the field's total allowable shall be allocated equally among all the individual proratable wells producing from the field.

NINETY FIVE percent (95%) of the total field allowable shall be allocated among the individual wells in the proportion that the acreage assigned such well for allowable purposes bears to the summation of the acreage with respect to all proratable wells producing from this field.

It is further **ORDERED** by the Railroad Commission of Texas that the application of Devon Energy Production Co., LP for suspension of the allocation formula in the Carthage (Haynesville Shale) Field is approved. The allocation formula may be reinstated administratively if the market demand for gas in the Carthage (Haynesville Shale) Field drops below 100% of deliverability. If the market demand for gas in the Carthage (Haynesville Shale) Field drops below 100% of deliverability while the allocation formula is suspended, the operator shall immediately notify the Commission and the allocation formula shall be immediately reinstated.

It is further **ORDERED** that a hearing will be held on or before January 1, 2012, to consider whether these Field Rules should be made permanent, modified or rescinded.

It is further **ORDERED** by the Railroad Commission of Texas that the following fields are consolidated into the Carthage (Haynesville Shale) Field (RRC Field No. 16032 300), Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas:

| FIELD NAME | FIELD NUMBER |
|---|---|
| Shelbyville Deep (Haynesville) | 82907 500 |
| Center (Haynesville) | 16697 300 |
| Carthage, E. (Bossier) | 16033 500 |
| Waskom (Haynesville) | 95369 260 |
| Naconiche Creek (Haynesville) | 64300 280 |
| Naconiche Creek (Bossier) | 64300 100 |
| Bossierville (Bossier Shale) | 10758 500 |
| Beckville (Haynesville) | 06448 600 |
| Carthage, North (Bossier Shale) | 16034 200 |

Wells in the subject fields shall be transferred into the Carthage (Haynesville Shale) Field without requiring new drilling permits.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

This order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

Done this 15th day of December, 2009.

RAILROAD COMMISSION OF TEXAS

Chairman Victor G. Carrillo

Commissioner Elizabeth A. Jones

Commissioner Michael L. Williams

ATTEST:

Secretary

VICTOR G. CARRILLO, *CHAIRMAN*
ELIZABETH A. JONES, *COMMISSIONER*
MICHAEL L. WILLIAMS, *COMMISSIONER*

LINDIL C. FOWLER, JR., *GENERAL COUNSEL*
COLIN K. LINEBERRY, *DIRECTOR*
*HEARINGS SECTION*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

Date: November 6, 2009 Oil and Gas Docket No. 06-0262000

**NOTICE TO THE PARTIES**

The attached document is a Proposal for Decision and recommended Final Order issued by the examiner(s) in this case. Under Section 1.141 of the Commission's General Rules of Practice and Procedure, we are required to circulate the document to each party or its authorized representative. This is only a proposal and is not to be interpreted as a final decision unless an official order adopting the proposal is signed and issued by the Commission.

Under Section 1.142 of the General Rules of Practice and Procedure (16 T.A.C. §1.142), you have the right to file a written statement disagreeing with the proposal and setting out your reasons for this position. This document is referred to as "Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 15 days of the date above. You have the right to respond in writing to any exceptions filed by another party. This document is referred to as "Replies to Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 10 days after the deadline for filing exceptions.

In addition to written exceptions and replies, the parties may file with the Commission a one page summary of the case. The summary shall be filed with the Commission **at the time exceptions are due.** The summary is specifically limited to one page and shall contain only information of record or argument based on the record. The summary shall not be submitted in reduced print. If the summary contains any material not of record, has reduced print, or exceeds one page (8-1/2" x 11"), the examiner(s) will reject the summary and it will not be submitted to the Commissioners for their review.

The summary shall contain the name of the party, the status of the party, the name and docket number of the case, the issue(s), the key facts, the legal principles involved (including proposed conclusions of law), and the action requested. (See enclosed form.)

1701 NORTH CONGRESS AVENUE ★ POST OFFICE BOX 12967 ★ AUSTIN, TEXAS 78711-2967 ★ PHONE: 512/463-6924 FAX: 512/463-6989
TDD 800-735-2989 OR TDY 512-463-7284 AN EQUAL OPPORTUNITY EMPLOYER http://www.rrc.state.tx.us

In view of the due dates stated above, all parties are reminded that pleadings are considered filed only upon **actual receipt by the Docket Services Section of the Office of General Counsel** (Room 12-123). Furthermore, each pleading must be served upon all Parties of Record and a statement certifying such and giving complete names and addresses must be included. Exceptions and replies may not be filed by telephonic document transfer unless otherwise directed by the examiner(s). **An original plus THIRTEEN copies of exceptions, replies and summaries should be submitted to the Commission. PLEASE DO NOT STAPLE.** Further, a copy of these pleadings **must be submitted to each party. IN ADDITION, IF PRACTICABLE, PARTIES ARE REQUESTED TO PROVIDE THE EXAMINERS WITH A COPY OF ANY FILINGS ON A DISKETTE IN WORD OR WORDPERFECT FORMAT. THE DISKETTE SHOULD BE LABELED WITH THE DOCKET NUMBER, THE TITLE OF THE DOCUMENT, AND THE FORMAT OF THE DOCUMENT.**

The proposal for decision, and all exceptions and replies will be submitted to the Commissioners for their consideration at one of their regularly scheduled conferences. The agenda for the scheduled conferences will be published in the *Texas Register* and posted in the office of the Secretary of State. The conferences are open meetings; you may attend and listen to the presentation of the case.

NAME OF PARTIES

Brian Sullivan, Attorney
Representing Devon Energy Production Co. LP
PO Box 12127
Austin TX 78711

Sandra Buch, Attorney
Representing Devon Energy Production Co. LP
PO Box 12127
Austin TX 78711

Dale Greenfeather, Geologist
1200 Smith
Houston TX 77002

Ben Wilson
1200 Smith St
Houston TX 77002

Brad Hall
1200 Smith St
Houston TX 77002

Douglas Dahmann
1200 Smith St
Houston TX 77002

Daniel W Higdon
1200 Smith St
Houston TX 77002

Ana Marie Marsland-Griffith, Attorney
Representing Anadarko E & P Company, LP
515 Congress Ave Ste 2450
Austin TX 78759

Frank A. Davis
1201 Lake Robbins Dr
The Woodlands TX 77380

Scott Crump
PO Box 1330
Houston TX 77251

George Neale, Attorney
Representing El Paso E & P Company, LP,
Energen Resources Corp, and Tanos Exploration, LLC
PO Box 1945
Austin TX 78767

Bill G. Spencer
Representing Chesapeake Operating, LLC
201 S Lakeline Blvd Ste 303
Cedar Park TX 78613

Carroll Martin, Attorney
Representing EOG Resources, Inc.,
R. Lacy, Inc. , Darren Groce, Mickey Melton, Randall Davis, and Richard Rhodes
600 Congress Ave Ste 1500
Austin TX 78701

David Gross, Attorney
Representing XTO Energy, Inc.
12400 Hwy 71 W. Ste 350-230
Austin TX 78738

Mickey Olmstead, Attorney
Representing Samson Lone Star, LLC
PO Box 12127
Austin TX 78711

Tim George, Attorney
Representing ExxonMobil Corporation
600 Congress Ave Ste 2100
Austin TX 78701

Tommie Seitz - RRC, Austin

# CASE SUMMARY

PREPARED BY: STATUS:

EXAMINER(S):

DOCKET NO./CASE NAME:

ISSUE(S):

KEY FACTS:

LEGAL PRINCIPLES INVOLVED:

ACTION REQUESTED:

VICTOR G. CARRILLO, *CHAIRMAN*
ELIZABETH A. JONES, *COMMISSIONER*
MICHAEL L. WILLIAMS, *COMMISSIONER*

LINDIL C. FOWLER, JR., *GENERAL COUNSEL*
COLIN K. LINEBERRY, *DIRECTOR*
*HEARINGS SECTION*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

**OIL AND GAS DOCKET NO. 06-0262000**

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**THE APPLICATION OF DEVON ENERGY PRODUCTION CO., LP FOR A NEW FIELD DISCOVERY AND TO ADOPT FIELD RULES FOR THE PROPOSED CARTHAGE (HAYNESVILLE) FIELD, PANOLA COUNTY, TEXAS**

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**HEARD BY:** Richard D. Atkins, P.E. - Technical Examiner
Marshall F. Enquist - Legal Examiner

**HEARING DATES:** July 28 and September 1, 2009

| **APPEARANCES:** | **REPRESENTING:** |
|---|---|
| **APPLICANT:** | |
| Brian R. Sullivan<br>Sandra Buch<br>Dale Greenfeather<br>Ben Wilson<br>Brad Hall<br>Douglas Dahmann<br>Daniel W. Higdon | Devon Energy Production Co., LP |
| **INTERESTED PARTIES:** | |
| Ana Maria Marsland-Griffith<br>Frank A. Davis<br>Scott Crump | Anadarko E & P Company, LP |
| George Neale | El Paso E & P Company, LP<br>Energen Resources Corporation<br>Tanos Exploration, LLC |
| Bill G. Spencer | Chesapeake Operating, Inc. |
| Carroll Martin<br>Randall Davis<br>Richard Rhodes | EOG Resources, Inc. |

| | |
|---|---|
| Carroll Martin<br>Darren Groce<br>Mickey Melton | R. Lacy, Inc. |

OBSERVERS:

| | |
|---|---|
| David Gross<br>Rick Johnston | XTO Energy, Inc. |
| Mickey Olmstead<br>James M. Clark | Samson Lone Star, LLC |
| Tim George | ExxonMobil Corporation |

## PROCEDURAL HISTORY

| | |
|---|---|
| Application Filed: | June 1, 2009 |
| Notice of Hearing: | June 8, 2009 |
| Hearing Held: | July 28, 2009 |
| Re-convened Hearing Held: | September 1, 2009 |
| Transcript Received: | September 10, 2009 |
| Proposal for Decision Issued: | November 6, 2009 |

## EXAMINERS' REPORT AND PROPOSAL FOR DECISION

## STATEMENT OF THE CASE

Devon Energy Production Co., LP ("Devon") requests that a new field designation called the Carthage (Haynesville) Field be approved for its Hull Unit A Lease, Well No. 102 (API No. 42-365-36749), and include the entirety of Panola County. Devon also requests that the following permanent Field Rules be adopted for the new field:

1. Designation of the field as the correlative interval which includes both the Bossier and Haynesville Shales;

2. 330' lease line spacing and no between well spacing with special provisions for "take points" and an off-lease penetration point for horizontal wells with an included "box rule" stating that the as-drilled location of a well will be considered in compliance with spacing rules if it falls within a rectangle of which two sides are parallel to the permitted drainhole and 50 feet on either side of the drainhole;

3. 640 acre gas proration units with 10% tolerance and optional 40 acre density;

4. Allocation based on 95% acres and 5% per well with AOF status;

5. Special provisions for stacked lateral wells;

6. An "allocation rule" for horizontal wells drilled and completed in more than one existing lease or pooled unit.

Based on evidence received at the hearing, the examiners re-convened the hearing to consider the consolidation of numerous other Haynesville/Bossier Shale fields into the Carthage (Haynesville) Field. There was no objection by any party to inclusion of the Shelbyville Deep (Haynesville), Center (Haynesville), Carthage, E. (Bossier), Waskom (Haynesville), Naconiche Creek (Haynesville), Naconiche Creek (Bossier), Bossierville (Bossier Shale), Beckville (Haynesville) and Carthage, North (Bossier Shale) Fields into the Carthage (Haynesville Shale) Field. The examiners recommend that the nine Bossier and Haynesville Shale fields listed above be consolidated into the Carthage (Haynesville Shale) Field.

Commission staff reviewed the P-7 submitted for the new field and recommended that the field name be changed to Carthage (Haynesville Shale) Field. Staff felt that this would highlight the fact that this field is producing from a shale formation. Devon did not consider this to be an adverse recommendation.

The application was unprotested. The examiners recommend approval of the new field designation and Field Rules for the Carthage (Haynesville Shale) Field, with the exception of proposed Rule 8 ("allocation rule"), the included "box rule" in proposed Rule 2 and the calculation of additional acreage assignments pursuant to Statewide Rule 86 in proposed Rule 2. The examiners also recommend expansion of paragraph 1 of the proposed Rule 6 ("Stacked Lateral Rule") to include language ensuring each point of a stacked lateral drainhole is no further than 300 feet away horizontally from any point along any other horizontal drainhole of the same Stacked Lateral Well. In addition, the examiners recommend that for purposes of assigning additional acreage to a horizontal wellbore pursuant to Statewide Rule 86, any "no-perf" zones between the first and last take points in excess of 330 feet be excluded from the calculation of horizontal drainhole displacement. Finally, the examiners recommend adoption of 320 acre density with optional 20 acre units and that these rules be adopted on a temporary basis for review in eighteen months.

## DISCUSSION OF THE EVIDENCE

Devon completed its Hull Unit A Lease, Well No. 102, in July 2008 with perforations in the Haynesville Shale between 10,529 feet and 11,024 feet. On initial test, the well produced at a maximum rate of 474 MCFGPD and 0.1 BCPD and 38 BWPD.

Devon submitted a structure map, cross sections and two geological papers that show that the proposed Carthage (Haynesville Shale) Field produces from the Bossier and Haynesville Shale formations which extend from the State of Louisiana through several counties in East Texas, including all or portions of Harrison, Nacogdoches, Panola, Rusk and Shelby Counties. Devon does not consider the examiners recommendation that the Shelbyville Deep (Haynesville), Center (Haynesville), Carthage, E. (Bossier), Waskom (Haynesville), Naconiche Creek (Haynesville), Naconiche Creek (Bossier), Bossierville (Bossier Shale), Beckville (Haynesville) and Carthage, North (Bossier Shale) Fields be consolidated into the Carthage (Haynesville Shale) Field to be adverse.

Devon asserts that the Haynesville Shale formation has relatively uniform petrophysical properties and is homogeneous and isotropic over the length of any horizontal well drilled and completed in the field. Consequently, over the length of any given horizontal well, Devon opines that the amount of gas present in the rock and contributing to production into the wellbore is expected to be the same for one linear foot of rock as for any other linear foot of rock completed.

Devon requests that the entire correlative interval from 9,568 feet to 11,089 feet as shown on the log of the Devon Energy Production Co., LP - Hull Unit A Lease, Well No. 102 (API No. 42-365-36749), Panola County, Texas, be considered a single field known as the Carthage (Haynesville Shale) Field. This interval includes the entire Bossier and Haynesville Shales and is located stratigraphically between the base of the Cotton Valley and the top of the Louann Salt formations.

Devon requests that the Carthage (Haynesville Shale) Field be classified as non-associated and that field rules similar to those that currently exist for shallower fields in the area be adopted for the new field. In addition, Devon requests adoption of some of the field rules that currently exist in the Newark, East (Barnett Shale) Field. Devon proposes field rules that provide for 330' lease line spacing and no between well spacing with special provisions for "take points" and an off-lease penetration point for horizontal wells. Devon also requests 640 acre gas proration units with 10% tolerance and optional 40 acre density. Devon feels that adopting a density rule similar to other shallower fields in the area will provide consistency in developing the Carthage (Haynesville Shale) Field and will allow greater flexibility in selecting future drilling locations.

Wells in the area covered by the proposed Carthage (Haynesville Shale) Field have been producing oil and gas since the 1930s and there are numerous oil and gas producing zones above the field. Over 11,000 wells have been drilled in Panola County. Well spacing of 330 feet is used in the State of Louisiana, located immediately to the east, and has already been adopted for the Wascom (Haynesville Shale) Field which will be included in the Carthage (Haynesville Shale) Field.

The historic unit size for gas wells in the Haynesville trend is 640 acres and most of the acreage is held by production from existing units that are approximately 640 acres in size. Where field rules have been adopted for gas fields producing above the Carthage (Haynesville Shale) Field, 640 acres plus 10% tolerance has been the predominant

standard unit size and most of the fields have adopted optional 40 acre density. In addition, the standard development unit size for Haynesville wells in the State of Louisiana is 640 acres and the density field rules for the Waskom (Haynesville Shale) Field, proposed to be included in the Carthage (Haynesville Shale) Field, are 640-acre units plus 10% tolerance with an optional 40-acre unit size.

Devon felt that the Haynesville Shale could not be commercially developed with vertical wells and that conventional drainage area calculations did not apply. Devon submitted decline curves for two horizontal wells located in Panola County and four horizontal wells located across the Texas state line in Louisiana. The two Panola County wells had limited production data of less than six months and the decline curve data indicated gas recoveries between 4.0 and 6.0 BCFG. The four Louisiana wells also had limited production data of less than one year, but the decline curve data indicated gas recoveries between 12.0 and 20.0 BCFG. Based on these gas recovery estimates, Devon believes that the fracture stimulated horizontal wells are impacting a drainage area of greater than 320 acres.

Operators are currently developing the field with horizontal wellbores. Devon requests that a field rule be adopted which includes language relevant to measurement of distances to lease lines for horizontal drainhole wells. Devon's proposed rule specifies that, for purposes of lease line spacing, the nearest "take point" in a horizontal well be used. This take-point could be a perforation, if a horizontal well is cased and cemented, an external casing packer in a cased well, or any open-hole section in an uncased well. Similar rules have been adopted in other tight reservoirs, including the Barnett Shale, Cotton Valley and Granite Wash Fields.

The proposed rule would allow operators to drill horizontal wells with penetration points, as defined by Rule 86, at distances closer than 330 feet to a lease line, as long as no take-point is closer than 330 feet to any lease line. Horizontal drainhole length on a lease is then maximized, resulting in additional recovery of gas. For purposes of assignment of additional acreage pursuant to Rule 86, it is proposed that the distance between the first and last take-point in a horizontal well be used. In addition, Devon proposes a fifty (50) foot "box rule" for horizontal drainhole wells that would allow drainholes to deviate 50 feet from their permitted track without the necessity of obtaining a Statewide Rule 37 exception.

In some cases, it is beneficial to penetrate the reservoir off lease, while still having "take points" no closer to lease lines than allowed under the field rules. Devon requests that field rules for the subject field provide for off-lease penetration points. Statewide Rule 86 requires that the penetration point of a horizontal drainhole be on the lease. In this field, a well generally requires 500-600 feet of horizontal displacement to make the 90 degree turn from vertical to horizontal. If the penetration point is required to be on the lease, then the first point of production would be about 600 feet from the lease line. The proposed rules will allow approximately 250 feet of additional producing drainhole, resulting in the recovery of 316 MMCF to 437 MMCF of additional gas reserves. Similar rules

allowing offsite penetration points have been adopted in other fields, after notice to the mineral owners of the off-lease tract on which the penetration point is to be located and if no protest is received.

Devon also requests that spacing rules for the field be adopted to accommodate the drilling of stacked horizontal lateral wells. The gross thickness of the Bossier and Haynesville shale interval is over 2,000 feet. Devon believes that several separate laterals may be necessary to effectively develop the reservoir with horizontal wells. Similar stacked lateral rules have already been adopted in Granite Wash and Cotton Valley Fields, as well as in the Newark, East (Barnett Shale) Field. The rule would allow stacked horizontal laterals within the Bossier and Haynesville correlative interval that are drilled from different wellbores to be considered a single well for regulatory purposes. It is proposed that a stacked lateral be defined to be multiple horizontal drainholes which are drilled (1) from different surface locations on the same lease unit no more than 250 feet from each other at the surface.

Devon requests that a two factor allocation formula based on 95% acres and 5% per well be adopted for the field. Devon also requests that the allocation formula be suspended, as there is a 100% market for all the gas produced and that the filing of P-15's and plats not be required.

Due to the shape of the existing 640 acre units in the field area, Devon argues that many horizontal wells will not be drilled. Devon proposes an "allocation rule" be placed in the field rules which will allow drilling wells across unit boundaries and allocating the production from those wells to the separate units on a per foot pro rata basis for royalty payment purposes. Devon supplied a plat in its Exhibit No. 35 demonstrating how acreage would be taken from each of three fictional units and assigned to an "allocation well". (see Attachment I) In the supplied example, Devon proposes to take 10 acres from the Dell Unit, 22 acres from the Jones Gas Unit and 48 acres from the Smith Lease, thereby creating an 80 acre unit for the Smith-Dell-Jones Allocation Well No. 1H.

Devon proposes to drill across units and submit forms to the Commission similar to those used in the Newark East (Barnett Shale) Field for Production Sharing Agreement wells. The wells drilled across unit boundaries would not respect the proposed 330 foot leaseline spacing rule, but the operators of each unit with a boundary crossed would grant waivers to each other. Devon proposes that the field rule for the proposed Carthage (Haynesville Shale) Field include an "allocation rule" which states:

> Operators shall be permitted to drill and complete horizontal wells that traverse one or more units and/or leases as long as that operator has a lease or other mineral ownership right to produce from each such unit or lease. If such a well is not already subject to an agreement regarding the allocation of proceeds (commonly referred to as a Production Sharing Agreement), then the following allocation formula will be presumed to constitute a fair and reasonable allocation of production from a well in this field: an allocation of

production to each of the units and/or leases traversed by and completed in the horizontal well based on the percent of said horizontal well from first take point to last take point that lies under each unit or lease.

Devon argues that the Railroad Commission has the authority to include its proposed "allocation rule" in a field rule and refers to the provisions in Texas Natural Resources Code §§88.001(3); 88.011(a)(1); 88.115; 85.053, 85.054; 85.055, 85.059; 85.046(3),(6),(7)&(11); 85.042; 85.201; 85.202(3)(7)&(8); 85.203; 86.012(5)&(13); 86.041; 86.042(1),(4), (7)&(9); 86.081; 86.083; 86.084; 86.085; 86.086; 86.087; 86.088; and 86.089 as support for its proposition.

It is Devon's assertion that a problem is created by the existing pooled units in the Haynesville trend which have been in place since the 1930s through 1950s and held by production from fields shallower than the proposed Carthage (Haynesville Shale) Field. The existing units were developed before the advent of horizontal drilling and are not optimally shaped for horizontal drilling. It is Devon's position that the field can only be economically developed by drilling and completing horizontal wells approximately 5,000 feet long. Devon also believes that, due to regional stresses, the wells must be oriented 10 degrees west of north. (see Attachment II)

Devon looks east to Louisiana and notes the square 640 acre sections available for development, as opposed to the less uniform property lines in East Texas. Louisiana uses the township and section method of surveying, at least in the portion of the state adjacent to Panola County, resulting in neat rows of 640 acre sections. This is convenient for the type of development Devon envisions and it is also convenient to Devon that Louisiana is a compulsory pooling state. A square 640 acre drilling unit can be obtained by application to the Louisiana Office of Conservation. Texas, on the other hand, uses a metes and bounds hybrid surveying system based partially on old Spanish land grants and partially on the township and section method. This gives rise to oddly shaped tracts which in turn give rise to less uniform tracts and units. Unlike Louisiana, Texas is not a compulsory pooling state, except in very limited circumstances under the Mineral Interest Pooling Act (Texas Natural Resources Code, Chapter 102).

Devon states that it is not possible to unpool and repool the existing Texas units without the royalty owners' consent and complains that the number of owners has multiplied due to the passage of time and inheritance of interests. Devon has argued that for many of the old units, hundreds of owners would need to sign off on any effort to repool (VI, p. 54, l. 2-5). Devon argues that, due to the high number of interest owners and the fact that many cannot be located, it is not feasible to amend the old leases to allow the type of pooling suitable for horizontal well technology. Devon also argued that it is not feasible to obtain the signatures of enough interest owners to enter into a Production Sharing Agreement. Devon believes the only way to develop these old units effectively is to drill horizontally from one unit across the unit boundary and into another unit. Devon proposes its "allocation rule" as the means of doing so. Devon asserts that if its proposed plan is not approved, "...the Haynesville will just not be developed." (Transcript, July 28, 2009, V. I,

p.15, line 24).

**EXAMINERS' OPINION**

The examiners recommend that most, but not all, of the field rules proposed by Devon be approved as temporary field rules. Designation of the field as the correlative interval that includes both the Bossier and Haynesville Shales, 330 foot leaseline spacing with no between-well spacing and a provision for an off-lease penetration point should be approved.

Devon has requested permanent field rules prescribing standard units of 640 acres with optional 40 acre units. Devon presented very little evidence directly from wells in the proposed field. The evidence for the proposed "standard" density of 640 acres is particularly tenuous. The standard unit size is supposed to indicate the acreage that a typical vertical well in the specific field at issue can effectively drain. The Commission's informal guide to oil and gas practice and procedure provides,

> At field rule hearings where density provisions are requested, reservoir pressure and production performance data are presented to indicate whether the wells are capable of draining the requested proration unit size. The supporting data for a density request should include pressure interference testing or material balance calculations based on production history or a pressure decline versus production curve.

*Texas Oil & Gas - Discussions of Law, Practice and Procedure*, p. 5 (Railroad Commission of Texas)

No such data was submitted by Devon. In fact, Devon candidly admitted that vertical wells could not be economically produced from the proposed field which indicates extremely small drainage areas for vertical wells. In addition, in the information Devon put on at the hearing regarding its planned development of the field, 640 acre existing units were typically shown with four or more proposed horizontal wellbores. This indicates that Devon believes the drainage area for horizontal wells will be 160 acres or less per well. Of the nine fields proposed to be consolidated into the new Carthage (Haynesville Shale) Field, there are two fields with prescribed 640 acre density. However, those fields both have optional 40 acre units. The other seven fields to be consolidated into the proposed Carthage (Haynesville Shale) Field are all governed by 40 acre standard density. The examiners do not find the Louisiana orders submitted by Devon persuasive with regard to drainage areas. First and foremost, those orders obviously involve wells that are not located in the proposed field area in Texas. In addition, neither the standard employed nor the evidence relied on regarding drainage area were shown.

The examiners recognize that shale fields are different from more traditional reservoirs and that size and effectiveness of fracture stimulation are more important than

the more traditional methods of determining the productivity and drainage area of a well. However, Devon also did not put on any evidence of typical fracture size or other data to support the 640 acre density it proposes. Devon's own development plans showing multiple horizontal wellbores on 640 acre units indicate that it believes multiple wells are necessary to adequately develop 640 acre units.

The examiners recommend adoption of 320 acre density with optional 20 acre units. This recommended density is identical to the rules governing the Newark, East (Barnett Shale) Field, the only shale field in Texas which has been significantly developed.[1] This recommendation is also consistent with the 330 foot lease line spacing proposed by Devon for the field. Under Commission rules, lease line spacing of 330 feet is generally associated with optional 20 acre units, not 40 acre units. *See* Statewide Rule 38(b)(2)(A).

Permanent rules are established for a field only where there is sufficient evidence to determine the drainage abilities of wells in the field. See *Texas Oil & Gas - Discussions of Law, Practice and Procedure*, p. 3 (Railroad Commission of Texas). Based on the extremely limited evidence regarding wells within the proposed field, the examiners recommend that the Commission adopt field rules on a temporary basis to be reviewed in eighteen months.

The examiners recommend adoption of Devon's two-factor allocation formula based on 95% acres and 5% per well with AOF status. The examiners also recommend approval of the proposed Rule 6 ("Stacked Lateral Rule") after expansion of paragraph 1 to include language ensuring each point of a stacked lateral drainhole is no farther than 300 feet away horizontally from any point along any other horizontal drainhole of the same Stacked Lateral Well. The additional language would make the Carthage (Haynesville Shale) Field Stacked Lateral Rule identical to the one currently in place for the Newark, East (Barnett Shale) Field. Devon does not object to this and states the missing language was inadvertently left out of its proposed rule when the application was made.

There has been no objection to the examiners' proposal that the field be named the Carthage (Haynesville Shale) Field and that it consist of a consolidation of the Shelbyville Deep (Haynesville), Center (Haynesville), Carthage, E. (Bossier), Waskom (Haynesville), Naconiche Creek (Haynesville), Naconiche Creek (Bossier), Bossierville (Bossier Shale), Beckville (Haynesville) and Carthage, North (Bossier Shale) Fields in Harrison, Nacogdoches, Panola, Rusk, and Shelby Counties.

The examiners do not recommend approval of Devon's proposed Rule 8 ("allocation rule") or the included "box rule" in proposed Rule 2 and recommend revisions to the proposed rule for the calculation of additional horizontal well acreage assignments in proposed Rule 2.

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[1] The Toyah, NW (Shale) Field, the only other shale field in the state with more than a negligible number of wells also is governed by 320 acre standard units.

Proposed Rule 8 "allocation rule"

Devon proposes that the field rule for the proposed Carthage (Haynesville Shale) Field include an "allocation rule" which states:

> Operators shall be permitted to drill and complete horizontal wells that traverse one or more units and/or leases as long as that operator has a lease or other mineral ownership right to produce from each such unit or lease. If such a well is not already subject to an agreement regarding the allocation of proceeds (commonly referred to as a Production Sharing Agreement), then the following allocation formula will be presumed to constitute a fair and reasonable allocation of production from a well in this field: an allocation of production to each of the units and/or leases traversed by and completed in the horizontal well based on the percent of said horizontal well from first take point to last take point that lies under each unit or lease.

This proposed "allocation rule" exceeds the boundaries of normal field rule provisions. No similar field rule has ever been adopted. "Field rules are special rules that modify the Railroad Commission's well spacing, density, prorationing and casing requirements for designated fields to deal with differences in reservoir conditions. See 2 Smith & Weaver, supra, §10.2; Robert E. Hardwicke, *Oil Well Spacing Regulations and Protection of Property Rights in Texas*, 31 Tex. L. Review 103 (1952)." Footnote 5 in Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 633 (Tex. App. - Austin, 2000, writ denied). The proposed rule does not address well spacing, density, or prorationing but, instead, addresses lease interpretation and royalty apportionment issues.

Devon's proposed "allocation rule" allocates production between units as opposed to allocation of gas allowables to individual wells. In the quote above from the Luecke case, prorationing refers to allocation . Devon has already proposed an allocation formula based on 95% acres and 5% per well. The examiners have recommended approval of the 95/5 rule, thus the true allocation formula issue is already resolved.

The "allocation rule" proposed by Devon does not allocate authorized production among different wells in the field. Instead, the proposed rule purports to authorize drilling across unit and/or lease lines without the agreement of any royalty or working interest owners. In addition, the proposed rule would direct, by Railroad Commission rule, how production and thus royalty payments could reasonably be divided among different royalty owners.

The first sentence of the proposed "allocation rule" states "Operators shall be permitted to drill and complete horizontal wells that traverse one or more units and/or leases as long as that operator has a lease or other mineral ownership right to produce from each such unit or lease." This sentence, in a field rule, would purport to give operators Commission-granted authority to override lease or unit provisions (such as limitations on unit size or other anti-dilution clauses) that would otherwise prohibit the drilling of such a well. "It is thought to be fundamental that the rules and regulations of the Railroad Commission cannot have the result of effecting a change or transference of

property rights" Whelan v. Placid Oil, 274 S.W.2d 125, 130, (Tex. Civ. App.-Texarkana,1954, writ ref'd n.r.e.), citing Mueller v. Sutherland, 179 S.W.2d 801, 808, (Tex. Civ. App. - El Paso 1943, writ ref'd w.o.m.). "...the acts of the Railroad Commission cannot be said to operate effectively to extend the restrictive terms of a lease. The orders of the Railroad Commission cannot compel pooling agreements that the parties themselves do not agree upon. The Railroad Commission has no power to determine property rights." Jones v. Killingsworth, 403 S.W.2d 325, 328, (Tex. 1966) (emphasis added). Also see Ryan Consolidated Petroleum Corp. v. Pickens, 285 S.W.2d 201, (Tex. 1955); Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189, (Tex. 1943); Nale v. Carroll, 289 S.W.2d 743, (Tex. 1956).

The language in Jones v. Killingsworth stating that the orders of the Commission cannot compel pooling agreements that the parties themselves do not agree on is subject to the limited exception of the Mineral Interest Pooling Act ("MIPA"). Devon is not seeking to invoke the MIPA in this proceeding.

The restrictive lease terms that would be affected by the proposed allocation rule are those that have led to the presently existing 640 acre units. Leases from the 1940s introduced into evidence by Devon commonly contain a grant of pooling authority subject to the following restriction or one substantially similar:

> "Each such drilling or production unit shall not exceed 40 acres plus an acreage tolerance not to exceed ten percent (10%) of 40 acres, when created for the purpose of drilling for or producing oil therefrom and 640 acres, plus an acreage tolerance not to exceed ten percent (10%) of 640 acres, when created for the purpose of drilling for or producing gas, distillate or condensate...."

Brumble Lease, Panola County, May 29, 1947.

Devon argues that the Railroad Commission is authorized to adopt its proposed "allocation rule" under the provisions of Texas Natural Resources Code §§88.001(3); 88.011(a)(1); 88.115; 85.053, 85.054; 85.055, 85.059; 85.046(3),(6),(7)&(11); 85.042; 85.201; 85.202(3)(7)&(8); 85.203; 86.012(5)&(13); 86.041; 86.042(1),(4), (7)&(9); 86.081; 86.083; 86.084; 86.085; 86.086; 86.087; 86.088; and 86.089. A review of these statutes indicates they give the Commission broad powers to prevent waste and confiscation in its role as a conservation agency, and to require accurate measurement of produced hydrocarbons to meet reporting requirements. The examiners find nothing in the referenced statutes that grant the Commission the authority to override lease provisions or determine property rights, such as the proper apportionment of royalties.

> [T]he Commission does not have power to determine title to land or property rights. It is invested with broad powers to determine where, or whether wells may be drilled, and how much oil or gas may be produced. But it does not have authority to determine the ownership of oil or gas, or how the proceeds from the sale of oil or gas should be apportioned among people who contend that it was, or is, actually being produced from beneath their land." Railroad Commission of Texas v. City of Austin, 524 S.W.2d 262, 267-

268 (Tex. 1975).

The Railroad Commission has no authority to interpret leases and determine that they authorize the drilling of a well as contemplated in the first sentence of the proposed "allocation rule". The effect of Devon's proposed language would essentially be the authorization of a 0% sign-up Production Sharing Agreement, contrary to the Commission's current policy of requiring at least a 65% sign-up for a Production Sharing Agreement. Devon's proposal amounts to compulsory pooling by field rule.

Although Devon may argue that it is not pooling portions of existing units, this is, in fact, what it is doing. In the hypothetical example provided by Devon, it proposes to take acreage from each of three units (10 acres from the Dell Unit, 22 acres from the Jones Gas Unit and 48 acres from the Smith Lease) and combine them into 80 acres for the drilling of a horizontal well. "Pooling occurs when tracts from two or more leases are combined for the purpose of drilling a single well" 1 Smith & Weaver, Texas Law of Oil and Gas, §4.8. That is precisely what Devon proposes - combining multiple tracts for purposes of drilling a horizontal well. Devon has admitted that it does not have pooling authority

> Examiner: The proposed form you have shown us, the allocation of well tract description, which is somewhat like a P-12, is different in that it does not make any representation that you have pooling authority. I suppose that is because of the lease problems.
> Attorney for Devon: And that is also true of the production sharing agreement description form. It intentionally does not make that representation because it wouldn't be true.

Transcript, Re-opened Hearing, September 1, 2009, p. 41, lines 11-20. (Emphasis added)

"A lessee's authority to pool is derived solely from the terms of the lease; a lessee has no power to pool absent express authority." Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 634 (Tex. App. - Austin, 2000, pet. denied). See also Southeastern Pipe Line Co. v. Tichacek, 997 S.W.2d 166, 170 (Tex. 1999); Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1965).

As support for its proposed "allocation rule", Devon relies heavily on the opinion letter from its retained expert, Professor Ernest Smith (see Attachment III, consisting of Devon's Request for Opinion and Professor Smith's Reply), and the court's opinion in Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625 (Tex. App. - Austin, pet. denied). Curiously, neither directly addresses Railroad Commission rules or provides any substantial support for Devon's position.

In his opinion letter, Professor Smith responded to very specific questions based on a specified hypothetical situation involving drilling a horizontal well across existing units denominated as A, B and C. Interestingly, although Professor Smith was asked whether Devon was authorized to drill a horizontal well across the boundaries of the three existing

units, he declined to answer that question. Instead, Professor Smith chose to break the question into two parts and answer whether such drilling would "constitute an actionable trespass." Professor Smith opined, "The answer...is susceptible to reasonable disagreement, but my considered response to it is No, i.e. that Devon will not commit an actionable trespass by drilling [the hypothesized horizontal well]." This is clearly not an unequivocal opinion that Devon has the legal authority to drill as it proposes even under its carefully constructed hypothetical.

Similarly, in response to the question of whether a production sharing agreement is necessary, Professor Smith responded "Without a production sharing agreement, a lessee that drills a horizontal well such as the one proposed unquestionably exposes itself to litigation by the royalty owners in the various units; however, uncertainty over how production should be allocated does not override a lessee's right to drill." (Smith Opinion, pp. 7-8). Again, this is hardly an unequivocal statement of support.

Perhaps most interesting is the response to the question, "...would an allocation based on the percent of the wellbore within each tract between the first and last takepoint represent a fair and reasonable allocation to each tract?" Professor Smith states:

> The method of allocation described above would appear to be both fair and reasonable, if supported by appropriate geological studies. ...It should be noted, however, that even though it is fair and reasonable, this method of accounting can be attacked on the ground that it fails to comply with the ruling in *Browning v. Luecke*. Each of the three units is the equivalent of each of plaintiff's tracts in *Browning*. It can thus be argued that the case requires Devon to establish the amount of gas that is actually produced from each specific unit and allocate that amount to each unit in making payments to the royalty owners in that unit. (Smith Opinion, pages 10-11)

Again, in spite of the carefully worded question and hypothetical facts, Professor Smith is unable to conclude that the proposed procedure is unambiguously authorized. Perhaps most pertinent to the issues before the Commission is the fact that Devon's request for an opinion from Professor Smith does not mention that either its proposal to drill across unit boundaries or its proposal for allocation of production are contemplated for inclusion in a field rule. No question was asked and no opinion is given by Professor Smith regarding the legality or advisability of inserting Devon's proposals into a Commission field rule. Professor Smith's opinion is written in terms of what Devon, on its own, may or may not be entitled to do under Texas law and the possible consequences. Professor Smith does not indicate any endorsement of Devon's proposals being placed in a field rule.

Browning Oil Co., Inc. v. Luecke provides even less support for Devon's proposed rule. In that case, Browning Oil Co., as Devon proposes here, ignored the terms of its leases and drilled a horizontal well across multiple tracts it operated. Luecke, one of the mineral owners, sued. The Luecke court noted the need to restrain operators while not discouraging the use of new technology. "Moreover, in considering public policy, we must attempt to balance two competing interests. First, we recognize that Lessees should not

be allowed to ignore anti-dilution provisions and exceed their pooling authority with impunity. A reasonably prudent operator may conclude that horizontal drilling in the Austin Chalk formation will benefit a lessor, and the operator may correctly opine that reasonable prudence dictates the drilling of a horizontal well that exceeds the authority granted under the applicable lease. Nevertheless, rather than ignore the written lease, the prudent operator must seek to negotiate a solution mutually beneficial to both the lessee and the lessor or else forego drilling." Luecke, 38 S.W.3d 625, 646-7(Tex. App. - Austin, 2000, writ denied)(emphasis added). Far from upholding the operator's actions, the court found Browning had breached its leases and remanded the case for a determination of damages.

Devon is not the owner of the minerals under the various tracts it operates in the area of the proposed Carthage (Haynesville Shale) Field. It is the lessee and its rights are controlled by the terms of the leases it took from the owners of the minerals. Devon itself acknowledges that those lease terms do not authorize it to pool the tracts as it desires. Devon is seeking a Commission field rule that would endorse its desires to effectively amend the terms of its agreements with the mineral owners, authorize it to combine the tracts and direct that the mineral owners be paid in a manner different than is provided in the lease contracts. Such a field rule would be unprecedented in Commission practice and would far exceed the Commission's statutory authority. (see Railroad Commission v. City of Austin, 524 S.W.2d 262, 267-268 (Tex. 1975). The Commission's own website, under "Frequently Asked Questions", states, "The Railroad Commission does not have jurisdiction over ...leases, pipeline easements or royalty payments."

Devon is not without alternatives. First, it could negotiate amendments to the leases with the mineral owners. Devon claims this would be burdensome. Undoubtedly, it would be more burdensome than ignoring the lease terms it previously agreed to and drilling and paying royalties as it proposes without obtaining the agreement of any of the mineral owners whose rights are being affected. However, inconvenience or burden is not a legally permissible reason for ignoring property rights. Further, Devon clearly overstates the difficulty involved. These are currently active leases and units on which Devon is (presumably) paying royalties monthly to the mineral owners. The mineral owners currently receiving monthly checks are the very property owners Devon must negotiate lease amendments with.

As another alternative, Devon has the option under current Commission practice to enter into production sharing agreements. Production Sharing agreements (PSAs) have the advantage that the Commission only requires agreement of 65% of mineral owners rather than the 100% that may be required for lease amendment.

Devon's proposed Rule 8 addresses lease interpretation, property rights, and royalty apportionment issues over which the Commission does not have jurisdiction. The examiners recommend that the Commission not approve the proposed Rule 8 "allocation rule".

Box Rule

Devon proposes an unusual "box rule" providing that a properly permitted horizontal drainhole will be considered to be in compliance with spacing rules if the as-drilled location falls within two sides of a rectangle whose sides are parallel to the permitted drainhole and 50 feet on either side of the drainhole. Devon notes that a box rule has been approved in the Brookeland (Austin Chalk 8800) Field. VI, p. 73, l. 16-17.

The proposed rule would authorize an operator drilling a well along the lease line to deviate 50 feet closer to an offset than the stated regular distance of 330 feet without notifying the offset or obtaining a Rule 37 exception. Devon asserts that this "box" rule would allow operators to avoid having to seek "unnecessary" Rule 37 exceptions. Why Devon considers Rule 37 exceptions for any and all encroachments of 50 feet or less as unnecessary is not clear. As proposed, the rule would allow an operator to permit a horizontal well running parallel to its lease line 330 feet from an offset operator or unleased mineral owner. Because the well would be permitted at a regular location, no notice to offsets would be required. The operator could then drill the well with an actual location parallel to the lease line but only 280 feet from the offsetting tract along its entire length from penetration point to terminus. Under the proposed rule, the wellbore would be within the "box" and no Rule 37 exception (or notice to the offset being encroached on) would be required. In practical effect, the box rule changes the lease line spacing to 280 feet from offset tracts rather than the 330 feet spacing distance expressly stated in the rule. No evidence was presented to support 280 foot lease line spacing.

Although a handful of fields in the state have a so-called box rule[2], those instances are significantly different than the circumstances presented in this field. First, in the few existing instances where a box rule has been adopted, the regular spacing distance is 1200 feet or more and the authorized deviation box is 10% of the spacing distance. In this instance, the regular spacing distance is only 330 feet and the proposed authorized deviation is nearly 15% of the regular distance. Under the proposed rule, the regular distance is less than a third of the regular distance in the only other fields in which a box rule has been adopted. However, the proposed deviation is proportionately even greater (15% versus 10%). More importantly, none of the few fields that currently have a box rule have rules dictating that spacing be determined by where the wellbore is open to the formation. In other words, in those fields there is no way to "cure" a minor deviation from the permitted wellbore path.

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[2] Of the more than 50,000 fields in the state, the examiners are only aware of three that have a "box rule" and all are in the Austin Chalk formation. The Brookeland (Austin Chalk 8800) Field has prescribed leaseline spacing of 1500 feet and a box rule authorizing 150 foot deviations. The Magnolia Springs (Austin Chalk) Field and Double A Wells, N (Austin Chalk) Field both have 1,200 foot leaseline spacing and a box rule authorizing 120 foot deviations.

Under the recommended Carthage (Haynesville Shale) Field rules the need for a Rule 37 exception is determined by take points. An operator that inadvertently drills closer than allowed by its permit and the field rules to an offset can cure the problem (and, in Devon's parlance, avoid an unnecessary Rule 37 exception application) by simply not perforating that portion of the wellbore that encroaches on an offset. Further, the Commission has long recognized that it is not practically possible to drill a perfectly straight hole and, even under existing rules and procedures, a Rule 37 exception is not required where an operator has attempted in good faith to drill the well as permitted when minor deviations (usually understood to be less than 10%) from the permitted path have occurred. This existing policy requires an operator to have made a good faith attempt to comply with its permit and, unlike the proposed rule, does not grant an absolute right to deviate from the wellbore track that was permitted.

Acreage Assignment under Statewide Rule 86

With regard to additional acreage assignment under Rule 86 based on the length of the horizontal wellbore, the examiners agree with Devon that generally the length of the wellbore should be measured from first to last take point (rather than penetration point to terminus) as proposed by Devon. However, experience in the Newark, East (Barnett Shale) Field has shown that operators frequently permit horizontal wells with long interim unperforated intervals (usually to avoid having to prove the right to a Rule 37 exception as to an unleased or partially unleased tract). These unperforated intervals are frequently hundreds of feet, and sometimes thousands of feet in length, and clearly do not contribute to production. These non-contributing intervals should not be counted for purposes of determining the amount of additional acreage that can be added to a standard proration unit. Accordingly, the examiners recommend that the proposed rule authorizing additional acreage for horizontal wells based on wellbore length be amended to exclude any interim unperforated portions of a wellbore that are more than 330 feet in length.

## FINDINGS OF FACT

1. Notice of this hearing was given to all persons entitled to notice and no protests were received.

2. Devon completed its Hull Unit A Lease, Well No. 102, in July 2008 with perforations in the Haynesville Shale between 10,529 feet and 11,024 feet. On initial test, the well produced at a maximum rate of 474 MCFGPD and 0.1 BCPD and 38 BWPD.

3. The Hull Unit A Lease, Well No. 102 is entitled to a new field designation.

    a. A structure map, cross sections and several geological articles show that the Carthage (Haynesville Shale) Field produces from the Bossier and Haynesville Shale formations which extend from the State of Louisiana through several counties in East Texas, including all or portions of Harrison,

Nacogdoches, Panola, Rusk and Shelby Counties.

b. The Haynesville Shale formation has relatively uniform petrophysical properties. The field can only be economically developed by drilling and completing horizontal wells.

c. The Haynesville Shale formation is similar throughout East Texas and should be governed by one set of field rules.

d. The Shelbyville Deep (Haynesville), Center (Haynesville), Carthage, E. (Bossier), Waskom (Haynesville), Naconiche Creek (Haynesville), Naconiche Creek (Bossier), Bossierville (Bossier Shale), Beckville (Haynesville) and Carthage, North (Bossier Shale) Fields should be consolidated into the Carthage (Haynesville Shale) Field.

4. The correlative interval from 9,568 feet to 11,089 feet as shown on the log of the Devon Energy Production Co., LP - Hull Unit A Lease, Well No. 102 (API No. 42-365-36749), Panola County, Texas, should be considered a single field known as the Carthage (Haynesville Shale) Field. This interval includes the entire Bossier and Haynesville Shales and is located stratigraphically between the base of the Cotton Valley and the top of the Louann Salt formations.

5. Field Rules that provide for 330' lease line spacing and no between well spacing with special provisions for "take points" and an off-lease penetration point for horizontal wells will provide consistency in developing the field and will allow greater flexibility in selecting future drilling locations.

6. Well spacing of 330 feet from lease lines is used to space wells in the State of Louisiana, located immediately to the east, and has already been adopted for the Carthage, N. (Bossier Shale) Field which will be consolidated into the Carthage (Haynesville Shale) Field.

7. Devon did not present sufficient evidence to demonstrate that a density of 640 acres with optional 40 acre density should be adopted on a permanent basis in the proposed Carthage (Haynesville Shale) Field. A density of 320 acres with optional 20 acre units should be adopted on a temporary basis.

a. The only shale field in Texas that has been significantly developed is the Newark, East (Barnett Shale) Field. The Newark, East (Barnett Shale) Field is governed by 320 acre standard units with optional 20 acre units.

b. The Toyah, NW (Shale) Field is governed by 320 acre standard units.

c. The proposed 640 acre density for the Carthage (Haynesville Shale) Field

is not based on evidence of actual drainage areas, but simply mimics the density rules in effect for the shallower, non-shale fields in the area.

d. Devon's own development plans show multiple horizontal wellbores on 640 acre units indicating that multiple wells are necessary to adequately develop 640 acre units.

e. Based on limited gas recovery estimates from six wells, Devon only opines that fracture stimulated horizontal wells are impacting a drainage area of greater than 320 acres.

f. Of the nine fields proposed to be consolidated in the Carthage (Haynesville Shale) Field, two have prescribed 640 acre density with optional 40 acre units. The other seven fields to be consolidated are governed by 40 acre standard density.

g. Lease line spacing of 330 feet is associated with 20 acre units.

8. A spacing rule which utilizes "take-points" in a horizontal well for the determination of distances to lease lines will prevent waste and will not harm correlative rights.

a. The Bossier and Haynesville are shale formations and are not commercially productive unless fracture-stimulated.

b. A take-point in a horizontal well in this field may be a perforation, if a horizontal well is cased and cemented, an external casing packer in a cased well, or any open-hole section in an uncased portion of the wellbore.

c. Adoption of the proposed rule would allow operators to drill horizontal wells with penetration points, as defined by Rule 86, at distances closer than 330 feet to a lease line, as long as no take-point is closer than 330 feet to any lease line.

d. Adoption of the proposed rule will allow the horizontal drainhole length on a lease to be maximized.

9. For purposes of assignment of additional acreage pursuant to Rule 86, the distance between the first and last take-point in a horizontal well should be used. Unperforated intervals between the first and last take points of a horizontal well do not contribute to the production of the well. Unperforated intervals greater than 330 feet should be excluded as wellbore length for purposes of assignment of additional acreage to a horizontal well pursuant to Statewide Rule 86.

10. Allowing off-lease penetration points will result in maximum producing drainhole

length, thereby increasing ultimate recovery from horizontal drainhole wells. The proposed rules will allow an additional approximately 250 feet of producing drainhole, resulting in the recovery of 316 MMCF to 437 MMCF of additional gas reserves. To protect correlative rights, prior notice and opportunity to object should be given to the mineral owners of offsite surface locations.

11. The proposed "stacked lateral" rule, as revised, will allow stacked horizontal laterals within the Bossier and Haynesville shale correlative interval that are drilled from different wellbores to be considered a single well for regulatory purposes and facilitate additional recovery of gas.

12. Allocation based on 95% acres and 5% per well will protect correlative rights.

13. Continued suspension of the allocation formula is appropriate, as there is a 100% market for all the gas produced. Elimination of the requirement to file P-15's and plats when the field has 100% AOF status will eliminate unnecessary paperwork.

14. Devon's proposed Rule 8, the "allocation rule," purports to allow drilling of horizontal wells across unit and/or lease boundaries without the agreement of any royalty or working interest owners under the authority of a Railroad Commission field rule.

15. Devon's proposed "allocation rule" purports to apportion production and thus royalty payments between units and/or leases under the authority of a Railroad Commission field rule.

16. Compliance with existing lease terms will not cause the physical waste of oil or gas. Existing gas within the proposed field that is not recovered now will remain in place in the formation and will be recovered when an operator negotiates amended lease terms, enters into a production sharing agreement, or negotiates new leases.

17. The "box rule" proposed by Devon would authorize an operator drilling a horizontal well along a leaseline to deviate 50 feet closer to an offset than the stated regular leaseline spacing distance of 330 feet without notifying the offset or obtaining a Statewide Rule 37 exception.

18. The proposed "box rule" would effectively reduce the lease line spacing rule for the Carthage (Haynesville Shale) Field to 280 feet.

19. No drainage calculations or other geological evidence was submitted to support 280 foot lease line spacing.

20. The proposed box rule is not necessary to allow operators reasonable minor deviations from the wellbore track that has been permitted.

21. With regard to optional additional acreage assignment under Statewide Rule 86 based on the length of a horizontal wellbore, generally the length of the wellbore should be measured from first take point to last take point.

    a. Operators frequently permit horizontal wellbores with long unperforated intervals, usually to avoid the need for a Statewide Rule 37 exception hearing due to an unleased or partially unleased tract.

    b. Unperforated intervals do not contribute to production from the wellbore and should not be counted as wellbore length for purposes of assigning additional acreage to a horizontal well pursuant to Statewide Rule 86.

22. Devon's proposed rule language authorizing additional acreage for horizontal wells based on wellbore length should be amended to exclude any unperfed portions of a wellbore that are more than 330 feet in length.

## CONCLUSIONS OF LAW

1. Proper notice of this hearing was issued.

2. All things have been accomplished or have occurred to give the Commission jurisdiction in this matter.

3. Approval of the requested new field designation and adoption of field rules prescribing 330 foot lease line spacing, no minimum between well spacing, and standard density of 320 acres with optional 20 acre units will prevent waste, protect correlative rights and promote the orderly development of the field.

4. Consolidation of the Shelbyville Deep (Haynesville), Center (Haynesville), Carthage, E. (Bossier), Waskom (Haynesville), Naconiche Creek (Haynesville), Naconiche Creek (Bossier), Bossierville (Bossier Shale), Beckville (Haynesville) and Carthage, North (Bossier Shale) Fields into the Carthage (Haynesville Shale) Field will prevent waste, foster conservation and protect correlative rights.

5. The Railroad Commission has no authority to extend or modify the terms of a lease by its acts or orders.

6. The Railroad Commission has no authority to determine the ownership of oil or gas or how the proceeds from the sale of oil or gas should be apportioned.

7. Railroad Commission rules cannot extend the restrictive terms of leases. Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1965); Browning Oil Co. v. Luecke, 38 S.W.3d 624, 642 (Tex. App. – Austin 2000, writ denied).

8. The Railroad Commission has no jurisdiction to adopt the proposed allocation rule and adopting the rule is not necessary to prevent waste and could harm correlative rights.

9. Sufficient evidence of well performance and drainage areas within the proposed field area does not exist to warrant permanent field rules for its proposed Carthage (Haynesville Shale) Field.

10. The proposed "box rule" will not prevent waste and will harm correlative rights.

11. No-perf zones 330 feet or longer do not contribute to the production from a well and should be excluded from the calculation of addition assignment of acreage to a horizontal wellbore pursuant to Statewide Rule 86.

## RECOMMENDATION

Based on the above findings of fact and conclusions of law, the examiners recommend that the Commission approve the new field designation and Field Rules for the Carthage (Haynesville Shale) Field prescribing 330 foot lease line spacing, no minimum between well spacing, and standard density of 320 acres with optional 20 acre units, with the exception of the "allocation rule" and the "box rule". The examiners also recommend that temporary rules be assigned to the Carthage (Haynesville Shale) Field. In addition, the examiners recommend that no-perf zones be excluded from the calculation of additional acreage assigned to horizontal wellbores in the Carthage (Haynesville Shale) Field. Finally, the examiners recommend that the nine subject Bossier and Haynesville Shale fields be consolidated into the Carthage (Haynesville Shale) Field.

Respectfully submitted,

Richard D. Atkins, P.E.
Technical Examiner

Marshall F. Enquist
Legal Examiner

6-6200Crev320.wpd

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION

OIL AND GAS DOCKET NO. 06-0262000

IN THE CARTHAGE (HAYNESVILLE SHALE) FIELD, HARRISON, NACOGDOCHES, PANOLA, RUSK AND SHELBY COUNTIES, TEXAS

# FINAL ORDER
# APPROVING THE APPLICATION OF DEVON ENERGY PRODUCTION CO., LP FOR A NEW FIELD DESIGNATION AND ADOPTING TEMPORARY FIELD RULES FOR THE CARTHAGE (HAYNESVILLE SHALE) FIELD AND CONSOLIDATING VARIOUS BOSSIER AND HAYNESVILLE SHALE FIELDS INTO THE CARTHAGE (HAYNESVILLE SHALE) FIELD HARRISON, NACOGDOCHES, PANOLA, RUSK AND SHELBY COUNTIES, TEXAS

The Commission finds that after statutory notice in the above-numbered docket heard on July 28 and September 1, 2009, the presiding examiner has made and filed a report and recommendation containing findings of fact and conclusions of law, for which service was not required; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and proposal for decision, the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that the application of Devon Energy Production Co., LP for a new field designation for its Hull Unit A Lease, Well No. 102, is hereby approved. The new field shall be known as the Carthage (Haynesville Shale) Field (RRC Field No. 16032 300), Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas.

It is further **ORDERED** that the following Field Rules are hereby adopted for the Carthage (Haynesville Shale) Field, Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas:

**RULE 1:** The entire correlative interval from 9,568 feet to 11,089 feet as shown on the log of the Devon Energy Production Co., LP - Hull Unit A Lease, Well No. 102 (API No. 42-365-36749), Panola County, Texas, shall be designated as a single reservoir for proration purposes and be designated as the Carthage (Haynesville Shale) Field.

**RULE 2:** No well for gas shall hereafter be drilled nearer than THREE HUNDRED THIRTY (330) feet to any property line, lease line, or subdivision line. There is no between well spacing limitation. The aforementioned distances in the above rule are minimum distances to allow an operator flexibility in locating a well, and the above spacing rule and the other rules to follow are for the purpose of permitting only one well to each drilling and proration unit. Provided however, that the Commission will grant exceptions to permit drilling within shorter distances and drilling more wells than herein prescribed whenever the Commission shall have determined that such exceptions are necessary either to prevent waste or to prevent the confiscation of property. When exception to these rules is desired, application therefor shall be filed and will be acted upon in accordance with the provisions of Commission Statewide Rules 37 and 38, which applicable provisions of said rules are incorporated herein by reference.

In applying this rule, the general order of the Commission with relation to the subdivision of property shall be observed.

Provided, however, that for purposes of spacing for horizontal wells, the following shall apply:

a. A take point in a horizontal drainhole well is any point along a horizontal drainhole where oil and/or gas can be produced into the wellbore from the reservoir/field interval. The first take point may be at a different location than the penetration point and the last take point may be at a location different than the terminus point.

b. All take points in a horizontal drainhole well shall be a minimum of THREE HUNDRED THIRTY (330) feet from any property line, lease line, or subdivision line. A permit or an amended permit is required for all take points closer to the property line, lease line, or subdivision line than the lease line spacing distance, including any perforations added in the vertical portion or the curve of a horizontal drainhole well.

For all horizontal wells, the drilling permit application (Form W-1H) and plat shall identify the penetration point and the terminus of the wellbore, the first and last take points, and if there is any continuous span of more than 100 feet without take points between the first and last take points, every perforation or other take point in the wellbore must also be identified on the drilling permit application (remarks section) and plat. Operators shall file an as-drilled plat showing the path, penetration point, terminus, first and last take points, and if there is any continuous span of more than 100 feet without take points between the first and last take points, every perforation or other take point in the wellbore of all drainholes in horizontal wells, regardless of allocation formula.

For any well permitted in this field, the penetration point need not be located on the same lease, pooled unit or unitized tract on which the well is permitted and may be located on an Offsite Tract. When the penetration point is located on such Offsite Tract, the applicant for such a drilling permit must give 21 days notice by certified mail, return receipt

requested to the mineral owners of the Offsite Tract. For the purposes of this rule, the mineral owners of the Offsite Tract are (1) the designated operator; (2) all lessees of record for the Offsite Tract where there is no designated operator; and (3) all owners of unleased mineral interests where there is no designated operator or lessee. In providing such notice, applicant must provide the mineral owners of the Offsite Tract with a plat clearly depicting the projected path of the entire wellbore. In the event the applicant is unable, after due diligence, to locate the whereabouts of any person to whom notice is required by this rule, the applicant must publish notice of this application pursuant to the Commission's Rules of Practice and Procedure. If any mineral owner of the Offsite Tract objects to the location of the penetration point, the applicant may request a hearing to demonstrate the necessity of the location of the penetration point of the well to prevent waste or to protect correlative rights. Notice of Offsite Tract penetration is not required if (a) written waivers of objection are received from all mineral owners of the Offsite Tract; or, (b) the applicant is the only mineral owner of the Offsite Tract. To mitigate the potential for well collisions, applicant shall promptly provide copies of any directional surveys to the parties entitled to notice under this section, upon request.

**RULE 3:** The acreage assigned to an individual gas well shall be known as a proration unit. The standard drilling and proration units are established hereby to be THREE HUNDRED TWENTY (320) acres. No proration unit shall consist of more than THREE HUNDRED TWENTY (320) acres; provided that, tolerance acreage of ten (10) percent shall be allowed for each standard proration unit so that an amount not to exceed a maximum of THREE HUNDRED FIFTY TWO (352) acres may be assigned. Each proration unit containing less than THREE HUNDRED TWENTY (320) acres shall be a fractional proration unit. All proration units shall consist of continuous and contiguous acreage which can reasonably be considered to be productive of gas. No double assignment of acreage will be allowed.

An operator, at his option, shall be permitted to form optional drilling and proration units of TWENTY (20) acres. A proportional acreage allowable credit will be given for a well on a fractional proration unit. There is no maximum diagonal limitation in this field.

For the determination of acreage credit in this field, operators shall file for each well in this field a Form P-15 Statement of Productivity of Acreage Assigned to Proration Units. On that form or an attachment thereto, the operator shall list the number of acres that are being assigned to each well on the lease or unit for proration purposes. When the allocation formula in this field is suspended, operators in this field shall not be required to file plats with the Form P-15. When the allocation formula is in effect in this field, operators shall be required to file, along with the Form P-15, a plat of the lease, unit or property; provided that such plat shall not be required to show individual proration units. Provided further, that if the acreage assigned to any well has been pooled, the operator shall furnish the Commission with such proof as it may require as evidence that interests in and under such proration unit have been so pooled. Operators in this field are exempt from the requirements of Rule 86(f)(4) entitled Proration Unit Plat; however operators must, for each horizontal drainhole, file a plat showing the as-drilled path, penetration point, terminus and,

if applicable, perforations or external casing packer, for that horizontal drainhole and, for wells treated as stacked laterals, operators must file the plats required by paragraph number 6 of Rule 5. All plats referred to in this paragraph may be either a surveyor's plat or a certified plat, at the operator's option.

For the purpose of assigning additional acreage to a horizontal well pursuant to Rule 86, the distance from the first take point to the last take point in the horizontal drainhole shall be used in such determination, in lieu of the distance from penetration point to terminus. Provided, however, that if any horizontal wellbore has one or more continuous spans in excess of 330 feet without take points, the length of such spans shall be excluded form the calculation of horizontal drainhole displacement for purposes of assigning additional acreage.

**RULE 4:** For oil and gas wells, Stacked Lateral Wells within the correlative interval for the field that are drilled from different wellbores may be considered a single well for regulatory purposes, as provided below:

1. A horizontal drainhole well qualifies as a Stacked Lateral Well under the following conditions:
   a) There are two or more horizontal drainhole wells on the same lease or pooled unit within the correlative interval for the field;
   b) Horizontal drainholes are drilled from at least 2 different surface locations on the same lease or pooled unit;
   c) There shall be no more than 250 feet between the surface locations of horizontal drainholes qualifying as a Stacked Lateral Well.
   d) Each point of a Stacked Lateral Well's horizontal drainhole shall be no more than 300 feet in a horizontal direction from any point along any other horizontal drainhole of that same Stacked Lateral Well. This distance is measured perpendicular to the orientation of the horizontal drainhole and can be illustrated by the projection of each horizontal drainhole in the Stacked Lateral Well into a common horizontal plane as seen on a location plat; and
   e) There shall be no maximum or minimum distance limitations between horizontal drainholes of a Stacked Lateral Well in a vertical direction.

2. A Stacked Lateral Well, including all surface locations and horizontal drainholes comprising such Stacked Lateral Well, shall be considered as a single well for density and allowable purposes.

3. Each surface location of a Stacked Lateral Well must be permitted separately and assigned an API number. In permitting a Stacked Lateral Well, the operator shall identify each surface location of such well with the designation "SL" in the well's lease name and also describe the well as a Stacked Lateral Well in the "Remarks" of the Form W-1 drilling permit application. The operator shall also identify on the plat any other existing, or applied for, horizontal drainholes comprising the Stacked Lateral Well being permitted.

4. To be a regular location, each horizontal drainhole of a Stacked Lateral Well must comply with (i) the field's minimum spacing distance as to any lease, pooled unit or property line, and (ii) the field's minimum between well spacing distance as to any different well, including all horizontal drainholes of any other Stacked Lateral Well, on the same lease or pooled unit in the field. Operators may seek exceptions to Rules 37 and 38 for Stacked Lateral Wells in accordance with the Commission's rules, or any applicable rule for this field.

5. Operators shall file separate completion forms for each surface location of the Stacked Lateral Well. Operators shall also file a certified as-drilled location plat for each surface location of a Stacked Lateral Well showing each horizontal drainhole from that surface location, confirming the well's qualification as a Stacked Lateral Well and showing the maximum distances in a horizontal direction between each horizontal drainhole of the Stacked Lateral Well.

6. In addition to the completion forms for each surface location of a Stacked Lateral Well, the operator must file a separate Form G-1 or Form W-2 for record purposes only for the Commission's Proration Department to build a fictitious "Record Well" for the Stacked Lateral Well. This Record Well will be identified with the words "SL Record" included in the lease name. This Record Well will be assigned an API number and Gas Well ID or Oil lease number and listed on the proration schedule with an allowable if applicable.

7. In addition to the Record Well, each surface location of a Stacked Lateral Well will be listed on the proration schedule, but no allowable shall be assigned for an individual surface location. Each surface location of a Stacked Lateral Well shall be required to have a separate G-10 or W-10 test and the sum of all horizontal drainhole test rates shall be reported as the test rate for the Record Well.

8. Operators shall report all production from horizontal drainholes included as a Stacked Lateral Well on Form PR to the Record Well. Production reported for a Record Well is the total production from the horizontal drainholes comprising the Stacked Lateral Well. Operators shall measure the production from each surface location of a Stacked Lateral Well. Operators may measure full well stream with the measurement adjusted for the allocation of condensate based on the gas to liquid ratio established by the most recent G-10 well test rate for that surface location. The gas and condensate production will be identified by individual API number and recorded and reported on the "Supplementary Attachment to Form PR".

9. If the field's 100% AOF status should be removed, the Commission's Proration Department shall assign a single gas allowable to each Record Well classified as a gas well. The Commission' s Proration Department shall also assign a single oil allowable to each Record Well classified as an oil well. The assigned allowable may be produced from any one or all of the horizontal drainholes comprising the Stacked Lateral Well.

10. Operators shall file an individual Form W-3A Notice of Intention to Plug and Abandon and Form W-3 Well Plugging Report for each horizontal drainhole comprising the Stacked Lateral Well as required by Commission rules.

11. An operator may not file Form P-4 to transfer an individual surface location of a Stacked Lateral Well to another operator. P-4's filed to change the operator will only be accepted for the Record Well if accompanied by a separate P-4 for each surface location of the Stacked Lateral Well.

RULE 5: The daily allowable production of gas from individual wells completed in the subject field shall be determined by allocating the allowable production, after deductions have been made for wells which are incapable of producing their gas allowables, among the individual wells in the following manner:

FIVE percent (5%) of the field's total allowable shall be allocated equally among all the individual proratable wells producing from the field.

NINETY FIVE percent (95%) of the total field allowable shall be allocated among the individual wells in the proportion that the acreage assigned such well for allowable purposes bears to the summation of the acreage with respect to all proratable wells producing from this field.

It is further **ORDERED** by the Railroad Commission of Texas that the application of Devon Energy Production Co., LP for suspension of the allocation formula in the Carthage (Haynesville Shale) Field is approved. The allocation formula may be reinstated administratively if the market demand for gas in the Carthage (Haynesville Shale) Field drops below 100% of deliverability. If the market demand for gas in the Carthage (Haynesville Shale) Field drops below 100% of deliverability while the allocation formula is suspended, the operator shall immediately notify the Commission and the allocation formula shall be immediately reinstated.

It is further **ORDERED** that a hearing will be held on or before July 1, 2011, to consider whether these Field Rules should be made permanent, modified or rescinded.

It is further **ORDERED** by the Railroad Commission of Texas that the following fields are consolidated into the Carthage (Haynesville Shale) Field (RRC Field No. 16032 300), Harrison, Nacogdoches, Panola, Rusk and Shelby Counties, Texas:

| FIELD NAME | FIELD NUMBER |
|---|---|
| Shelbyville Deep (Haynesville) | 82907 500 |
| Center (Haynesville) | 16697 300 |
| Carthage, E. (Bossier) | 16033 500 |
| Waskom (Haynesville) | 95369 260 |
| Naconiche Creek (Haynesville) | 64300 280 |

| | |
|---|---|
| Naconiche Creek (Bossier) | 64300 100 |
| Bossierville (Bossier Shale) | 10758 500 |
| Beckville (Haynesville) | 06448 600 |
| Carthage, North (Bossier Shale) | 16034 200 |

Wells in the subject fields shall be transferred into the Carthage (Haynesville Shale) Field without requiring new drilling permits.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

This order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

Done this _____ day of _________________, 2009.

**RAILROAD COMMISSION OF TEXAS**

_______________________________

**Chairman Victor G. Carrillo**

_______________________________

**Commissioner Elizabeth A. Jones**

_______________________________

**Commissioner Michael L. Williams**

**ATTEST:**

_______________________________

**Secretary**

VICTOR G. CARRILLO, *CHAIRMAN*
ELIZABETH A. JONES, *COMMISSIONER*
MICHAEL L. WILLIAMS, *COMMISSIONER*

LINDIL C. FOWLER, JR., *GENERAL COUNSEL*
COLIN K. LINEBERRY, *DIRECTOR*
*HEARINGS SECTION*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

December 16, 2009

Brian Sullivan, Attorney
Representing Devon Energy Production Co. LP
PO Box 12127
Austin TX 78711

Re: **OIL & GAS DOCKET NO. 06-0262000**; THE APPLICATION OF DEVON ENERGY PRODUCTION CO., LP FOR A NEW FIELD DISCOVERY AND TO ADOPT FIELD RULES FOR THE PROPOSED CARTHAGE (HAYNESVILLE) FIELD, PANOLA COUNTY, TEXAS; **FINAL ORDER**

To the Parties:

The Railroad Commission of Texas has acted upon the above-referenced case. Please refer to the attached Final Order for the terms and date of such action.

This order will not be final and effective until at least 23 days after the date of this letter. If a Motion for Rehearing is timely filed, this order will not be final and effective until such Motion is overruled. A Motion for Rehearing should state the reasons you believe a rehearing should be granted, including any errors that you believe exist in the Commission's order. If the Motion is granted, the order will be set aside and the case will be subject to further action by the Commission at that time or at a later date.

To be timely, a Motion for Rehearing must be received by the Commission's Docket Services (see letterhead address) no later than 5:00 p.m. on the 20th day after you are notified of the entry of this order. You will be presumed to have been notified of this order three days after the date of this letter. This deadline cannot be extended by the Examiners. Fax transmissions will not be accepted without prior approval from the hearings examiner. **ORIGINAL PLUS THIRTEEN** copies of the Motion for Rehearing shall be submitted to the hearings examiner. **PLEASE DO NOT STAPLE COPIES.** One copy must be sent to each party. **In addition, if practical, parties are requested to provide the examiners with a copy of the Motion for Rehearing on a diskette in Word or WordPerfect format. The diskette should be labeled with the docket number, the title of the document, and the format of the document.**

Sincerely,

Richard D. Atkins (krj)

Richard D. Atkins
Technical Examiner
Office of General Counsel

RDA/krj

Enclosures

cc: Tommie Seitz - RRC, Austin
Dorsey Twidwell- RRC, Austin
Joe Stasulli - RRC, Austin
Kilgore District Office - 06
Compliance Analyst - 06

Sandra Buch, Attorney
Representing Devon Energy Production Co. LP
PO Box 12127
Austin TX 78711

Dale Greenfeather, Geologist
1200 Smith
Houston TX 77002

Ben Wilson
1200 Smith St
Houston TX 77002

Brad Hall
1200 Smith St
Houston TX 77002

Douglas Dahmann
1200 Smith St
Houston TX 77002

Daniel W Higdon
1200 Smith St
Houston TX 77002

Ana Marie Marsland-Griffith, Attorney
Representing Anadarko E & P Company, LP
515 Congress Ave Ste 2450
Austin TX 78759

Frank A. Davis
1201 Lake Robbins Dr
The Woodlands TX 77380

Flip Whitworth, Attorney
Representing EOG Resources, Inc.,
R. Lacy, Inc., Darren Groce, Mickey Melton, Randall Davis, and Richard Rhodes
600 Congress Ave Ste 1500
Austin TX 78701

Scott Crump
PO Box 1330
Houston TX 77251

George Neale, Attorney
Representing El Paso E & P Company, LP, Energen Resources Corp, and Tanos Exploration, LLC
PO Box 1945
Austin TX 78767

Bill G. Spencer
Representing Chesapeake Operating, LLC
201 S Lakeline Blvd Ste 303
Cedar Park TX 78613

Carroll Martin, Attorney
Representing EOG Resources, Inc.,
R. Lacy, Inc. , Darren Groce, Mickey Melton, Randall Davis, and Richard Rhodes
600 Congress Ave Ste 1500
Austin TX 78701

David Gross, Attorney
Representing XTO Energy, Inc.
12400 Hwy 71 W. Ste 350-230
Austin TX 78738

Mickey Olmstead, Attorney
Representing Samson Lone Star, LLC
PO Box 12127
Austin TX 78711

Tim George, Attorney
Representing ExxonMobil Corporation
600 Congress Ave Ste 2100
Austin TX 78701