MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney
       Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: October 15, 2019

SUBJECT: Proposed Amendments to 16 TAC §3.40, relating to Assignment of Acreage to Pooled Development and Proration Units.

Attached is Staff’s recommendation to amend 16 Texas Administrative Code §3.40 to allow the same surface acreage to be assigned to more than one well in an unconventional fracture treated (UFT) field when mineral ownership is severed at different depths below the surface.

Staff requests the Commission’s approval to publish the proposed amendments in the Texas Register for public comment. If approved at conference on October 22nd, the proposal should appear in the November 8th issue of the Texas Register. The proposal and an online comment form would also be made available on the Commission’s website by October 23rd, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
    Danny Sorrells, Director, Oil and Gas Division
    Jason Clark, Director of Agency Projects
Railroad Commission of Texas
16 TAC Chapter 3--Oil and Gas Division

The Railroad Commission of Texas proposes amendments to §3.40, relating to Assignment of
Acreage to Pooled Development and Proration Units. The amendments are proposed to allow the same
surface acreage to be assigned to more than one well in an unconventional fracture treated (UFT) field
when mineral ownership is severed at different depths below the surface.

Currently, §3.40 prohibits acreage from being assigned to more than one well in a field, except in
limited circumstances. The Commission recognizes significant changes have occurred in the exploration
and production industry in Texas, and certain rule changes are needed to uphold the Commission’s
statutory requirements to prevent waste and protect correlative rights. Specifically, the Commission has
determined there are circumstances in which the assignment of acreage to more than one well in a field is
necessary to prevent waste and protect correlative rights. The basis for this determination arises from
primarily two factors: (1) severed ownership of mineral rights at depth, and (2) technological advances
that have unlocked heretofore inaccessible hydrocarbon resources in UFT fields.

Several years ago, Commission staff and operators in certain fields began to experience difficulty
in applying the language of §3.40 because many fields contain multiple productive zones within the
field’s overall interval. In these same fields, private lease provisions were creating horizontal severances
such that undeveloped intervals were required to be returned to lessors after some period of time. These
depth severances created more than one ownership interval beneath the surface. In December 2013, the
Commission recognized the limitations of §3.40 as applied to the Spraberry (Trend Area) Field and
signed a final order (O&G Docket No. 7C-0283443) creating a “Rule 40 Exception Field” to allow
acreage in the Spraberry to be assigned twice – to a well in the shallow portion of the field and a well in
the deep portion. Since 2013, the issue with depth severances has expanded so that more fields are
experiencing the same limitations with §3.40. In addition, private lease agreements are creating multiple
depth severances such that even allowing duplicate assignment of acreage to wells in shallow and deep
portions of a field may still limit development in UFT fields. For example, private lease agreements and
other land transactions for a tract may create five or more distinct ownership intervals that vary by depth
within a single field. Under current §3.40, the operator could develop one ownership interval. Under
existing field rules in the Spraberry, an operator could develop two. In either scenario, at least three
intervals could not be developed.

In 2016, the Commission established UFT fields to address the efficient production of
hydrocarbons from reservoirs that exhibited certain “unconventional” characteristics. A UFT field is a
field in which horizontal drilling and hydraulic fracturing must be used in order to recover resources from
all or part of the field and which is developed using either vertical and horizontal drilling techniques. This
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designation includes shale formations in which the drainage of a wellbore is based upon the area reached
by the hydraulic fracturing treatments rather than conventional flow patterns. That is, in UFT fields
hydrocarbon fluids do not flow beyond the spatial limits of the stimulated reservoir volume. Efficient
production is not dependent upon conventional reservoir structure, stratigraphy, or native reservoir
properties, but on the quality and characteristics of the fracture stimulation treatments. Therefore, the
Commission recognized the need for special provisions for UFT fields through the amendments to §3.86,
relating to Horizontal Drainhole Wells, adopted in 2016. Similarly, the Commission now proposes
amendments to §3.40 to allow the same surface acreage to be assigned to more than one well in a UFT
field when mineral ownership is severed below the surface.

In preparation for this proposal, Commission staff circulated an informal draft and received
several comments, which informed the proposed amendments described below. The Commission
appreciates the interest and participation from stakeholders.

Proposed amendments to §3.40(d) and (e)(1) are nonsubstantive. The amendments proposed in
§3.40(d) clarify the term “multiple assignment of acreage,” and amendments to §3.40(e)(1) reorganize
existing language related to assignment of acreage to horizontal and vertical wells.

Proposed amendments to §3.40(e)(2) provide that where ownership of the right to drill or produce
from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well
provided that the wells having the same wellbore profile are not completed in the same ownership
interval. “Divided horizontally” means that ownership of the right to drill or produce has been divided
into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some
other discriminator. A tract may be “divided horizontally” even where one operator has the right to drill
or produce multiple intervals on the same tract of land in the same field.

Proposed amendments to §3.40(e)(2)(A) require that an application for multiple assignment of
acreage under subsection (e) show the upper and lower limits of the operator’s ownership interval. The
interval is measured as the total vertical depth from the surface. The Commission understands that, due to
geological characteristics, the total vertical depth provided by an operator will be an approximation.
However, Commission staff needs this information to conduct required due diligence before granting a
drilling permit.

The proposed amendments in §3.40(e)(2)(B) require that within 15 days prior to filing its drilling
permit application, an applicant for multiple assignment of acreage shall locate any well, including wells
permitted but not yet drilled or completed, that is located within one-half mile of the applicant’s proposed
wellbore between the first and last take points. The applicant must use all available resources, including
but not limited to the Commission’s GIS well database, to find wells within the one-half mile radius. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of those wells.

Proposed amendments to §3.40(e)(2)(C) provide a right to request a hearing to a person who was entitled to notice but claims he or she did not receive it. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

Proposed amendments to §3.40(e)(2)(D) provide a method for obtaining copies of directional surveys, and proposed amendments to §3.40(e)(2)(E) clarify that field density rules will apply separately to each ownership interval.

Proposed amendments to §3.40(e)(2)(F) clarify that upon the effective date of the proposed rule amendments, which will be added at such time as the amendments are adopted, existing field rules that allow assignment of acreage to more than one well in a UFT field are superseded by §3.40. Subparagraph (F) also prohibits field rule applications regarding multiple assignment of acreage in UFT fields until two years after the effective date of the proposed amendments. Several comments on the informal draft requested removing this provision. The commenters believed a ban on field rule applications would be unduly prejudicial. The Commission disagrees. Commission staff must develop and learn new procedures to implement the proposed amendments, if adopted. If, after adoption of any amendments to §3.40, field rule amendments were adopted to create different requirements for each field, then Commission staff would have to develop and learn different procedures for each field. Therefore, the Commission proposes a hold on field rule applications to allow Commission staff time to test these procedures and resolve any issues before making piecemeal changes. The amendments are proposed with a minor change to the informal draft language such that field rule applications may be submitted two years after the effective date of the rule amendments. The Commission also notes that the temporary prohibition would only apply to UFT fields and only to field rule applications addressing multiple assignment of acreage. In addition, operators would still have the opportunity to seek relief from §3.40 by applying for an exception for an individual well or lease.

Proposed new §3.40(e)(3) allows the Commission to require non-confidential information supporting the operator’s right to drill or produce in the interval indicated on the operator’s drilling permit application.

Proposed new §3.40(f) allows the Oil and Gas Director or the director’s delegate to resolve existing instances of multiple assignment of acreage upon an operator’s written request and for good
cause shown. If such a request is administratively denied, the operator shall have a right to request a
hearing to review the denial. The term “existing” is not meant to apply only to instances of multiple
assignment of acreage existing at the time of the adoption of proposed amendments but is intended to
apply to instances of multiple assignment of acreage existing at the time of the written request for relief.
In other words, the relief proposed in subsection (f) can be requested for good cause when acreage is
assigned to more than one well and the subject wells have already been drilled or completed.
Proposed new §3.40(g) formalizes the process for obtaining an exception to §3.40. If an operator
does not qualify for multiple assignment of acreage under subsection (e), acreage cannot be assigned to
more than one well unless the operator is granted an exception after public hearing held after notice to all
persons described in subsection (g).

Jason Clark, Director of Agency Projects, has determined that for each year of the first five years
the amendments as proposed will be in effect, there will be minimal fiscal implications to the
Commission as a result of enforcing or administering the amendments. Any costs associated with the
amendments would be due to minor programming to update online systems. There will be no fiscal effect
on local government.

Mr. Clark has determined that for the first five years the proposed amendments are in effect, the
primary public benefit will be increased development of resources.

Mr. Clark has determined that for each year of the first five years that the amendments will be in
effect, there will be no economic costs for persons required to comply as a result of adoption of the
proposed amendments. The amendments would allow surface acreage to be assigned to more than one
well in a UFT field.

The Commission has determined that the proposed amendments to §3.40 will not have an adverse
economic effect on rural communities, small businesses or micro businesses. As noted above, there is no
anticipated additional cost for any person required to comply with the proposed amendments. Therefore,
the Commission has not prepared the economic impact statement or the regulatory flexibility analysis
pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local
economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to

The Commission has determined that the amendments do not meet the statutory definition of a
major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
analysis conducted pursuant to that section is not required.
During the first five years that the rules would be in effect, the proposed amendments would not:
create or eliminate a government program; create or eliminate any employee positions; require an increase
or decrease in future legislative appropriations; create a new regulation; increase or decrease the number
of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect
the state's economy. The proposed amendments may increase fees paid to the agency. Because the
amendments would allow increased development in UFT fields, the Commission may receive more
drilling permit applications and corresponding fees.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday,
December 9, 2019. The Commission finds that this comment period is reasonable because the proposal
and an online comment form will be available on the Commission's website more than two weeks prior to
Texas Register publication of the proposal, giving interested persons additional time to review, analyze,
draft, and submit comments. The Commission cannot guarantee that comments submitted after the
deadline will be considered. For further information, call Mr. Clark at (512) 463-2655. The status of
Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-
rules.

The Commission proposes the amendments to §3.40 pursuant to Texas Natural Resources Code
§§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or
engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for
governing and regulating persons and their operations under the jurisdiction of the Commission; Texas
Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units
for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing
waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and
enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for
drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports
to be made.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202 and Chapter
102.

Cross reference to statute: Texas Natural Resources Code Chapters 81, 85, and 102.
§3.40. Assignment of Acreage to Pooled Development and Proration Units.

(a) An operator may pool acreage, in accordance with appropriate contractual authority and applicable field rules, for the purpose of creating a drilling unit or proration unit by filing an original certified plat delineating the pooled unit and a Certificate of Pooling Authority, Form P-12, according to the following requirements:

(1) Each tract in the certified plat shall be identified with an outline and a tract identifier that corresponds to the tract identifier listed on Form P-12.

(2) The operator shall provide information on Form P-12, accurately and according to the instructions on the form.

(A) The operator shall separately list each tract committed to the pooled unit by authority granted to the operator.

(B) For each tract listed on Form P-12, the operator shall state the number of acres contained within the tract. The operator shall indicate by checking the appropriate box on Form P-12 if, within an individual tract, there exists a non-pooled and/or unleased interest.

(C) The operator shall state on Form P-12 the total number of acres in the pooled unit. The total number of acres in the pooled unit shall equal the sum of all acres in each [individual] tract listed. The total acreage shown on Form P-12 shall only include tracts in which the operator holds a leased or ownership interest in the minerals or other contractual authority to include the tract in the pooled unit.

(D) If a pooled unit contains more tracts than can be listed on a single Form P-12, the operator shall file as many additional Forms P-12 as necessary to list each pooled tract individually. The additional Forms P-12 shall be numbered in sequence.

(E) The operator shall provide the requested identification and contact information on Form P-12.
(F) The operator shall certify the information on Form P-12 by signing and
dating the form.

(3) Failure to timely file the required information on the certified plat or Form P-12 may
result in the dismissal of the W-1 application. "Timely" means within three months of the Commission
notifying the operator of the need for additional information on the certified plat and/or Form P-12.

(4) The operator shall file Form P-12 and a certified plat in the following instances:

(A) with the drilling permit application when two or more tracts are joined to
form a pooled unit for Commission purposes;

(B) with the initial completion report if any information reported on Form P-12
has changed since the filing of the drilling permit application;

(C) to designate a pooled unit formed after a completion report has been filed; or

(D) to designate a change in a pooled unit previously recognized by the
Commission. The operator shall file any changes to a pooled unit in accordance with the requirements of
§3.38(d)(3) of this title (relating to Well Densities).

(b) If a tract to be pooled has an outstanding interest for which pooling authority does not exist,
the tract may be assigned to a unit where authority exists in the remaining undivided interest[1]
provided[2] that total gross acreage in the tract is included for allocation purposes, and the certificate filed
with the Commission shows that a certain undivided interest is outstanding in the tract. The Commission
may not allow an operator to assign only the operator's undivided interest out of a basic tract[3] where a
nonpooled interest exists.

(c) The nonpooled undivided interest holder retains the development rights in the basic tract. If
the development rights are exercised, the Commission grants authority to develop the basic tract, and the
well is completed as a producing well on the basic tract, then the entire interest in the basic tract and any
interest pooled with another tract shall be assigned to the well on the basic tract for allocation purposes.
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Splitting of an undivided interest in a basic tract between two or more wells on two or more tracts is not acceptable.

(d) **Multiple assignment of acreage is not permitted, except** [Except] as provided in subsection (e) of this section. **Multiple assignment of acreage is defined as the assignment of the same surface acreage to more than one well in a field, acreage assigned to a well for drilling and development, or for allocation of allowable, shall not be assigned to any other well or wells completed or projected to be completed in the same field; such duplicate assignment of acreage is not acceptable.** However, this limitation shall not prevent the reformation of development or proration units so long as:

1. no **multiple [duplicate]** assignment of acreage occurs; and
2. such reformation does not violate other conservation regulations.

(e) In unconventional fracture treated (UFT) fields defined in §3.86 of this title (relating to Horizontal Drainhole Wells), **multiple [duplicate]** assignment of acreage [to both a horizontal well and a vertical well for drilling and development or for allocation of allowable] is permissible as follows:

1. **Assignment of acreage to both a horizontal well and a vertical well for drilling and development or for allocation of allowable is permissible.** The field density rules apply independently to horizontal wells and vertical wells. Acreage assigned to horizontal wells shall not count against acreage assigned to vertical wells, and acreage assigned to vertical wells shall not count against acreage assigned to horizontal wells.

2. **(A) [(2)] Acreage assigned to horizontal wells for drilling and development[,] or for allocation of allowable[,] shall be permissible [acceptable] so long as the horizontal well density complies with §3.38 of this title and/or special field rules, as applicable. For the purposes of this section, stacked lateral wells as defined in §3.86(a)(10) of this title are not considered assignment of acreage to multiple horizontal wells.**
(B) [(4)] Acreage assigned to vertical wells for drilling and development[1] or for
allocation of allowable[2] shall be permissible [acceptable] so long as the vertical well density complies
with §3.38 of this title and/or special field rules, as applicable.

[(4) For the purposes of this section, stacked lateral wells as defined in §3.86(a)(10) of
this title are not considered duplicate assignment of acreage to multiple horizontal wells.]

(2) Where ownership of the right to drill or produce from a tract in a UFT field is divided
horizontally, acreage may be assigned to more than one well provided that the wells having the same
wellbore profile are not completed in the same ownership interval. For purposes of this section "divided
horizontally" means that ownership of the right to drill or produce has been separated into depth intervals
defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator.
A tract may be “divided horizontally” even where one operator has the right to drill or produce multiple
intervals on the same tract of land in the same field.

(A) To apply for multiple assignment of acreage under this subsection, the
operator’s drilling permit application shall indicate the upper and lower limits of the operator’s ownership
interval. The interval shown on the drilling permit application is measured as the total vertical depth from
the surface.

(B) Within 15 days prior to filing its drilling permit application, the applicant
shall locate any well, including any wells permitted but not yet drilled or completed, that is located within
one-half mile of the applicant’s proposed wellbore between the first and last take points. The applicant
shall then send written notice of its application to the P-5 address of record of each Commission-
designated operator of the wells determined to fall within the one-half mile radius. The applicant shall
attach to the notice a certified plat that clearly depicts the projected path of the wellbore and the one-half
mile radius surrounding the wellbore from the first take point to the last take point. Copies of the notice,
service list, and certified plat shall be filed with the drilling permit application.
(C) If any person entitled to notice under this subsection did not receive notice, that person may request a hearing. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

(D) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant’s receipt of a request.

(E) Where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, the field density rules for the field will apply separately to each ownership interval, such that pronation units on a tract above and below a division of ownership are accounted for separately.

(F) Field rules that allow assignment of acreage to more than one well in UFT fields are superseded by this rule amendment, as of the effective date of this amendment. If, prior to the effective date of this amendment, an operator has assigned acreage to more than one well pursuant to previous field rules, such multiple assignment remains valid. After the effective date of this amendment, multiple assignment of acreage is not permissible unless the applicant complies with the requirements of this subsection. The Commission will not consider any applications for field rules regarding multiple assignment of acreage in UFT fields until two years after the effective date of this amendment.

(3) Upon request by the Commission, an operator shall provide non-confidential information supporting its right to drill or produce in the interval indicated on its drilling permit application.

(f) Upon an operator’s written request and for good cause shown, the director or the director’s delegate may resolve an existing instance of multiple assignment of acreage. If such a request is administratively denied, the operator shall have a right to request a hearing to review the denial.
(g) If an operator does not qualify for multiple assignment of acreage under subsection (e) of this section, acreage cannot be assigned to more than one well unless the operator is granted an exception after a public hearing held after notice to all persons described in paragraph (2) of this subsection.

(1) An operator applying for an exception must show:

(A) an exception is necessary to prevent waste, prevent confiscation, or protect correlative rights;

(B) ownership under the tract is divided horizontally as defined in subsection (e) of this section; and

(C) the wells are not completed in the same ownership interval.

(2) With its application for an exception, the operator shall file the mailing addresses of all mineral interest owners within the Commission-designated field underlying the drilling unit and all mineral owners of any tracts adjacent to the drilling unit. In the event the applicant is unable after due diligence to locate the whereabouts of any person to whom notice is required by this subsection, the applicant shall publish notice of this application pursuant to §1.43 of this title (relating to Notice by Publication).

(3) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant’s receipt of a request.

(h) If an offset, overlying, or underlying operator, or a lessee or unleased mineral interest owner determines that any operator has assigned identical acreage to two or more concurrently producing wells in violation of this section, the operator or owner may file a complaint with the Hearings Division to request that a hearing be set to consider the issues raised in the complaint. If the Commission determines after a hearing on the complaint that acreage has been assigned in violation of this section, the
Commission may curtail or cancel the allowable production rate for any affected wells and/or may cancel the Certificate of Compliance (Form P-4) for any affected wells for failure to comply with this section.

(i) [(g)] An operator shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report for horizontal wells in any field and for all wells in designated UFT fields as defined in §3.86 of this title. An operator assigning surface acreage to more than one well pursuant to subsection (g) of this section shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report. The operator may file Form P-16 with each drilling permit application and with each completion report for all other wells. The operator may also file proration unit plats for individual wells in a field.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on October 22, 2019.

Filed with the Office of the Secretary of State on October 22, 2019.

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas