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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

July 24, 2014

OIL & GAS DOCKET NO. 02-0284266

COMMISSION CALLED HEARING TO PROVIDE BES ENVIRONMENTAL SERVICES, INC. AN OPPORTUNITY TO SHOW CAUSE WHY ITS DISPOSAL PERMIT (PERMIT NO. 13637) FOR THE HOSKINS, W.B. LEASE, WELL NO. 1, SPEARY (ROEDER 9100) FIELD, KARNES COUNTY, TEXAS, SHOULD NOT BE MODIFIED, SUSPENDED OR TERMINATED.

APPEARANCES:

FOR : BES Environmental Services, Inc.

Kelly Beck, Geologist

REPRESENTING:

BES Environmental Services, Inc.

FOR: Protestant

Anatole Barnstone, Attorney

Stephen Fenoglio, Attorney

Robert Elizondo

REPRESENTING:

Robert Elizondo

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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:

August 16, 2013

DATE OF NOTICE OF HEARING:

October 2, 2013

DATE OF HEARING:

December 5, 2013

HEARD BY:

Marshall Enquist, Hearings Examiner

Paul Dubois, Technical Examiner

DATE RECORD CLOSED:

December 5, 2013

PFD ISSUED:

July 24, 2014

STATEMENT OF THE CASE

On July 21, 2011, Applicant BES Environmental Services (hereinafter “BES”) submitted a Form W-14 application pursuant to Statewide Rule 9 for its proposed disposal well, the W.B. Hoskins Well No. 1 in Karnes County. On February 20, 2012, BES submitted a revised application



for the well which increased the Maximum Daily Injection Volume from 2,000 bpd to 7,500 bpd. The revised application also reduced the Maximum Surface Injection Pressure from 3,000 psig to 1500 psig, the Estimated Average Daily Injection Volume from 10,000 bpd to 1,800 bpd and the Estimated Average Surface Injection Pressure from 2,000 psig to 1,200 psig. On March 26, 2012, BES presented another revised application for the disposal well. On April 19, 2012, the Commission granted BES Environmental Services Permit No. 13637 (Commercial), a Permit to Dispose of Non-Hazardous Oil and Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas, for its W.B. Hoskins Lease, Well No. 1 in the Speary (Roeder 9100) Field in Karnes County, Texas, pursuant to Statewide Rule 9.

Under Statewide Rule 9, the applicant is responsible for providing notice of the application by mailing a copy of the Form W-14 to all affected parties. Notice of application is also provided by publishing notice one time in a newspaper of general circulation in the county in which the well is located.

The application was protested by Meta Sparks, an adjoining landowner. In order to secure the withdrawal of the Meta Sparks protest, BES agreed to move the surface facility to a location that would not be directly across State Highway 72 from Ms. Sparks's property. The new surface facility location placed it directly across the highway from the property of Mr. Robert Elizondo. By letter dated April 15, 2013 received at the Commission on April 16, 2013, Mr. Elizondo indicated he had become aware of the application and believed he would be affected by the permitted disposal well and facility, but had not received notice of the application. Mr. Elizondo also pointed out that both the BES application and published notice of the application indicated the well was located 3.5 miles northeast of the city of Runge, when in fact the well is located 0.5 miles southwest of Runge. This complaint letter became the basis for opening Complaint File 2013-047.

Examiner Michael Crnich issued a letter on June 20, 2013, giving BES three weeks, until July 11, 2013, to respond to Mr. Elizondo's complaint and explain why Permit No. 13637 should not be revoked for failure to provide proper notice. On July 31, 2013, Examiner Crnich issued a letter noting that he had not received a reply to his earlier letter and was forwarding the Complaint file to Docket Services to be set for hearing to give BES an opportunity to show cause why its disposal permit should not be revoked for failure to provide notice.

BES appeared at the hearing through Kelly Beck, a Geologist. Complainant Robert Elizondo appeared at the hearing, represented by Attorneys Stephen Fenoglio and Anatole Barnstone.

APPLICABLE LAW

Statewide Rule 9(5)(A)-(B) [TEX. ADMIN. CODE §3.9(5)(A)-(B)] states:

(A) The applicant shall give notice by mailing or delivering a copy of the application to affected persons who include the owner of record of the surface tract on which the well is located;

each Commission-designated operator of any well located within one-half mile of the proposed disposal well; the county clerk of the county in which the well is located; and the city clerk or other appropriate city official of any city where the well is located within the municipal boundaries of the city, on or before the date the application is mailed to or filed with the Commission. For the purposes of this section, the term “of record” means recorded in the real property or probate records of the county in which the property is located.

(B) In addition to the requirements of subsection (5)(A) of this section, a commercial disposal well permit applicant shall give notice to owners of record of each surface tract that adjoins the proposed disposal tract by mailing or delivering a copy of the application to each surface owner.

MATTERS OFFICIALLY NOTICED

The examiners have taken Official Notice of Complaint File 2013-047.

BES' EVIDENCE

In its opening statement, BES stated it did not intentionally provide incorrect information to the Commission during the permitting process of its well. BES admitted that the application was flawed as to the location of the facility as measured from the City of Runge and as to notice to affected parties. These were mistakes caused by a previously employed consultant that failed to exercise due diligence. BES stated it was preparing a revised permit application for the well and would present it to the Commission soon. BES stated the revised application would include corrected information to the Commission and would provide proper notice to all offsets.

BES had leased acreage from Whiting Oil and Gas Corporation (“Whiting”) which included the location of the W.B. Hoskins Well No. 1, a well BES intended to use for disposal. The former BES consultant used a pooling plat that Whiting had previously used in permitting the W.B. Hoskins Well No. 1 as an attachment to the Form W-14 application for the disposal well, and this pooling plat was used as the basis for determining parties entitled to notice. Although this plat included the acreage the disposal well is found on (see Attachment I), the plat only partially represents the larger total acreage leased by BES for the proposed disposal well. The correct acreage is outlined in orange on BES Exhibit No. 3 (see Attachment II). In order to avoid a protest from Meta Sparks, owner of Tract 6 on Attachment I, BES agreed to move the surface facility to the north end of its property, directly across from Mr. Elizondo, and pipe disposal fluids to the W.B. Hoskins Well No. 1 at the south end of the property. BES agrees that Mr. Elizondo was not given notice in its first application, a situation BES will correct in the revised application.

ELIZONDO'S EVIDENCE

Mr. Elizondo’s attorneys entered into evidence a series of exhibits showing that the subject disposal well is located one and a half miles southwest of the center of the City of Runge, or one-half

mile southwest of the edge of Runge, rather than 3.5 miles to the northeast.

Since 1997, Mr. Elizondo has been the owner of a 4.75-acre tract of land southwest of Runge. This tract is directly across the road from the BES receiving facility. Mr. Elizondo did not receive notice of the application for the BES disposal permit for the W.B. Hoskins Well No. 1. Mr. Elizondo stated that, at one time, he had plans to build a home on his acreage and retire there, but that now there will be increased truck traffic in what would have been his backyard. The road in front of the BES receiving facility is already badly potholed, to the extent that it is easier to drive in the bar ditches. "What the locals and I have done to access our properties is you can actually see where the ditches are worn down to bare dirt, because we're all driving on the ditch and not the pavement." Transcript, p. 25, lines 19-22.

Mr. Elizondo's attorneys noted the similarities of the present case to prior oil and gas dockets. Oil & Gas Docket Nos. 02-0277320¹ involved a complaint by a landowner that he had not received notice of an application. The Commission found that the permit was void *ab initio*. In Oil & Gas Docket No. 09-0257041², the published notice of application for a well stated the well was to be located 2.9 miles northwest of Adkins, Texas, when in fact the well was 2.3 miles southeast of Adkins. In this case as well, the permit was cancelled.

EXAMINERS' OPINION

It is clear that the parties entitled to notice in the original BES application were determined by using an old pooling plat used by Whiting to permit the W.B. Hoskins Well No. 1. The acreage covered by the old Whiting plat was less than the acreage leased by BES for its conversion of Whiting's old Hoskins Well No. 1 to disposal purposes. This resulted in an incomplete list of parties entitled to notice, which led to the present case.

The burden of proof in this case was on BES, which forthrightly admitted that it had failed to provide notice to a party, Mr. Elizondo, who was entitled to notice. There is no disagreement between BES and Complainant Elizondo as to the facts of this case. The evidence shows that the wrong plat was used for notice purposes and, consequently, notice was not given to all parties entitled to notice, including Mr. Elizondo. Mr. Elizondo's property is directly across the road from the BES W.B. Hoskins Well No. 1 offloading facility. BES agrees that Mr. Elizondo should have been given

¹ Oil & Gas Docket No. 02-0277320: The Complaint of Lloyd Kellner and Sue Carter That They Did Not Receive Notice of Nor-Tex Resources, LLC's Application For a W-14 Permit for the Nortex SWD 1 Lease, Eagleville (Eagleford-2) Field, Karnes County, Texas.

² Oil & Gas Docket No. 09-0257041: Commission Called Hearing to Provide WEC, Inc. An Opportunity to Show Cause Why Statewide Rule 9 Commercial Disposal Permit No. 12263 Should Not Be Suspended, Modified or Cancelled, Acton SWD Lease, Well No. 1, Newark, East (Barnett Shale) Field, Hood County, Texas.

notice.

There is also no dispute that the location of the well in the published Notice of Application and both the initial and revised Forms W-14 incorrectly stated the well was 3.5 miles northeast of Runge. The well is located southwest of Runge, a mile and a half from the center of Runge or a half mile from the southwest edge of Runge.

BES acknowledges the deficiencies in its application. It plans to prepare a new application for submission to the Commission with corrected information on the Form W-14 and will provide notice all parties entitled to notice.

The examiners recommend that Disposal Permit No. 13637 for the W.B. Hoskins Lease, Well No. 1, issued on April 19, 2012, be cancelled as void *ab initio*.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. BES Environmental Services, Inc. ("BES") appeared at the hearing and presented evidence and testimony. Robert Elizondo appeared at the hearing and presented evidence and testimony.
2. On April 19, 2012, the Commission granted BES Environmental Services Permit No. 13637 (Commercial), a Permit to Dispose of Non-Hazardous Oil and Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas, for its W.B. Hoskins Lease, Well No. 1 in the Speary (Roeder 9100) Field in Karnes County, Texas, pursuant to Statewide Rule 9.
3. This hearing was called at the request of BES to provide BES the opportunity to show cause why its Disposal Permit No. 13637 (Commercial), for the Hoskins, W.B. Lease, Well No. 1, Speary (Roeder 9100) Field, Karnes County, should not be cancelled.
4. In Complaint No. 2013-047, Complainant Robert Elizondo stated that he would be affected by the location of the offloading facility for the disposal well but had not received notice of the applied-for disposal permit.
 - a. The Service List for the BES application was developed from a pooling plat provided by Whiting Oil and Gas Corporation. The pooling plat represented some of the acreage leased by BES (see Attachment I) but not all of the acreage leased by BES (see Attachment II). Attachments I and II of the PFD are incorporated into these findings of fact and conclusions of law.
 - b. The Service List assembled using the Whiting Oil and Gas pooling plat did not include Robert Elizondo.

- c. To avoid a protest from an offsetting land owner, BES moved the location of its surface facility to the northern tip of its leased property, directly across from Mr. Robert Elizondo. The northern tip of the BES leased property was outside the area of the pooling plat used by the BES consultant to provide notice to affected offsets, thus Mr. Elizondo never received notice of the applied for disposal well.
5. Mr. Elizondo is an affected person who did not receive notice of BES's 2011 application for Commercial Permit No. 13637, A Permit to Dispose of Non-Hazardous Oil and Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas.
6. The original Form W-14 application, dated July 21, 2011, and the revised Form W-14 dated February 20, 2012, indicated the applied-for Hoskins, W.B. Lease, Well No. 1 was located 3.5 miles northeast of Runge. The actual location of the Hoskins, W.B. Lease, Well No. 1 is 1.5 miles southwest of the center of Runge or one half mile southwest of the outskirts of Runge.
7. Notice of the application was published on July 27, 2011 in the Karnes Countywide, a newspaper of general circulation in Karnes County. The published notice incorrectly identified the well location as 3.5 miles NE of Runge, Texas.
8. The location of the W.B. Hoskins Well No. 1 is a mile and a half southwest of the center of Runge, or, alternatively, one half mile southwest of the southwesterly edge of Runge.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. BES did not provide proper notice of its application to dispose of oil and gas waste into the W.B. Hoskins Well No. 1 to an adjacent surface owner, Mr. Robert Elizondo, pursuant to the requirements of Statewide Rule 9(5)(A)-(B)[TEX. ADMIN. CODE §3.9(5)(A)-(B)]. Accordingly, the Commission lacked jurisdiction to issue the permit.
4. Disposal Permit No. 13637 (Commercial), a Permit to Dispose of Non-Hazardous Oil and Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas, granted to BES Environmental Services for its W.B. Hoskins Lease, Well No. 1 in the Speary (Roeder 9100) Field in Karnes County, Texas on April 19, 2012, should be terminated as void *ab initio*.

RECOMMENDATION

The examiners recommend that the attached Final Order be adopted ordering that the Permit to Dispose of Non-Hazardous Oil and Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas, granted to BES Environmental Services for its W.B. Hoskins Lease, Well No. 1 in the Speary (Roeder 9100) Field in Karnes County, Texas on April 19, 2012, be cancelled as void *ab initio*.

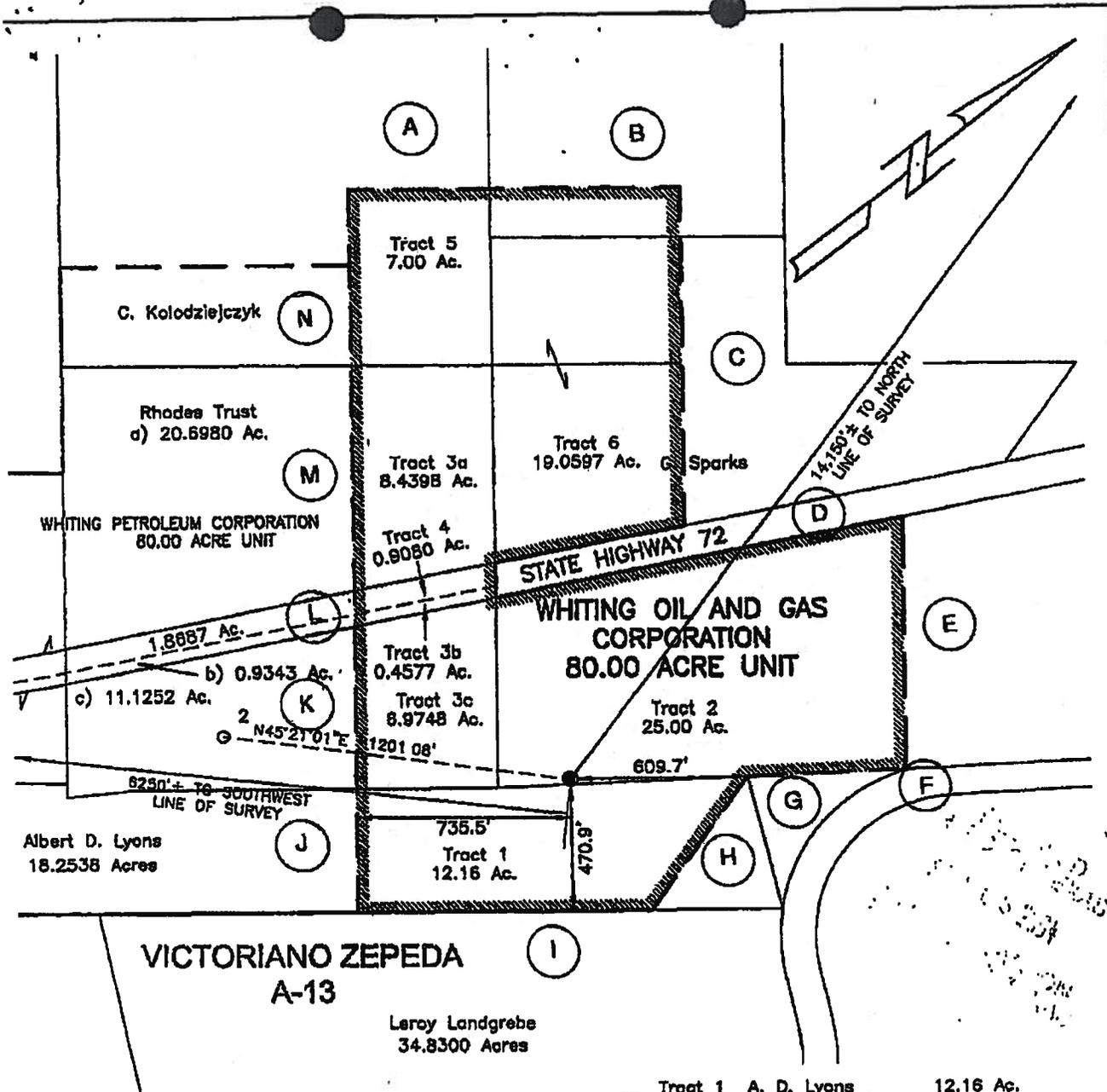


Paul Dubois
Technical Examiner



Marshall Enquist
Hearings Examiner

ATTACHMENT I
Oil & Gas Docket No. 02-0284266

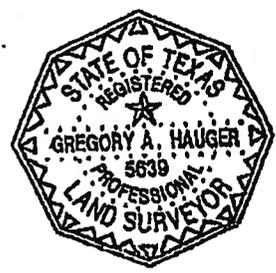


W. B. HOSKINS - WELL NO. 1
 X: 2409371.96, Y: 378009.93, NAD 27,
 TEXAS SOUTH CENTRAL ZONE.

There may be existing pipelines not shown on this plat. Use the Texas One Call System to locate existing pipelines before performing any excavation on this property.

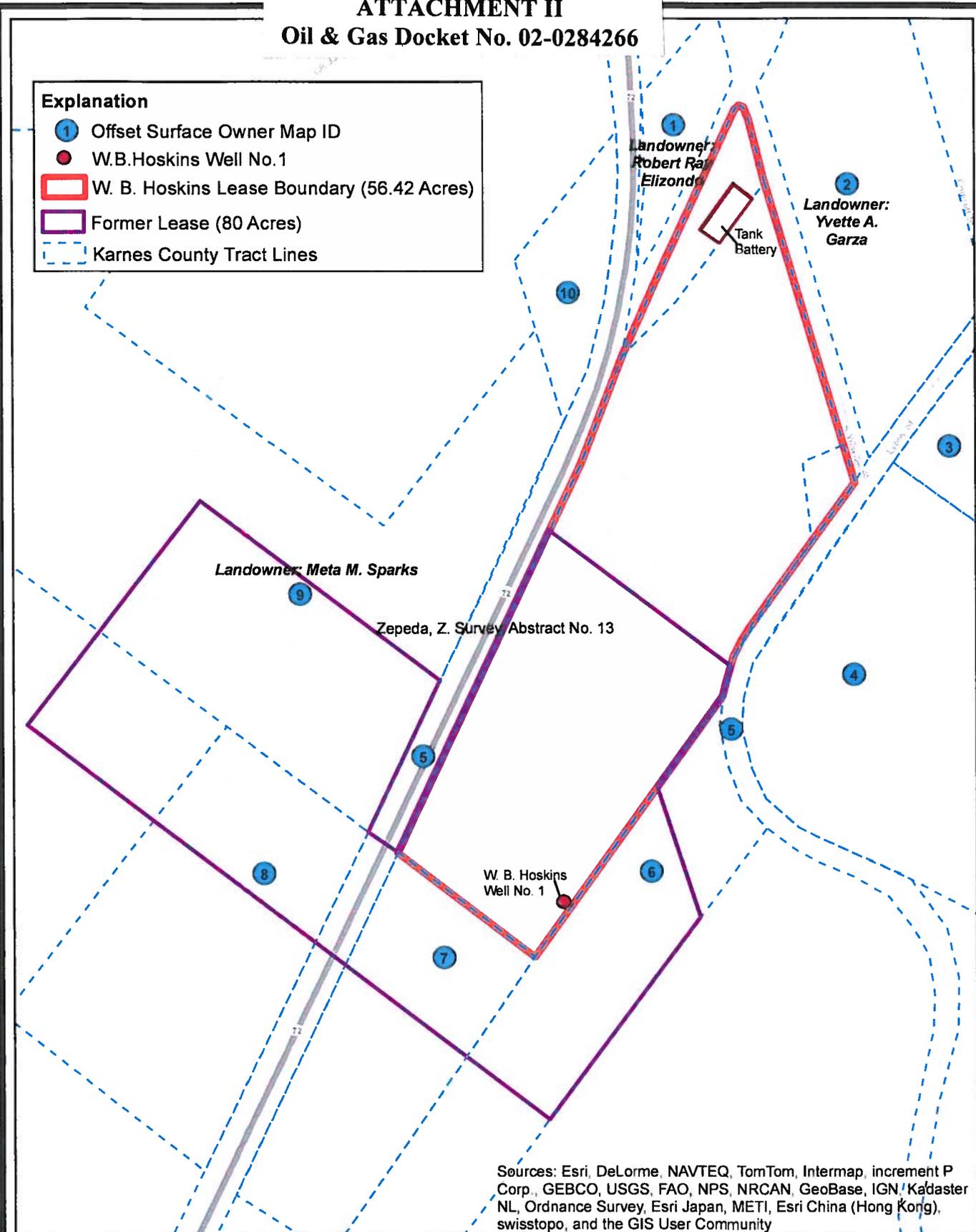
Tract 1	A. D. Lyons	12.16 Ac.
Tract 2	W. B. Hoskins	25.00 Ac.
Tract 3	Rhodes Trust	
a)	S. Shaw	8.4398 Ac.
b)	S. Johns	0.4577 Ac.
c)	C. Easley	6.9748 Ac.
Tract 4	State Highway 72	0.9080 Ac.
Tract 5	C. Kolodziejczyk	7.00 Ac.
Tract 6	G. Sparks	19.0597 Ac.
Total Acres in Unit		80.00 Ac.

PLAT SHOWING LOCATION MADE FOR
 WHITING OIL AND GAS CORPORATION
 W. B. HOSKINS - WELL NO. 1
 OUT OF THE
 VICTORIANO ZEPEDA SURVEY, ABSTRACT 13
 KARNES COUNTY, TEXAS
 SCALE 1" = 500 FEET

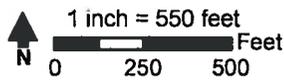


ATTACHMENT II
Oil & Gas Docket No. 02-0284266

- Explanation**
- ① Offset Surface Owner Map ID
 - W.B.Hoskins Well No. 1
 - W. B. Hoskins Lease Boundary (56.42 Acres)
 - Former Lease (80 Acres)
 - Karnes County Tract Lines



Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community



BES ENVIRONMENTAL SERVICES, INC.
W. B. Hoskins - Well No. 1
Karnes County, Texas

 **Daniel B. Stephens & Associates, Inc.**
 11/26/2013 ES 13.0227.00

EXHIBIT
3

1 - Offset Surface Owner Map

N:\Client\BES Environmental Services, Inc\Hoskins, W.B. Lease Well 1\GIS\MapDocs\Hearing\Exhibit\OffsetSurfaceOwnersMap_W.B.Hoskins_KarnesCounty.mxd