



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

December 29, 2016

Rule 37 Case No. 0299363
Status No. 813063
RRC District 01

Application of Benchmark Texas Petroleum, LLC for an Exception to Statewide Rule 37 for its Merka Lease, Well No. 1A, Larremore and Wildcat Fields, Caldwell County, Texas

APPEARANCES:

FOR APPLICANT:

Greg Cloud, Consulting Engineer
Andrew A. Alf, Consulting Geologist

APPLICANT:

Benchmark Texas Petroleum, LLC.

FOR PROTESTANT:

George C. Neale, Attorney at Law
Jim Clark, Petroleum Engineer

PROTESTANT:

Centex Pipe & Equipment, Inc.

PROPOSAL FOR DECISION

Procedural History

APPLICATION FILED:

January 7, 2016

NOTICE OF HEARING:

January 14, 2016

HEARING DATE :

April 28, 2016

HEARD BY:

Marshall Enquist, Administrative Law Judge
Richard Eyster, P.G., Technical Examiner

TRANSCRIPT RECEIVED DATE:

May 4, 2016

WRITTEN BY:

Clayton Hoover, Administrative Law Judge

PFD CIRCULATION DATE:

December 29, 2016

STATEMENT OF THE CASE

Benchmark Texas Petroleum, LLC (“Benchmark” or “Applicant”) seeks a permit pursuant to the provisions of Statewide Rule 37 and Special Field Rules for its Merka Lease, Well No. 1A, in the Larremore and Wildcat Fields, Caldwell County, Texas.

Benchmark filed a W-1 permit application for its Merka Lease, Well No. 1A, on January 7, 2016, seeking an exception to Field Rules and Statewide Rule 37 to prevent waste and/or confiscation. Notice of Application was issued by the Commission on January 14, 2016. Notice of Hearing was issued by the Commission on February 11, 2016. Notice of Intent to Appear in Protest was filed by George C. Neale, Attorney at Law, on behalf of Centex Pipe & Equipment, Inc., an offset operator, on April 22, 2016. The Hearing took place on April 28, 2016.

The surface location of Well No. 1A is located on the 63 acre Merka Lease. It is 116 feet from the south line and 122 feet from the northeast line of the Merka Lease, and 5,886 feet from the northwest line and 1,832 feet from the southwest line of the C. Powers Survey, A-68 in Caldwell County, Texas. Such location is not a regular location based on existing Field Rules for the Larremore Field, which set the minimum distance from lease lines at 150 feet and from other wells at 300 feet, or based on Statewide Rules for the Wildcat Field portion of the Application.

DISCUSSION OF THE EVIDENCE

Evidence of Benchmark Texas Petroleum, LLC, Applicant

Benchmark seeks this permit as an exception to Field Rules and Statewide Spacing Rule 37 in order to re-enter an existing wellbore. Benchmark presented exhibits and expert opinion from Andrew A. Alf, Consulting Geologist, to show that this permit is necessary and proper to prevent confiscation of oil in place on their Merka lease. Mr. Alf testified that the estimated amount of recoverable oil in place is 5,814 barrels of oil (See *Transcript*: Page 37, lines 13,14) which can be economically recovered only from re-entry of the existing wellbore at the location which is the subject of the Application.

Benchmark submitted exhibits which Mr. Alf used to demonstrate the structural, stratigraphic and petrophysical basis for his opinion on the amount of recoverable oil in place in the Larremore Field on the Merka Lease. (See Benchmark Exhibits **4-Structure Map Larremore Field Area**, **5-Cross Section A-A'**, **6-Cross Section B-B'** and **7-Stratigraphic Cross Section**.) Such Exhibits provided adequate foundation for Mr. Alf’s testimony and expert opinions.

Benchmark, through the direct testimony of Mr. Alf, also reviewed the history of the subject well, which was originally permitted as a Rule 37 exception well in 1948, its initial potential test of 15 barrels of oil per day on pump, its production history and its plugging on August 1, 2015. Mr. Alf also testified that the Merka Well No. 1H is in another fault block.

Benchmark argues that there is an existing wellbore at the subject location, that there is recoverable oil in place in the Larremore Field on the Merka Lease, that such recoverable oil in place cannot be recovered from existing wells on the lease or from a regular location and that they should be granted a Rule 37 exception to prevent confiscation since such recoverable oil is subject to being drained by offset wells. Benchmark presented no evidence on the Wildcat Field portion of its application.

Evidence of Centex Pipe & Equipment, Inc., Protestant

In their direct case, the Protestants introduced exhibits and presented testimony from Jim Clark, Petroleum Engineer. Mr. Clark presented exhibits to show his Original Oil in Place Calculations in a drainage area of .92 acres on which the Merka No. 1A well is located. Mr. Clark also presented exhibits and testimony as to the production history of such well. However, Mr. Clark did not present exhibits or testimony to show that there is no recoverable oil currently in place on the .92 acre drainage area. In fact, he admits, and his Exhibit No. 3 shows, that there is recoverable oil currently in place in the Larremore Field on the Merka Lease. His testimony to the effect that any oil in place can be produced by updip well(s) in the Field may be relevant on the issue of waste, but does not refute Benchmark's basis for this application, which is preventing confiscation. Preventing waste is not the basis for this Application.

OPINION

It is the basic right of every landowner or lessee to a fair and reasonable chance to recover the oil and gas under their property as recognized by the Texas Supreme Court in *Gulf Land Co. v. Atlantic Refining Co.*, 131 S.W.2d 73, 80 (Tex. 1939). Denial of that fair chance is confiscation within the meaning of Rule 37. *Id.* To obtain an exception to Statewide Rule 37 to protect correlative rights and prevent confiscation, the applicant must show that:

- 1.) it is not possible for the applicant to recover its fair share of minerals under its tract from regular locations; and
- 2.) that the proposed irregular location is reasonable.

The Examiners are of the opinion that approval of the Field Rule exception requested by Benchmark is necessary to prevent confiscation and protect correlative rights as to the Larremore Field. As to the Larremore Field, Benchmark and its lessors are entitled to recover their fair share of oil from beneath the Merka Lease. "Fair share" is measured by the currently recoverable reserves beneath the lease, which in this case is approximately 5,817 barrels of oil. The evidence shows that it is not economically feasible for Benchmark to recover its fair share of such oil from a regular location. Benchmark presented no exhibits or testimony to support the Wildcat Field portion of the Application.

The Protestants argued that the Merka No. 1A well has already recovered substantial oil since its original completion in 1948. However, this fact is not relevant to this Application because there is unrefuted evidence presented by Benchmark that there remains recoverable oil in place.

It is therefore recommended that Benchmark be granted an exception to Field Rules for its Merka Lease, Well No. 1A in the Larremore Field in Caldwell County, Texas, based on prevention of confiscation. As to the Wildcat Field portion of the Application, it is recommended that the Application be denied.

Based on the record in this docket, the Administrative Law Judge and the Technical Examiner recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At least 10 days notice of this hearing was given to the designated operator, all offset operators, all lessees of record for tracts that have no designated operator, and all owners of record of unleased mineral interests for each affected adjacent tract.
2. In Rule 37 Case No. 0299363, Benchmark Texas Petroleum, LLC (“Benchmark” or “Applicant”), seeks an exception to Field Rules and Statewide Spacing Rule 37 for the Merka Lease, Well No. 1A, in the Larremore and Wildcat Fields in Caldwell County, Texas.
3. A Rule 37 exception is needed for the proposed Merka Lease, Well No. 1A, because there is recoverable oil in place of approximately 5,817 barrels in the Larremore Field and use of the existing wellbore at the subject location is necessary in order to recover it. No evidence was presented to support the Wildcat Field portion of the Application.

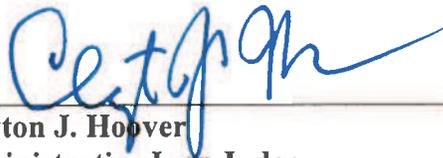
CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred to give the Commission jurisdiction to decide this matter.
3. Approval of a Field Rule exception for the proposed location of the Merka Lease, Well No. 1A, as proposed by Benchmark Texas Petroleum, LLC, is necessary to prevent confiscation and protect the correlative rights of the leased mineral owners as to the Larremore Field.
4. As to the Larremore Field, Benchmark has met its burden of proof and satisfied the requirements of Railroad Commission Statewide Rule 37 in Rule 37 Case No. 0299363. As to the Wildcat Field portion of the Application, Benchmark did not meet its burden of proof.

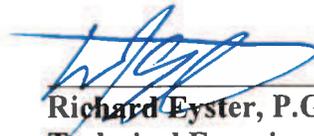
RECOMMENDATION

The Administrative Law Judge and Technical Examiner recommend that the Application of Benchmark Texas Petroleum, LLC, for a Field Rule exception for the proposed location of the Merka Lease, Well No. 1A in the Larremore Field, Caldwell County, be granted as necessary to prevent confiscation and protect correlative rights as to the Larremore Field and that such Application be denied as to the Wildcat Field portion thereof.

Respectfully submitted,



Clayton J. Hoover
Administrative Law Judge



Richard Eyster, P.G.
Technical Examiner

CALDWELL COUNTY, TEXAS

A PLAT FOR:

**BENCHMARK TEXAS PETROLEUM, LLC
MERKA LEASE**

CORNELIUS CRENSHAW

SITUATED IN THE CORNELIUS CRENSHAW SURVEY, ABSTRACT 68, APPROXIMATELY 3.80 MILES N 74° W OF LOCKHART IN CALDWELL COUNTY, TEXAS.

CENTERLINE HIGHWAY

FM HIGHWAY 2720

63 ACRE LEASE SHOWN

(Centex Pipe & Equipment, Inc.)

MERKA * 1A

055-02966

ARD 27

Lat 29.899129

Lon -97.727311

PAYNE ROAD (CR 236)

SOUTH EDGE OF PAYNE ROAD

MARTIN MCFERRIN

abst. 68

abst. 204

ALL LEASE & TRACT INFORMATION SHOWN HEREON IS FROM DEED RECORD INFORMATION ONLY AND THE UNDERSIGNED SURVEYOR DOES NOT WARRANT TO THE ACCURACY THEREOF.

THIS THE 27th DAY OF November 2012

Keith Howard

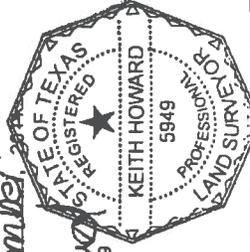
KEITH HOWARD, R.P.L.S. NO. 5949

HOWARD SURVEYING, LLC

402 STATE HWY 173 SOUTH

HONDO, TEXAS 78861

(830) 426-4776



SCALE 1" = 500'

