



EARTHWORKS

January 30, 2012

Railroad Commission of Texas
1701 North Congress Avenue
Austin, TX 78711-2967

Re: Earthworks' comments on Mineral Interest Pooling Act rule proposal

Dear RCT,

On behalf of Earthworks' hundreds of members here in Texas, I would like to make the following comments on the idea of adopting a formal rule to implement the Mineral Interest Pooling Act (MIPA).

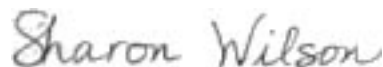
General Comment: The MIPA has been in effect for more than 30 years, and has more or less functioned during that time without administrative rules ever being adopted. The RCT's poorly thought through decision in the Finley case turned the purpose of the MIPA – allowing a smaller landowner who desired to produce to put himself into a larger producing tract – upside-down. In Finley, the RCT essentially gave a club to gas producers to force unwilling small landowners to produce – regardless of whether producing was in their economic or environmental interest. In essence, Finley has allowed corporations to condemn private property interests for the benefit of the corporations. Therefore, we believe the RCT should adopt rules that undo the mischief Finley has unleashed, and return MIPA to the role it had for 30 years – leveling the playing field between large operators and small landowners.

Specific Comments: As MIPA has now joined the operators' arsenal of weapons, including Rule 37 exceptions and no perforation zones, to push unsophisticated and unwilling urban residents into giving operators what they want, we believe that, if RCT insists on setting rules under MIPA that allow involuntary forced pooling, the following should be included:

- a high and explicit burden must be placed on the operator to show that its offers are at least 25% above the going market rate, in recognition of the fact that production is for the benefit of the operator, and not necessarily for the unwilling landowner;
- all production risks are the financial responsibility of the operator, and the unwilling landowner may not be forced to assume any of that responsibility; in short, the unwilling landowner may not be obligated under any circumstances to pay money to the operator;
- where an unwilling landowner decides to consider an offer that includes a 'working interest', the operator must provide a reasonable and straight forward summary of the success rate for all other wells drilled within one mile of the landowner's property, and an appraisal of what the impact of the presence of the well on the landowner's property values is likely to be;
- the unwilling landowner is entitled to receive a copy of any operating agreement for the pooled unit that would apply to the landowner's property within a reasonable time prior to any deadlines for responding to offers from the operator;
- where a hearing is required under MIPA, that hearing shall be held in the municipality nearest to the location of the landowner's property, unless the landowner consents in writing to an alternative hearing location.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Wilson".

Sharon Wilson
Earthworks