



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 02-0288946

COMMISSION-CALLED HEARING TO PROVIDE SABLE ENVIRONMENTAL, LLC AN OPPORTUNITY TO SHOW CAUSE WHY THE COMMERCIAL INJECTION PERMIT (PROJECT NO. F-18813) FOR THE FF COY CITY SWD LEASE, WELL NO. 1, COY CITY (7100) FIELD, KARNES COUNTY, TEXAS, SHOULD NOT BE CANCELLED FOR FAILURE TO PROVIDE PROPER NOTICE AS REQUIRED BY STATEWIDE RULE 46

APPEARANCES

FOR SABLE ENVIRONMENTAL, LLC:

Clay Nance, Attorney at Law

FOR EMRICK OPIELA, RANCHO GRANDE LAND MANAGEMENT, LP, RANCHO GRANDE MINERAL MANAGEMENT, LP, ERIC OPIELA AND EVE OPIELA LLOYD:

Eric Opiela, Attorney at Law

FOR HECTOR VENEGAS:

John Hays, Attorney at Law

FOR PATRICIA AND TERRELL GRAHAM:

Patricia Graham, *pro se*

PROCEDURAL HISTORY

Notice of Hearing:	May 15, 2014
Hearing on the merits:	July 23, 2014
Transcript received:	August 5, 2014
Heard by:	Terry J. Johnson, Legal Examiner Paul Dubois, Technical Examiner

SUMMARY

This is a show cause proceeding in which the Complainants seek cancellation of a commercial injection permit on allegations that the permit was issued after insufficient notice. It is recommended that the permit be terminated under authority of 16 TEX. ADMIN. CODE 3.46(d)(1)(D) due to misrepresentation of a material fact during the permit issuance process.

ORIGIN OF THE DISPUTE

The Permit

On February 2, 2012, and after receiving no protest to the application, the Commission issued a Rule 46 disposal permit¹ to Four Fountains, LLC (Four Fountains), authorizing the commercial injection of salt water and other non-hazardous oil and gas waste into the Coy City (7100) Field in Karnes County, Texas. Four Fountains conducted no disposal operations under the permit, later selling it to the current operator, Sable Environmental, LLC (Sable). Sable has voluntarily suspended operations pending the outcome of the dispute at hand.

Complainants argue that the permit should be cancelled because Four Fountains obtained it in contravention of the notice requirements contained in the rule.

Notice

Under the rule, notice is accomplished by mailing or delivering a copy of the application to each person or entity entitled to notice.² Accordingly, Four Fountains was required to give notice of its permit application to the owner of record of the surface tract where the well is to be located, to the operator of each well within a half mile of the proposed well and to the Karnes County Clerk. Because the permit would authorize commercial operations, Rule 46 also required Four Fountains to give notice to the

¹ 16 TEX. ADMIN. CODE § 3.46 (Fluid Injection Into Productive Reservoirs)

² Id., § 3.46(c)(1)-(2)

owners of record of each surface tract that adjoined the injection tract and to publish notice of the application in a newspaper of general circulation for Karnes County.³

The Banks Mailing

In connection with its application, Four Fountains engaged Banks Oil & Gas Consulting (Banks). On behalf of Four Fountains, Banks mailed a copy of the Four Fountains application – a completed form H-1 (Application to Inject Fluid into a Reservoir Productive of Oil or Gas) and form H-1A (Injection Well Data) – to those persons it had determined were entitled to notice. In addition to the H-1 and H-1A, Banks’ mailing included a cover letter and a GIS (Graphic Information System) map purporting to show the location of the proposed well. Notice of the application was published in the December 28, 2011 edition of the *Karnes Countywide* newspaper.

Administrative Approval

Under Rule 46, if the application had been protested, a permit could not be issued without a full hearing on the merits.⁴ No protest was received, however, and the Four Fountains application was administratively approved on February 2, 2012.

COMPLAINANTS’ CLAIMS

Emrick Opiela

On December 30, 2011, Emrick Opiela signed a United States Postal Service domestic return receipt for the Banks mailing. Three decades earlier, on January 10, 1980, Mr. Opiela and his wife, Elaine, had purchased the 754.65-acre tract of land that now adjoined the proposed Four Fountains injection tract. Eighteen months after their purchase – on September 4, 1981 – Mr. and Ms. Opiela conveyed the tract to Mr. Opiela as trustee for the benefit of Eva, Emory and Eric Opiela. Styled as a “gift deed”, the instrument was recorded on September 17, 1981 in the real property records of Karnes County.

³Id., § 3.46(c)(4)

⁴Id., § 3.46(c)(6)

Twenty-two years later – and some 15 months after the Four Fountains permit had been issued – Mr. Opiela on May 7, 2013 conveyed the tract to Rancho Grande Land Management, LP. This deed contained a recitation that the “Rancho Grande Trust” had been created by the gift deed of September 4, 1981.

Rancho Grande Land Management, LP, Rancho Grande Mineral Management, LP, Eric Opiela and Eve Opiela Lloyd (collectively Rancho Grande) argue that Mr. Opiela’s receipt of the Banks mailing did not constitute notice of the Four Fountains application. Specifically, Rancho Grande asserts that notice was insufficient because the Banks mailing was addressed to Emerick and Elaine Opiela, and not to Emerick Opiela in his capacity as trustee. Rancho Grande also argues that Eva, Emory and Eric Opiela are owners of record and entitled to notice of the Four Fountains application.

Additionally, Rancho Grande argues that even if he received the Banks mailing, its contents neither adequately apprised Mr. Opiela of the application nor informed him of any right to protest. The envelope, Rancho Grande asserts, appeared to be a business solicitation and not formal notice of a state agency proceeding. It did not identify Banks as Four Fountains’ representative or agent. Rancho Grande points to Mr. Opiela’s testimony at hearing that he thought the correspondence was either from a bank in Austin or junk mail.

Rancho Grande argues that Banks’ cover letter failed to inform Mr. Opiela of any right to protest, that it failed to mention any protest deadline and that it failed to state where any protest should be filed. For these reasons, Rancho Grande asserts that the Banks mailing does not meet the notice requirements of Rule 46.

Rancho Grande further argues that the Banks mailing was deliberately misleading because it contained a map that incorrectly depicted the location of the proposed injection well, leading Mr. Opiela to believe that the site was many miles from Rancho Grande property.

Even if notice of the Four Fountains application is held to be sufficient, Rancho Grande argues that transfer of the permit from Four Fountains to Sable amounts to a Rule 46 application that Rancho Grande was entitled to protest.

Hector Venegas

Mr. Venegas, record owner of the drillsite tract, admits receipt of the Banks mailing by his agent, but argues that the mailing failed to provide sufficient notice of Four Fountains' proposed disposal well. Specifically, Mr. Venegas claims that the cover letter does not provide guidance with regard to the right to protest, that the letter does not list the Commission's address or telephone number, that the only information regarding a right to protest is in small print on the back of one of the forms included in the mailing, that the information on the form is convoluted, that the cover letter has the appearance of a business solicitation and that the cover letter does not identify Banks as Four Fountains' representative.

Mr. Venegas also argues that the Banks mailing was misleading because the included map showed the proposed well location to be nearly a mile from what proved to be its actual site.

Finally, Mr. Venegas – who sold the 20-acre parcel that became home to the actual location of the well – asserts that he was told the acreage would be used to store oil and gas equipment. He argues that, had he been told the property would be used for a disposal well, he never would have sold it.

Patricia and Terrell Graham

Mr. and Ms. Graham (the Grahams), record owners of a tract adjoining the drillsite, do not dispute their receipt of the Banks mailing. They argue, however, that notice was inadequate because the map that Banks included showed the injection site to be 4,309 feet away from its true location. The actual location is much closer to the Grahams' property than the location depicted on Banks' map. The Grahams assert that they would have protested the Four Fountains application if the Banks map had shown the actual location of the well.

In addition, the Grahams argue that forms H-1 and H-1A did not contain the information necessary for them to determine the impact of the proposed well.

SABLE'S RESPONSE TO COMPLAINANTS' CLAIMS

Receipt of Notice

Sable argues that the complaints of the Grahams and Mr. Venegas are without merit because, in each case, notice of the Four Fountains application was not only sent, but received.

In response to Rancho Grande's claim that Mr. Opiela was not notified in his capacity as trustee, Sable notes that the Rancho Grande trust did not enter the chain of title until May 2013, more than a year after Four Fountains' permit had been issued. Sable also notes that Mr. Opiela's actual receipt of the Banks mailing is undisputed. Sable argues that the notice received by Mr. Opiela constitutes notice to the trust, especially when the trust is unnamed in the property records of the county.

Contents of Notice

Sable argues that Rule 46 did not require Four Fountains to do more than transmit copies of the front and back of the application forms. Since it is undisputed in this case that forms H-1 and H-1A were included in the Banks mailing, Sable argues that notice of the Four Fountains application met the requirements of the rule.

The Banks Map

Sable argues that the 4,300-foot variance between the actual location of the disposal well and the location as shown on Banks' map does not change the identities of the surface owners that had been entitled to notice.⁵ Neither did the variance require notice to additional offset operators. The well authorized by the Four Fountains permit, even with the variance, was still on the same surface tract with the same adjoining surface owners.

Moreover, Sable asserts that forms H-1 and H-1A set out the contact information for both the Railroad Commission and the applicant, but the Complainants failed to exercise due diligence by conducting further inquiry.

⁵ The variance resulted from Banks' failure to confirm the accuracy of the map location before mailout.

DISCUSSION AND RECOMMENDATION

Notice Pursuant to Rule 46

Statewide Rule 46 governs the disposal of fluid into subsurface reservoirs that are productive of oil, gas or geothermal resources. A prospective operator must apply to the Commission for a permit and give notice of the application to the affected persons identified by the rule. After notice, there follows a period during which an affected person may file a protest to the application. A protested application requires a full hearing on the merits. An unprotested application can be approved administratively.

Under Rule 46, the notice requirement is satisfied by mailing a copy of the application to affected persons.

(c) Notice and opportunity for hearing

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

[. . .]

(3) If [the Commission determines] that another class of persons should receive notice [the Commission] may require the applicant to *mail . . . a copy of the application* to members of that class. (emphasis supplied)

And where, as in the case at hand, an applicant seeks a permit for a commercial disposal well, the rule also requires notice to adjoining surface owners. This can also be accomplished by mail.

In addition to the requirements of subsection (c)(1), a commercial disposal well permit applicant shall give notice to owners of record of each surface tract that adjoins . . . by *mailing . . . a copy of the application . . .*⁶

With regard to determining the owner of record for purposes of notice, Rule 46 defines the phrase “of record” to mean the real property or

⁶ Id., § 3.46(c)(2)

probate records of the county in which the property is located.⁷ Finally, notice of the application must be published in a newspaper that has general circulation in the county.⁸

Mailing and Publication Requirements Satisfied

It is undisputed that notice of the Four Fountains application was published in the December 28, 2011 edition of the *Karnes Countywide* newspaper. It is undisputed that the *Karnes Countywide* has general circulation in Karnes County.

It is undisputed that Banks mailed a cover letter, a map and copies of the H-1 and H-1A to each of the Complainants. It is undisputed that the H-1 and H-1A constitute the Four Fountains application. It is undisputed that Mr. Opiela, the Grahams and Mr. Venegas all received the Banks mailing.

Under Texas law, Mr. Opiela held a fiduciary obligation to act in the best interests of his beneficiaries. This would reasonably include making decisions informed by his personal knowledge.⁹ Rancho Grande offers no legal authority for its claim that notice to Mr. Opiela fails because it was addressed to him personally and not as trustee. Accordingly, that claim is given no weight. Similarly, Rancho Grande's assertion that the Opiela children – as beneficiaries of a trust – are record owners of the trust corpus fails for lack of factual or legal support.

Finally, Rancho Grande misplaces its reliance on prior Commission action in the case of Nor-Tex Resources, LLC.¹⁰ In Nor-Tex, an operator's injection permit was cancelled due to its failure to provide proper notice. Rancho Grande is correct that the mailing conducted by Banks in Nor-Tex and the case at hand are functionally identical. However, unlike Nor-Tex, the complainants in the present case received the mailing in question.

⁷ Id., § (c)(1)

⁸ Id., § (c)(4)

⁹ See *Barrientos v. Nava*, 94 S.W.3d 270, 290 (Tex. App. – Houston [14th Dist.] 2002, no pet.)

¹⁰ Oil & Gas Docket No. 02-0277320 (Final Order February 12, 2013)

The examiners conclude that the credible record evidence in the case at hand demonstrates that the Four Fountains application was published and mailed as required by Rule 46. This conclusion, however, does not end the inquiry.

Misrepresentation

Under Rule 46, the Commission retains authority to modify, suspend or terminate a permit where an applicant has misrepresented any material facts during the permitting process.¹¹

It is undisputed that the actual location of the Four Fountains well is not the location depicted on the Banks map.¹² The permitted well is in fact 4,309 feet to the southwest of that location.¹³ The examiners determine that the true location of the well was a fact material to the permitting process. The examiners further determine that the Banks map misrepresented the location of the applied-for well. Accordingly, the examiners recommend that the Commission may take action against the permit that is now in the hands of Sable.

Sable argues that the notice requirements of Rule 46 were satisfied by mailing the H-1 and H-1A forms alone and that Banks' gratuitous inclusion of the map was surplusage, a courtesy. Moreover, since form H-1A shows the survey-line footage calls and the latitude and longitude of the well, the Complainants' failure to confirm its location using these coordinates amounts to a lack of due diligence for which Sable should not be penalized.

Sable is correct that the rule speaks only to the mailing of the H-1 and H-1A. However, when an applicant – or in this case Banks acting on behalf of Four Fountains – includes a map, it is reasonable for the recipient to believe that the map shows the actual location of the well. Sable offers no evidence to counter such a determination. The applicant is, therefore, obligated to include an accurate map. Stated another way, it is

¹¹ Id., § (d)(1)(D)

¹² A copy of the map that was included in the Banks mailing is attached as Appendix A.

¹³ A plat showing the difference between the locations is attached as Appendix B.

unreasonable to accept a Rule 46 notice requirement which conditions the affected party's right to protest on its ability to determine which parts of the notice are accurate and which are not. The burden to provide an accurate notice falls on the applicant, not the affected party.

Sable claims that, even with the difference in well location, the surface owners do not change. This misses the point. The actual location of the well is the better part of a mile away from the location on the Banks map. This means that the well is actually 1,030 feet from the Grahams, not 2,450 feet as shown by Banks. For Mr. Opiela, the actual location is 2,050 feet from his tract, not 174 feet. And for Mr. Venegas, who sold the 20 acres that comprise the wellsite tract, the well's actual location is 148 feet beyond his southwest line. The Banks map showed the location to be inside his tract and 270 feet from the northeast boundary. The Banks map misrepresented the location of the well, which is a fact material to the Four Fountains application.

The examiners recommend that the Commission adopt the following findings and conclusions and enter an order terminating the subject permit.

FINDINGS OF FACT

Application

1. Under authority of 16 TEX. ADMIN. CODE 3.46 (Rule 46) on or about December 12, 2011, Four Fountains, LLC (Four Fountains) applied for a permit authorizing the commercial injection of salt water and other non-hazardous oil and gas wastes into the Coy City (7100) Field in Karnes County, Texas.

Notice

2. Rule 46 required Four Fountains to publish notice of the application in a newspaper of general circulation in Karnes County, to mail a copy of the permit application to the record owner of the drillsite tract and to mail a copy of the permit application to the surface owners of tracts that adjoined the drillsite tract.
3. The *Karnes Countywide*, a newspaper of general circulation in Karnes County, published notice of the Four Fountains application on December 28, 2011.

4. For purposes of Rule 46, Commission forms H-1 (Application to Inject Fluid into a Reservoir Productive of Oil or Gas) and form H-1A (Injection Well Data) constitute the permit application.
5. Four Fountains engaged Banks Oil & Gas Consulting (Banks) in connection with its application.
6. On behalf of Four Fountains, Banks mailed a copy of the permit application, together with a cover letter and a map that purported to show the location of the applied-for well, to those persons whom it had determined were entitled to notice under Rule 46 (the Banks mailing).

The Graham Tract

7. At all times relevant to this proceeding, Patricia and Terrell Graham were surface owners of a tract that adjoined the drillsite tract.
8. On January 4, 2012, Patricia Graham signed a United States Postal Service domestic return receipt for the Banks mailing.
9. For purposes of Rule 46, Four Fountains mailed a copy of its permit application to the surface owner of the Graham tract.
10. Patricia and Terrell Graham did not file a protest to the Four Fountains application.

The Venegas Tract

11. At all times relevant to this proceeding, Hector Venegas was record owner of the drillsite tract.
12. On January 11, 2012, an agent for Mr. Venegas signed a United States Postal Service domestic return receipt for the Banks mailing.
13. For purposes of Rule 46, Four Fountains mailed a copy of its permit application to the surface owner of the Venegas tract.
14. Hector Venegas did not file a protest to the Four Fountains application.

The Opiela Tract

15. On January 10, 1980, Emrick and Elaine Opiela became record owners of a 754.65-acre tract of land in Karnes County.
16. On September 4, 1981, the Opielas conveyed the Opiela tract to Emrick Opiela, as trustee of an unnamed trust, for the benefit of Eva, Emory and Eric Opiela.
17. The Opiela tract adjoins the drillsite tract.
18. On December 30, 2011, Emrick Opiela signed a United States Postal Service domestic return receipt for the Banks mailing that was addressed to Emrick and Elaine Opiela.
19. For purposes of Rule 46, Four Fountains mailed a copy of its permit application to the surface owner of the Opiela tract.
20. Emrick Opiela did not file a protest to the Four Fountains application.

Permit Issued

21. As it relates to the permit sought by Four Fountains, the notice requirements of Rule 46 had been satisfied.
22. If the Four Fountains application had been protested, a permit could not have been issued without a full hearing on the merits.
23. Since no protest was filed, on February 2, 2012, the Commission administratively approved the Four Fountains application and issued a permit, Project No. F-18813.
24. Four Fountains conducted no disposal operations under the permit and later sold the permit to Sable Environmental, LLC.

Misrepresentation of Material Fact

25. The Banks mailing contained a map that purported to show the location of the injection well sought by Four Fountains' Rule 46 application.

26. The applied-for location of the well was actually 4,309 feet southwest of the location depicted on the Banks map.
27. Banks, on behalf of Four Fountains, mailed to the record surface owners of the Graham tract, the Venegas tract and the Opiela tract information that misrepresented the location of the applied-for well.
28. Four Fountains misrepresented the location of the applied-for well during the permitting process.
29. The actual location of an applied-for injection well is a fact that is material to the Rule 46 permitting process.

CONCLUSIONS OF LAW

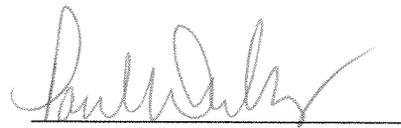
1. Sable Environmental, LLC has received notice and opportunity for hearing as required by 16 TEX. ADMIN. CODE § 3.46(d)(1).
2. The permit to inject fluid into a reservoir productive of oil and gas, Project No. F-18813, Commercial, issued to Four Fountains, LLC on February 2, 2012, was granted without proper notice, which is just cause for subsequent Commission action on the permit. 16 TEX. ADMIN. CODE § 3.46(d).

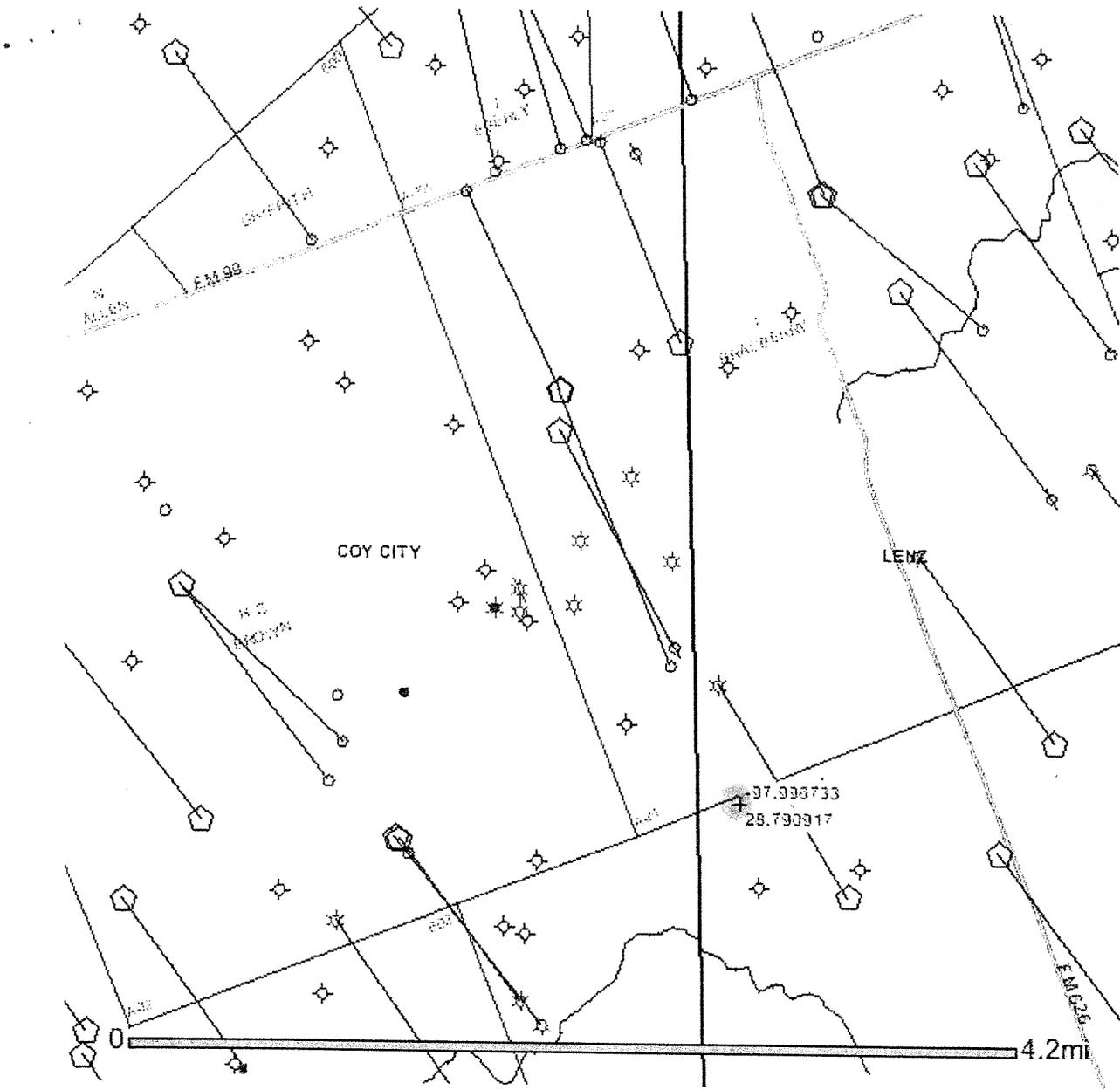
EXAMINERS' RECOMMENDATION

The examiners recommend that Sable Environmental, LLC's permit to inject fluid into a reservoir productive of oil and gas be TERMINATED.

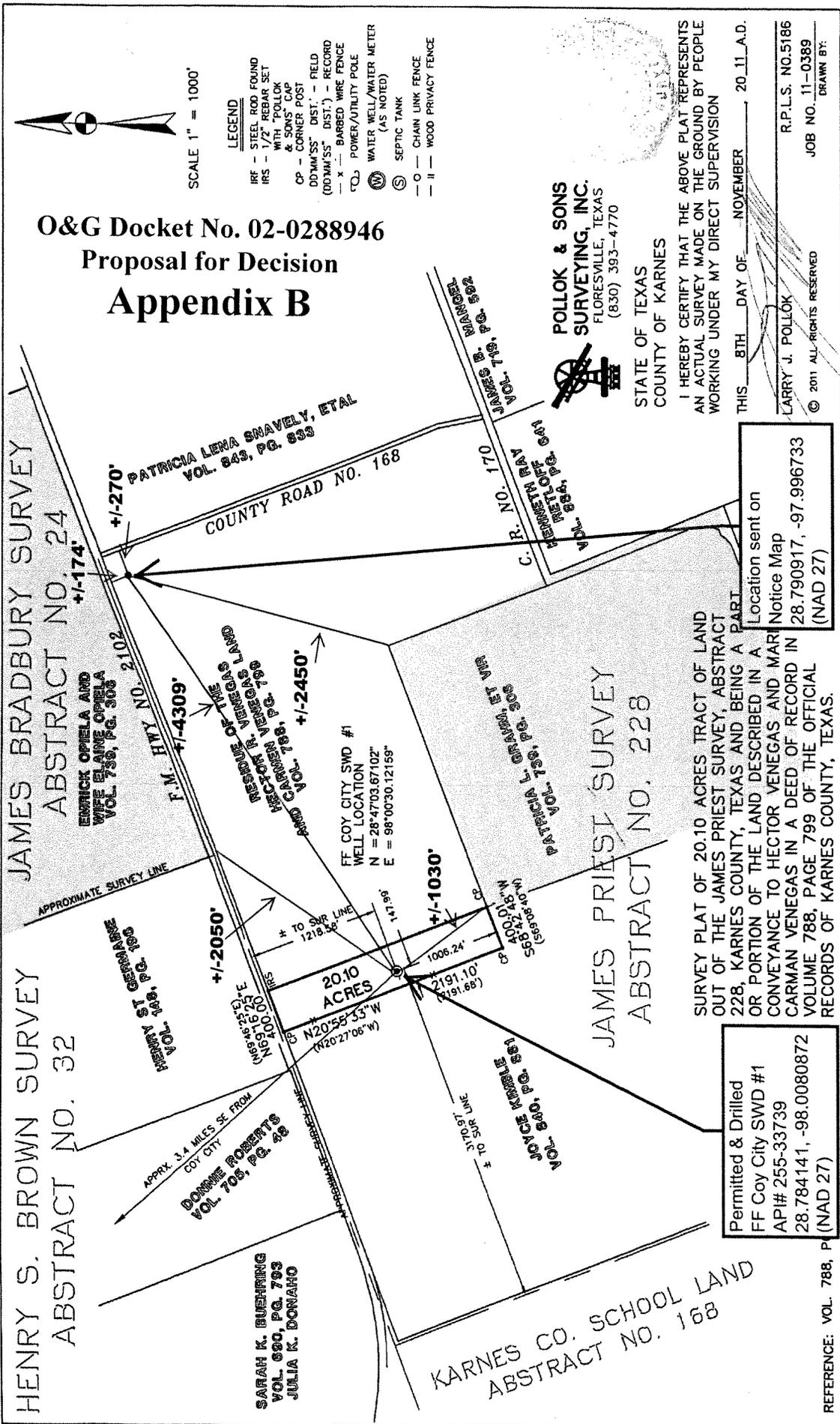
RESPECTFULLY SUBMITTED on this the 7th day of
October, 2014.


TERRY J. JOHNSON
Hearings Examiner


PAUL DUBOIS
Hearings Examiner



O&G Docket No. 02-0288946
 Proposal for Decision
Appendix A



O&G Docket No. 02-0288946
 Proposal for Decision
Appendix B



SCALE 1" = 1000'

- LEGEND**
- IRF - STEEL ROD FOUND
 - IRS - W/7' RODS SET W/7' RODS
 - W - W/7' RODS SET W/7' RODS
 - CP - CORNER POST
 - DD/MM/SS' DIST. - FIELD
 - (DD/MM/SS' DIST.) - RECORD
 - X - BARBED WIRE FENCE
 - - POWER/UTILITY POLE
 - - WATER WELL/WATER METER (AS NOTED)
 - - SEPTIC TANK
 - - CHAIN LINK FENCE
 - II — WOOD PRIVACY FENCE

POLLOK & SONS SURVEYING, INC.
 FLORESVILLE, TEXAS
 (830) 393-4770



STATE OF TEXAS
 COUNTY OF KARNES

I HEREBY CERTIFY THAT THE ABOVE PLAT REPRESENTS AN ACTUAL SURVEY MADE ON THE GROUND BY PEOPLE WORKING UNDER MY DIRECT SUPERVISION

THIS 8TH DAY OF NOVEMBER 20 11 A.D.

LARRY J. POLLOK
 © 2011 ALL RIGHTS RESERVED
 R.P.L.S. NO. 5186
 JOB NO. 11-0389
 DRAWN BY:

Location sent on Notice Map 28.790917, -97.996733 (NAD 27)

Permitted & Drilled
 FF Coy City SWD #1
 API# 255-33739
 28.784141, -98.0080872
 (NAD 27)

*Late-filed exhibit
 by direction JH*

REFERENCE: VOL. 788, P.

KARNES CO. SCHOOL LAND
 ABSTRACT NO. 168