IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
CHESAPEAKE ENERGY CORPORATION, *et al.*,[1]	§	Case No. 20-33233 (DRJ)
Reorganized Debtors.	§	(Jointly Administered)
STEFANIE LYN PORTERFIELD DELASANDRO, Plaintiff	§	Adv. Pro. 21-03009
v.	§	
ESQUISTO RESOURCES II, LLC, WILDHORSE RESOURCES MANAGEMENT CO., LLC, WHR EAGLE FORD, LLC, AND CHESAPEAKE OPERATING, L.L.C. Defendants.	§	

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S POOLING CLAIMS

TO THE HONORABLE DAVID R. JONES:

Defendants Esquisto Resources II, LLC ("Esquisto"), Wildhorse Resource Management Co., LLC ("Wildhorse"), WHR Eagle Ford, LLC ("WHR") and Chesapeake Operating, L.L.C. ("Chesapeake Operating") (all collectively referred to as "Defendants") file this Motion for Partial Summary Judgment on Plaintiff's pooling claims "Motion."

[1] A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/chesapeake. The location of Reorganized Debtor Chesapeake Energy Corporation's principal place of business and the Reorganized Debtors' service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

I. OVERVIEW

Defendants and Plaintiff are parties to four oil and gas leases ranging in size from approximately 3 acres up to approximately 100 acres. Plaintiff brings multiple causes of action in this adversary case, but her claims focus on pooling issues, and this Motion addresses these pooling claims.

Defendants pooled all of Plaintiff's leased acreage into four different pooled units in order to drill five horizontal wells in the Eagle Ford formation. Plaintiff claims that Defendants' pooling did not comply with the lease terms, and therefore the inclusion of her acreage in various pooled units is invalid. This allegation of pooling invalidity then forms the basis of the following causes of action: (1) suit to remove cloud on title[2]; (2) trespass to try title[3]; (3) breach of contract – wrongful pooling[4]; (4) claims under the Texas Natural Resources Code[5]; (5) bad faith pooling[6]; and (6) declaratory judgment[7] (collectively, "Plaintiff's pooling claims"). Plaintiff seeks as relief on these pooling claims (a) a declaration that the leases have terminated and (b) money damages.[8]

In Texas, pooling is typically a function of a contractual grant of authority given in an oil and gas lease. Here, the parties' leases each grant Defendants the right to pool in conformity

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[2] Pl.'s Am. Adversary Complaint, Dkt. No. 17 ("Pl.'s Cmplt."), p. 19, ¶¶ 42-44.

[3] *Id.* at pp. 20-21, ¶¶ 45-46.

[4] *Id.* at pp. 21-22, ¶¶ 47-49.

[5] *Id.* at pp. 23-24, ¶¶ 53-55.

[6] *Id.* at pp. 25-26, ¶¶ 57-58. This Motion, however, does not address Plaintiff's claim for bad faith pooling based on the shape of the Lero Unit; that claim presents a fact issue for the Court.

[7] *Id.* at pp. 26-28, ¶¶ 59 and 60 (A) (B) (C), (E). This Motion does not address subsections 60(D) and (E).

[8] *See* Pl.'s Cmplt., p. 37, ¶ 86.

with the written terms of those leases. Whether Defendants' pooling complied with the leases is a question of law. The Court should grant summary judgment dismissing Plaintiff's pooling claims, because Defendants complied with the terms of the leases' pooling clauses, including the acreage inclusion and size limitations set forth in the leases.

II. STATEMENT OF UNDISPUTED FACTS

A. The Leases

Plaintiff owns mineral interests in Brazos County and is a lessor or a successor-in-interest lessor to four leases: (a) three leases executed by her predecessor in 1994, which are identical in terms except for the acreage they cover and which were all amended with identical amendments in 2017, and (b) a fourth lease covering a different tract executed by Plaintiff in 2018.[9] Specifically:

- A March 9, 1994 lease for "63.50 acres, more or less," as amended, which is pooled in part into each of the Irene, Inez, and Lero Units[10] (the "1994 63.5-acre Lease");
- A March 9, 1994 lease for "100 acres, more or less," as amended, which is pooled in part into the Irene Unit and in part into the Inez Unit[11] (the "1994 100-acre Lease");
- A March 9, 1994 lease for "71.79 acres, more or less," as amended, which is pooled in part into the Scarpinato and in part into the Irene Unit[12] (the "1994 71.79-acre Lease") [13]; and

[9] *See* Pl.'s Cmplt., pp. 45, ¶¶ 17-18.

[10] **Ex. 1-3**.

[11] **Ex. 5-6**

[12] **Ex. 7-8**.

[13] The three 1994 Leases were originally a part of a March 9, 1993 lease for 499-acres ("the 499-acre Lease). **Ex. 9**.

- A February 1, 2018 lease for "3.59 acres, more or less," which is pooled into the Inez Unit[14] ("the 2018 Lease").

All of the above-referenced leases are referred to collectively as "the Leases," and the three 1994 leases are collectively referred to as the "1994 Leases."[15] Defendants are lessees/operators of these Leases.

B. The Leases' Pooling Requirements

Each Lease grants the lessee the right to pool the acreage covered thereby with other lands or leases, subject to certain requirements for (a) acreage inclusion and (b) maximum unit size.

1. Acreage Inclusion Language

The 1994 Leases, as amended, require, in relevant part, that:

> Notwithstanding any provision herein to the contrary, Lessee shall have no authority to pool or unitize the leased premises unless all of the leased premises is included in such unit or units.[16]

The other lease at issue—the 2018 Lease—allows for pooling subject to the following:

> Lessee shall have no right to pool the leased premises with other lands for the production of oil or gas unless all of [*sic*] leased premises are included within the first pooled unit thereby created.[17]

[14] **Ex. 4**.

[15] The 63.5-acre Lease includes a 7.64-acre tract that is not contiguous to the other 63.5-acre tracts. *See* Plaintiff's Complaint, p. 5 and fn.8. References to the 63.5-acre Lease herein include this tract.

[16] **Ex. 3. 6, 8** Amendment at ¶ 1 (emphasis added).

[17] **Ex. 4** at ¶ 6 and Addendum ¶ A.3 (emphasis added).

2. Unit Size Limit Formula

The Leases also limit the size of a pooled unit for horizontal wells. The size restriction is not a fixed amount. Instead, the size restriction uses a formula that allows larger units for longer horizontal wells.

The 2018 Lease contains the following formula:

> The maximum authorized size of pooled units…for horizontal wells (either oil or gas) shall be calculated according to the following formula:
> A (acreage) = [L (Horizontal Drainhole Displacement) X .064 + 160];
> then A is rounded up to the nearest number evenly divisible by 40.[18]

The variable in the formula is L, which is Horizontal Drainhole Displacement, and so the longer the horizontal drainhole, the larger the unit allowed by the lease.

The 1994 Leases determine maximum unit sized based on the same formula but they get there by a different path. Instead of quoting that formula in the leases, the 1994 Leases instead state that the pooled unit may be established up to the size "prescribed or permitted" by the applicable government regulations "for obtaining maximum allowable" for a well.[19] Here, the applicable government regulations are the special field rules adopted by the Texas Railroad Commission for the Giddings (Eagleford) Field (the "Giddings Field Rules").[20] The

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[18] *See* **Ex. 4**, Addendum ¶ A.3.iii.

[19] **Ex. 1, 5, 7,** ¶ 4 ("Units pooled for oil hereunder shall not substantially exceed 40 acres…provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, for the drilling of or operation of a well at a regular location or for obtaining maximum allowable from any well to be drilled…units thereafter created may conform substantially in size with those prescribed or permitted by governmental regulations.").

[20] The Texas Administrative Code contains the regulations promulgated by the Texas Railroad Commission, including provisions regarding allowables for oil wells. Section 3.86(d)(4) states that the "the maximum daily allowable for a horizontal drainhole well shall comply with [that section]…unless special field rules specify different requirements for…maximum daily allowable." 16 Tex. Admin. Code § 3.86(d)(4). These wells are located in the Giddings Field, which has adopted special field rules that include an allowable

Giddings Field Rules provide that the allowable to which a well is entitled is tied to the number of acres assigned to the well for proration purposes. The Giddings Field Rules utilize the same formula as the one contained in the 2018 Lease to calculate the maximum acres assignable for proration purposes.[21]

> For the purpose of allocating allowable oil production, acreage may be assigned to each horizontal well up to the acreage determined by the following formula:
>
> A = (L x 0.064) + 160 acres, where A = calculated area assignable, to a horizontal well for proration purposes rounded up to the next whole number evenly divisible by 40 acres; and L = the horizontal displacement of the well measured in feet between the first take point and the last take point of the horizontal well within the designated interval, provided that L is at least 150 feet.

C. The Pooled Units

In 2018, Defendants formed the Inez, Irene, Lero, and Scarpinato Units for the drilling of wells in the Eagle Ford formation, which include acreage from the Leases, and drilled five Eagle Ford wells in those units.[22] Specifically, Defendants formed:

- the Irene Unit, which includes a portion of the acreage from the 1994 71.79-acre, 100-acre, and 63-acre Leases, and drilled the Irene 1H well;
- the Inez Unit, which includes all of the acreage from the 2018 Lease, and a portion of the acreage from the 1994 100-acre Lease and 63.5-acre Lease, and drilled the Inez 1H well;

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formula identical to that set forth in the 2018 Lease. *See* **Ex. 18, 19** Form W-2 (reflecting that the wells are in the Giddings Field); **Ex. 16**, Final order Amending Field Rules for the Giddings (Eagleford) Field, Rule 3, p. 4; *see also* Pl.'s Cmplt., p. 13, ¶ 30 (recognizing that the Giddings (Eagleford) field rules apply) and p. 12, ¶ 28 (stating that the 2018 Lease formula "is the identical formula used by the RRC as provided in the Giddings (Eagleford) Field Rules").

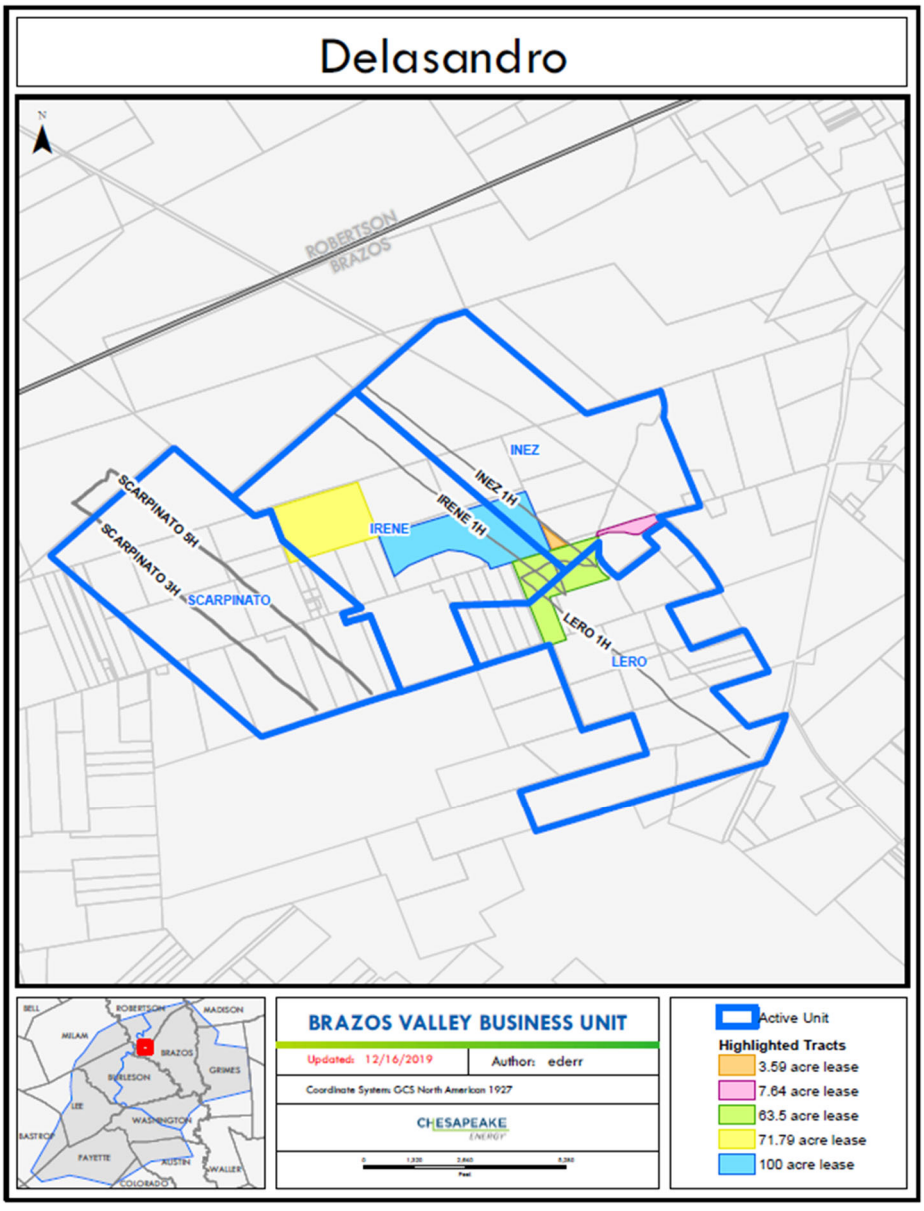
[21] *See* **Ex. 10**, Deposition of Stefanie Delasandro ("Pl. Depo") at 66:25-67:7, 68:6-11 (Plaintiff agreement that the Giddings (Eagleford) Field Rule formula applies to the 1994 Leases, and that formula set forth in the Giddings Field Rules and the formula in the 2018 Lease "work out to be the same.")

[22] **Ex. 12, 13, 14, 15.**

- the Lero Unit, which includes a portion of the acreage from the 1994 63.5-acre lease, and drilled the Lero 1H well; and

- the Scarpinato Unit, which includes a portion of the acreage from the 1994 71.79-acre Lease, and drilled the Scarpinato 3H well and 5H well.[23]

These four units collectively include all the acreage covered by the Leases:



[23] *See* Pl.'s Cmplt., pp. 9-10, ¶ 25.

III. SUMMARY JUDGMENT STANDARD AND LEGAL PRINCIPLES

A. Summary Judgment Standard

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).[24] The movant accomplishes this by "informing the court of the basis for its motion, and by identifying portions of the record which highlight the absence of genuine factual issues." *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir. 1992). "Once the movant produces such evidence, the nonmovant must then direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial[.]" *Id.* "This burden is not satisfied with 'some metaphysical doubt as to the material facts,' by 'conclusory allegations,' by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (internal citations omitted).

B. Lease Construction Principles

"A pooling clause allows a lessee to join land from two or more leases into a single unit." *Browning Oil Co., Inc. v. Luecke*, 38 S.W.3d 625, 634 (Tex. App.—Austin 2000, pet. denied). Pooling is an exception to the rule that the ownership interest conveyed under a lease cannot include a right to production from another's tract. *See Southeastern Pipe Line Co., Inc. v. Tichacek*, 997 S.W.2d 166, 170 (Tex. 1999). Thus, pooling allows owners of "non-producing tracts to share in production" from a well physically located on another nearby tract. *Browning Oil*, 38 S.W.3d at 634. "A lessee's authority to pool requires the lessor's consent, which is

[24] Rule 7056 of the Federal Rules of Bankruptcy Procedure states that "Rule 56 F. R. Civ. P. applies in adversary proceedings[.]"

typically furnished via a pooling provision in the mineral lease." *Samson Expl., LLC v. T.S. Reed Props., Inc.*, 521 S.W.3d 766, 774 (Tex. 2017); *accord HS Resources v. Wingate*, 327 F.3d 432, 442 (5th Cir. 2003).

"Oil and gas leases in general, and pooling clauses in particular, are a matter of contract." *Samson Expl.*, 521 S.W.3d at 774 (internal quotation marks omitted). "Construing an unambiguous lease is a question of law for the Court" which must "ascertain the parties' intentions as expressed in the lease." *Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex. 2002); *accord Browning Oil*, 38 S.W.3d at 640. Moreover, "Texas courts recognize that pooling is a standard and widespread industry practice that should be encouraged as a broad policy matter." *PYR Energy Corp. v. Samson Res. Co.*, 456 F. Supp. 2d 786, 791 (E.D. Tex. 2006), *opinion clarified on denial of reconsideration*, 470 F. Supp. 2d 709 (E.D. Tex. 2007). And "the anticipatory pooling power given the lessee in oil and gas leases is necessarily broad." *Young v. Amoco Prod. Co.*, 610 F.Supp. 1479 (E.D. Tex. 1985); *aff'd* 786 F.2d 1161 (5th Cir. 1986) (*citing Elliott v. Davis*, 553 S.W.2d 223, 226 (Tex. Civ. App.—Amarillo 1977, writ ref'd n.r.e.). As a result, "in the absence of clear language to the contrary, pooling clauses should not be construed in a narrow or limited sense." *Id.* (*citing Mengden v. Peninsula Pro. Co.*, 544 S.W.2d 643, 647 (Tex. 1976); *accord Sabre Oil & Gas Corp. v. Gibson*, 72 S.W.3d 812, 816 (Tex. App.—Eastland 2002, pet. denied).

IV. ARGUMENT AND AUTHORITIES

Plaintiff's claims fail because the summary judgment evidence establishes that Plaintiff's acreage was properly pooled as a matter of law.

A. The pooling of the acreage meets the Leases' acreage inclusion requirements.

1. Acreage from the 1994 Leases was properly pooled into multiple "unit or units," as expressly permitted by the 1994 Leases.

Plaintiff claims that the acreage from each of the 1994 Leases was not properly pooled, seemingly on the theory that the acreage must be pooled into a single pooled unit.[25] This is incorrect. The pooling of the acreage from the 1994 Leases is proper because the 1994 Leases expressly allow the acreage to be pooled into a "unit or units." In fact, Plaintiff agreed to lease amendments of the 1994 Lease for that very purpose. The 1994 Leases originally contained the following language:

> Notwithstanding anything contained herein to the contrary, Lessee shall have no authority to pool or unitize any particular tract of the herein leased premises for oil and/or gas unless one-half (1/2) of all of the acreage in such particular tract is included in said pooled unit.[26]

In 1994, acreage from these leases was pooled into pooled units for drilling into the Austin Chalk and Buda geologic formations.[27]

In 2017, Wildhorse asked Plaintiff to execute amendments to the 1994 Leases' pooling provisions in order to facilitate the creation of Eagle Ford geologic pooled units for the drilling of horizontal Eagle Ford wells. In an email to Plaintiff dated October 4, 2017, Wildhorse representative Joseph Milburn stated:

> As of right now, Wildhorse Resources is planning to develop three units that would each include a portion of a 63.5 acre tract in which you own the mineral

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[25] *See* Pl.'s Cmplt., p. 9, ¶ 25; **Ex. 10**, Pl. Depo. at 38:22-39:3; and Plaintiffs' Motion for Partial Summary Judgment (Dkt. 19 at 4-5).

[26] **Ex. 1, 5, 7** at ¶ 12 (emphasis added).

[27] These wells included the Scarpinato-Ayers No. 1 and No. 2 and Haltom Fazzino Unit 1. *See* Pl.'s Cmplt., pp. 6-8.

> rights to. I have attached the Oil, Gas and Mineral Lease in which this land is subject to. In paragraph 12 of the attached lease it is saying that if we use any of this land then we must include 50% of it in the unit. Since we are planning to include this property in 3 different units, that is not possible. The following is what we would like to propose that paragraph to change to:
>
> "Notwithstanding any provision herein to the contrary, Lessee shall have no authority to pool or unitize the leased premises unless all of the leased premises is included in such unit or units."
>
> Please give this a look and if it is agreeable to everyone then I will prepare the amendment for everyone to sign.[28]

This email provides surrounding context. Prior to the lease amendment, Wildhorse explained that at least 50% lease acreage was required to be included in a pooled unit. Wildhorse wanted to pool smaller portions of the lease into three different units and proposed a lease amendment that allowed smaller portions of the lease to be pooled, provided that "all of the leased premises" were included in the multiple "units".

Plaintiff, who was represented by counsel,[29] reviewed and executed the proposed amendments, and Defendants pooled the 1994 Lease acreage into four Eagle Ford pooled units.

Despite executing the Lease amendments expressly allowing for pooling into a "unit or units" Plaintiff nevertheless claims that Defendants "breached each of the[] leases …by failing to pool all of the acreage under these leases with respect to the Inez 1-H, Irene, Lero and Scarpinato Wells."[30] Plaintiff's claim rises and falls on contract interpretation: (a) whether Defendants complied with the lease language when they pooled the acreage into multiple units

[28] **Ex. 10,** Pl. Depo. at 32:15-33:9; **Ex. 11,** Email from Landman Joseph Milburn to Plaintiff.

[29] **Ex. 10**, Pl. Depo. at 35:7-12; 37:11-38:17.

[30] Amended Complaint, p. 10, ¶ 25.

(as Defendants contend) or (b) whether Defendants were required to pool the acreage underlying any given lease into a single unit (as Plaintiff contends).

Plaintiff's lease interpretation fails, because the 1994 Leases were expressly amended to state that the acreage could be pooled into a "unit or units."[31]

Pre-Amendment	Post-Amendment
"Lessee shall have no authority to pool or unitize . . . unless one-half (1/2) of all acreage . . . is included in said pooled unit."[32]	"Lessee shall have no authority to pool or unitize . . . unless all of the leased premises is included in such unit or units."[33]

Plaintiff's interpretation renders meaningless the specific amendment (a) to add the "or units" language to the lease, and (b) to delete the requirement that one-half of the lease acreage be included in a unit. Plaintiffs would read the lease to still require all lease acreage be included in a single unit. That ignores the plain language of the lease amendment and ignores the surrounding circumstances that prompted the lease amendment in the first place.

Lease language is given its plain, grammatical meaning unless doing so would clearly defeat the parties' intentions. *Anadarko*, 94 S.W.3d at 554. And contracts are to be construed "to avoid rendering any language meaningless." *Bair Chase Prop. Co., LLC v. S & K Dev. Co., Inc.*, 260 S.W.3d 133, 142 (Tex. App.—Austin 2008, pet. denied); *see also HS Resources*, 327 S.W.3d at 442 (5th Cir. 2003) (refusing to add an additional condition into the pooling

[31] **Ex. 3, 6, 8** (emphasis added).

[32] **Ex. 1, 5, 7** at ¶ 12 (emphasis added).

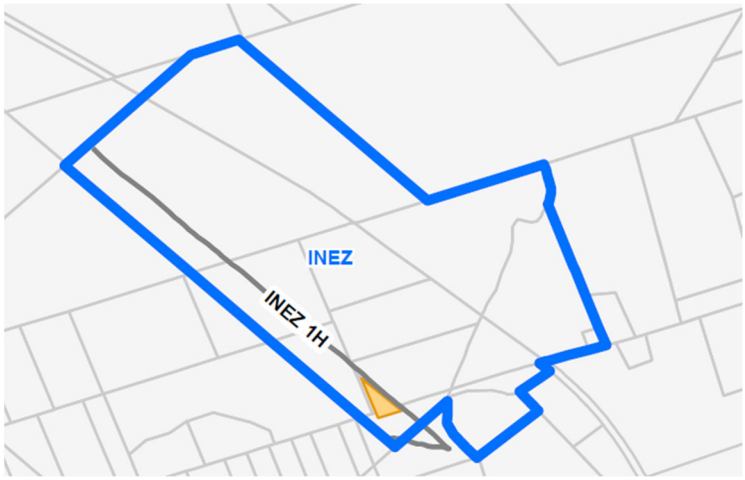
[33] **Ex. 3, 6, 8** Amendments (emphasis added).

provision that all of the acreage had to be pooled, because it would be "internally inconsistent" with the plain language).

Plaintiff admits she was informed, prior to executing the "unit or units" amendments, of Defendants' intent to pool acreage from the leases into multiple units.[34] She now seeks to disavow the Lease amendments in an attempt to seek additional royalties or lease termination. Her claims that arise out of alleged non-compliance with the acreage inclusion language in the leases should be dismissed, because the undisputed evidence establishes that Defendants complied with the Leases by pooling "all of the leased premises" into a "unit or units."

2. "[A]ll of the leased premises" from the 2018 Lease was properly included in the Inez Unit.

Plaintiff's next claim concerns the 2018 acre lease for a small tract of land comprising "3.59 acres, more or less." That tract (in orange) was entirely pooled into the Inez Unit:



[34] **Ex. 10**, Pl. Depo. at 43:7-44:25. Plaintiff also acknowledges that all of the acreage was pooled, albeit across multiple units. *Id.* at 57:20-58:1 (admitting that the "one hundred percent" of the 63.5-acre lease is pooled across the three units).

Plaintiff claims that Defendants pooled only 2.88 acres "of the 3.59-acres lease," and that this constitutes a failure to pool "the **entire** 3.59-acres" under the 2018 Lease, which requires that "all of the leased premises" be pooled. Plaintiff claims that "the 3.59-acres lease is now null and void."[35]

Defendants are entitled to summary judgment on this claim, because all of the acreage under the 2018 Lease was included in the Inez Unit. Plaintiff's claim is born out of a difference in how the acreage is estimated on the face of the lease and how the acreage was surveyed. The "leased premises" is described in the 2018 Lease as "3.59 acres, **more or less,** being the same land described in that certain Warranty Deed dated March 25, 1950…."[36] The survey and title opinion for that tract, however, reflect that the tract includes only 2.88 acres. In conformity with the survey and title opinion, the Unit plat lists the 2018 the tract as being as 2.88 acres.[37]

Whether the proper survey measurement is 2.88 acres or 3.59 acres is immaterial to whether 100% of the tract was pooled, because whatever the proper measurement, "all of the lease premises," is expressly included in the Inez Unit. The Inez Unit Designation provides that:

> It is the intention of the undersigned to include, and it hereby includes in said Unit, all lands and Leases in which the undersigned now owns an interest, either legal or equitable….[38]

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[35] Pl.'s Cmplt., p. 8, ¶ 23.

[36] **Ex. 4** (emphasis added).

[37] *See* **Ex. 12, p. 5.**

[38] **Ex. 12**, p. 1.

And it further describes the lands included in the Inez Unit as follows:

> The undersigned do hereby POOL…the lands covered by such Leases [on Exhibit A]… and lands set out and outlined in the plat attached hereto as Exhibit B, and described in Exhibit C, attached hereto (collectively, 'Unit Acreage')….[39]

Thus the Designation provides that it includes all of the lands in which Defendants owned an interest within the Unit, and further included three reference points further identifying what "leases" and "lands" are included: (1) an Exhibit A listing of leases, (2) an Exhibit B unit plat depicting the unit outline and the tracts within it, and (3) an Exhibit C unit description containing a description of the tracts within the unit and a metes and bounds description of the outline of the unit; these three collectively are referred to in the Unit Designation as the "Unit Acreage."[40] The Unit Designation—as reflected by all three of these reference points—includes the entire tract covered by the 2018 Lease.

First, the 2018 Lease is expressly listed in the First Amendment of the Inez Unit Designation, thus all of the "lands covered by" the identified Lease are included in the Unit.[41]

Second, Exhibit B of the Unit Designation identifies all of the 2018 Lease acreage as being within the Inez Unit boundary, shown as Tract 2B on the Unit Plat (in yellow):[42]

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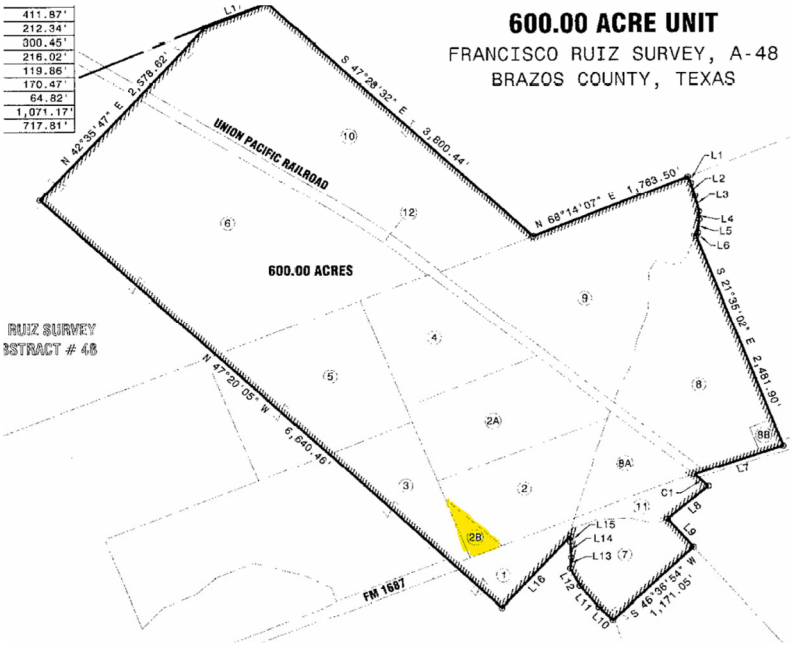
[39] *Id.*

[40] *Id.*

[41] *Id.*, Amendment.

[42] *Id.* at p. 5; *see also* **Ex. 10**, Pl. Depo. at 64:22-65:4.



Third, the Exhibit C unit description expressly includes a description of the leased acreage, that matches the description of the leased premises found in the Lease.[43] Specifically, the Unit Description describes "a called 3 59/100 acre tract of land described in the deed to Clyde J. Porterfield recorded in Volume 143, Page 278 of said Deed Records of Brazos County."[44]

Finally, the Designation expressly states that it includes "all the lands and Leases in which the undersigned now owns an interest…."

The Unit Designation establishes that regardless of whether the true acreage of the "leased premises" is 2.88 acres or 3.59 acres, the Unit Designation and Amendment include

[43] *Compare* **Ex. 4**, Lease "3.59 acres, more or less…being the same land described in that certain Warranty deed…to Clyde J. Porterfield…recorded in Volume 143, Page 278 of the Deed Records of Brazos County" *with* **Ex. 12**, p. 6, Unit Description "a called 3 59/100 acre tract of land described in the deed to Clyde J. Porterfield recorded in Volume 143, Page 278 of said Deed Records of Brazos County."

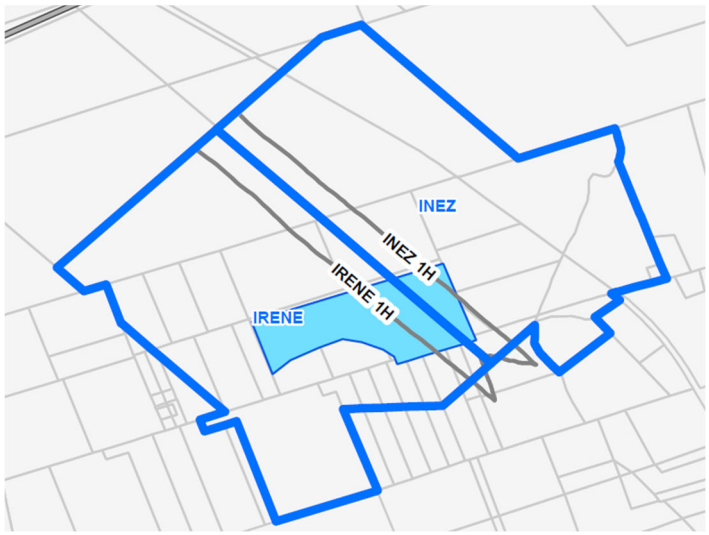
[44] *See id.*

all of the leased premises under the Lease in the description of the Unit, however many acres that precisely may be.[45]

The summary judgment evidence establishes as a matter of law that all of the acreage covered by the 2018 Lease was included in the Inez Unit, which means the lease was pooled in compliance with the lease's acreage inclusion requirement as a matter of law.

3. The 100-acre Lease was properly pooled and included in the Irene and Inez Unit Descriptions.

Plaintiff's next pooling claim concerns the 1994 100-acre Lease (in light blue). As the graphic illustrates, the 100-acre Lease was pooled partially into the Irene Unit and partially into the Inez Unit:



[45] The Lease expressly contemplates that the metes-and-bounds description in the Warranty Deed may be "more or less" than the 3.59 acres referenced in the Lease. And Texas law is clear that a deed metes-and-bounds description typically controls over a general acreage description, for, as noted by the Texas Supreme Court, "[t]he call for acreage…is the least reliable of all calls in a deed." *Stribling v. Millican DPC Partners, LP*, 458 S.W.3d 17, 20-21 (Tex. 2015). Plaintiff admits that per the "more or less," language, the actual acreage covered by the lease could be more than 3.59 acres or could be less than 3.59 acres. **Ex. 10**, Pl. Depo. at 60:11-61:4.

The pooling clause in the 1994 100-acre Lease requires that "Lessee…file for record in the appropriate records of the county in which the leased premises are situated an instrument describing and designating the acreage as a pooled unit."[46] Defendants did this, by filing Unit Designations for the Irene and Inez Units that describe and designate "the acreage" from the 100-acre Lease in multiple ways as part of those units.[47]

Both the Irene Designation and the Inez Designation state that it is the intent to include all the land and leases in which Defendants own an interest that is located within the "Unit Acreage":

> It is the intention of the undersigned to include, and it hereby includes in said Unit, all lands and Leases in which the undersigned now owns an interest, either legal or equitable, covering said Unit and any additional lands, Lease or Leases which may be hereinafter acquired by the undersigned, or any of the working interest owners, covering all or part of the Unit Acreage during the time the Unit remains in effect.[48]

The Irene and Inez Unit Designations define the "Unit Acreage" as follows:

> The undersigned do hereby POOL…the lands covered by such Leases [on Exhibit A] insofar as they cover production from the Leases and lands set out and outlined on the plat attached hereto as Exhibit B, and described in Exhibit C, attached hereto (collectively, 'Unit Acreage')….[49]

The Designations thus specifically describe the acreage as including (a) the lands covered by the leases identified in Exhibit A, (b) insofar as they cover production from lands "set out and outlined" on the Exhibit B plat, and (c) as "described in Exhibit C."[50]

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[46] **Ex. 5**, ¶ 4.

[47] **Ex. 12, 13**.

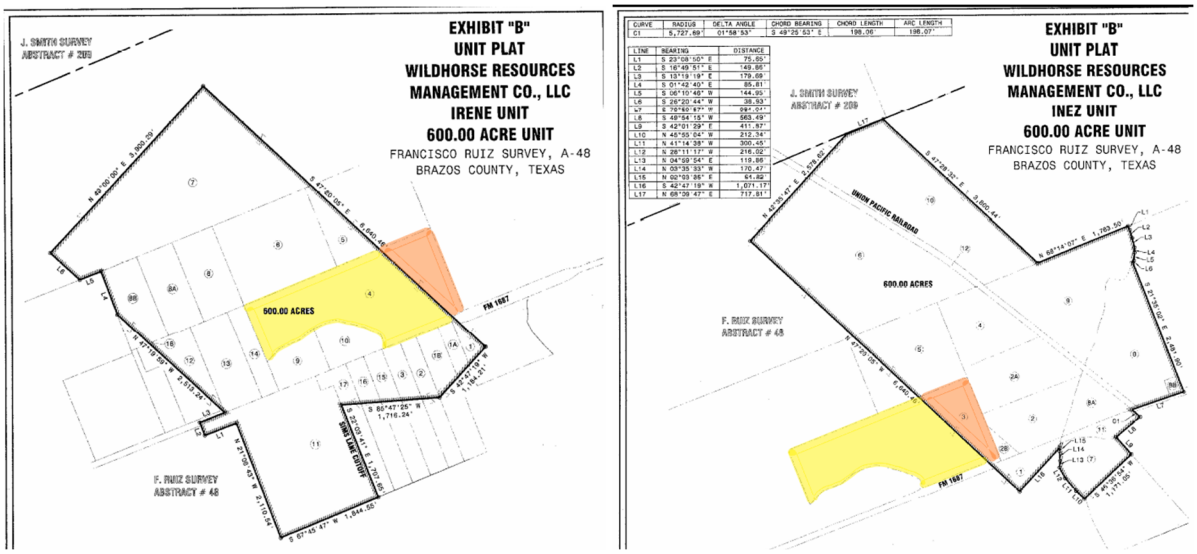
[48] *Id.* (emphasis added).

[49] **Ex. 12, 13**.

[50] *Id.* (emphasis added).

Plaintiff claims that the 1994 100-acre Lease was "not included" in the Unit, because the 1994 100-acre Lease is not listed on Exhibit A of the Inez and Irene Unit Designations. This is true, but it is immaterial, because the Lease contains no such requirement. Instead, the Lease requires Defendants to file a description of "the acreage,"[51] which Defendants did.

First, the 100 acres is included in the Unit Designations' Exhibit B Unit Plats (below; with the Irene acreage highlighted in yellow and Inez acreage in orange):[52]



Second, each Unit Designation's Exhibit C Unit Description includes a description of the 100 acres. Exhibit C expressly includes in its description: "a portion of a called 131 acre tract of land described in the deed to Porterfield Family Partners I, Ltd. recorded in Volume 2415,

[51] **Ex. 5**, ¶ 4.

[52] *See* **Ex. 12**, p. 5; **Ex. 13**, p. 7 (coloring added).

Page 105 of said Deed Records of Brazos County)."[53] This is the 100 acre tract covered by the 1994 100-acre Lease.[54]

Third, the actual 100 acres covered by the 1994 100-acre Lease is included as part of "lands covered by" a 1993 499-acre Lease, which is listed in Exhibit A[55]:

Clyde J. Porterfield and wife, Irene H. Porterfield	Union Pacific Resources Company	3/9/1993	1780	91

The 1993 499-acre Lease includes and describes the exact 100-acre tract covered by the 1994 100-acre Lease. From the listed 1993 499-acre Lease[56]:

TRACT SIX: Being 100.0 acres, more or less, out of the Francisco Ruiz League, Abstract 48, Brazos County, Texas, and being the same land described as the "Third Tract" in a Deed dated February 21, 1944, from Vince Court and wife, Anthonette Court, to Clyde J. Porterfield and recorded in Volume 115, Page 439 of the Deed Records of Brazos County, Texas.

This language describes the exact "land covered by" the 1994 100-acre Lease[57]:

TRACT SIX: Being 100.0 acres, more or less, out of the Francisco Ruiz League, Abstract 48, Brazos County, Texas, and being the same land described as the "Third Tract" in a Deed dated February 21, 1944, from Vince Court and wife, Anthonette Court, to Clyde J. Porterfield and recorded in Volume 115, Page 439 of the Deed Records of Brazos County, Texas.

[53] *See* **Ex. 12** p. 6 and **Ex. 13** p. 8.

[54] *See* **Ex. 17,** Deed (describing the "131 acres of land, less 31 acres conveyed to Chas. Wilson…leaving 100 acres, more or less.")

[55] **Ex. 12**, p. 4; **Ex. 13**, p. 4.

[56] **Ex. 9**, vol 1780, page 93.

[57] **Ex. 5**, vol 2151, page 179.

Exhibit A of the Unit Designations does not limit the description to *leases* listed but instead expressly includes the "*lands covered by* such leases."[58] This 100 acres is expressly part of the land covered by the listed 1993 Lease.

Defendants complied with the Lease requirement that they file "an instrument describing or designating the acreage in the pooled unit. The pooling clause in the lease does not require naming leases. Plaintiff's claim fails as a matter of law.[59]

B. The Inez and Lero Units meet the Leases' maximum unit size requirements.

Plaintiff's next claim alleges that the Inez and Lero Units are too large. The Inez and Lero Unit Designations include 600 acres each. Plaintiff claims that the maximum permitted size of these units, per the Leases pooled into those units, is 560 acres. Plaintiff claims that the 600-acre size of the Inez and Irene Units is a breach of the pooling provisions in the 100-acre Lease, the 63.5-acre Lease, and the 2018 Lease. As explained below, this claim fails because the acreage calculation formulas applicable to those Lease unambiguously allows the Inez and Lero units to be 600 acres.

Both the 1994 Leases and 2018 Lease contain a restriction on unit size for pooled units. That restriction is not a fixed number, but rather a formula. The 2018 Lease (expressly) and

[58] **Ex. 12**, p. 1; **Ex. 13**, p. 1.

[59] The description of the acreage covered by the 100-acre Lease in the Unit Designations also satisfies the statute of frauds, which requires that a conveyance of land contain a "sufficient legal description." *Morrow v. Shotwell*, 477 S.W.2d 538, 539 (Tex. 1972); *Kuklies v. Reinert*, 256 S.W.2d 435 (Tex. Civ. App. – Waco 1953, writ ref'd n.r.e.). "Generally speaking, a property can be identified with reasonable certainty if it identifies the general area of the land and contains information regarding the size, shape and boundaries" and the court "allow[s] for a liberal construction of the words describing the land." *Ardmore, Inc. v. Rex Group, Inc.*, 377 S.W.3d 45, 56 (Tex. App. – Houston [1st Dist.] 2012, pet. denied); *see also Dixon v. Amoco Prod. Co.*, 150 S.W.3d 191, 194 (Tex. App.—Tyler 2004, pet. denied) (holding that the "unit Designation List of Lease and the Unit Designation Map should be considered together in determining whether there is a sufficient legal description for the Unit Designation").

the 1994 Leases (by reference to the size "prescribed or permitted" by governmental authority for "maximum allowables" in the Giddings (Eagleford) Field) limit the size of the pooled unit, for horizontal wells, according to the following formula:

A (acreage) = [L (Horizontal Drainhole Displacement) X .064 + 160],

then A is rounded up to the nearest number evenly divisible by 40.[60]

"Horizontal Drainhole Displacement" is calculated as the distance "from the first take point to last take point" of the well, as reflected on as-drilled plats submitted to and approved by the Texas Railroad Commission.[61]

The approved plats for the Inez 1H and Lero 1H set forth the following first take point and last take point calculations, which calculate the following horizontal drainhole displacement:[62]

Well	First Take Point	Last Take Point	Horizontal Drainhole Displacement
Inez 1H	7,970'	14,421'	6451'
Lero 1H	7,920'	14,226'	6306'

Plaintiff admits that she has no evidence that these listed take points are incorrect.[63] Applying the formula from the 2018 Lease and Giddings Field Rules, the Inez 1H calculation equals 600 acres:

[60] **Ex. 4**, Addendum ¶ A.3.iii; **Ex. 1, 5, 7** at ¶ 4; **Ex. 16**, Rule 3, p. 4; *see Jones v. Killingsworth*, 403 S.W.2d 325, 332 (Tex. 1965) ("So long as the lessor's pooling unit is confined to the size of the pooling units authorized by the rules and regulations of the Railroad Commission, it can reasonably be said that the unit complies in size with the prescribed regulation.")

[61] *See* 16 Tex. Admin. Code § 3.86(a)(4) ("Horizontal drainhole displacement—The calculated horizontal displacement of the horizontal drainhole from the first take point to the last take point.").

[62] *See* **Ex. 18, 19.**

[63] **Ex. 10**, Pl. Depo. at 71:2-72:2, 74:1-22.

A = (6,451 x .064) + 160 = 572.864

This calculation rounds up to 600, because 600 is the next number above 572.864 that is evenly divisible by 40. The Lero 1H calculation also equals 600 acres:

A = (6,306 x .064) + 160 = 563.584

This calculation also rounds up to 600, because 600 is the next number above 563.584 that is evenly divisible by 40. Further, the Railroad Commission reviewed and approved the completion reports supporting these calculations and confirmed the 600 acre unit size for these Units.[64]

In summary, Plaintiff's claims based on the size of the Inez and Lero Units fail as a matter of law, because the summary judgment evidence establishes that the maximum size of the units is 600 acres. Defendants are entitled to summary judgment on this claim.

C. Because Defendant's pooling complied with the Leases, Plaintiff's pooling claims fail.

Plaintiff's causes for action for (1) suit to remove cloud on title and (2) trespass to try title are solely premised on the pooling claims set forth above, and Defendants should be

[64] It appears that Plaintiff claims that the maximum size is 560, not 600, based on a prior W-2 that incorrectly calculated unit size based on an incorrect "horizontal drainhole displacement" value. This was corrected, and the proper 600-acre calculation was accepted and confirmed by the Commission as reflected on the current Completion Reports (Form W-2). **Ex. 18, 19.** Plaintiff has not presented any evidence that this calculation is incorrect, and moreover, cannot in this proceeding contest the validity of the Railroad Commission order of the maximum unit size. *See Magnolia Petroleum Co. v. New Process Prod. Co.*, 104 S.W.2d 1106, 1110 (Tex. 1937) ("This court has repeatedly held that an order of the Railroad Commission, regular on its face, is presumed to be valid, and will be enforced unless set aside in a direct proceeding brought for that purpose; and, furthermore, it is not subject to collateral attack"); *Mulvey v. Mobil Producing Texas and New Mexico Inc.*, 147 S.W.3d 594, 601 (Tex. App.—Corpus Christy-Edinburg 2004, pet. denied) (holding that the court lacked jurisdiction on claims attacking the Railroad Commissions decisions related to "permits, allowables and exceptions because "with regard to decisions of the commission promulgated within the scope of its regulatory authority, trial courts are mandated to take judicial notice of such decisions.")

granted summary judgment on those claims.[65] Plaintiff's causes of action that are based in part on these claims—claims for (3) breach of contract – wrongful pooling; (4) claims under the Texas Natural Resources Code; (5) bad faith pooling; and (6) declaratory judgment—should be dismissed to the extent that they are based on the alleged improper pooling of the Leases.[66]

V. SUMMARY JUDGMENT EVIDENCE

In support of its Motion for Partial Summary Judgment, Defendants rely on the following summary-judgment evidence, which is attached hereto and incorporated herein by reference:

Ex. 1:	Oil, Gas and Mineral Lease dated March 9, 1994 between Irene H. Porterfield and Union Pacific Resources Company for **63.50 acres**, more or less, recorded in Vol. 2151, page 191 of the Deed Records of Brazos County; and Amendment of Oil, Gas and Mineral Lease (the "1994 63.5-acre Lease")
Ex. 2:	Amendments of 1994 63.5-acre Lease
Ex. 3:	Amendment of 1994 63.5-acre Lease signed by Stefanie Delasandro
Ex. 4:	Paid Up Oil and Gas Lease between Stefanie Lyn Delasandro and Esquisto Resources, LLC, effective February 1, 2018 (the "2018 Lease")
Ex. 5:	Oil, Gas and Mineral Lease dated March 9, 1994 between Irene H. Porterfield and Union Pacific Resources Company for **100 acres**, more or less, recorded in vol. 2151, page 177 of the Deed Records of Brazos County; and Amendment of Oil, Gas and Mineral Lease (the "1994 100-acre Lease")

[65] Plaintiff claims that the alleged ineffective pooling renders the Leases invalid and resulted in those termination of those Leases. Defendants contend that, even if the pooling was invalid, those Leases were held by production from those tracts and have not terminated. That issue is not addressed in this motion. Defendants will address that claim once a ruling is made on the pooling issues.

[66] As noted in footnote 6 and 7, *supra*, Plaintiff also asserts a claim for wrongful/bad faith pooling of the Lero Unit based on the shape of that Unit, which presents a fact issue and is therefore not the subject of this Motion. Plaintiff also asserts a claim under the Texas Natural Resources Code, and certain declaratory judgment claims, that are not addressed herein.

Ex. 6:	Amendment of 1994 100-acre Lease signed by Stefanie Delasandro
Ex. 7:	Oil, Gas and Mineral Lease dated March 9, 1994 between Irene H. Porterfield and Union Pacific Resources Company for **71.79** acres, more or less, recorded in Vol. 2151, page 184 of the Deed Records of Brazos County; and Amendment of Oil, Gas and Mineral Lease (the "1994 71.79-acre Lease")
Ex. 8:	Amendment of 1994 71.79 -acre Lease signed by Stefanie Delasandro
Ex. 9:	Oil, Gas and Mineral Lease dated March 9, 1993 between Clyde J Porterfield and wife Irene H. Porterfield and Union Pacific Resources Co., for 499 acres recorded in Vol. 1780, page 91 of the Deed Records of Brazos County(the "1993 499-acre Lease")
Ex. 10:	Excerpts from December 18, 2019 deposition of Stefanie Delasandro ("Pl. Depo.")
Ex. 11:	October 4, 2017 Email from Landman Joseph Milburn to Stefanie Delasandro
Ex. 12:	Wildhorse Resources Management Co., LLC Unit Designation and Amended Unit Designation ("Inez Unit Designation")
Ex. 13:	Wildhorse Resources Management Co., LLC Unit Designation ("Irene Unit Designation")
Ex. 14:	Wildhorse Resources Management Co., LLC Unit Designation ("Lero Unit Designation")
Ex. 15:	Declaration of Pooled Unit Scarpinato Unit ("Scarpinato Unit Designation")
Ex. 16:	Giddings (Eagleford) Field Rules
Ex. 17:	Warranty Deed dated July 31, 1995, from Irene H. Porterfield to Porterfield Family Partners, I, Ltd., conveying 131 acres of land, less 31 acres conveyed to Chas. Wilson, recorded in Volume 2415, Page 105 of the Deed Records of Brazos County
Ex. 18:	Certified Copy of RRC Form W-2, Completion or Recompletion Report, Plat and P-16 for the Inez 1H Well, Approved by the Railroad Commission
Ex. 19:	Certified Copy of RRC Form W-2, Completion or Recompletion Report, Plat and

	P-16 for the Lero 1H Well, Approved by the Railroad Commission

VI. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant Defendants' Motion for Partial Summary Judgment, and order that:

(1) The pooling provisions of the 71.79-acre Lease, 100-acre Lease, and 63.5-acre Leases were not breached, because the language of the 1994 leases allow acreage from the leases to be included in multiple units, provided that all the acreage is pooled into one or more units;

(2) The pooling provision of the 2018-acre Lease was not breached, because the 2018 Lease was properly pooled into the Inez Unit;

(3) The pooling provision of the 100-acre Lease was not breached because the 100-acre Lease was properly pooled into the Irene and Inez Units; and

(4) The pooling provisions of the 100-acre Lease, 63.5-acre Lease and 2018 Lease were not breached because the size of the Inez and Lero Units does not exceed the maximum size set forth in the Leases.

Defendants further request that the Court grant summary judgment and dismiss with prejudice any and all claims premised on the foregoing issues, including but not limited to Plaintiff's claims for: (1) suit to remove cloud on title; (2) trespass to try title; (3) breach of contract – wrongful pooling; (4) claims under the Texas Natural Resources Code; (5) bad faith pooling; and (6) declaratory judgment. Defendants further request that the Court award Defendants all other relief, at law or in equity, to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2021, the foregoing has been served upon counsel of record via ECF as follows:

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