



Department of Energy

Washington, DC 20585

February 26, 2018

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Deputy Director
Mail Stop T8-F5
Washington, DC 20555-0001

Subject: Alternative Proposal to Meet the Requirements of 10 CFR 40 Appendix A
Criterion 11C to Obtain Subsurface Rights for the Panna Maria, Ray Point, and
Conquista, Texas, UMTRCA Title II Sites

To Whom It May Concern,

This letter responds to previous discussions between U.S Department of Energy (DOE) and the U.S Nuclear Regulatory Commission (NRC) regarding the real property requirements for license termination set forth in 10 CFR 40 as they apply to the Panna Maria, Ray Point, and Conquista, Texas, Uranium Mill Tailings Radiation Control Act (UMTRCA) Title II sites. During the DOE pre-transition due diligence reviews for these sites, DOE noted that, because of current growth in oil and gas production in the Karnes and Live Oak Counties, alternative requirements may be needed for DOE to meet its responsibilities to manage and maintain long-term protection of public health, safety, and the environment.

The requirement at Title 10 *Code of Federal Regulations* Section 40 (10 CFR 40), Appendix A, Criterion 11C states specific licensees must demonstrate a “serious effort” to obtain subsurface rights for land that will be transferred to DOE under Title II of UMTRCA. Because of the high value of subsurface rights for the Texas sites, the possibility exists that the licensees will be unable to acquire these rights. This leaves open the possibility that DOE could become responsible for a site where a third party has a valid right to enter the site, install oil and gas wells and associated production equipment, and conduct completion activities.

The Texas Title II sites are located within the Eagle Ford shale oil and gas play. Multiple producing wells exist near and, in some cases, beneath the sites, as shown on the enclosed maps. If an oil and gas lease owner declines a reasonable offer to purchase the subsurface rights, the specific licensee will have met the requirements of Criterion 11C and license termination can occur. DOE, as the surface owner, might then have to allow surface access and installation of wells within the boundary of the DOE property. Even if the lease operator obtains an NRC license to enter the site, locating oil and gas wells on DOE property could force DOE to manage access, respond to spills or other ecological disruptions, or monitor construction and operation of well pads and production pipelines. DOE submits that oil and gas wells on DOE property may not be protective of surface land use or disposal cell integrity, and could increase DOE costs to manage a site.

As an alternative, DOE has discussed with both NRC and the Texas Commission on Environmental Quality (TCEQ) that the specific licensees obtain binding agreements with the lease owners to access their leases from an offsite location. The agreements, or “surface waivers,” would prohibit oil and gas operators from entering the site footprint within, for

NMSS01



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example, 4,000 feet of the surface (the Eagle Ford pay zones are typically about 10,000 beneath the surface). This would prohibit location of wellheads within the site boundaries. Recently, most oil and gas resources in the area are accessed with directional drilling to place horizontal well bores in the pay zone. Many leases cross the proposed license boundaries; consequently, a surface waiver should not pose a significant hardship on lease owners. Also, consistent with Criterion 11C, we suggest obtaining subsurface rights might not be necessary for these Texas sites to maintain protectiveness.

If this alternative is acceptable, the specific licensee would not be required to assess the value of the leases or take any further action to obtain ownership of the subsurface rights at the subject sites. However, because third-party rights would remain beneath the site, DOE expects the public record would be annotated as required in Criterion 11C.

The Falls City UMTRCA Title I site was transferred to DOE with valid subsurface rights owned by third parties. DOE will consider establishing surface waivers with lease owners beneath the Falls City site, as well.

On January 29, 2018 NRC provided guidance in a letter to DOE, which stated:

“... while transfer of the surface and/or subsurface estates is permitted under certain circumstances at UMTRCA Title II sites, use of the surface or subsurface estates by an entity other than the DOE will generally require that a specific license be issued by the NRC, as required in 10 CFR 40.28 (d). In addition DOE would remain the owner of the land, and would need to meet its requirements under UMTRCA and NRC regulations for its general license.”

Because of the upcoming transitions of the Panna Maria and Ray Point sites, DOE requests NRC guidance on this alternative to satisfy Criterion 11C of 10 CFR 40 Appendix A. Specifically, DOE requests clarification from NRC on the following questions with regard to the Texas Title II sites:

1. If subsurface rights were not transferred to DOE, would the owner of those rights be subject to NRC licensing to enter DOE property to access those rights?
2. Would NRC oversee the actions of an oil and gas operator working on the DOE site under an NRC license?
3. Would NRC concur in the application of a binding surface waiver in lieu of the licensee making a serious effort to acquire the subsurface rights?

Because Texas is an agreement state, DOE requests coordination with NRC and TCEQ to resolve DOE concerns related to obtaining subsurface rights for these sites.

Document Control Desk

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February 26, 2018

Please contact me at (970) 248-6378 or at Tashina.Jasso@lm.doe.gov if you have any questions.
Please address any correspondence to:

U.S. Department of Energy
Office of Legacy Management
2597 Legacy Way
Grand Junction, CO 81503

Sincerely,



Tashina Jasso, Site Manager
Office of Legacy Management

Enclosure

cc w/enclosure:

N. Goates, ConocoPhillips
D. Grapski, ExxonMobil
K. Raabe, Rio Grande Resources
T. Gonzalez, TCEQ
C. Grossman, NRC
D. Orlando, NRC
S. Poy, NRC
M. Kautsky, DOE-LM (e)
M. Widdop, Navarro (e)
File: CON\PNM\RYP 0030.10 (records)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 29, 2018

Mr. Carmelo Melendez, Director
U.S. Department of Energy
Office of Legacy Management
1000 Independence Avenue, SW
Washington, DC 20585

SUBJECT: CLARIFICATION OF ALLOWABLE LAND USE AT URANIUM MILL TAILINGS
RADIATION CONTROL ACT (UMTRCA) TITLE I AND TITLE II DISPOSAL
SITES

Dear Mr. Melendez:

I am writing in response to the U.S. Department of Energy's (DOE's) request for clarification of the allowable land uses at Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) Title I and Title II Disposal Sites, as discussed in the UMTRCA and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 40.27, *General license for custody and long-term care of residual radioactive material disposal sites*, and Section 40.28, *General license for custody and long-term care of uranium or thorium byproduct materials disposal sites*. This request was made during discussions between U.S. Nuclear Regulatory Commission (NRC, the Commission) and DOE staff regarding potential future alternative uses at DOE's UMTRCA Title I and Title II sites and during a recent visit by NRC staff to DOE's Title I sites in Colorado.

UMTRCA Title I, Section 104(h) states, in part, that:

No provision of any agreement under section 103 shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition.

UMTRCA Title II, Section 201(b)(2)(B) states, in part, that:

If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section.

The NRC staff's understanding of the difference between what may be permitted for Title I and Title II sites derives from UMTRCA itself, and what other uses are permitted for each class of site.

These requirements are reflected in 10 CFR 40.27(d), which states, in part, that:

As specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the Commission shall grant a license permitting use of the land if it finds that the use will not disturb the residual radioactive materials or that the residual radioactive materials will be restored to a safe and environmentally sound condition if they are disturbed by the use.

And 40.28(d), which states, in part, that:

Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land.

As outlined above for Title I sites, only the subsurface mineral rights may be sold or leased, whereas, for Title II sites, use of the surface or subsurface estates, or both, is allowed, consistent with NRC requirements, including the need to license the user, and the applicable provisions of UMTRCA. In either case, DOE would remain the owner of the site and the 11(e)2 byproduct material. As such, any transfer of the surface estate at an UMTRCA Title I site is not permitted, and therefore, could not be approved by the NRC. DOE may otherwise manage the site as it thinks appropriate, so long as it complies with UMTRCA and its obligations under the NRC general license. Specifically barred for Title I sites, however, is the use of the surface estates by another party (e.g., under the lease agreement described for the Durango site, discussed below).

Further, while transfer of the surface and/or subsurface estates is permitted under certain circumstances at UMTRCA Title II sites, use of the surface or subsurface estates by an entity other than the DOE will generally require that a specific license be issued by the NRC, as required in 10 CFR 40.28(d). In addition, DOE would remain the owner of the land, and would need to meet its requirements under UMTRCA and NRC regulations for its general license.

During evaluation of this request for clarification of allowable land use, the NRC staff identified that by letter dated May 20, 2011,¹ the staff accepted a revision to the Long Term Surveillance Plan (LTSP) for the Durango, Colorado, disposal site. The accepted Durango LTSP revisions would accommodate the following two potential alternative uses:

¹ Agencywide Documents Access and Management System Accession No. ML111290657.

- lease the disposal area to private industry or electric utilities to place solar photovoltaic panels on top of the disposal cell cover or on previously disturbed areas west of the cell to generate electricity; and,
- coordinate with other government agencies in management of site activities, such as coordination with state agencies to enhance site resources to the benefit of the local wildlife population.

The letter further references 10 CFR 40.28, which applies only to Title II sites, even though the Durango site is an UMTRCA Title I site, governed by 10 CFR 40.27. Upon review, we have determined that the NRC staff should not have accepted this change to the LTSP for the reasons discussed above. Based on a discussion with the staff on November 15, 2017, the DOE committed to submit a revised LTSP for the Durango, Colorado, Disposal Site, specifically updating Section 4.0, *Beneficial Reuse Project*, accordingly.

Based on a review of DOE Annual UMTRCA Site Inspection Reports, the NRC staff is also aware that DOE has previously allowed ranchers to graze their cattle on Title I and Title II sites. The staff has no concerns regarding this activity at this time, but notes that DOE is responsible for ensuring that any damage done to the disposal cell associated with the grazing is addressed in a timely manner and reported to the NRC consistent with the LTSP.

The NRC staff understands the importance of returning land to productive use where practicable, and looks forward to working with DOE in permitting such use where appropriate while ensuring the safe long-term management of these sites.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

C. Melendez

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If you have any questions concerning the content of this letter, please contact me at
301-415-7319 or by email at john.tappert@nrc.gov.

Sincerely,

/RA/

John R. Tappert, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Docket No.: WM-00048

cc: distribution via listserv

C. Melendez

- 5 -

SUBJECT: CLARIFICATION OF ALLOWABLE LAND USE AT URANIUM MILL TAILINGS
RADIATION CONTROL ACT (UMTRCA) TITLE I AND TITLE II DISPOSAL
SITES DATED JANUARY 29, 2018

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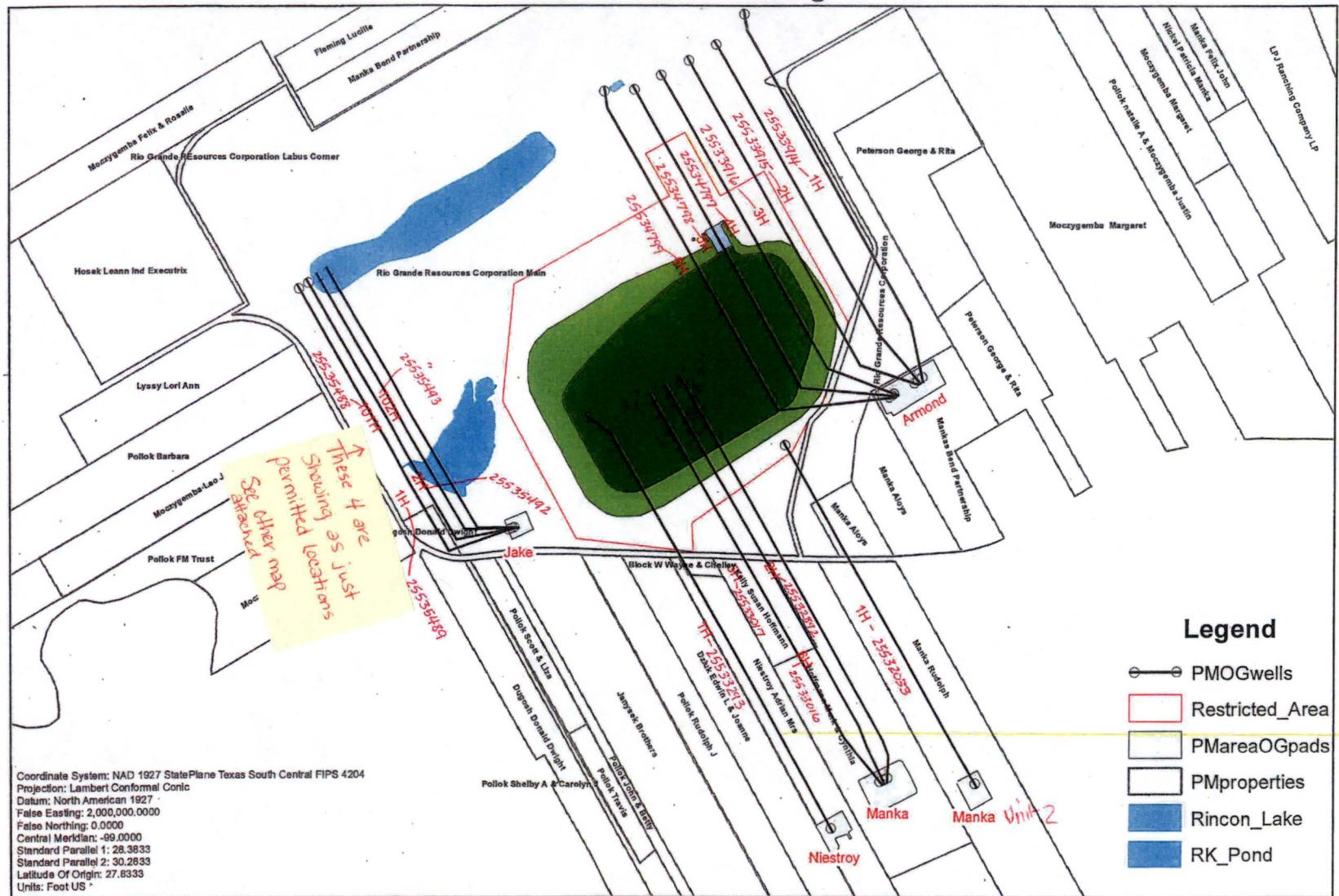
ADAMS Accession No.: ML17216A800

*via e-mail

OFFICE	DUWP/MDB/PM	DUWP/LA	DUWP/MDB/BC	OGC (NLO)	DUWP
NAME	JWhited	CHolston	SKoenick	AGendelman*	JTappert
DATE	08/08/2017	08/08/2017	12/05/2017	12/01/2017	01/29/2018

OFFICIAL RECORD COPY

Oil & Gas Lateral Drilling



Rio Grande Resources Corporation

0 0.125 0.25 0.5 0.75 1 Miles

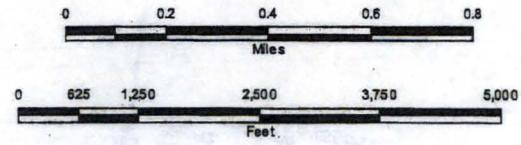
Downloaded from <http://www.jbc.org> at 09:45 09 March 2015 by guest

Ray Point

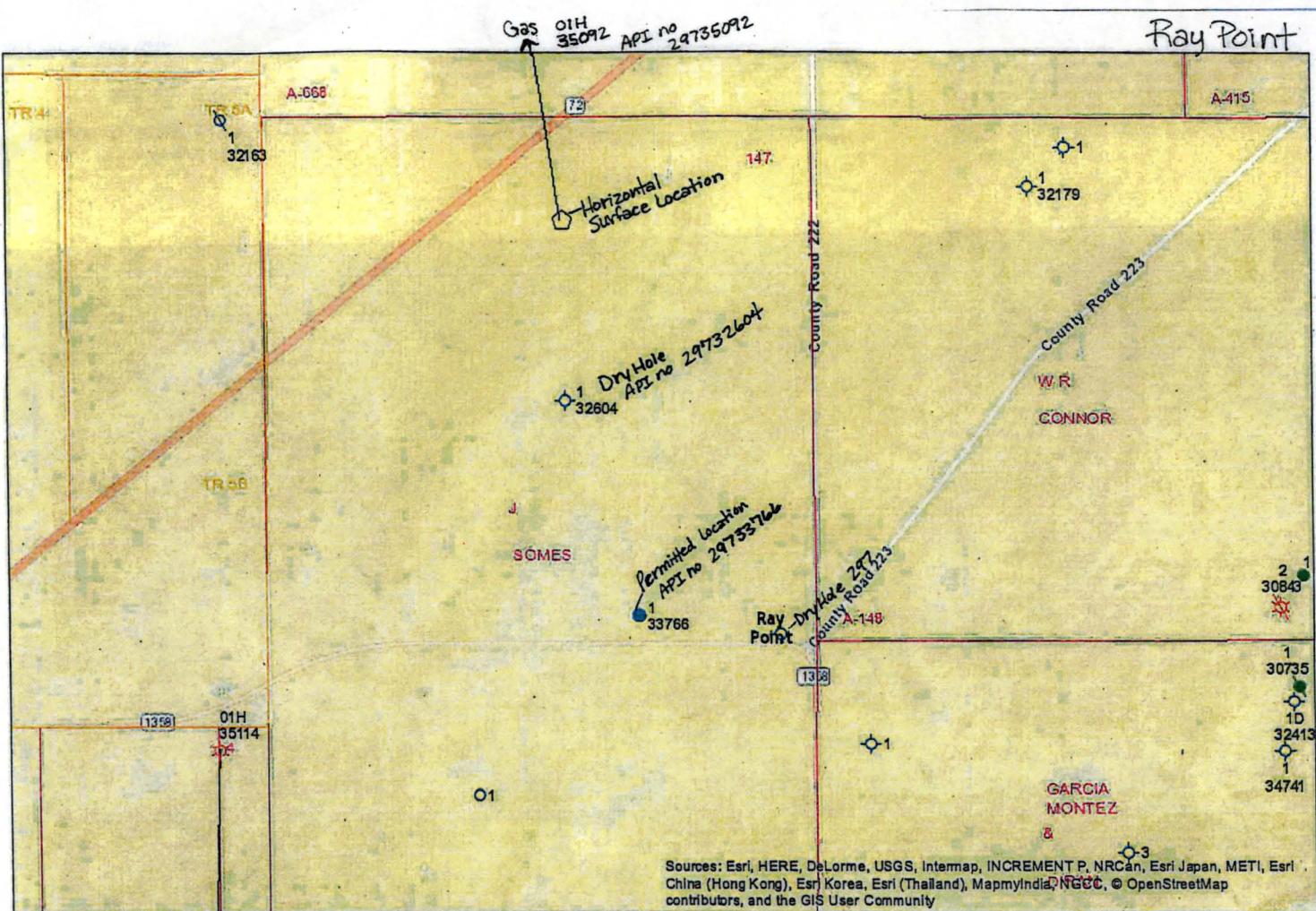


PREPARED BY:
RAILROAD COMMISSION of TEXAS
P.O. BOX 12967
AUSTIN, TX 78711-2967

Source: RRC Public GIS Viewer



NOTICE/DISCLAIMER: Mapping data sets are provided for informational purposes only. These data sets are continuously being updated and refined. Users are responsible for checking the accuracy, completeness, currency, and/or suitability of these data sets themselves. This is not a survey grade product and should not be used to define or establish survey boundaries.

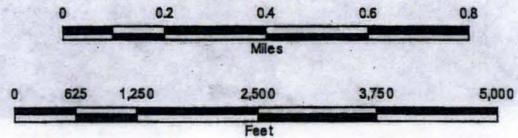


July 21, 2017

1 inch = 1,505 feet

PREPARED BY:
RAILROAD COMMISSION of TEXAS

Source: RRC Public GIS Viewer



NOTICEDISCLAIMER: Mapping data sets are provided for informational purposes only. These data sets are continuously being updated and refined. Users are responsible for checking the accuracy, completeness, currency, and/or suitability of these data sets themselves. This is not a survey grade product and should not be used to define or establish survey boundaries.

GIS Identify Results - Well Location Attributes

Number of identify results: 1

Result #1	
API	29732604
GIS WELL NUMBER	1
GIS SYMBOL DESCRIPTION	Dry Hole
GIS LOCATION SOURCE	Commission's hardcopy map
GIS LAT (NAD27)	28.520568
GIS LONG (NAD27)	-98.096077
GIS LAT (NAD83)	28.520838
GIS LONG (NAD83)	-98.096360

OPERATOR/WELLBORE	
WELLBORE STATUS	DRY
LAST PERMIT ISSUED	099987
LAST PERMIT OPERATOR NUMBER	174000
LAST PERMIT OPERATOR	CONVEST ENERGY CORPORATION
LAST PERMIT LEASE NAME	GENTRY, HOYTE ET UX
TOTAL DEPTH	
SURFACE LOCATION	Land
ABSTRACT	
SURVEY	
BLOCK	
SECTION	
DISTANCE 1	
DIRECTION 1	
DISTANCE 2	
DIRECTION 2	

No Well records were found.

ONLINE SYSTEM

Off & Gas Data Query
Query Menu Help

Form W-1

Status #: 09987 - 99 API #: 297-32604	Operator: 174000 - CONVEST ENERGY CORPORATION Issued: 11/20/1980, Filed: Hardcopy	Lease Name: GENTRY, HOYTE ET UX Well #: 1; District: 02; County: LIVE OAK	Filing Purpose: New Dr Wellbore Profiles Vertical								
LOCATION COMMENT: 2500 FNL & 2500 FEL of lease (11/20/1980 12:00:00 AM)											
Status: Approved											
Completion Information											
Well Status Code <input checked="" type="checkbox"/> D - Dry hole	Spud Date 01/03/1981	Drilling Compliated 01/20/1981	Surface Casing Date								
General / Location Information											
Basic Information:											
Filing Purpose New Drill	Wellbore Profiles Vertical	Lease Name GENTRY, HOYTE ET UX	Well # 1	SWR 6722	Total Depth Horizontal Wellbore	Stacked Lateral Status #					
Surface Location Information:											
API # 297-32604	Distance from Nearest Town 10.0 miles	Direction from Nearest Town NE	Nearest Town THREE RIVERS	Surface Location Type Land							
Survey/Legal Location Information:											
Section	Block	Survey JAMES SOMES SURVEY A-427		Abstract #	County LIVE OAK						
Township	League	Labor	Portion	Share	Tract	Lot					
Perpendicular surface location from two nearest designated lines:											
Perpendiculars	Distance 0.0 feet	Direction SEE COMMENTS	Distance 0.0 feet	Direction							
Survey Perpendiculars											
Permit Restrictions:											
Code 30	Description WILDCAT ABOVE 6700										
Fields											
District 02	Field Name WILDCAT Primary Field	Field # 00004001	Completion Depth 6722	Lease Name GENTRY, HOYTE ET UX	Well # 1	Well Type Oil or Gas Well	Acre 409.0	Distance to nearest well 0.0 feet	Distance to nearest Lease Line	SWR N	Pooled/Unitized
Perpendiculars			Distance 0.0 feet	Direction SEE COMMENTS			Distance 0.0 feet	Direction			
Surface Lease Lines											
Comments											
Remark LOCATION COMMENT: 2500 FSL & 2500 FEL of survey NEAREST WELL COMMENT: N/A LOCATION COMMENT: 2500 FNL & 2500 FEL of lease							Date Entered 11/20/1980 12:00:00 AM 11/20/1980 12:00:00 AM 11/20/1980 12:00:00 AM	Entered By SYSTEM SYSTEM SYSTEM			

Lease Detail

<http://webapps2.tcc.state.tx.us/EWA/leaseDetailAction.do?searchTyp...>

ONLINE SYSTEM
Oil & Gas Data Query
Query Menu Help

Lease Detail

Drilling Permits Wellbore UIC Severance P4 Oil Proration Gas Proration Inactive Well Aging Inactive Well PS Renewal Status Orphan Well Aging Operator

Lease Summary
Api Number: 29733766
Oil Lease No./Gas Well ID No:
Well Number:
Field Number:
Current Operator Number:
Operator Status:

District: 02
Lease Name:
Well Type:
Field Name:
Current Operator Name:

Drilling Permit Results for API Number

1 results Page: 1 of 1 Page Size: View All

API NO.	District	Lease	Well Number	Permitted Operator	County	Status Date	Status Number	Wellbore Profiles	Filing Purpose	Amend	Total Depth	Status
29733766	02	GENTRY, HOYIE	1	WILLIAMS OIL & GAS CORPORATION(927680)	LIVE OAK	Submitted: 06/22/1987 Approved: 06/29/1987	331899	Vertical	New Drill	N	8000	APPROVED

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Oil & Gas Data Query
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Lease Detail

Drilling Permits | Wellbore | UTC | Severance | P4 | Oil Proration | Gas Proration | Inactive Well Aging | Inactive Well | P5 Renewal Status | Orphan Well Aging | Operator

Lease Summary
API Number: 29733766
OTC Lease No./Gas Well ID No:
Well Number:
Field Number:
Current Operator Number:
Operator Status:

District: 02
Lease Name:
Well Type:
Field Name:
Current Operator Name:

Wellbore Results for API Number

1 results Page: 1 of 1 Page Size: View All

API No.	District	Lease No.	Lease Name	Well No.	Field Name	Operator Name	County	On Schedule	API Depth
29733766	Llano						LIVE OAK	N	

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GIS Identify Results - Well Location Attributes

Number of identify results: 1

Result #1	
API	29733766
GIS WELL NUMBER	1
GIS SYMBOL DESCRIPTION	Permitted Location
GIS LOCATION SOURCE	Commission's hardcopy map
GIS LAT (NAD27)	28.514567
GIS LONG (NAD27)	-98.093755
GIS LAT (NAD83)	28.514837
GIS LONG (NAD83)	-98.094038

OPERATOR/WELLCASE	
WELLCASE STATUS	LOCATION
LAST PERMIT ISSUED	331899
LAST PERMIT OPERATOR NUMBER	927680
LAST PERMIT OPERATOR	WILLRICH OIL & GAS CORPORATION
LAST PERMIT LEASE NAME	GENTRY, HOYTE
TOTAL DEPTH	
SURFACE LOCATION	Land
ABSTRACT	42 7
SURVEY	JAMES SOMES
BLOCK	
SECTION	
DISTANCE 1	5100
DIRECTION 1	1700
DISTANCE 2	
DIRECTION 2	

No Well records were found.

ONLINE SYSTEM
Oil & Gas Data Query
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Form W-1

Status #: 331899 - 99	Operator: 927680 - WILLRICH OIL & GAS CORPORATION	Lease Name: GENTRY, HOYTE	Filing Purpose: New Drill
API #: 297-33766	Issued: 06/29/1987, Filed: Hardcopy	Well #: 1, District: 02, County: LIVE OAK	Wellbore Profiles: Vertical
NEAREST WELL COMMENT: NA (06/22/1987 12:00:00 AM)			

Status: Approved

General / Location Information

Basic Information:

Filing Purpose	Wellbore Profiles	Lease Name	Well #	SWR	Total Depth	Horizontal Wellbore	Stacked Lateral Status #
New Drill	Vertical	GENTRY, HOYTE	1		8000		

Surface Location Information:

API #	Distance from Nearest Town	Direction from Nearest Town	Nearest Town	Surface Location Type
297-33766	5.5 miles	NE	THREE RIVERS	Land

Survey/Legal Location Information:

Section	Block	Survey	Abstract #	County		
		JAMES SOMES	427	LIVE OAK		
Township	League	Labor	Portion	Share	Tract	Lot

Perpendicular surface location from two nearest designated lines:

Perpendiculars	Distance	Direction	Distance	Direction
Survey Perpendiculars	5100.0 feet	S	1700.0 feet	E

Permit Restrictions:

Code	Description
30	WILDCAT ABOVE 8000 FEET.
30	REGULAR PROVIDED THIS WELL IS NEVER COMPLETED IN VIOLATION OF APPLICABLE SPECIAL FIELD OR STATEWIDE SPACING RULES.
30	REGULAR PROVIDED THIS WELL IS NEVER COMPLETED IN THE SAME RESERVOIR AS ANY OTHER WELL CLOSER THAN 1200 FEET ON THIS SAME LEASE.
30	REGULAR PROVIDED THIS WELL IS NEVER DRILLED DEEPER THAN 8000 FEET.

Fields

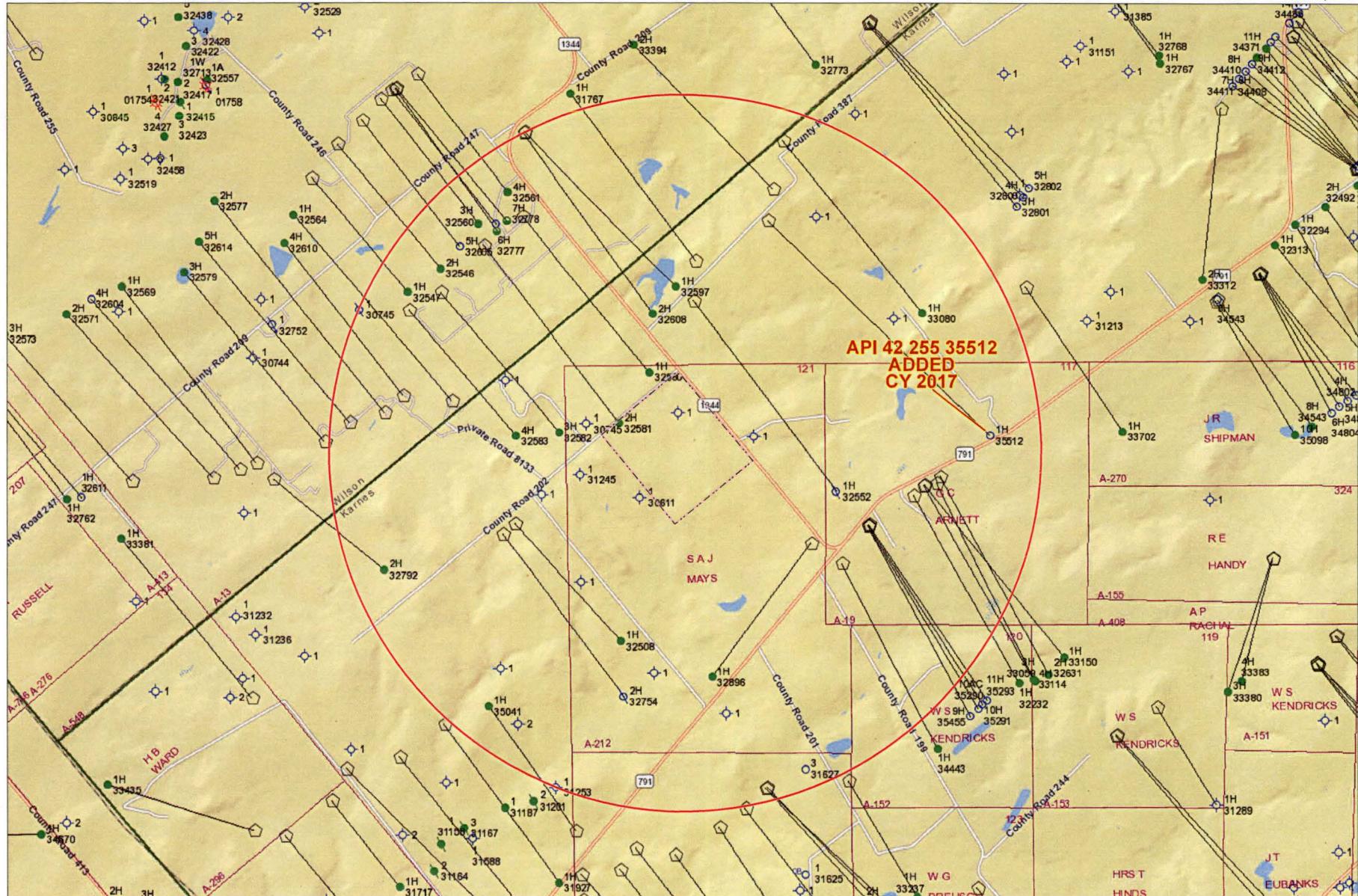
District	Field Name	Field #	Completion Depth	Lease Name	Well #	Well Type	Acres	Distance to nearest well	Distance to nearest Lease Line	SWR	Pooled/Unitized
02	WILDCAT Primary Field	00004001	8000	GENTRY, HOYTE	1	Oil or Gas Well	320.0	0.0 feet			N
				Perpendiculars	Distance	Direction	Distance	Direction			
				Surface Lease Lines	467.0 feet	N	1700.0 feet	E			

Comments

Remark	Date Entered	Entered By
NEAREST WELL COMMENT: NA	06/22/1987 12:00:00 AM	SYSTEM

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LEGEND

- Permitted Location
- Oil Well Location
- ◊ Dry Hole
- ☒ Canceled / Abandoned Location
- Horizontal Well Surface Location

Site Boundary
2 Mile Radius from Site Monument

N
0 2,000 4,000
Feet

U.S. DEPARTMENT OF ENERGY
OFFICE OF LEGACY MANAGEMENT

Work Performed by
Navarro Research & Engineering, Inc.
Under DOE Contract Number DE-LM0000421

Work Figure (January 2018)
Texas Oil and Gas
Falls City, TX Disposal Site

DATE PREPARED: January 4, 2018 FILE NAME: FCT_O&G-2017