

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING CALLED BY  
THE OIL CONSERVATION DIVISION TO  
CONSIDER:**

**CASE NO. 20191  
ORDER NO. R-20642**

**APPLICATION OF PERCUSSION PETROLEUM OPERATING, LLC FOR  
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on February 7, 2019, at Santa Fe, New Mexico, before Examiner Scott A. Dawson.

NOW, on this 24<sup>th</sup> day of June, 2019, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT**

(1) Due public notice has been given and the Division has jurisdiction of this case and the subject matter.

(2) Case Nos. 20191 and 20263 were consolidated at the hearing for the purpose of testimony and a single order is being issued for each case.

(3) The Applicant, Percussion Petroleum Operating, LLC seeks in this case to compulsory pool all uncommitted oil and gas interests within a spacing unit ("the Unit") described as follows:

A Horizontal Spacing Unit (the "Unit") comprising 200 acres (more or less) in the San Andres-Yeso (Assoc) formation, Penasco Draw; San Andres-Yeso (Assoc) Pool (Pool code 50270), comprising the S/2 S/2 of Section 28 and SE/4 SE/4 of Section 29, all in Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico.

Pooled vertical depths are limited to the depths from 3201 feet to the base of the Yeso.

(4) The Unit will be dedicated to the following "proposed well". The completed interval for the proposed well within the Unit will be orthodox:

**Nirvana No. 1H, API No. 30-015-Pending**

SHL: 520 feet from the South line and 665 feet from the West line,  
(Unit M) of Section 27, Township 18 South, Range 26 East, NMPM.

BHL: 360 feet from the South line and 1306 feet from the East line,  
(Unit P) of Section 29, Township 18 South, Range 26 East, NMPM;

(5) The Penasco Draw; San Andres-Yeso Pool is governed by Division Rule 19.15.15.9(A) NMAC, which specifies 40-acre spacing and proration units [for vertical wells], each comprising a governmental quarter-quarter section.

(6) The allowed setback footage distance for the proposed horizontal Oil well(s) is specified in Paragraph (1) of Subsection C of 19.15.16.15 NMAC effective June 26, 2018. Said rules allow the first or last take points to be no closer than 100 feet to the nearest unit boundary, and the setbacks measured perpendicular to the well path to be a minimum of 330 feet from the outer boundary of the horizontal spacing unit.

(7) No other party entered an appearance in this case or otherwise opposed this application.

(8) Applicant appeared through counsel and presented the following land and technical evidence:

- (a) The San Andres-Yeso formation in this area is suitable for development by horizontal drilling.
- (b) The proposed orientation of the horizontal well from east to west is appropriate for optimum recovery of oil and gas.
- (c) A depth severance exists in the Yeso formation at 3200 feet. Accordingly, Percussion seeks to compulsory pool in Case No. 20191 from the top of the pool [at a stratigraphic equivalent of 2279 feet measured depth], as defined in the Gamma Ray-Neutron Log of the Len Mayer No. 1 Well (API No. 30-015-05926) to a depth of 3200 feet.
- (d) The depth severance was created by virtue of an assignment between two predecessors in interest. This document defines the depth severance due to a pugh clause for an old well, the Mallard HM #2 well. And the document creating the depth severance does define the depth as 3200 feet, as measured in the Mallard HM No. 2 Well (API No. 30-015-22052).
- (e) All owners of the mineral estate above and below the depth severance were notified of the proposed pooling. One overriding interest owner, Helen Holt, had mail returned to sender.



- (f) In addition to parties the Applicant seeks to compulsory pool, the Applicant provided notice of these applications to the vertical offsets who were excluded from the spacing unit that the Applicant seeks to pool. All parties received notice of the pooling and the spacing unit and did not object to the Applicant's plan to pool only a portion of the pool in each case.
- (g) The cross-section submitted at the hearing depicts the Nirvana 1H target interval to be at 2765 feet true vertical feet which is approximately 435 feet above the depth severance at 3200 feet; therefore, the well will not impair correlative rights at 3200 feet or below the 3200-foot depth severance.
- (h) In addition, Applicant provided geologic testimony and exhibits indicating there are silts that act as a frac barriers in each of the two wells and the applicant opines in their affidavit that the silts will act as a frac barrier, preventing drainage from the other side of the depth severance line.
- (i) The proposed well(s) will not drain pressure from, produce oil or gas from, or otherwise affect, or be affected by, production from each other or the respective depth severance at 3200 feet.
- (j) Applicant testified and included in their affidavit statement that their current wells are each about 400 feet from the depth-severance line above and below, and they will not infill closer than those current proposed depths above and below without coming to hearing before the division.
- (k) All quarter-quarter sections to be included in the Unit are expected to be substantially productive in the San Andres-Yeso formation, so that the Unit as requested will not impair correlative rights.
- (l) Notice by certified mail was provided to all uncommitted interest owners in the proposed Unit whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instruments.
- (m) Those potentially affected parties whose whereabouts could not be ascertained were noticed by publication as provided in Rule 19.15.4.12.B NMAC.

The Division finds and concludes that

(9) The application in this case was filed, and the Well(s) were permitted, on or after the June 26, 2018 date on which amendments to 19.15.16.7 and 19.15.16.15 NMAC (prescribing new spacing rules for horizontal wells) became effective (see Order No. R-14689). Hence the

Well(s) must be spaced, permitted and drilled pursuant 19.15.16.15 NMAC, as amended effective June 26, 2018.

(10) Provided that the Unit constitutes a standard horizontal spacing unit for each of the Well(s) under now effective rules, no non-standard spacing unit approval is needed. If, however, the Unit is not a standard horizontal spacing unit for any of the Well(s), the operator must obtain approval of a non-standard horizontal spacing unit pursuant to 19.15.16.15.B(5) prior to producing such well(s). The Unit shall not be considered non-standard due to the depth limitations approved in this Order.

(11) The depth severance and upper limit of the interval to be pooled was described as follows in applicant's exhibits presented February 7, 2019:

A depth severance exists in the San Andres-Yeso formation at 3200 feet. Accordingly, Percussion seeks to compulsory pool from the top of the pool at a stratigraphic equivalent of 2279 feet measured depth, as defined in the Gamma Ray-Neutron Log of the Len Mayer No. 1 Well (API No. 30-015-05926) to a depth of 3200 feet.

(12) Applicant has presented evidence that the proposed horizontal well if drilled in the Penasco Draw; San Andres-Yeso (Assoc) Pool will not be in hydraulic contact with the interval in Penasco Draw; San Andres-Yeso (Assoc) Pool located below the 3200-foot depth severance.

(13) Applicant testified and included in their affidavit statement that their current wells are each about 400 feet from the depth-severance line above and below, and they will not infill closer than those current proposed depths above and below without coming to hearing before the division.

(14) Percussion Petroleum Operating, LLC (OGRID 371755) should be designated the operator of the Well(s) and of the Unit.

(15) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(16) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the Well(s) to a common source of supply within the Unit at the described depths and location(s).

(17) There are interest owners in the Unit that have not agreed to pool their interests.

(18) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas in the San Andres-Yeso formation within the Unit.



(19) To ensure protection of correlative rights, any pooled working interest owner whose address is known, and who has elected to participate under the terms of this order should be notified before the Division grants any extension of the time provided herein for commencing drilling. Any such owner may file an application, with notice to the operator, requesting that the extension be denied.

(20) Infill wells within the Unit should be subject to Division Rules 19.15.13.9 NMAC through 19.15.13.10 NMAC, and to the terms and conditions of this order.

(21) Any pooled working interest owner who does not pay its share of estimated well costs of any well should have withheld from production from such well its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the Well(s).

(22) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates should be adjusted annually pursuant to the COPAS form titled "*Accounting Procedure-Joint Operations*."

**IT IS THEREFORE ORDERED THAT**

(1) All uncommitted interests, whatever they may be, in the oil and gas within the following described spacing unit ("the Unit") are hereby pooled:

A Horizontal Spacing Unit comprising 200 acres (more or less) within the San Andres-Yeso formation (as it is described below) and in the Penasco Draw; San Andres-Yeso (Assoc) Pool (Pool code 50270) and all other pools hereafter defined within the San Andres-Yeso formation in the S/2 S/2 of Section 28 and the SE/4 SE/4 of Section 29, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico.

Pooled Interval: A stratigraphic equivalent of the top of the San Andres-Yeso at 2279 feet measured depth, as defined in the Gamma Ray-Neutron Log of the Len Mayer No. 1 Well (API No. 30-015-05926) to a depth of 3200 feet.

(2) The Unit shall be dedicated to the following "proposed well". The completed interval of the proposed well will be orthodox:

**Nirvana No. 1H, API No. 30-015-Pending**

SHL: 520 feet from the South line and 665 feet from the West line,  
(Unit M) of Section 27, Township 18 South, Range 26 East, NMPM.

BHL: 360 feet from the South line and 1306 feet from the East line,  
(Unit P) of Section 29, Township 18 South, Range 26 East, NMPM;

(3) Percussion Petroleum Operating, LLC (OGRID 371755) is hereby designated the operator of the Well(s) and Unit.

(4) If any of the Well(s) is completed at an unorthodox location under applicable rules in effect at the time such well is completed, the operator shall provide notice and apply administratively for a location exception prior to producing the well.

(5) The operator of the Unit shall commence drilling the proposed well on or before June 30, 2020 and shall thereafter continue drilling the proposed well with due diligence to test the San Andres-Yeso formation at or about the proposed true vertical and measured depths.

(6) In the event the operator does not commence drilling the Well(s) on or before the date provided in the foregoing paragraph, the compulsory pooling provision of this order shall be of no effect, unless the operator obtains a written time extension from the Division Director pursuant to a written request stating its reasons for such extension and attaching satisfactory evidence.

(7) In the event the operator does not commence completion operations within one year after commencement of drilling operations pursuant to this order, then the compulsory pooling provisions of this order shall be of no effect unless operator obtains a written time extension from the Division Director pursuant to a written request stating its reasons for such extension and attaching satisfactory evidence.

(8) The operator shall provide a copy of any request for extension of time to drill or complete any well filed with the Director pursuant to this order to each pooled working interest owner who has elected to participate in the drilling of any well that is the subject of the request. Such copy shall be sent at the same time the request is sent to the Director.

(9) Upon final plugging and abandonment of the Well(s) and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled unit created by this order shall terminate unless this order has been amended to authorize further operations.

(10) Infill wells within the Unit shall be subject to Division Rule 19.15.13.9 NMAC and to the terms and conditions of this order.

(11) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit separate itemized schedules of estimated costs of drilling, completing and equipping each of the Well(s) ("well costs").

(12) Within 30 days from the date the schedule of estimated well costs for any well is furnished, any pooled working interest owner shall have the right to elect to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided. Payment shall be rendered within 90 days after expiration of the 30-day election period and any such owner who pays its share of estimated well costs as provided above for any well shall remain liable for operating costs but shall not be liable for risk



charges to the extent computed based on costs of such well. Pooled working interest owners who do not elect to pay their share of estimated well costs, or who do not render timely payment to the operator, as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(13) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs of each well within 180 days following completion of the proposed well. If no objection to the actual well costs for any well is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule for such well, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs for such well after public notice and hearing.

(14) Within 60 days following determination of reasonable well costs for any well, any pooled working interest owner who has paid its share of estimated costs of such well in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid for such well exceed its share of reasonable well costs.

(15) The operator is hereby authorized to withhold the following costs and charges from each non-consenting working interest owner's share of production from each well:

(a) the proportionate share of reasonable well costs attributable to the non-consenting working interest owner; and

(b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(16) During the cost recovery period, the operator shall furnish to the Division and to each known non-consenting pooled working interest owner, annually, and within 90 days after payout occurs, a schedule of all revenues attributable to each proposed well, and all charges for supervision and operating costs charged against such revenues. Operating costs shall include all reasonable costs incurred for the maintenance and operation of the well, except for "well costs" reported pursuant to prior ordering paragraphs, that are properly chargeable to the joint account pursuant to COPAS procedures. If no objection to the operating costs is received by the Division, and the Division has not objected, within 45 days following receipt of any schedule, the costs shall be deemed to be the reasonable operating costs. If there is an objection to the accuracy or reasonableness of operating costs reported within the 45-day period, the Division will determine reasonable operating costs after public notice and hearing.

(17) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs for such well.

(18) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$7000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates shall be adjusted annually pursuant to the COPAS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production from each well the proportionate share of both the supervision charges and the actual expenditures required for operating of such well, not more than what are reasonable, attributable to pooled working interest owners.

(19) Except as provided in the foregoing paragraphs, all proceeds from production from the Well(s) that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not sooner disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

(20) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for allocating costs and charges under this order. Any costs that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(21) Should all the parties to this compulsory pooling order reach voluntary agreement after entry of this order, this order shall thereafter be of no further effect.

(22) The operator of the wells and Unit shall notify the Division in writing of the subsequent voluntary agreement of any party subject to the compulsory pooling provisions of this order.

(23) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

Handwritten signature of Adrienne Sandoval in blue ink.

ADRIENNE SANDOVAL  
Director