

**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 FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 13999
ORDER NO. R-12834**

**APPLICATION OF HARVEY E. YATES COMPANY FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 20, 2007 at Santa Fe, New Mexico before Examiners William V. Jones and David K. Brooks, then again on October 18, 2007 before Examiners Richard Ezeanyim and David K. Brooks.

NOW, on this 26th day of October, 2007, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

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

(2) The applicant, Harvey E. Yates Company ("HEYCO" or "applicant"), seeks an order pooling all uncommitted interests from the base of the Queen formation to the base of the Morrow formation underlying the N/2 of Section 18, Township 18 South, Range 32 East, NMPM, Lea County, New Mexico, in the following manner:

Lots 1 and 2, E/2 NW/4, and NE/4 (N/2) forming a standard 321.89-acre, more or less, spacing unit for all formations or pools spaced on 320 acres within this vertical extent, including but not limited to the Undesignated North Lusk-Morrow Gas Pool (80800); and

Lots 1 and 2, E/2 NW/4 (NW/4) forming a standard 161.89-acre, more or less, spacing unit for all formations or pools spaced on 160 acres within this vertical extent.

(3) The above-described units ("the Units") are to be dedicated to the applicant's Walker 18 Federal Com Well No. 1 (API No. 30-025-38081), to be drilled at a standard well location in the SW/4 NW/4 (Lot 2) of Section 18 to an estimated depth of 12,700 feet.

(4) This case was presented on September 20, 2007, then continued to provide further notice to parties being pooled and to re-publish the newspaper notice – presented on October 18, 2007, as applicant's Exhibit No. 10. The examiner asked for an analysis of normal overhead rates while drilling and while producing in Lea County. The applicant presented this at an October hearing as Exhibit No. 9 and at that time asked for rates as described below.

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

(6) Applicant is an owner of an oil and gas working interest within the Units. Applicant has the right to drill to a common source of supply within the SW/4 NW/4 of Section 18.

(7) Chesapeake Exploration, Ltd. and XTO Energy Inc. ("XTO") entered appearances in this case and cross-examined the applicant's witnesses but did not present evidence of their own. No other parties entered an appearance or otherwise opposed this application.

(8) HEYCO presented land testimony as follows:

(a) The latest "Title Opinion" available to HEYCO is dated August 8, 2007. Within two to three weeks after the September 20, 2007, hearing, all parties would be supplied with information from the revised Title Opinion.

(b) Chesapeake Exploration, Ltd. has tentatively joined in this well pending receipt of a corrected Joint Operating Agreement from HEYCO.

(c) There are three vertical sections in this proposed well with diverse interests. Area "A" is from the base of the Queen to 5500 feet (one set of interests), then area "B" is from 5500 feet to 100 feet below the base of the Wolfcamp (another set of interests), and everything below the Wolfcamp is called area "C" which is another set of interests.

(d) The N/2 of Section 18 consists of two different tracts.

(e) This proposed well has 32 working interest owners.

(9) HEYCO presented geologic testimony as follows:

(a) Interpreted 3-D seismic data, calibrated with well data, was used to locate this prospect in the middle and lower Morrow formation. HEYCO has used this 3-D dataset before to drill Morrow wells.

(b) The well location in the western portion of this N/2 unit was chosen as the best chance of a low-relief closure. Deeper faulting has likely caused this structure in the Morrow formation.

(c) The spacing unit was oriented east-west because of the well's general location within the Delaware basin and the expected Morrow channel direction.

(d) HEYCO did not offer a risk factor for this prospect.

(e) Between the Queen and the Morrow are numerous Bone Spring sand possibilities and there was Wolfcamp formation production in the eastern portion of Section 18.

(10) XTO appeared at the hearing through counsel and expressed many concerns including a problem reconciling its interests in this proposed well with the interests shown on the Title Opinion as supplied by HEYCO.

(11) To protect correlative rights, to prevent waste, and to afford to the owner of each interest in the Units the opportunity to recover or receive without unnecessary expense its 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 within the Units.

(12) Harvey E. Yates Company (OGRID 10179) should be designated the operator of the well and of the Units.

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

(14) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6800 per month while drilling and \$680 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Harvey E. Yates Company ("applicant"), all uncommitted interests, whatever they may be, in the oil and gas from the base of the Queen formation to the base of the Morrow formation underlying the N/2 of Section 18,

Township 18 South, Range 32 East, NMPM, Lea County, New Mexico, are hereby pooled in the following manner:

Lots 1 and 2, E/2 NW/4, and NE/4 (N/2) forming a standard 321.89-acre, more or less, spacing unit for all formations or pools spaced on 320 acres within this vertical extent, including but not limited to the Undesignated North Lusk-Morrow Gas Pool (80800); and

Lots 1 and 2, E/2 NW/4 (NW/4) forming a standard 161.89-acre, more or less, spacing unit for all formations or pools spaced on 160 acres within this vertical extent.

The above-described units ("the Units") shall be dedicated to the applicant's Walker 18 Federal Com Well No. 1 (API No. 30-025-38081), to be drilled at a standard well location in the SW/4 NW/4 (Lot 2) of Section 18.

(2) The operator of the Unit shall commence drilling the proposed well on or before January 31, 2008 and shall thereafter continue drilling the well with due diligence to test the Morrow formation at an approximate depth of 12,700 feet.

(3) Harvey E. Yates Company (OGRID 10179) shall be designated the operator of the well and of the Units.

(4) In the event the operator does not commence drilling the proposed well on or before January 31, 2008, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the proposed well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(6) Upon final plugging and abandonment of the Walker 18 Federal Com Well No. 1 (API No. 30-025-38081) and of any other well subsequently approved within this spacing unit, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(7) 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 an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right 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, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(9) 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 within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, 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 after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs 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 exceed its share of reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

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

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,800 per month while drilling and \$680 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Except as provided above in ordering paragraphs (11) and (13), all proceeds from production from the well that are not disbursed for any reason shall be

placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

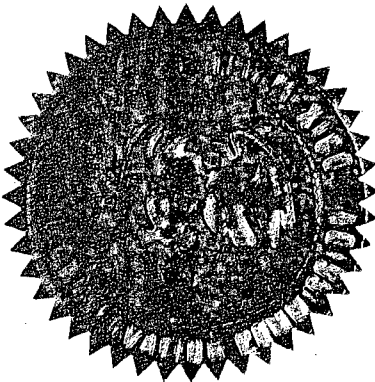
(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working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

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

(17) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in dark ink, appearing to read "Mark E. Fesmire", written over a horizontal line.

MARK E. FESMIRE, P.E.
Director