

Nadel Gussman Permian

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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

September 14, 1998

HAND DELIVERED

Mr. Michael E. Stogner
Hearing Examiner

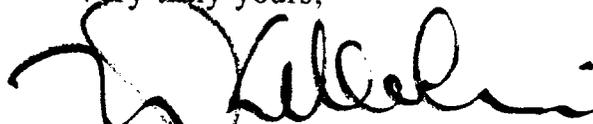
Rand L. Carroll, Esq.
Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **MOTION TO DISMISS**
NMOCD Case 12054
Application of Nadel and Gussman Permian, L.L.C
for compulsory pooling, Eddy County, New Mexico

Gentlemen:

On behalf of Stevens & Tull, Inc., an adversely affected interest owner, please find enclosed our **MOTION TO DISMISS** the referenced application filed by Nadel and Gussman Permian, L.L.C on September 11, 1998. This case is currently set on the Examiner's Docket scheduled for October 8, 1998.

Very truly yours,



W. Thomas Kellahin

cfx: James Bruce, Esq.
Attorney for Nadel and Gussman Permian, L.L.C.
Stevens & Tull, Inc.
Attn: Jerry Weant

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

IN THE MATTER OF THE APPLICATION
OF NADEL AND GUSSMAN PERMIAN, L.L.C.
FOR COMPULSORY POOLING
EDDY COUNTY, NEW MEXICO

CASE NO. 12054

MOTION TO DISMISS

Comes now Stevens & Tull, Inc. ("Stevens"), by its attorneys Kellahin & Kellahin, Esq., enters its appearance in this case as an interested party in opposition to the applicant, Nadel and Gussman Permian, L.L.C. ("Nadel") and moves the Division to dismiss this case because the applicant has violated Section 70-2-17(C) NMSA 1978 by instituting an application for compulsory pooling prior to conducting a good faith effort to reach a voluntary agreement:

And in support states:

RELEVANT FACTS

(1) The working interest ownership within the Morrow formation in the N/2 of Section 36, T20S, R21E, NMPM, Eddy County, New Mexico is as follows:

(a) Stevens:	65.00 %
(b) Wilson & Barr:	12.00 %
(c) Nadel:	15.00 %
(d) James R. Bartel	02.00 %
(e) Cannon Exploration	02.00 %
(f) David J. Andrews*	0.200 %
(g) Dennis Corkran*	0.200 %

*committed to Stevens & Tull JOA

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(2) As a result of a Joint Operating Agreement dated January 1, 1997, ("JOA") Stevens has consolidated 69% of the working interest ownership which names Stevens as operator.

(3) Stevens has previously invited Wilson & Barr and Nadel to commit their interest to this JOA but they have refused.

(4) In accordance with this JOA, Stevens as operator has drilled and completed 4 Morrow gas wells in this immediate vicinity and is currently completing the Sweet Thing Federal Unit Well No. 2 in Section 31, T20-1/2S, R22E, Eddy County, New Mexico

(5) By letter dated September 9, 1998, Nadel proposed to Stevens the drilling of the Little Box State Well No. 3 be drilled in the SE/4NW/4 of Section 36, T20S, R21E. **See Exhibit 1.**

(6) Nadel's letter also advised that it would apply for a compulsory pooling hearing to be held on October 8, 1998 unless Stevens elected to participate in this well within 15-days of the date of receipt of the September 9, 1998 letter.

(7) On September 11, 1998, Stevens received the Nadel well proposal letter dated September 9, 1998.

(8) On the same day as Stevens received the Nadel well proposal and without waiting for a reply from Stevens, Nadel filed its application for compulsory pooling to be heard on October 8, 1998 in which it alleges that it had "in good faith sought to obtain the voluntary joinder of all other mineral owners..." but "certain interest owners have failed or refused to join in dedicating their interests."

(9) Stevens has already consolidated 69% of the working interest ownership in this proposed spacing unit and desires to reach a voluntary agreement with Nadel for a well in the N/2 of this Section. **See Exhibit 2**

(10) There are no expiring leases or other extenuating circumstance which require that an application be filed in less than 30-day after the well is proposed.

ARGUMENT

Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978), Nadel and Gussman has instituted compulsory action against Stevens without first making "good faith" effort to form a spacing unit on a voluntary basis for the drilling of Nadel's well. Section 70-2-17(C) NMSA 1978 is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. Under the circumstances of this case, it is impossible to have exhausted a good faith effort to reach a voluntary agreement when the applicant files its application the same day the well proposal is received by Stevens & Tull and prior to determining if it is impossible to reach a voluntary agreement. **For example, see NMOCD Case 11434, Order R-10545 and NMOCD Case 11107, Order R-10242.**

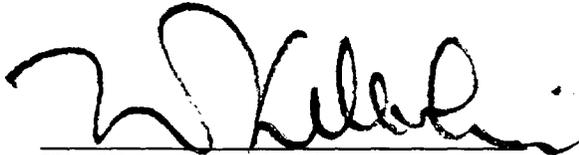
Any compulsory pooling application filed on the same day as the well proposed is received must be dismissed. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. **See NMOCD Case 11434, Order R-10545.** Such action simply ignores the requirements of Section 70-2-17(C) NMSA 1978 and will encourage others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort.

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Nadel and Gussman has not engaged in any effort, good faith or otherwise, to reach a voluntary agreement for this well.

Unless this application is dismissed the Division will be establishing a precedent which will allow applicants to avoid complying with Section 70-2-17(C) NMSA 1978.

WHEREFORE Stevens & Tull, Inc. requests that the Division Hearing Examiner grant this motion and dismiss this Oil Conservation Division Case.



W. Thomas Kellahin
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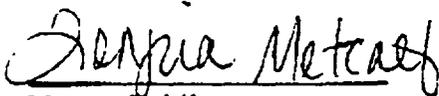
STATE OF TEXAS)
) SS.
COUNTY OF MIDLAND)

AFFIDAVIT

I, Jerry A. Weant, a petroleum landman for Stevens & Tull, Inc., being first duly sworn and under oath, state that I am personally aware of the facts set forth in this motion and each factual statements is true and correct to the best of my knowledge and belief.

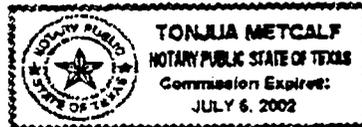

Jerry A. Weant

Subscribed and sworn to before me this 14th day of September, 1998, by Jerry A. Weant.


Notary Public

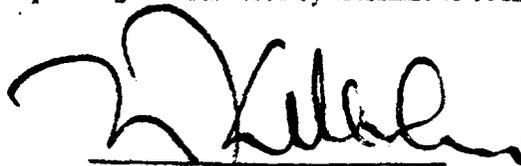
My Commission Expires:

Seal



CERTIFICATE OF SERVICE

I certify that a copy of this pleading was delivered by facsimile to counsel for applicant this 14th day of September, 1998.


W. Thomas Kellahin

NADEL AND GUSSMAN PERMIAN, L.L.C.
801 N. Marienfeld, Suite #508
Midland, Texas 79701
(915) 682-4429
Fax (915) 682-4325

RECEIVED SEP 11 1998

September 9, 1998

TO WORKING INTEREST OWNERS
(SEE ADDRESS LIST ATTACHED)

Re: Little Box State #3
SE/4 NW/4 Section 36,
T-20-S, R-21-E,
Eddy County, New Mexico
Sweet Thing Prospect

Nadel and Gussman Permian, L.L.C. (NGP") and Wilson & Bar Oil and Gas Exploration ("WB"), as Working Interest Owners under the captioned acreage, hereby propose the drilling of the Little Box State #3 well to be operated by NGP. The Little Box State #3 will be drilled at a legal location in the SE/4 NW/4 of Section 36, T-20-S, R-21-E, to a depth sufficient to adequately test the Morrow Formation, and with the option, but not the obligation, to dually complete the well in both the Morrow and Cisco-Canyon Formations

Enclosed for your review is a complete copy of the Joint Operating Agreement for the proposed drilling of this well, an extra copy of the signature page to the JOA, as well as two (2) copies of the AFE. Please execute and return the extra copy of the signature page to the JOA and the AFE to the undersigned within fifteen (15) days of receipt of this letter. In the event all parties elect not to participate, NGP and WB will apply for compulsory pooling to be heard on the October 8, 1998 NMOCD docket. We desire to expedite the drilling and completion of this well so that we may be on line for November and December sales.

If you should have any questions regarding this matter, please feel free to contact the undersigned.

Yours very truly,

NADEL AND GUSSMAN PERMIAN, L.L.C.

By: Sam H. Jolliffe, IV
Sam H. Jolliffe, IV, CPL/ESA
Land Manager

SP

Enclosure



STEVENS & TULL, INC.

P. O. Box 11005

MIDLAND, TEXAS 79702

915/699-1410

September 11, 1998

Nadel and Gussman Permian, L.L.C.
601 N. Marienfeld, Suite #508
Midland, Texas 79701

Attn: Mr. Sam H. Jolliffe, IV, CPL/ESA
Land Manager

Re: Little Box #3
SE/4 NW/4 Section 36,
T-20-S, R-21-E, N.M.P.M.,
Eddy County, New Mexico
Little Box Prospect

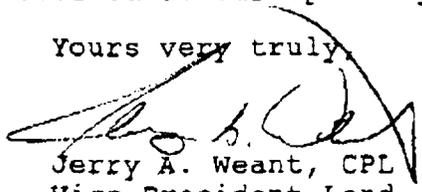
Gentlemen:

In response to your September 9, 1998, proposal to drill the captioned well, please be advised that Stevens & Tull, Inc. does not intend to give up operations on the captioned lands or any other lands in the area. Stevens & Tull, Inc. currently is the Operator of an Operating Agreement covering 69.00% of the working interest under the subject lands as well as other lands jointly owned in this area.

Stevens & Tull, Inc. is not opposed to drilling a well in the N/2 of Section 36; however, as we have discussed with Wilson and Barr as well as your company, we believe it is only prudent to obtain the information from our Sweet Thing Federal Unit #2 well, which is currently approaching total depth. The timing of your proposal is perplexing in that Scott Germann of your office had requested that we meet to discuss our options on this acreage. On Tuesday, September 8, 1998, I contacted you to discuss a meeting date. This morning, September 11, 1998, we agreed to meet on Wednesday, September 16, 1998. We received your proposal today. Nadel & Gussman has not once indicated that it wanted to takeover operations and drill the subject well. Obviously, Wilson and Barr and Nadel and Gussman have been discussing a plan to remove Stevens & Tull, Inc. as Operator and attempt to drill additional wells in this area. Stevens & Tull, Inc. has drilled and completed 4 commercial wells in this area, as well as negotiated a new pipeline for gas marketing. As stated above, we have no intent to give up operations of acreage where we own and control 69.00% of the working interest.

We trust that this issue may be resolved at our upcoming meeting.

Yours very truly,


Jerry A. Weant, CPL
Vice President-Land

