

**KELLAHIN AND KELLAHIN**

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

June 30, 1999

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)

06-09-1999 11:55 AM

09 JUN 29 11:55

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

**HAND DELIVERED**

Ms. Lori Wrotenbery, Director  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

**Re: Proposed Revisions to Division compulsory pooling orders**

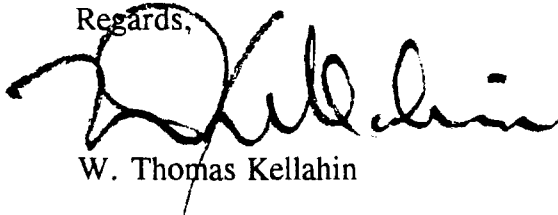
Dear Ms. Wrotenbery:

On several occasions over the last couple of years, I have recommended to the Division that it revise its form for compulsory pooling orders. In particular, I was urging the Division to adopt a "subsequent operations" clause similar to the one contained in Article VI of the AAPL Form 610-1989 Joint Operating Agreement.

Yesterday, I received a copy of Mr. Randy Patterson's letter to you dated June 24, 1999 in which he recommends the Division revise its compulsory pooling orders to solve several problems which will occur if the Commission adopts the optional second well now proposed in Revised Rule 104. While I am not yet sure which version of the model form to use, I concur with Mr. Patterson's proposed solution. As you are perhaps aware, the wellbore pooling versus unit pooling was a considerable problem in Oklahoma where parties pooled in the first well would then propose the infill well and participate in that well and claim that none of the production from the infill well could be used to pay for their non-consent share of the original well. New Mexico needs to avoid the Oklahoma problem.

Accordingly, I have reformatted the form of order currently used by the Division, incorporated Mr. Patterson's concepts, along with other suggestions of my own, in the enclosed "sample order". After appropriate review and comment by the industry and the Division, I would think that the Division could simply docket a case and adopt a new pooling order form by order of the Division without the necessity of adopting a new rule on this subject.

Regards,



W. Thomas Kellahin

cc: Regulatory Practices Committee (NMOGA)  
Attn: Richard Foppiano  
Randy Patterson (Yates Petroleum Corporation)  
William F. Carr, Esq.  
Rand Carroll, Esq.

**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.  
ORDER NO. R-**

**APPLICATION OF RAND OIL COMPANY  
FOR COMPULSORY POOLING  
EDDY COUNTY, NEW MEXICO**

**SAMPLE  
ORDER OF THE DIVISION**

**BY THE DIVISION:**

This cause came on for hearing at 8:15 a.m. on July 1, 1999, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this \_\_\_\_\_ day of August, 1999, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

**FINDS THAT:**

(1) Due public notice having been given as required by law, the Division has jurisdiction over the parties, of this cause and the subject matter thereof.

(2) The applicant, Rand Oil Company, seeks an order pooling uncommitted mineral interest owners of an interest in the mineral estate who have failed to agree to voluntarily commit their interests from the surface to the base of the Morrow formations underlying the following described acreage in Section 11, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, and in the following manner:

- (a) the S/2 to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within this vertical extent, which presently includes but is not necessarily limited to the Undesignated Empire-Pennsylvanian Gas Pool, Undesignated Bear Grass Draw-Atoka Gas Pool, Undesignated Palmillo Draw-Atoka Gas Pool, Undesignated North Turkey Track-Morrow Gas Pool, Undesignated Empire-Morrow Gas Pool, and Undesignated North Illinois Camp-Morrow Gas Pool;
- (b) the SE/4 to form a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within this vertical extent; and
- (c) the SE/4SE/4 to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within this vertical extent, which presently includes but not necessarily limited to the Undesignated East Illinois Camp-Bone Spring Pool.

(3) These units are to be dedicated to the applicant's proposed Rand "11" Federal Well No. 1 (API No. 30-015-\_\_\_\_\_) which applicant originally requested be approved at an unorthodox gas well location for all three sized units 1650 feet from the East line and 660 feet from the South line (Unit O) of this section.

(4) Rand Oil Company has the right to develop the subject units and produce any hydrocarbons underlying the same, however, as of June 1, 1999, the date this application was filed, the following working interest owners and/or unleased mineral owners in the above described 320, 160 and 40 acre spacing and proration units have not agreed to pool their interests:

Atlantic Richfield Company ("ARCO")  
Yates Petroleum Corporation

(5) Section 70-2-17.C NMSA (1978) provides, in part that:

"Where, however, such owner or owners have not agreed to pool their interests,...the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste shall pool all or any part of such lands or interest or both in the spacing unit or proration unit as a unit."

(6) Rand Oil Company submitted a sworn affidavit verifying that each and every compulsory pooled person received actual notice of this hearing in accordance with Division Rule 1207 and the Division finds that each said party has been afforded a fair and reasonable opportunity to appear and participate. The Division further finds that none of the compulsory pooled parties appeared and they have waived their rights to object.

(7) In support of its application, Rand Oil Company submitted the following evidence through its exhibits and the testimony of its witnesses which the Division finds to be substantial:

(a) the primary zone of interest for this well is the Morrow formation, therefore it was reasonable to limit applicant's geologic testimony to this interval. Based upon this evidence, including "three-dimensional" seismic data, the Morrow formation in this area is expected to be a series of river channels and that a well at the proposed gas well location should penetrate a thicker portion of the Morrow sand.

(b) Rand Oil Company has proposed this well and its appropriate spacing units(s) to the uncommitted owners in the spacing units as identified in Finding ( ) above.

(d) Despite its good faith efforts, Rand Oil Company has been unable to obtain a written voluntarily agreement from all of these uncommitted owners voluntarily pooling their interests.

(e) Rand Oil Company's witness testified in support of the approval of an Authority for Expenditure ("AFE") for a total completed well costing and estimated \$798,600.00 and to use of its Joint Operating Agreement with overhead rates of \$5,000/month drilling and \$540/month producing.

(f) Since risk of an unsuccessful completion is very high, the risk penalty to be applied to the compulsory pooled parties who elect to be carried should be set at 200 % of their proportionate share of actual total completed well costs.

(g) to avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owners of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of hydrocarbon production in any pool, the subject application should be approved by compulsory pooling of any working

interest owner and/or mineral owner who owned an interest not voluntarily committed to the drilling of this well as of June 3, 1999 (date the application was filed) and any said party's successors, grantees, or assignees.

(8) Approval of the application will afford the applicant the opportunity to produce its just and equitable share of the gas in these formations/pools, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells and will otherwise prevent waste and protect correlative rights.

(9) Pursuant to Section 70-2-17(C) NMSA (1978) and in order to obtain its just and equitable share of potential production underlying these spacing units, Rand Oil Company should be granted an order by the Division pooling the identified and described mineral and/or working interest owners set forth in Finding (4) above (hereinafter "compulsory pooled parties") so as to prevent waste and protect correlative rights for the drilling of this well at a standard well location upon terms and conditions which include:

(a) Rand Oil Company be named operator of this spacing unit for the initial well and any subsequent operation, including subsequent wells;

(b) provisions for all compulsory pooled parties to participate in the costs of drilling, completing, equipping and operating the initial well and any subsequent well;

(c) in the event a compulsory pooled party fails to timely elect to voluntarily commit its interest and participate pursuant to this order, then said compulsory pooled party's interest is hereby involuntarily committed to participation pursuant to the terms and conditions of the compulsory pooling provisions of this order and shall be deemed a non-consenting owner whose interest shall be carried so the carrying parties can recover out that compulsory pooled party's share of production, that compulsory pooled party's share of the costs of the drilling, completing, equipping and operating the initial well, including a risk factor penalty of 200 %;

(d) provisions for a compulsory pooled party to pay his share of overhead rates per month drilling and per month operating and a provision providing for an adjustment method of the overhead rates as provided by COPAS;

(10) Approval as set forth above and in the following ordering paragraphs will avoid the drilling unnecessary wells, protect correlative rights, prevent waste and afford the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool resulting from this order.

**IT IS THEREFORE ORDERED THAT:**

(1) The application of Rand Oil Company in this case is hereby **GRANTED**. and Rand Oil Company is hereby designated operator of these corresponding spacing unit(s).

(2) Each and every compulsory pooled party received actual notice of this hearing in accordance with Division Rule 1207 which the Division finds to have afforded each said party a fair and reasonable opportunity to appear and participate and that none of the compulsory pooled parties appeared and they have waived their rights to object and are **hereby compulsory pooled as set forth herein**.

(3) Effective as of the date of the filing of the application in this case, the interests of uncommitted mineral interest owners of an interest in the mineral estate who have failed to agree to voluntarily commit their interests ("compulsory pooled parties") identified in Finding ( ) above, including, if any, their assignees, successor and grantees, from the surface to the base of the Morrow formations underlying the following described acreage in Section 11, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, **are hereby pooled on a unit basis** and in the following manner:

- (a) the S/2 to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 230-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated Empire-Pennsylvanian Gas Pool, Undesignated Bear Grass Draw-Atoka Gas Pool, Undesignated Palmillo Draw-Atoka Gas Pool, Undesignated North Turkey Track-Morrow Gas Pool, Undesignated Empire-Morrow Gas Pool, and Undesignated North Illinois Camp-Morrow Gas Pool;

- (b) the SE/4 to form a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent; and
- (c) the SE/4SE/4 to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent, which presently includes but not necessarily limited to the Undesignated East Illinois Camp-Bone Spring Pool.

(4) That the initial well in these spacing units shall be the Rand "11" Federal Well No 1 to be located in Unit O of this section.

(5) That in the event an optional well is drilled in the 320-acre spacing unit consisting of the S/2 of this section, then the following provisions shall apply:

(a) any compulsory pooled person who has failed to timely elect to voluntarily participate in the initial well in this spacing unit, shall be afforded the right to elect to participate in the optional well in accordance with Article VI of the Joint Operating Agreement incorporated by reference herein;

(b) if the initial well has not recovered any compulsory pooled person's share of costs plus any penalty within a period of seven years after its date of first production, then that person's share of any production from the optional well shall be applied to pay for the costs and penalty involved in the original well;

(6) This pooling order shall remain in effect as to all horizons above the initial producing horizon until such time as the initial and optional wellbores have been abandoned as to all horizons.

(7) If any mineral interest owner, within 30 days of receipt of a proposal, including "AFE") for the optional second well in this spacing unit objects to either the costs or the 200 % risk factor penalty being applied to the second well, then those issues shall be decided by the Division after notice and hearing.

**PROVIDED HOWEVER THAT:**

(8) Rand Oil Company's proposed drilling-completion program and the corresponding Authority for Expenditures ("AFE") is hereby **APPROVED**.

(9) The terms and conditions of the AAPL Form 610-1989 Model Form Operating Agreement are incorporated herein by reference and shall be binding upon all compulsory pooled parties, subject to the following:

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the \_\_\_\_th day of \_\_\_\_\_, 1999, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test both the Morrow formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the \_\_\_\_th day of \_\_\_\_\_, 1999, Decretory Paragraph No. (\_\_\_\_) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Decretory Paragraph No. (2) of this order should not be rescinded.

(10) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each compulsory pooled party in the subject unit an itemized schedule of estimated well costs.

(11) Within 30 days from the date the schedule of estimated well costs is furnished to him, any compulsory pooled party shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such compulsory pooled party who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk factor penalty charges.

(12) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well cost is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs



after public notice and hearing.

(13) Within 60 days following determination of reasonable well costs, any compulsory pooled party who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(14) The operator is hereby authorized to withhold from the compulsory pooled party the following costs and charges from production:

- A. The pro rata share of reasonable well costs attributable to each compulsory pooled party who has not paid his share of estimated well costs within 30 days from the date of schedule of estimated well costs is furnished to him; and
- B. As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each compulsory pooled party who has not paid his share of estimated total completed well costs within 30 days from the date the schedule of estimated costs is furnished to him.

(15) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(16) \$5,400 per month while drilling and \$540 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each compulsory pooled party, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each compulsory pooled party's interest.

(17) The operator shall furnish the Division and each compulsory pooled party with an itemized schedule of actual operating well costs to be charged on a monthly basis in the form of a joint interest billing within 90 days following completion of the well; if no objection to the actual operating well cost or the joint interest billing is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(18) Any unleased mineral interest who is a compulsory pooled party 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 the terms of this order.

(19) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(20) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy 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 said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

(22) The operator shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

(23) The operator shall record a certified copy of this order with the appropriate county clerk in this the spacing unit is located and provide proof of record to the Division.

(24) Jurisdiction of this cause 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

LORI WROTENBERY,  
Director