

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:)
APPLICATION OF HARVEY E. YATES COMPANY)
FOR COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)

CASE NO. 12,545

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

November 16th, 2000

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, November 16th, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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OIL CONSERVATION DIV
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I N D E X

November 16th, 2000
Examiner Hearing
CASE NO. 12,545

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<u>VERNON D. DYER</u> (Landman)	
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A P P E A R A N C E S

FOR THE DIVISION:

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FOR THE APPLICANT:

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 By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 4:35 p.m.:

3 EXAMINER ASHLEY: The Division calls Case 12,545,
4 Application of Harvey E. Yates Company for compulsory
5 pooling, Eddy County, New Mexico.

6 Call for appearances.

7 MR. CARR: May it please the Examiner, my name is
8 William F. Carr with the Santa Fe law firm Campbell, Carr,
9 Berge and Sheridan. We represent Harvey E. Yates Company
10 in this matter, and I have one witness.

11 EXAMINER ASHLEY: Additional appearances?

12 Will the witness please rise to be sworn in?

13 (Thereupon, the witness was sworn.)

14 MR. CARR: May it please the Examiner, this is
15 not the first time we have been before you concerning our
16 efforts to develop Section 7.

17 It is important, I think, at the beginning to
18 advise you that the well which is the subject of this
19 hearing has been drilled and completed.

20 Briefly to review the history of Section 7, it
21 should be pointed out that the McMillan-Morrow Gas Pool is
22 developed on 640-acre spacing, pursuant to special pool
23 rules that were adopted and have been amended numerous
24 times, the most recent of which being July 27th of this
25 year, Order Number R-2917-C.

1 Pogo came before the Division and in December of
2 1999 obtained an order, R-11,308, which approved the
3 nonstandard spacing unit for the south half of Section 7.
4 That left the north half of the section available to Heyco
5 for the development of the Morrow formation. Pogo drilled
6 its Davis 7 Number 1 well 660 feet from the south and west
7 line of the section, and they obtained a very good Morrow
8 well.

9 Heyco came before the Division, and by Order
10 Number R-11,448, dated August 31 of this year, received
11 approval of a 318.22-acre nonstandard gas spacing unit for
12 the north half of the section and approval of an unorthodox
13 well location for the Turner Federal 7 Deep Well Number 1.
14 The location is 1980 from the north line and 660 from the
15 west line of the section.

16 The well has been drilled, and we have discovered
17 that there are certain interest owners whose interests have
18 not been voluntarily committed to the well.

19 We had hoped all interest owners could be
20 voluntarily joined in this effort, but we have been
21 unsuccessful in getting the last owners in, and so we are
22 here before you today seeking an order pooling this acreage
23 for four interest owners who have not signed an AFE and a
24 joint operating agreement.

25 And our witness is Vernon Dyer.

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VERNON D. DYER,

the witness herein, after having been first duly sworn upon
his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. Would you state your name for the record, please?

A. It's Vernon Duane Dyer.

Q. Where do you reside?

A. Roswell, New Mexico.

Q. By whom are you employed?

A. Harvey E. Yates Company, also known as Heyco.

Q. Mr. Dyer, what is your position with Harvey E.
Yates Company?

A. I'm the land manager.

Q. Have you previously testified before this
Division?

A. Yes, I have.

Q. At the time of that testimony, were your
credentials as an expert in petroleum land matters accepted
and made a matter of record?

A. Yes, it was.

Q. Are you familiar with the Application filed in
this case on behalf of Harvey E. Yates Company?

A. Yes, I am.

Q. And are you familiar with the status of the lands

1 in the subject area?

2 A. Yes.

3 MR. CARR: Are Mr. Dyer's qualifications
4 acceptable?

5 EXAMINER ASHLEY: They are.

6 Q. (By Mr. Carr) Would you briefly state what Heyco
7 seeks with this Application?

8 A. An order pooling all the minerals from the
9 surface to the base of the Morrow formation in the north
10 half of Section 7, Township 20 South, 27 East, in the
11 manner of having the 320 pooling for the McMillan-Morrow
12 Gas Pool, the northwest quarter a 160 spacing and the
13 southwest of the northwest quarter for all formations or
14 pools developed on 40-acre spacing, the southwest of the
15 northwest being where the well is located.

16 MR. CARR: Mr. Ashley, there is no pool in this
17 area developed on 80-acre spacing, so that portion of the
18 case should be dismissed.

19 EXAMINER ASHLEY: Okay, we'll dismiss that part.

20 MR. CARR: There are also two 40-acre pools in
21 the area, the McMillan-Wolfcamp Pool and the East McMillan-
22 Seven Rivers-Queen Pool, and they both include the spacing
23 unit or encompass the spacing unit which is the subject of
24 the hearing.

25 Q. (By Mr. Carr) Mr. Dyer, to what well will these

1 spacing units be dedicated?

2 A. To the Turner 7 Federal Deep Well Number 1.

3 Q. Let's go to what has been marked as Heyco Exhibit
4 Number 1, the land plat. Would you identify and review
5 that for Mr. Ashley?

6 A. Yes, it's the black outline showing the north
7 half of Section 7, also indicated in yellow is the spacing
8 unit for the 320, the red circle is the Turner well, then
9 by the map you can see the offset locations, the Pogo well
10 being in the south half, in the southwest of the southwest
11 quarter.

12 Q. What is the status of the acreage in the north
13 half of Section 7?

14 A. It's all federal acreage.

15 Q. And what is the primary objective in this well?

16 A. It's the Morrow formation of the McMillan-Morrow
17 Gas Pool.

18 Q. Let's go to what has been marked as Heyco Exhibit
19 Number 2. Would you identify and review that for Mr.
20 Ashley?

21 A. That is a list of all the partners or the people
22 that have an interest in this well.

23 Q. And it shows their percentage ownership?

24 A. As is common, and the ownership is common
25 throughout the whole north half of this section.

1 Q. So these percentages are applicable to 320-acre
2 units, 160 units and 40-acre units?

3 A. Yes.

4 Q. Okay. What percentage of the working interest is
5 voluntarily committed to the well?

6 A. We have 93 percent signed up, signed an AFE and
7 the joint operating agreement.

8 Q. Are there owners who you have been unable to
9 locate?

10 A. No, there's not.

11 Q. And how many interest owners are you asking be
12 subject to this particular pooling order?

13 A. Four.

14 Q. Could you summarize the efforts made by Heyco to
15 obtain the voluntary joinder of all working interest and
16 mineral interest owners in the proposed spacing unit?

17 A. Yes, we first made contact by letter on May 5th
18 of this year, and we offered them an opportunity to
19 participate or farm out to the well. We've made numerous
20 telephone calls since then. We have also written another
21 letter dated October the 3rd to all the partners. Again,
22 numerous phone calls afterwards. And we've been able to
23 reach an agreement with 23 of the 27 working interest
24 owners.

25 Q. Now, as to the interests that are represented by

1 Bank of America, have they executed your AFE?

2 A. Yes, there's two interests there, and they have
3 executed the AFE, but they refuse to execute the operating
4 agreement.

5 Q. Are you requesting that the pooling order at
6 least include those interests to the extent that it sets
7 overhead and administrative costs so that you may charge
8 the Bank of America --

9 A. Yes.

10 Q. -- in a fashion consistent with all other owners
11 in the well?

12 A. Yes, that is correct.

13 Q. Have you made a good-faith effort to locate all
14 owners in the well and obtain their voluntary joinder?

15 A. Yes, we feel we have.

16 Q. Would you identify what has been marked as
17 Exhibit Number 3?

18 A. Exhibit Number 3 is the two letter, a copy of the
19 two letters that we furnished to all the working interest
20 owners, one dated May 5th and one dated October the 3rd.

21 Q. And you included an AFE with this letter, did you
22 not?

23 A. Yes, we did.

24 Q. Is the AFE also marked Heyco Exhibit Number 4?

25 A. Yes, it is.

1 Q. Could you review that, please, for the Examiner?

2 A. The dryhole cost on the AFE is \$559,905. To
3 totally complete the well is estimated to be \$849,022.

4 Q. Are these costs in line with what's been charged
5 and incurred by other operators for similar wells in this
6 area?

7 A. Yes, it is.

8 Q. Is Exhibit Number 5 an affidavit with attached
9 letters and return receipts confirming that notice of this
10 hearing has been provided in accordance with the rules of
11 the Division?

12 A. Yes, it is.

13 Q. Have you made an estimate of the overhead and
14 administrative costs to be incurred while drilling the well
15 and also while producing it if, in fact, it is successful?

16 A. Yes, we have. It's \$6350 a month for drilling
17 and \$635 a month for producing.

18 Q. Are these the figures that have been accepted by
19 the 23 parties who voluntarily committed to the well?

20 A. Yes, it is.

21 Q. And how do these compare to the overhead and
22 administrative costs assessed or incurred in the
23 development of the Pogo well to the south?

24 A. It is the same interest used there, same amounts.

25 Q. Is Heyco Exhibit Number 6 a copy of the joint

1 operating agreement in which these figures are set out?

2 A. Yes, it is.

3 Q. And does this also contain the COPAS form which
4 provides for the periodic adjustment of these figures?

5 A. Yes, it's attached as Exhibit C.

6 Q. Do you request that the overhead and
7 administrative costs be subject to the same adjustments as
8 set forth in this COPAS form?

9 A. Yes, we do.

10 Q. Do you recommend that these figures be
11 incorporated into the order that results from this hearing?

12 A. Yes, we do.

13 Q. And does Harvey E. Yates seek to be again
14 designated operator of this well?

15 A. Yes, that is correct.

16 Q. Were Exhibits 1 through 6 prepared by you?

17 A. By me or under my direction.

18 Q. And can you testify as to their accuracy?

19 A. Yes, I can.

20 MR. CARR: At this time, Mr. Ashley, we would
21 move the admission into evidence of Exhibits 1 through 6.

22 EXAMINER ASHLEY: Exhibits 1 through 6 will be
23 admitted as evidence.

24 Q. (By Mr. Carr) And I have one final question.

25 Mr. Dyer, in your opinion will approval of this Application

1 be in the best interest of conservation, the prevention of
2 waste and the protection of correlative rights?

3 A. Yes, we feel it will be.

4 MR. CARR: That concludes my examination of Mr.
5 Dyer.

6 EXAMINATION

7 BY EXAMINER ASHLEY:

8 Q. Mr. Dyer, on Exhibit 2 you have a list of working
9 interest owners?

10 A. Yes.

11 Q. Can you tell me which ones are not committed?

12 A. The ones that are not committed is Grant Smith
13 and the Jalapeno Corporation; we do not have any signatures
14 at all from them. And the ones that refused to sign the
15 operating agreement is the Tom P. Stephens Trust and the
16 Charles A. Aston, III, Trust. It's listed there, down --
17 13th from the bottom, Charles A. Aston, III.

18 Q. I see it. Now, did you seek their voluntary
19 joinder from this original notification that you mailed out
20 in May?

21 A. Yes.

22 Q. And so what's the status of Jalapeno and Grant?
23 You just haven't heard anything back from them?

24 A. No, we've been negotiating all along, and we just
25 hadn't been able to come to terms with them. They refused

1 to sign the operating agreement, and they refused to farm
2 out to us under terms that's acceptable to both parties.

3 Q. So how come the well ended up being drilled
4 before there was any kind of pooling order?

5 A. Because we were under the impression we were
6 going to get something; Jalapeno had even said, Yes, we
7 agree to it, but they have never signed anything. Mr.
8 Grant Smith is a gentleman in Roswell that we all know, and
9 he changed his mind; he decided he didn't want to go into
10 the working interest after he verbally said he would do it.

11 MR. CARR: Mr. Dyer, who are the principals in
12 Jalapeno?

13 THE WITNESS: The principals in Jalapeno is
14 Harvey Yates, Jr., and he's notorious for agreeing on stuff
15 but not ever signing anything. And so we finally got to a
16 point where we got the well down and completed, he still
17 hasn't sent us his signed agreement or farmout, so we're
18 going to have to do something to get it accomplished here.

19 Q. (By Examiner Ashley) Is there any kind of
20 similar relationship with Heyco of the other interests who
21 committed, similar to what the relationship is with
22 Jalapeno?

23 A. That's uncommitted?

24 Q. Right.

25 A. No -- Huh?

1 Q. Right, is there --

2 A. No, just Grant Smith, is an old gentleman there
3 that we know very well. Now, the other two have signed the
4 AFE. They just -- The banks refused to sign the operating
5 agreements because they feel that it will deteriorate the
6 trust.

7 Q. This Charles Aston and Tom P. Stephens?

8 A. Yes, is the Bank of America out of Fort Worth.

9 Q. They've signed that AFE?

10 A. Yes.

11 Q. Was there any comment on risk?

12 MR. CARR: No, the reason is, the statute
13 provides that a penalty may be imposed for drilling and
14 completion of the well. It has been drilled and completed,
15 and we've been in the past denied a risk penalty on the
16 grounds that the risk has already been assigned.

17 EXAMINER ASHLEY: So you're not asking for any
18 risk?

19 MR. CARR: We're not. In the past we've been
20 told we couldn't get it. So under these circumstances, we
21 thought we might try it on for size, and we have Mr. Reyes
22 here, who, when he didn't have to testify, we insisted he
23 stay in the room for all the hearings today. He would have
24 preferred to testify.

25 (Laughter)

1 Q. (By Examiner Ashley) And is it a pretty good
2 well?

3 A. It's a keeper.

4 Q. It's a standard location?

5 A. Yes.

6 EXAMINER ASHLEY: Okay, I have nothing further.
7 Thank you.

8 THE WITNESS: Thank you.

9 MR. CARR: Mr. Ashley, I believe it is -- Let me
10 check. I think it's at an unorthodox location that was
11 previously approved.

12 EXAMINER ASHLEY: Previously approved --

13 MR. CARR: Let me check.

14 THE WITNESS: It may have when we got the -- an
15 unorthodox well location, yes, it is unorthodox.

16 MR. CARR: Okay.

17 THE WITNESS: In the R-11,448 ruling --

18 MR. CARR: Yes.

19 THE WITNESS: -- of August, it is unorthodox.

20 MR. CARR: Okay. And it was -- the variation in
21 the unit size is just simply due to a survey variation.

22 EXAMINER ASHLEY: Okay. Thank you.

23 There being nothing further in this case, Case
24 12,545 will be taken under advisement.

25 (Off the record)

1 EXAMINER ASHLEY: There are two additional cases
2 to be continued. Cases 12,458 and 12,475 will be continued
3 to January 11th, 2001.

4 And that concludes today's hearing.

5 (Thereupon, these proceedings were concluded at
6 4:55 p.m.)

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15 I do hereby certify that the foregoing is
16 a complete record of the proceedings of
the Examiner hearing of Case 12545
17 heard by me on 11-16-00
18 Mark Ashley, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 26th, 2000.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002