

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

**APPLICATION OF SPUR ENERGY
PARTNERS, LLC FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO**

CASE NOS. 21882 & 21883

**SPUR ENERGY PARTNERS, LLC'S RESPONSE
IN OPPOSITION TO MOTION TO DISMISS**

Spur Energy Partners, LLC ("Spur") submits this response in opposition to Petro-Yates, Inc. and Jalapeno Corporation's motion to dismiss. For the reasons discussed below, the motion should be denied.

I. Introduction

In Case No. 21882, Spur seeks an order pooling all uncommitted interests in the Yeso formation in a 320-acre standard horizontal spacing unit comprised of the S/2 of Section 27, Township 17 South, Range 28 East in Eddy County, New Mexico. In Case No. 21883, Spur seeks an order pooling all uncommitted interests in the Yeso formation in a 160-acre standard horizontal spacing unit comprised of the N/2S/2 of Section 27, Township 17 South, Range 28 East in Eddy County, New Mexico. Jalapeno Corporation ("Jalapeno") acquired Petro-Yates' working interest in these units and owns a 0.3749% working interest within the proposed unit in Case No. 21882 and a 0.75% working interest within the proposed unit in Case No. 21883. Jalapeno filed a motion to dismiss Spur's applications, arguing that: (1) Jalapeno is not subject to compulsory pooling since it has agreed to participate in the wells; and (2) hearing Spur's applications on May 6, 2021 would have violated Jalapeno's due process and correlative rights. Neither argument has merit, and the second argument is moot.

II. Argument

A. **Jalapeno is subject to compulsory pooling because the parties have not entered into a voluntary agreement governing operation of Spur's proposed wells.**

In its motion, Jalapeno argues that it is not subject to compulsory pooling under NMSA 1978, Section 70-2-17(c) because the parties entered into a voluntary agreement when Jalapeno sent a letter to Spur indicating its willingness to participate in the wells. But Jalapeno's argument is incorrect. Although Jalapeno signed Spur's authorizations for expenditures ("AFE's"), it did not execute the joint operating agreement ("JOA") referenced in Spur's initial well proposal letter or agree to the essential terms of the JOA set out in the letter. In fact, Jalapeno responded to Spur's well proposals by striking out and initialing over the proposal's provision stating that Jalapeno agreed to the terms of the referenced JOA. Thus, Jalapeno rejected Spur's well proposal letter, which had expressly stated that the offer included a JOA with the essential terms set forth in the letter. *See* Jalapeno's well proposals, attached as Exhibit A.

Further, in its letter to Spur, Jalapeno rejected the non-consent risk penalty included in Spur's JOA and proposed a new risk penalty amount. *See* Jalapeno's response to Spur's well proposals attached as Exhibit B. In an email dated May 6, 2021, Spur informed Jalapeno it did not agree to the terms of Jalapeno's counteroffers, and as such, would not dismiss Jalapeno from its compulsory pooling applications until the parties execute an operating agreement. *See* e-mail from Morgan Landry, attached as Exhibit C. Because the parties have not entered into a voluntary agreement governing operations of Spur's proposed wells, compulsory pooling of Jalapeno's interests is necessary and appropriate for Spur to obtain its just and fair share of the oil and gas underlying the subject lands. *See, e.g.*, NMSA 1978, § 70-2-17(C).

B. Jalapeno's argument that its due process rights would have been violated by a May 6th hearing lacks merit and is moot.

In its motion, Jalapeno stated its due process and correlative rights would be violated if Spur's applications were presented and taken under advisement during the May 6th docket. However, these claims are moot since Spur's applications have been continued to the June 17th hearing docket. The parties have continued good-faith negotiations, and Jalapeno has had more than sufficient time to fully participate in the hearing in the event an agreement is not reached.

III. Conclusion

For the foregoing reasons, Spur respectfully requests the Division deny Jalapeno's motion to dismiss it from Spur's compulsory pooling applications.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Dana S. Hardy

Dana S. Hardy

Michael Rodriguez

P.O. Box 2068

Santa Fe, NM 87504-2068

Phone: (505) 982-4554

Facsimile: (505) 982-8623

dhardy@hinklelawfirm.com

mrodriguez@hinklelawfirm.com

Counsel for Spur Energy Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2021, I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail:

J.E. Gallegos
Michael J. Condon
jeg@gallegoslafirm.net
mjc@gallegoslafirm.net
Counsel for PetroYates and Jalapeno Corp.

/s/ Dana S. Hardy
Dana S. Hardy



March 2, 2021

Jalapeno Corporation
Attn: Kathryn J. Reese
P.O. Box 1608
Albuquerque, NM 87103-1608

RE: Well Proposals
Halberd A 27 State 1H, 10H, 50H, 70H, 90H and Halberd B 27 State 51H, 71H, 91H
N/2 of Section 27-T17S-R28E
Eddy County, New Mexico

Dear Working Interest Owner,

SEP Permian LLC ("Spur"), an affiliate of Spur Energy Partners LLC, hereby proposes to drill and complete the **Halberd A 27 State 1H, 10H, 50H, 70H, 90H and Halberd B 27 State 51H, 71H, 91H** wells to the approximate total vertical depths as referenced below as horizontal Yeso wells (the "Subject Wells") at the following proposed locations (subject to change upon staking and survey).

Halberd A 27 State 1H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 710' FNL & 750' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 430' FNL & 50' FEL, Section 27, T17S-R28E
- TVD: ~3525'

Halberd A 27 State 10H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 770' FNL & 750' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1180' FNL & 50' FEL, Section 27, T17S-R28E
- TVD: ~3650'

Halberd A 27 State 50H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 690' FNL & 750' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 331' FNL & 50' FEL, Section 27, T17S-R28E
- TVD: ~4075'

Halberd A 27 State 70H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 750' FNL & 750' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1080' FNL & 50' FEL, Section 27, T17S-R28E
- TVD: ~4325'

Halberd A 27 State 90H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 730' FNL & 750' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 705' FNL & 50' FEL, Section 27, T17S-R28E
- TVD: ~4625'

Halberd B 27 State 51H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 2175' FNL & 715' FWL, Section 26, T17S-R28E
- Proposed Bottom Hole Location – 1830' FNL & 50' FWL, Section 27, T17S-R28E
- TVD: ~4095'



Halberd B 27 State 71H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 2215' FNL & 715' FWL, Section 26, T17S-R28E
- Proposed Bottom Hole Location – 2580' FNL & 50' FWL, Section 27, T17S-R28E
- TVD: ~4350'

Halberd B 27 State 91H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 2195' FNL & 715' FWL, Section 26, T17S-R28E
- Proposed Bottom Hole Location – 2205' FNL & 50' FWL, Section 27, T17S-R28E
- TVD: ~4640'

Spur proposes to form a Drilling Spacing Unit (“DSU”) covering the N/2 of Section 27-T17S-R28E, Eddy County, New Mexico, containing 320 acres of land, more or less, from the top of the Yeso formation to 5000’. Portions of these lands are likely governed by existing Joint Operating Agreements (“JOAs”) which also cover the Yeso formation and which govern operations for vertical wells. For the mutually exclusive development of horizontal wells, and any concept wells (i.e. micro seismic wells, pilot hole wells) within the DSU, Spur hereby submits for your consideration, a new joint operating agreement dated March 1, 2021, being a modified 2015 Horizontal AAPL Form 610 Operating Agreement (“NJOA”) to govern proposals and operations within the DSU. The NJOA shall supersede any existing operations under any JOAs, expressly limited however, to horizontal well development and operations within the DSU. The NJOA has the following general provisions:

- Effective Date of March 1, 2021
- N/2 of Section 27-17S-28E
- Depths from the top of the Yeso formation to 5000’
- 100%/300%/300% non-consenting penalty
- \$8,000/\$800 drilling and producing monthly overhead rate
- Spur Energy Partners LLC named as Operator

The enclosed AFEs reflect the total estimated drilling and completion costs for each well. The AFEs are an estimate only and those parties electing to participate in the Subject Wells shall be responsible for their share of actual well costs, whether more or less than those shown on the enclosed AFEs.

Spur respectfully requests that you select one of the following four options with regard to your interest in the proposed wells:

Option 1: Participate in the drilling and completion of the proposed well and agree to enter into the NJOA with the terms specified above.

Option 2: Not participate in the proposed well (an election of “Non-Consent”).

Term Assignment Option: Assign your working interest in the N/2 of Section 27-17S-28E, exclusive of existing wellbores, to Spur through a term assignment with a primary term of three (3) years and a bonus consideration of \$500 per net acre, delivering a 75% leasehold net revenue interest (limited to the Yeso formation).

Assignment Option: Assign your working interest in the N/2 of Section 27-17S-28E, exclusive of existing wellbores, to Spur for a bonus consideration of \$1,000 per net acre, delivering a 75% leasehold net revenue interest (all rights owned).



Halberd A 27 State 1H
Owner: Jalapeno Corporation
WI Decimal: 0.001411

Option 1) The undersigned elects to participate in the drilling and completion of the Halberd A 27 State 1H well and agrees to the formation of the DSU and ~~to the terms of the NIOA as detailed in this proposal,~~ with the cost and maintenance of all surface facilities, including any shared well pads, being reapportioned between each well drilled in the DSU.

Option 2) The undersigned elects not to participate in the drilling and completion of the Halberd A 27 State 1H.

Should you elect to participate, please also indicate your Well Insurance election below. If you elect to obtain individual Well Insurance coverage, please provide Spur with a copy of your Certificate of Insurance.

Well Insurance:

The undersigned requests Well Insurance coverage provided by Spur Energy Partners.

The undersigned elects to obtain individual Well Insurance coverage.

* Agreed to and Accepted this 5th day of April, 2021.

* Valid until 8/1/2021.

Company/Individual: Jalapeno Corporation

By: [Signature]

Name: H. Emmons Yates, III

Title: Vice President



Halberd A 27 State 1H
Owner: Petro Yates, Inc.
WI Decimal: 0.001411

Option 1) The undersigned elects to participate in the drilling and completion of the Halberd A 27 State 1H well and agrees to the formation of the DSU and to the terms of the NJOA as detailed in this proposal, with the cost and maintenance of all surface facilities, including any shared well pads, being reapportioned between each well drilled in the DSU.

Option 2) The undersigned elects not to participate in the drilling and completion of the Halberd A 27 State 1H.

Should you elect to participate, please also indicate your Well Insurance election below. If you elect to obtain individual Well Insurance coverage, please provide Spur with a copy of your Certificate of Insurance.

Well Insurance:

The undersigned requests Well Insurance coverage provided by Spur Energy Partners.

The undersigned elects to obtain individual Well Insurance coverage.

* Agreed to and Accepted this 5th day of April, 2021.

* Valid until 8/1/2021.

Company/Individual: Petro Yates, Inc.

By: [Signature]

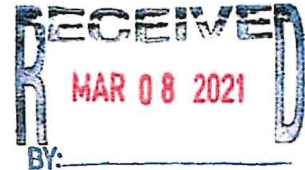
Name: H. Emmons Yates, III

Title: Vice President



March 2, 2021

Jalapeno Corporation
Attn: Kathryn J. Reese
P.O. Box 1608
Albuquerque, NM 87103-1608



**RE: Well Proposal
Halberd C 27 State 11H
N/2 S/2 of Section 27-T17S-R28E
Eddy County, New Mexico**

Dear Working Interest Owner,

SEP Permian LLC ("Spur"), an affiliate of Spur Energy Partners LLC, hereby proposes to drill and complete the **Halberd C 27 State 11H** well to the approximate total vertical depth as referenced below as horizontal Yeso well (the "Subject Well") at the following proposed location (subject to change upon staking and survey).

Halberd C 27 State 11H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 1800' FSL & 345' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1990' FSL & 50' FEL, Section 27, T17S-R28E
- TVD: 3775'

Spur proposes to form a Drilling Spacing Unit ("DSU") covering the N/2 S/2 of Section 27-T17S-R28E, Eddy County, New Mexico, containing 160 acres of land, more or less, from the top of the Yeso formation to 4000'. Portions of these lands are likely governed by existing Joint Operating Agreements ("JOAs") which also cover the Yeso formation and which govern operations for vertical wells. For the mutually exclusive development of horizontal wells, and any concept wells (i.e. micro seismic wells, pilot hole wells) within the DSU, Spur hereby submits for your consideration, a new joint operating agreement dated March 1, 2021, being a modified 2015 Horizontal AAPL Form 610 Operating Agreement ("NJOA") to govern proposals and operations within the DSU. The NJOA shall supersede any existing operations under any JOAs, expressly limited however, to horizontal well development and operations within the DSU. The NJOA has the following general provisions:

- Effective Date of March 1, 2021
- N/2 S/2 of Section 27-T17S-R28E
- Limited in depth from top of Yeso formation to 4000'
- 100%/300%/300% non-consenting penalty
- \$8,000/\$800 drilling and producing monthly overhead rate
- Spur Energy Partners LLC named as Operator

The enclosed AFE reflects the total estimated drilling and completion costs. The AFE is an estimate only and those parties electing to participate in the Subject Well shall be responsible for their share of actual well costs, whether more or less than those shown on the enclosed AFE.



Halberd C 27 State 11H
Owner: Jalapeno Corporation
WI Decimal: 0.0103

Option 1) The undersigned elects to participate in the drilling and completion of the Halberd C 27 State 11H well and agrees to the formation of the DSU ~~and to the terms of the NJOA as detailed in this proposal,~~ with the cost and maintenance of all surface facilities, including any shared well pads, being reapportioned between each well drilled in the DSU.

Option 2) The undersigned elects not to participate in the drilling and completion of the Halberd C 27 State 11H.

Should you elect to participate, please also indicate your Well Insurance election below. If you elect to obtain individual Well Insurance coverage, please provide Spur with a copy of your Certificate of Insurance.

Well Insurance:

The undersigned requests Well Insurance coverage provided by Spur Energy Partners.

The undersigned elects to obtain individual Well Insurance coverage.

Agreed to and Accepted this 5th day of April, 2021.
* Valid until August 1, 2021.

Company/Individual: Jalapeno Corporation

By: [Signature]

Name: H. Emmons Yates, III

Title: Vice President



March 2, 2021

Jalapeno Corporation
Attn: Kathryn J. Reese
P.O. Box 1608
Albuquerque, NM 87103-1608

RE: Well Proposals
Halberd C 27 State 52H, Halberd C 27 State 92H, Halberd D 27 State 72H and Halberd D 27 State 53H
S/2 of Section 27-T17S-R28E
Eddy County, New Mexico

Dear Working Interest Owner,

SEP Permian LLC ("Spur"), an affiliate of Spur Energy Partners LLC, hereby proposes to drill and complete the **Halberd C 27 State 52H, Halberd C 27 State 92H, Halberd D 27 State 72H and Halberd D 27 State 53H** wells to the approximate total vertical depths as referenced below as horizontal Yeso wells (the "Subject Wells") at the following proposed locations (subject to change upon staking and survey).

Halberd C 27 State 52H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 1780' FSL & 345' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1950' FSL & 50' FEL, Section 27, T17S-R28E
- TVD: 4150'

Halberd C 27 State 92H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 1760' FSL & 345' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1575' FSL & 50' FEL, Section 27, T17S-R28E
- TVD: 4650'

Halberd D 27 State 72H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 875' FSL & 645' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 1200' FSL & 50' FEL, Section 27, T17S-R28E
- TVD: 4500'

Halberd D 27 State 53H – Horizontal Yeso Well, Eddy County, NM

- Proposed Surface Hole Location – 875' FSL & 625' FEL, Section 28, T17S-R28E
- Proposed Bottom Hole Location – 450' FSL & 50' FEL, Section 27, T17S-R28E
- TVD: 4200'

Spur proposes to form a Drilling Spacing Unit ("DSU") covering the S/2 of Section 27-T17S-R28E, Eddy County, New Mexico, containing 320 acres of land, more or less, from 4000' to the base of Yeso formation. Portions of these lands are likely governed by existing Joint Operating Agreements ("JOAs") which also cover the Yeso formation and which govern operations for vertical wells. For the mutually exclusive development of horizontal wells, and any concept wells (i.e. micro seismic wells, pilot hole wells) within the DSU, Spur hereby submits for your consideration, a new joint operating agreement dated March 1, 2021, being a modified 2015 Horizontal AAPL Form 610 Operating Agreement ("NJOA") to govern proposals and operations within the DSU.



Halberd C 27 State 52H
Owner: Jalapeno Corporation
WI Decimal: 0.0052

Option 1) The undersigned elects to participate in the drilling and completion of the Halberd C 27 State 52H well and agrees to the formation of the DSU ~~and to the terms of the N/OA as detailed in this proposal~~, with the cost and maintenance of all surface facilities, including any shared well pads, being reapportioned between each well drilled in the DSU.

Option 2) The undersigned elects not to participate in the drilling and completion of the Halberd C 27 State 52H.

Should you elect to participate, please also indicate your Well Insurance election below. If you elect to obtain individual Well Insurance coverage, please provide Spur with a copy of your Certificate of Insurance.

Well Insurance:

The undersigned requests Well Insurance coverage provided by Spur Energy Partners.

The undersigned elects to obtain individual Well Insurance coverage.

* Agreed to and Accepted this 5th day of April, 2021.
* Valid until 8/1/2021

Company/Individual: Jalapeno Corporation

By: [Signature]

Name: H. Emmons Yates, III

Title: Vice President

JALAPENO CORPORATION

P.O.BOX 1608
ALBUQUERQUE, NM 87103
PHONE: 505-242-2050
FAX: 505-242-8501

A P R I L 2 , 2 0 2 1

Certified Mail Return Receipt Requested
7020 0640 0000 7485 4467

Spur Energy Partners LLC
Attn: Morgan Landry
9655 Katy Freeway, Suite 500
Houston, TX 77024

RE: Proposed Wells

Halberd C 27 State 11H well
N/2S/2 Section 27-T1&S-R28E
Halberd C 27 State 52H, 92H
Halberd D 27 State 72H, 53H
S/2 Section 27-T1&S-R28E

Halberd A 27 State 1H, 10H, 50H, 70H, 90H
Halberd B 27 State 51H, 71H, 91H
N/2 Section 27-T17S-R28E
Eddy County, NM

Dear Mr. Landry,

I am writing to respond to the recent well proposals Jalapeno received regarding the Halberd wells and the related proposed JOA's and their contract area terms that would cover various lands in Section 27-T17S-R28E. Jalapeno is willing to participate in the Halberd wells that will be drilled on our acreage and has so indicated with the signed AFE's. However, in regards to the proposed JOA's, we would not be willing to sign a JOA with the terms you have outlined in your letter.

Jalapeno does not believe that a 100/300 non-consent penalty is appropriate in today's horizontal drilling world. The actual risk of drilling a horizontal well in the Delaware Basin is much lower than 300%. Because of this fact, Jalapeno will not consent to sign a JOA with a 100/300 non-consent penalty for drilling. However, Jalapeno would be willing to sign a JOA with a 100/40 non-consent penalty. If that is not appealing to you, Jalapeno would also be willing to sign a JOA with a "farmout in lieu" of a non-consent penalty. This farmout would be for a 25% back-in after payout. If you can place either of these alternative suggestions in your proposed JOA, replacing the current 100/300 non consent penalty, we would be happy to sign a JOA covering the proposed unit area.

With this letter, I include the signed AFE's covering the Halberd wells that will penetrate our acreage. I have also included a sample of the farmout in lieu of non-consent penalty language. These signed AFE's will be valid until August 1, 2021. If you have not spudded the wells by August 1st, with the rig that will

EXHIBIT
B

drill the wells to TD, then these signed AFE's will no longer be valid. If you still plan to drill the wells but have not spudded by August 1st, please resubmit new AFE's for our review.

If SPUR is unwilling to negotiate on its proposed JOA, I recommend we enter into a letter agreement that will lay out the basic principles of a drilling agreement. I have attached a form that we have used with other companies to give you a general idea of what this agreement would contain.

Please feel free to contact me so that we can discuss this in greater detail.

Sincerely,



H. Emmons Yates III

From: Morgan Landry <mlandry@spurepllc.com>

Sent: Thursday, May 6, 2021 3:10 PM

To: kreese@jalapenocorp.com

Cc: Emmons Yates <eyates@jalapenocorp.com>

Subject: RE: Halberd wells - Recorded Assignment from PetroYates to Jalapeno - State of NM OGL B-2071 Lands in Sec 27-17S-28E, Eddy County, NM

Mr. Emmons,

To follow up on the conversation I had with Kathleen on Friday and our conversation on Monday, Spur does not accept Jalapeno's proposed amendments to the JOA or proposed letter agreements.

Additionally, Jalapeno's response to Spur's well proposals did not accept the essential terms of the JOA as set out in the proposal. Instead, Jalapeno crossed out the NJOA reference on the election forms and proposed alternative terms to the JOA. As a result, Jalapeno did not elect to participate under the terms that Spur had offered.

Since we have not reached an agreement on a JOA (including the essential terms set out in our well proposals), Spur intends to proceed to pool Jalapeno's interest. However, Spur is willing to discuss/negotiate reasonable terms with Jalapeno in an effort to reach an agreement on a JOA, subject to Spur's management approval.

Thanks

--

Morgan Landry

Senior Landman

Spur Energy Partners LLC

9655 Katy Freeway, Suite 500

Houston, Texas 77024

Direct: 832.930.8616

Cell: 337.280.9251

mlandry@spurepllc.com

