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

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

Case Nos. 21848

AMENDED PRE-HEARING STATEMENT

Jalapeno Corporation ("Jalapeno") provides this Amended Pre-Hearing Statement as required by Rule 19.15.4.13B NMAC. The issues in this case are identical with respect to the relief sought in the application and the basis for Jalapeno's opposition to those presented in Case Nos. 21880, 21881, 21882 and 21883 (Halberd force pooling cases). This Amended Statement addresses additional issues Jalapeno intends to raise in opposition to the Joint Operating Agreement provided by applicant Spur Energy Partners, LLC ("Spur") after the deadline for filing the Pre-Hearing Statement in anticipation of a May 13, 2021 hearing date.

APPEARANCES

APPLICANT	ATTORNEY
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OPPONENT	ATTORNEY
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STATEMENT OF THE CASE

Spur has filed this force pooling application which is currently set for hearing on June 17, 2021. Spur seeks an order from the Division force pooling all uncommitted interests and approving a 320-acre horizontal spacing unit comprised of the N/2 of Section 32, Township 17 South, Range 28 East, Eddy County, New Mexico. The spacing unit is to be dedicated to ten (10) "initial" horizontal Yeso wells (Blalock wells). Spur seeks an order "pooling all uncommitted mineral interests," approving the wells proposed, designating Spur as the operator of the unit, approving Spur's charges for the well, and imposing a 200% non-consent penalty.

On February 10, 2021, Spur sent Jalapeno a package which included:

- A cover letter proposing a Drilling Spacing Unit covering the relevant acreage
- An Authority for Expenditure (AFE) for each of the 10 Blalock wells with the amounts ranging from $2,791,000 to $3,041,000
- Election forms for each of the Blalock wells

On the election forms, Spur asked Jalapeno to choose one of four options regarding the Blalock wells. Spur attempted to condition Jalapeno's agreement to participate in the drilling and completion of the wells on Jalapeno's acceptance of the

proposed JOA. However, Spur did not include a complete copy of its proposed JOA in the package. Instead, it stated that the JOA would be "a modified 2015 Horizontal AAPL Form 610 Operating Agreement." The modifications are not disclosed. The cover letter only lists 6 "general provisions' the JOA.

Jalapeno wrote Spur on March 23, 2021. As to each of the Blalock wells, Jalapeno agreed to pool its interest in the acreage for purposes of drilling the wells. Jalapeno signed each AFE. Jalapeno elected the option "to participate in the drilling and completion of the [Halberd well] with the cost and maintenance of all surface facilities, including any shared well pads, being reapportioned between each well drilled in the DSU." Jalapeno objected and crossed out the language in the election form that would have constituted acceptance of the JOA terms.

Spur listed one of the general provisions of the JOA as a 100%/300%/300% non-consent penalty. Jalapeno objected to this disclosed provision. Jalapeno stated it would agree to a 100%/40% non-consent penalty. Alternatively, Jalapeno proposed a JOA with a "farmout in lieu" of a non-consent penalty, with a 25% back-in after payout. Jalapeno finally proposed that if Spur was unwilling to negotiate on the JOA, the parties should enter into a letter agreement that would set forth the basic principles of a drilling agreement.

Spur finally provided a proposed JOA for the Blalock wells on May 26, 2021.

In this case, Spur has not expressly stated the basis for its position that Jalapeno is subject to the force pooling proceeding. In the Halberd force pooling cases, Spur contends that Jalapeno has not sufficiently agreed to pool its interests because it has not agreed to sign the proposed JOA. Jalapeno believes that is also Spur's position here.

JALAPENO'S OBJECTIONS TO THE FORCE POOLING APPLICATIONS

Jalapeno contends the applications should be denied for the following reasons:

1. Jalapeno has agreed to pool its interests in the affected acreage so that Spur can drill and complete the Halberd wells. NMSA 1978 § 70-2-17(C)) authorizes the Division to approve a force pooling application only where an interest owner has not agreed to pool its interest. The Division lacks the authority under the statute to force pool Jalapeno in these cases.

2. Jalapeno has done everything necessary to agree to pool its interests and for purposes of Section 70-2-17(C). Any contention that Jalapeno must agree to all the terms of Spur's proposed JOA in order for Jalapeno's agreement to be effective is wrong. The statute does not prescribe any specific method an owner must follow in order to agree to pool its interests to develop the lands. The statute does not require an owner to accept an applicant's proposed JOA in order to agree to pool its interest. Spur is attempting to improperly use the force pooling procedure to strongarm Jalapeno into accepting Spur's non-consent penalty terms. Spur's position is particularly egregious where Spur did not provided Jalapeno with a complete copy of its proposed JOA before demanding acceptance of the JOA terms.

3. The proposed JOA is objectionable for several reasons. First, the non-consent penalty is not supported by the evidence. Second, in Article III.C, the JOA makes any burden not listed on Exhibit A to the JOA, an exhibit Spur created, a subsequently created interest even if the interest is presently of record. Third, Spur has added several non-standard provisions in Article XVI. Most egregious is the provision that allows Spur to require prepayment of all costs for all proposed wells to be drilled in the Contract Area, irrespective of when or whether they will actually be drilled. Given that Spur seeks

approval of 13 wells costing either $2.8 or $3.0 million, the type of prepayment obligation Spur seeks to force on Jalapeno would be a tremendous burden on Jalapeno and other interest owners. The prepayment provision is contrary to the custom and practice in the industry that calls for non-operators to pay their share of expenses as they are incurred by the operator or, at most, the preceding month before expenses are incurred.

4. The Division has historically imposed on force pooling applicants an obligation to make a good faith effort to secure voluntary agreement of affected interest owners. Spur has failed to make such a good faith effort. First, the issues Jalapeno has concerning the JOA do not negate Jalapeno's agreement to participate and pay its share of well costs for 10 Blalock wells. Second, Spur has no reasonable explanation as to why the alternatives to the non-consent provision offered by Jalapeno are unworkable or unacceptable.

5. The Yeso formation underlying the acreage at issue is a resource play extensively developed by horizontal wells and presents a dependable low risk, highly favorable return on investment. The very fact that Spur intends to drill 10 horizontal Yeso wells in Section 32 is a testament to the low-risk Spur anticipates in developing the acreage. Under these facts, a 200% non-consent penalty is not warranted. Spur cannot meet its burden to support such a non-consent penalty. Any non-consent penalty must be supported by evidence using an objective standard for the imposition of risk penalties. Application of a 200% non-consent penalty would result in a loss of a property interest for working interest owners who go non-consent.

6. Any force pooling order in this case should make provision for a just and reasonable payment plan for owners like Jalapeno who agree to participate in the drilling

of multiple wells. That is, an operator such as Spur should not be entitled to provide AFEs for the 10 Blalock wells totaling around $28 million and require immediate payment by Jalapeno of its pro rata share of the total costs for drilling all 10 wells up front and months before most of the wells are even started. A payment plan that requires payment by Jalapeno for costs invoiced for the following month would be just and reasonable.

PROPOSED EVIDENCE

Jalapeno will present evidence confirming the history of the parties' communications and Spur's position. Jalapeno will present evidence to support its position that it has agreed to pool its interest, and has offered terms accepted by other oil and gas operators to resolve the JOA issues. Spur has not acted in good faith in the negotiations and has not made a good faith effort to reach voluntary agreement. Jalapeno will also present evidence that a 200% non-consent penalty is unwarranted, and to establish that a 40% non-consent penalty would be appropriate.

WITNESSES	EST. TIME	EXHIBITS
Harvey Yates (operator/landman)	1 hour	5 approx.
Emmons Yates (practical oil man/landman)	45 min.	5 approx.

PROCEDURAL ISSUES

Given the nature of the issues and Jalapeno's objections, it will be important for the examiner to evaluate the credibility of the witnesses. In order to do that, cross-examination of the witnesses should be allowed. Jalapeno objects to having these cases presented and decided by affidavit.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By /s/ J.E. Gallegos
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 11th day of June, 2021.

/s/ J.E. Gallegos
J.E. Gallegos