

**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. 15712
ORDER NO. R-14419**

**APPLICATION OF SPECIAL ENERGY CORPORATION FOR A NON-
STANDARD OIL SPACING AND PRORATION UNIT AND COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on June 8, 2017, at Santa Fe, New Mexico, before Examiner Michael A. McMillan.

NOW, on this 16th day of August, 2017, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

- (1) Due public notice has been given and the Division has jurisdiction of this case and the subject matter.
- (2) Cases No. 15712 and 15713 were consolidated at the hearing for the purpose of testimony; however, separate orders will be issued for each case.
- (3) Special Energy Corporation (the "Applicant") seeks approval of a 160-acre non-standard oil spacing and proration unit and project area (the "Unit") for oil and gas production from the San Andres formation, Gladiola; San Andres Pool (Pool code 27810), comprising the W/2 W/2 of Section 20, Township 12 South, Range 38 East, NMPM, Lea County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the Unit for the San Andres formation.
- (4) The Unit will be dedicated to Applicant's Decker Well No. 1H (the "proposed well"; API No. 30-025-43890), a horizontal well to be drilled from a surface location 250 feet from the South line and 640 feet from the West line (Unit M) of Section

17, to a bottom-hole location 330 feet from the South line and 640 feet from the West line (Unit M) of Section 20, both in Township 12 South, Range 38 East, NMPM. The location of the completed interval will be standard for oil production within the Unit.

(5) The proposed oil well is within the Gladiola; San Andres Pool and is subject to Division Rule 19.15.15.9(A) NMAC, which provides for 330-foot setbacks from the unit boundaries and standard 40-acre units each comprising a governmental quarter-quarter section. The proposed Unit and project area consists of four (4) adjacent quarter-quarter sections oriented north to south.

(6) Applicant appeared through counsel and presented the following land, engineering, and geologic evidence:

- (a) the San Andres formation in this area is suitable for development by horizontal drilling;
- (b) each quarter-quarter section in the proposed unit can be expected to contribute more or less equally to production from the San Andres formation;
- (c) Applicant seeks to pool unleased mineral interest owners, and uncommitted working interest owners;
- (d) Applicant is also seeking to compulsory pool royalty interest owners subject to leases that lack sufficient language to allow for pooling of royalty interests. Further, these royalty interest owners would not be subject to the risk penalty;
- (e) The Applicant had an oil and gas lease with Betty and James Kringle ("Kringle"), which lacked a pooling clause in a Unit greater than 40 acres. Applicant stated that the Kringle interest would have to be compulsory pooled in order to consolidate the Unit; however, it would not be subject to the risk penalty. Further, Kringle made an appearance at the hearing;
- (f) Applicant also stated that a combined fixed rate of \$8,000 per month while drilling, and \$800 while producing is reasonable for horizontal San Andres wells;
- (g) Notice was provided to lessees or operators of surrounding tracts as affected parties of the proposed non-standard spacing unit;
- (h) Notice was provided to all interest owners subject to pooling proceedings as affected parties of the proposed compulsory pooling within the Unit; and

- (i) Applicant provided notice of this application by publication before hearing in a newspaper of general circulation in Lea County, New Mexico, the county in which the property is located for all parties subject to the pooling provisions of this Order. No unlocatable parties are subject to this order.

(7) Betty and James Kringle made an appearance through counsel, but otherwise did not oppose granting this application. No other party appeared at the hearing, or otherwise opposed the granting of this application.

The Division concludes as follows:

- (8) The non-standard spacing and proration unit should be approved.

(9) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(10) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill the proposed well to a common source of supply within the Unit at the described location.

(11) There are interest owners in the Unit that have not agreed to pool their interests.

(12) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(13) Special Energy Corporation should be designated the operator of the subject well and the Unit.

(14) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the subject well.

(15) Applicant's proposed overhead rates (combined fixed rates) of \$8,000 per month while drilling and \$800 per month while producing, are not warranted and should be lowered. Applicant did not provide testimony for any known drilling hazards, hazards associated with drilling deep wells, or high operating costs. Rather, this is a shallow well with no known drilling hazards.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7,500 per month while drilling and \$750 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Special Energy Corporation, a 160-acre non-standard oil spacing and proration unit (the "Unit") is hereby established for oil and gas production from the San Andres formation, Gladiola; San Andres Pool (Pool code 27810), comprising the W/2 W/2 of Section 20, Township 12 South, Range 38 East, NMPM, Lea County, New Mexico. All uncommitted interests, whatever they may be, including royalty interests, in the oil and gas in the San Andres formation within the Unit are hereby pooled.

(2) The Unit shall be dedicated to Applicant's Decker Well No. 1H (the "proposed well"; API No. 30-025-43890), a horizontal well to be drilled from a surface location 250 feet from the South line and 640 feet from the West line (Unit M) of Section 17, to a bottom-hole location 330 feet from the South line and 640 feet from the West line (Unit M) of Section 20, both in Township 12 South, Range 38 East, NMPM. The location of the completed interval will be standard for oil production within the Unit.

(3) The operator of the Unit shall commence drilling the proposed well on or before August 31, 2018, and shall thereafter continue drilling the proposed well with due diligence to test the San Andres formation.

(4) In the event the operator does not commence drilling the proposed well on or before August 31, 2018, Ordering Paragraphs (1) and (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

(5) Should the proposed well not be drilled and completed within 120 days after commencement thereof, then Ordering Paragraphs (1) and (2) shall be of no further effect, and the Unit and project area created by this order shall terminate, unless operator appears before the Division Director and obtains an extension of the time for completion of the proposed well for good cause shown by satisfactory evidence. If the proposed well is not completed in all of the standard spacing units included in the proposed project area (or Unit), then the operator shall apply to the Division for an amendment to this order to contract the Unit so that it includes only those standard spacing units in which the well is completed.

(6) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit created by this order shall terminate, unless this Order has been amended to authorize further operations.

(7) Special Energy Corporation (OGRID 305614) is hereby designated the operator of the well and the Unit.

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(11) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(12) The operator is hereby authorized to withhold the following costs and charges from production attributable to each non-consenting working interest owner from each well:

- (a) the proportionate share of reasonable well costs attributable to each such owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(13) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(14) Reasonable charges for supervision (combined fixed rates) for the well are hereby fixed at \$7,500 per month while drilling and \$750 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not more than what are reasonable, attributable to pooled working interest owners.

(15) Except as provided in Paragraphs (12) and (14) above, all proceeds from production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

(16) Any unleased mineral interest 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 this Order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement after entry of this order, this order shall thereafter be of no further effect.

(18) The operator of the well and the Unit shall notify the Division in writing of the subsequent voluntary agreement of parties subject to the compulsory pooling provisions of this order.

(19) If the applicant requests for infill wells within the Unit, the proposed infill wells shall be subject to Division Rule 19.15.13 NMAC.

(20) Jurisdiction of this case 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

David R. Catanach

DAVID R. CATANACH
Director