

**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. 13927
ORDER NO. R-12790**

**APPLICATION OF YATES PETROLEUM
CORPORATION FOR A NON-STANDARD
GAS SPACING UNIT, EDDY COUNTY,
NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on June 7 and June 21, 2007, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 16th day of July, 2007, 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 of the subject matter.
- (2) In this application, Yates Petroleum Corporation ("Yates" or "Applicant") seeks approval of a non-standard, 160-acre gas spacing unit in the Strawn formation ("the proposed unit"), comprising the SW/4 of Section 28, Township 20 South, Range 28 East, in Eddy County, New Mexico.
- (3) Applicant proposes to dedicate this unit to its Hedgerow BFH State Corn Well No. 1 (API No. 30-015-33715), located 660 feet from the South line and 1136 feet from the West line (Unit M) of Section 28 ("the subject well").
- (4) The proposed unit is located in the Saladar-Strawn Gas Pool (Pool Code 84412). Spacing in this pool is governed by statewide Rule 104.C(2), which provides for units comprising 320 acres.

(5) In support of its application, Yates presented evidence of the following:

(a) The Division, by Order No. R-11928, issued on March 26, 2003 in Case No. 12932, established a non-standard, 160-acre gas spacing unit in the Strawn formation comprising the SE/4 of Section 28. That unit is dedicated to the existing Burton Flat Deep Unit Well No. 13 (API No. 30-015-21125), located 660 feet from the South line and 1980 feet from the East line (Unit O) of Section 28.

(b) The N/2 of Section 28 is dedicated in the Atoka formation to the Blue Ridge 28 State Well No. 1 (API No. 30-015-34416), located 800 feet from the North line and 660 feet from the East line (Unit A) of Section 28, operated by COG Operating, LLC ("COG"). Although that well is not completed in the Strawn formation, it may be so completed in the future.

(c) A well was formerly drilled and completed in the Strawn formation in the NW/4 of Section 28, but has been plugged and abandoned.

(d) COG does not object to the formation of a non-standard Strawn unit limited to the SW/4.

(e) Yates and related entities collectively own the entire working interest in the SW/4 of Section 28 (the proposed unit).

(6) Ard Energy Group, LLC, ("Ard"), an owner of a working interest in the Burton Flat Deep Unit, and therefore also an owner of a working interest in the SE/4 of Section 28, offsetting the proposed unit, appeared through counsel in opposition to the application.

(7) Ard did not controvert any of the evidence presented by Applicant, nor did it contend, or present any evidence, that its correlative rights as an owner of oil and gas rights in the SE/4 of Section 28 or elsewhere would be adversely affected by approval of the proposed unit.

(8) Through cross-examination of Applicant's witness, Ard presented evidence that the subject well was drilled pursuant to a Joint Operating Agreement to which the working interest owners in the SE/4 are parties, and which defines the "contract area" as the S/2 of Section 28, excluding the Strawn formation.

(9) Ard contends that because the subject well was drilled pursuant to an operating agreement to which it is a party, Applicant does not have a right to use this well to produce from the Strawn formation without Ard's consent.

(10) The existence of a previously approved non-standard unit and the dedication thereto of a well completed in the Strawn formation preclude the formation of a standard, lay-down 320-acre unit including the SW/4 of Section 28.

(11) Approval of the proposed non-standard, 160-acre unit will prevent waste by allowing production of the Strawn reserves underlying the SW/4.

(12) A standard, 320-acre stand-up unit could be formed comprising the W/2 of Section 28, and including the proposed unit. However, the NW/4 can also be included in a standard, lay-down N/2 Strawn unit, and Rule 104.C(2) would permit an infill well in the NW/4 in either configuration.

(13) Accordingly, absent qualitative differences in the Strawn's productivity in different parts of the Section (of which there is no evidence in this case), approval of the proposed non-standard unit comprising only the SW/4 will not adversely affect the correlative rights of the owners in the NW/4, nor will it alter the permitted well density in Section 28.

(14) The proposed non-standard Strawn gas spacing unit, and the dedication of the subject well thereto, should accordingly be approved, *unless* such approval is precluded by the considerations advanced by Ard.

(15) Ard's contentions regarding wellbore ownership raise issues of property and contractual rights that the Division does not have jurisdiction to determine.

(16) The Division's approval of a spacing unit, or of the dedication of a well to a spacing unit, does not confer upon Applicant a right to commit a trespass or to breach a contract. As explained by the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Com'n*, 141 Tex. 98, 170 SW2d 189, 191 (1943),

It [the Railroad Commission's approval of a drilling permit] merely removes the conservation laws as a bar to the drilling of the well, and leaves the permittee to his rights at common law.

(17) Thus, the Division's approval of the proposed unit would not impair any property or contractual rights Ard may have, but would merely relegate Ard to the courts for enforcement of those rights should Yates encroach upon them.

(18) The New Mexico Oil Conservation Commission, however, in Order No. R-12343-E, issued on March 16, 2007 in combined Cases 13492 and 13493 (*Application of Samson Resources Co.* and *Application of Chesapeake Operating, Inc.*, respectively), admonished the Division that it ought not to grant an approval that would sanction a trespass. Order R-12343-E, Finding Paragraphs 29 through 33.

(19) The question now before the Division is whether, based on the evidence presented in this case, the Commission's admonition in *Samson/Chesapeake* precludes approval of the proposed unit absent Ard's consent or a judicial declaration of Applicant's rights. The Division concludes that it does not, for the following reasons:

(a) In *Samson/Chesapeake*, Chesapeake drilled a well on land in which it admittedly owned no interest, and had only an extremely dubious claim to a contractual right. In this case Yates and its related entities own 100% of the working interest in the land where the subject well is located.

(b) Ard did not refer the Division to any body of judicial authority in New Mexico or elsewhere, and the Division is aware of none, discussing the incidents of wellbore ownership as a property right separate and distinct from ownership of the land where the wellbore is located.

(c) The Joint Operating Agreement ("JOA") that forms the basis of Ard's claim does not explicitly address, affirmatively or negatively, the issue of use of the wellbore, or of the jointly owned equipment, for production from formations not included in the "contract area," other than to provide that the operator is not *required* to test such formations. JOA Article VI.A.

(d) With respect to the jointly owned equipment, and also to the wellbore if the parties of the JOA own the wellbore, as Ard contends, Applicant is an owner of an undivided interest, and has the express consent of the owners of approximately 99.5% of the total interest therein to its proposed dual completion of the well in the Strawn formation.

(e) As a general rule, use or occupation of property by a co-owner does not constitute a trespass, but merely gives rise to a duty of accountability.

(20) The Division accordingly concludes that the Yates' application for a non-standard 160-acre Strawn gas spacing unit should be approved.

IT IS THEREFORE ORDERED THAT:

(1) The application of Yates Petroleum Corporation to form a 160-acre non-standard gas spacing unit in the Saladar-Strawn Gas Pool (84412), comprising the SW/4 of Section 28, Township 20 South, Range 28 East, NMPM, in Eddy County, New Mexico, is hereby approved.

(2) The unit so formed shall be dedicated to Yates' Hedgerow BFH State Com Well No. 1 (API No. 30-015-33715), located 660 feet from the South line and 1136 feet from the West line (Unit M) of Section 28, in the event that well is completed in the Strawn formation.

(3) 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.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in cursive script, reading "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
Director