

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

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

Case Nos. 21882, 21883

**MOTION TO DISMISS FORCE POOLING APPLICATIONS AS TO PETRO-YATES
INC. AND JALAPENO CORPORATION**

Petro-Yates, Inc. (Petro-Yates) and Jalapeno Corporation (Jalapeno) (collectively movants), respectfully move the Division for its Order dismissing these force pooling applications as to them. The applications are set for hearing May 6, 2021. Movants will demonstrate that they have agreed to pool their interests and participate in the drilling and operation of the wells at issue in the applications. Consequently, they are not subject to force pooling pursuant to NMSA 1978 § 70-2-17(C). Moreover, the applicant Spur Energy Partners, LLC (Spur) initially advised movants they would not be subject to force pooling because they have agreed to participate, only to change its position on May 4, 2021 when it advised that movants would be subject to the force pooling proceedings. Because movants relied on Spur's earlier representation, they did not previously enter an appearance or file a pre-hearing statement. Spur's belated change of position would cause a violation of movants' due process and correlative rights if these proceedings move forward on May 6, 2021 as to Petro-Yates and Jalapeno.

As grounds for this Motion, movants state as follows:

1. In these force pooling proceedings, Spur seeks an order force pooling all uncommitted mineral interests in two units covering acreage in Township 17 South,

Range 28 East, Eddy County, New Mexico. Case 21882 seeks approval of a 320-acre unit to be dedicated to the following wells: Halberd C 27 State 52H, Halberd C 27 State 92H, Halberd D 27 State 72H, and Halberd D 27 State 53H. Case 21883 seeks approval of a 160-acre unit to be dedicated to the Halberd C 27 State 11H well.

2. On March 2, 2021, Spur sent movants proposed Joint Operating Agreements (JOAs) for the acreage at issue and well proposals (AFEs) for the wells at issue.¹ On April 2, 2021, Jalapeno responded by letter and indicated its willingness to participate in the wells. It included with the letter signed AFEs for each well at issue in these applications. However, Jalapeno stated it was not agreeable to the non-consent risk penalty provisions of the JOAs. Jalapeno offered alternatives that have been satisfactory to other operators in the Permian Basin. It indicated non-consent terms it would accept. It also offered to sign a JOA with a “farmout in lieu” of a non-consent penalty. It finally proposed a letter agreement to resolve the issue if Spur would not agree to negotiate the JOA. A copy of that letter is attached as Exhibit A.

3. Spur filed these force pooling applications on April 6, 2021. Upon receipt, Jalapeno sent an email to Spur Senior Landman Morgan Landry asking him to confirm receipt of movants’ signed AFEs for the wells and asked that Spur confirm it would not force pool Petro-Yates or Jalapeno in light of their election to participate.

4. Mr. Landry replied by email dated April 15, 2021: “Yes we do not intend to force pool either Jalapeno or PetroYates interest. These [force pooling applications] were prepared prior to receiving your election. Sorry for any confusion this may have caused.”

¹ Due to a clerical error, Petro-Yates was shown as a record working interest owner when the proposals were sent. Jalapeno has corrected the error. Jalapeno has acquired all of Petro-Yates’ working interest in the acreage.

The email said nothing about the need for movants to execute a JOA. A copy of the email string is attached as Exhibit B.

5. Based on Spur's assurance, movants did not enter an appearance or file a pre-hearing statement in these cases. These cases are set for hearing on May 6.

6. Undersigned counsel contacted Spur's counsel on May 5, 2021 to confirm that Spur would not seek to force pool Petro-Yates or Jalapeno in these applications. Spur counsel then advised that the communication from Mr. Landry was in anticipation of movants signing the JOA, and because that had not happened, "Spur is planning to pool Jalapeno and PetroYates . . .". A copy of that email is attached as Exhibit C.

7. These cases should be dismissed as to movants for two reasons. First, the statutory force pooling authorization applies only to owners who "have not agreed to pool their interests." § 70-2-17(C). Because Jalapeno has agreed to pool their interests, they are not subject to these force pooling proceedings.

8. Spur's actions have denied movants' due process rights to fully and meaningfully participate in these proceedings. See *Uhdén v. New Mexico Oil Conservation Commission*, 1991-NMSC-089, 112 N.M. 528, 817 P.2d 721. Movants were entitled to rely on the representation of the Spur landman that Spur would not force pool movants given their election to participate. Movants' due process and correlative rights would be violated if they are not allowed to fully participate, including filing a pre-hearing statement and having ample time to prepare for a hearing on the merits.

9. Due to the late timing of Spur's change of position, undersigned counsel is not available to attend the May 6 hearing on these applications. Consequently, movants ask the Division to decide this Motion on the pleadings.

WHEREFORE, movants request that the Division dismiss these force pooling applications as to Petro-Yates and Jalapeno, and for such further relief as the Division deems appropriate.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By /s/ J.E. Gallegos
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686
jeg@gallegoslawfirm.net
mjc@gallegoslawfirm.net

Attorneys for Petro-Yates and Jalapeno

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail this 5th day of May, 2021.

Dana S. Hardy
Michael Rodriguez
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
dhardy@hinklelawfirm.com
mrodriguez@hinklelawfirm.com

Attorneys for Spur Energy

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

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 A

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

April 2, 2021

Jalapeno Corporation
Attn: Emmons Yates
P.O. Box 1608
Albuquerque, NM 87103

Re: Joint Operating Agreement dated _____
(JOA description & depth limitations)
County, State

Ladies and Gentlemen:

This letter agreement shall evidence the agreement between Spur Energy Partners LLC ("Spur") and Jalapeno Corporation ("Jalapeno") concerning the referenced Joint Operating Agreement ("JOA").

The Parties hereby agree as follows:

1. Jalapeno agrees to execute the JOA, subject to this letter agreement.
2. As between Spur and Jalapeno, the provisions of Article VI.B. of the JOA shall be subject to the provisions set forth below. To the extent that provisions set forth below do not apply, the provisions of Article VI.B of the JOA shall govern and control.
3. Should Jalapeno elect not to participate in the drilling of any well proposed under the JOA, its working interest in the wellbore of such well shall be farmed out to Spur on a produce to earn basis. In the event such well is thereafter drilled to its proposed measured depth and completed as a well capable of producing oil and/or gas, Spur shall earn assignment of Jalapeno's working interest in and to such well. Thereafter, upon receipt of a written request from Spur, Jalapeno shall execute and deliver to Spur an assignment of all its leasehold working interest in the Contract Area, without warranty of title, either express or implied, and expressly limited to the wellbore of such well and the production of oil and gas therefrom.
4. Such assignment shall reserve unto Jalapeno (a) an overriding royalty interest in and to the oil, gas, casinghead gas, condensate, and other liquid hydrocarbons produced, saved and marketed from such well equal to the positive difference between all existing lease royalty and overriding royalty burdens and 25% of 8/8ths, proportionately reduced to Jalapeno's interest in the assigned leasehold ("Retained ORRI"), delivering a 75% net revenue interest to Spur, and (b) the option, upon "Payout" of the such well (as hereinafter defined), to convert its Retained ORRI to a proportionate Twenty-five percent (25%) working interest in the wellbore of such well together with all equipment and other personal property in said well or used or obtained in connection with the operation of said well (such 25% working interest to be proportionately reduced to the assigned interest and hereinafter referred to as "Back-In Interest").

Jalapeno Corporation

Date

Page2

5. Payout shall be defined as the first day of the month after the point in time in which the actual cumulative proceeds from the sale of production from the well, after deducting severance/production taxes and all applicable royalties and overriding royalties (including the Retained ORRI) exceeds or equals one hundred percent (100%) of the actual total cost of drilling, completing, equipping and operating such well prior to Payout (including the actual cost of any workovers or re-working of the well). Such cumulative proceeds and total costs shall be calculated as to the working interest assigned pursuant to paragraph 3. above.
6. On a quarterly basis prior to Payout, Spur shall furnish Jalapeno with payout statements summarizing the proceeds and costs as set out in paragraph 5. above. Upon Payout, Spur shall notify Jalapeno in writing by certified mail, and Jalapeno shall have 15 days from receipt of such notice to make written election to Spur to exercise its option as set forth in paragraph 4 (b) above. Should Jalapeno elect to exercise said option, Spur shall thereafter execute and deliver to Jalapeno for its execution an assignment evidencing the conversion as described in paragraph 4 above.
7. The provisions of this letter agreement shall only apply to a well in which Jalapeno elects, or is deemed to have elected, not to participate pursuant to the provisions of the JOA. In the event Jalapeno elects not to participate in a well proposed under the JOA and such well is not timely commenced under the JOA, this letter agreement shall have no force an effect as to such well.
8. This letter agreement shall inure to the benefit of the parties hereto and their respective successors and assigns.

Please sign in the space provided below to indicate your acceptance and agreement as to provisions set forth above, and return an executed copy of this letter agreement to the undersigned at your earliest convenience.

Best Regards,

Spur Energy Partners LLC

By: _____

Title: _____

Accepted and Agreed to this _____ day of _____, 20__.

Jalapeno Corporation

By: _____

Emmons Yates

Vice President

JALAPENO CORPORATION

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

April 2, 2021

Spur Energy Partners LLC
9655 Katy Freeway, Suite 500
Houston, TX 77024

Re: Letter Agreement

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

Ladies and Gentlemen:

Spur Energy Partners LLC ("Spur") and Jalapeno Corporation ("Jalapeno") hereby agree to the following:

1. Jalapeno agrees to pool its working interest with that of other parties and participate in the drilling and completion of the above referenced wells on the spacing units described above.
2. Jalapeno agrees to pay its proportionate share of the Halberd Wells JIB's within thirty (30) days of Jalapeno's receipt of the JIB's.
3. Jalapeno agrees to pay its proportionate share of overhead rates of \$8,000 per month for drilling and \$800 per month while producing for the above referenced weUs as the same may be adjusted from time to time pursuant to the standard 2005 COPAS accounting procedure.
4. Jalapeno will be covered by all of the operators well insurance coverage, related to these wells, and agrees to pay its proportionate share of the insurance costs.
5. This letter agreement and the signed AFE' s for the Halberd wells will only be effective until August 1, 2021, unless a rig, capable of drilling to TD, has been moved onto location before that time and has commenced drilling. However, if the drilling has not commenced by August 1, 2021, Spur will need to resubmit new AFE's and a new letter agreement to Jalapeno for its review for all the wells that have not been spudded. If a well has been spudded while this letter agreement is still in effect, this letter agreement shall remain in effect, as to that well, until the well has ben P&A.

This letter agreement will apply to the parties hereto and their respective successors and assigns. This letter agreement is effective for all purposes as of April 1, 2021. Please sign and return a copy of this letter and the attached AFE at your earliest convenience.

Sincerely,

H. Emmons Yates III

Spur Energy Partners LLC

By: _____
Name: _____
Title: _____

Jalapeno Corporation

By: _____
H. Emmons Yates, III
Vice President

Michael Condon

From: eyates@jalapenocorp.com
Sent: Wednesday, May 5, 2021 9:16 AM
To: Gene Gallegos; Michael Condon
Subject: FW: Halberd wells force pooling

From: kreese@jalapenocorp.com <kreese@jalapenocorp.com>
Sent: Thursday, April 15, 2021 9:32 AM
To: 'Morgan Landry' <mlandry@spurepllc.com>
Cc: 'Emmons Yates' <eyates@jalapenocorp.com>
Subject: RE: Halberd wells force pooling

Thanks for the confirmation!

Kathryn

From: Morgan Landry <mlandry@spurepllc.com>
Sent: Thursday, April 15, 2021 9:25 AM
To: kreese@jalapenocorp.com
Cc: Emmons Yates <eyates@jalapenocorp.com>
Subject: RE: Halberd wells force pooling

Yes we do not intend to force pool either Jalapeno or PetroYates interest. These were prepared prior to receiving your election. Sorry for any confusion this may have caused.

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

From: kreese@jalapenocorp.com <kreese@jalapenocorp.com>
Sent: Thursday, April 15, 2021 10:23 AM
To: Morgan Landry <mlandry@spurepllc.com>
Cc: Emmons Yates <eyates@jalapenocorp.com>
Subject: Halberd wells force pooling

[EXTERNAL]

Exhibit B

Good morning Morgan,

Jalapeno and PetroYates have received Notices of Compulsory Pooling Applications for the Halberd wells that were filed on April 6, 2021. On April 5th, we returned signed elections to participate and signed AFE's for these wells.

Please confirm that Spur is not force pooling either Jalapeno or PetroYates, since we have agreed to participate in the drilling and completion of the wells.

Thanks for your help in this matter,

Kathryn

Kathryn J. Reese, CPL

Landman

Jalapeño Corporation

P.O. Box 1608

Albuquerque, NM 87103-1608

Phone: 505.242.2050

Fax: 505.242.8501

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Michael Condon

From: Dana Hardy <DHardy@hinklelawfirm.com>
Sent: Tuesday, May 4, 2021 4:03 PM
To: Michael Condon; Gene Gallegos
Cc: Cheryl Ortega; Michael Rodriguez; Dana Hardy
Subject: RE: Spur Energy OCD FPs 21880, 21881,21882 and 21883

Michael and Gene,

It's my understanding that Morgan Landry's communication with Jalapeno and PetroYates was in anticipation of them signing the JOA and that they have not yet done so. As a result, Spur is planning to pool Jalapeno and PetroYates but intends to keep working with them to reach an agreement. As I mentioned in my prior email, Case Nos. 21880 and 21881 will be heard on 5/20.

Thanks,
Dana



Dana S. Hardy
Partner
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Santa Fe, New Mexico 87501
(505) 982-4554 telephone
(505) 930-5702 direct
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From: Michael Condon <mjc@gallegoslawfirm.net>
Sent: Tuesday, May 4, 2021 1:47 PM
To: Gene Gallegos <jeg@gallegoslawfirm.net>; Dana Hardy <DHardy@hinklelawfirm.com>
Cc: Cheryl Ortega <cortega@gallegoslawfirm.net>
Subject: RE: Spur Energy OCD FPs 21880, 21881,21882 and 21883

Dana, to follow up on Gene's email, our clients have an email from Senior Landman Morgan Landry stating Spur does not intend to force pool either Jalapeno or PetroYates on these proceedings.

Michael

From: Gene Gallegos <jeg@gallegoslawfirm.net>
Sent: Tuesday, May 4, 2021 11:36 AM
To: Dana Hardy <DHardy@hinklelawfirm.com>

Cc: Michael Condon <mjc@gallegoslawfirm.net>; Cheryl Ortega <cortega@gallegoslawfirm.net>

Subject: Spur Energy OCD FPs 21880, 21881,21882 and 21883

Hello Dana—I am contacting in behalf of Jalapeno. It received notice of the referenced cases. The notices state the hearing is set for this Thursday, May 6th.

Jalapeno informed Spur April 2, 2021 that it is willing to participate in the wells and has signed and returned the AFEs. It agrees to inclusion of its interests in the spacing units.

What I am asking is whether the cases will be heard Thursday and, whether then or later, Spur does or does not seek a force pooling order to apply to Jalapeno. We will appreciate hearing from you.

Gene

J. E. Gallegos
Gallegos Law Firm, P.C.
460 St. Michaels Dr., Bldg. 300
Santa Fe, NM 87505
Ph. 505.983.6686