

**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. 12957
ORDER NO. R-11868**

**APPLICATION OF NADEL AND GUSSMAN PERMIAN, L.L.C. FOR
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 14, 2002, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 3rd day of December, 2002, 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) The applicant, Nadel and Gussman Permian, L.L.C. ("Nadel and Gussman"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 35, Township 23 South, Range 27 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include the Undesignated Southeast Loving-Atoka and Undesignated Black River-Morrow Gas Pools.

(3) This unit is to be dedicated to Nadel and Gussman's proposed Palo Duro Well No. 1 to be drilled at a standard gas well location within the NE/4 SE/4 (Unit I) of Section 35.

(4) 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.

(5) Nadel and Gussman is an owner of an oil and gas working interest within the Unit.

(6) The evidence presented in this case demonstrates that:

- (a) the NE/4 of Section 35 is a fee lease that is currently owned by approximately eighty (80) different mineral interest owners;
- (b) Nadel and Gussman has secured leases from approximately fifty-four (54) of the mineral interest owners within the NE/4 of Section 35 and is continuing to negotiate with an additional 6 mineral interest owners in an effort to secure their voluntary joinder;
- (c) there are approximately twenty (20) mineral interest owners within the NE/4 of Section 35 that Nadel and Gussman have been unable to locate;
- (d) Yates Petroleum Corporation (“Yates”) currently owns 100% of the working interest within the SE/4 of Section 35; and
- (e) Nadel and Gussman is currently negotiating with Yates in an effort to secure voluntary joinder as to the interest within the SE/4 of Section 35.

(7) Nadel and Gussman testified that it anticipates it will reach a voluntary agreement with Yates with regards to the interest within the SE/4 of Section 35, and therefore requested that Yates’ interest not be pooled by this order.

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

(9) 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 in the oil and gas within the Unit, whatever they may be, excluding the interest of Yates.

(10) Nadel and Gussman should be designated the operator of the well and of the Unit.

(11) Any non-consenting 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 percent thereof as a reasonable charge for the risk involved in drilling the well.

(12) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,500 per month while drilling and \$650 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-Join Operations*." The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

IT IS THEREFORE ORDERED THAT :

(1) Pursuant to the application of Nadel and Gussman Permian, L.L.C., all uncommitted interests, whatever they may be, excluding the interest of Yates Petroleum Corporation, in the oil and gas from the surface to the base of the Morrow formation underlying the E/2 of Section 35, Township 23 South, Range 27 East, NMPM, Eddy County, New Mexico, are hereby pooled forming a standard 320-acre gas spacing and proration unit (the "Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include the Undesignated Southeast Loving-Atoka and Undesignated Black River-Morrow Gas Pools.

The Unit shall be dedicated to the applicant's proposed Palo Duro Well No. 1 to be drilled at a standard gas well location within the NE/4 SE/4 (Unit I) of Section 35.

(2) The operator of the Unit shall commence drilling operations on or before March 1, 2003, and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(3) In the event the operator does not commence drilling operations on or before March 1, 2003, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(4) Should the well not be drilled to completion, or be abandoned, within 120 days after commencement thereof, the operator shall appear before the Division Director and

show cause why Ordering Paragraph (1) should not be rescinded.

(5) Nadel and Gussman Permian, L.L.C. is hereby designated the operator of the subject well and of the Unit.

(6) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted 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 non-consenting working interest owner in the Unit an itemized schedule of estimated well costs of the proposed well.

(7) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting 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.

(8) The operator shall furnish the Division and each known non-consenting working interest owner 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.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated well 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 its share of the amount that paid, estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and

(b) as a charge for the risk involved in drilling the well,
200 percent of the above costs.

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

(12) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,500 per month while drilling and \$650 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 in excess of what are reasonable, attributable to each non-consenting working interest.

(13) Except as provided in Ordering Paragraphs (10) and (12) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(14) 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.

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

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

(17) This order is contingent upon Nadel and Gussman's obtaining the voluntary joinder of Yates Petroleum Corporation in the Unit, or securing an amendment of this order, after notice and hearing to pool the interest of Yates Petroleum Corporation.

(18) 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

LORI WROTENBERY
Director

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