

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

CASE NO. 8859  
Order No. R-8047-A

APPLICATION OF ROBERT E. CHANDLER  
CORPORATION FOR AN AMENDMENT TO  
DIVISION ORDER NO. R-8047, LEA  
COUNTY, NEW MEXICO

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on March 19, 1986, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 9th day of May, 1986, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Robert E. Chandler Corporation, seeks amendment of Order No. R-8047 entered October 3, 1985 which pooled the NE/4 SW/4 of Section 7, Township 23 South, Range 38 East, NMPM, Lea County, New Mexico, to extend the effective date thereof including the commencement date of the well to be drilled, and to clarify the treatment of various interests subject to the forced pooling for purposes of allocation of costs and application of the penalty provisions.

(3) Michael L. Klein, John H. Hendrix, John H. Hendrix Corporation and Ronnie H. Westbrook appeared in opposition to the application.

(4) Testimony at the hearing on this matter indicates that at some time after granting of the leases covering the properties involved in this case, the leases were conveyed and certain production payments retained by the conveyor. In turn,

interests in the production payments have been reconveyed for valuable consideration.

(5) The interest that is the subject of the instant proceeding was created by a document dated April 1, 1966 and titled "Conveyance of PARAMOUNT PRODUCTION PAYMENT and RESERVATION of RESERVED PRODUCTION PAYMENT and CONVEYANCE of NET PROFITS OVERRIDING ROYALTY," between the Prudential Insurance Company of America and Joseph E. Seagram and Sons, Inc.

(6) The applicant alleges that the "Net Profits Overriding Royalty" referred to in the above document is properly denominated as a Net Profits Interest and that the drilling of the well authorized by Order No. R-8047 is not economical if the interest is construed as an overriding royalty, insofar as the applicant would be required to absorb all of the costs of drilling and operating the well.

(7) The parties that appeared in opposition to the application in this matter have succeeded to an interest in the subject property and assert that the interest is properly delineated as an overriding royalty, which requires that they be paid their share of production free of all costs. Moreover, they challenge the jurisdiction of the Division to hear this matter.

(8) Testimony and evidence indicate that the interest in question is ambiguous insofar as it is referred to as a "net profits overriding royalty", but that the terms and conditions of the Agreement of April 1, 1966, including provisions stating that the interest is "exclusively an interest in net profits", demonstrate that the interest is not an overriding royalty as it is commonly known in the industry.

(9) Testimony and evidence presented at the hearing indicate that because of the controversy involving the question of the nature of the interest conveyed by the agreement of April 1, 1966, and the uneconomical nature of the proposed well if the interest is an overriding royalty, an extension of time in which to begin drilling a well pursuant to Order No. R-8047 is needed.

IT IS THEREFORE ORDERED THAT:

(1) Ordering Paragraph No. (1) of Division Order No. R-8047 is hereby amended to read as follows:

"(1) All mineral interests, whatever they may be, from the surface to the base of the Granite Wash formation

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underlying the NE/4 SW/4 of Section 7, Township 22 South, Range 38 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 40-acre oil spacing and proration unit to be dedicated to a well to be drilled at a standard oil well location thereon.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 31st day of August, 1986, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Granite Wash formation;

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 31st day of August, 1986, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded."

(2) The interest created by the Agreement of April 1, 1966, and referred to therein as a "Net Profits Overriding Royalty" is to be treated as a Net Profits interest under the terms of the compulsory pooling order entered by the Division on October 3, 1985, and should bear its appropriate share of the costs of drilling and operation.

(3) Jurisdiction of this cause 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



R. L. STAMETS,  
Director

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