

N.M. Stat. Ann. § 70-2-17

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
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* CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE *

* ANNOTATIONS CURRENT THROUGH 2007-NMCA-040 and 2007-NMSC-011 *

CHAPTER 70. OIL AND GAS

ARTICLE 2. OIL CONSERVATION COMMISSION; DIVISION; REGULATION OF WELLS

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§ 70-2-17. Equitable allocation of allowable production; pooling; spacing

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in

the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders.

HISTORY: Laws 1935, ch. 72, § 12; 1941 Comp., § 69-213 1/2; Laws 1949, ch. 168, § 13; 1953, ch. 76, § 1; 1953 Comp., § 65-3-14; Laws 1961, ch. 65, § 1; 1973, ch. 250, § 1; 1977, ch. 255, § 51.

NOTES:

STATUTORY NOTES

MEANING OF "THIS ACT". --"This act", appearing in the last paragraph of Subsection C, first appeared in Laws 1961, ch. 65, which is codified as this section.

MEANING OF "THIS ACT". --"This act", appearing in subsections D, E, and F first appeared in Laws 1949, ch. 168, which is codified as various sections throughout Chapter 70, Article 2 NMSA 1978. Laws 1949, ch. 168 amended Laws 1935, ch. 72, which enacted the sections of Chapter 70, Article 2.

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⚡GENERALLY

Reimbursement of costs and risk charges is authorized by 70-2-17 NMSA 1978, which mandates that provision be made for payment from production of well costs for any owner or owners who elects not to pay his proportionate share in advance; this section further allows the inclusion of a charge for the risk involved in the drilling of such well, which charge shall not exceed 200 percent of the nonconsenting working interest owner's or owners' pro rata share of the cost of drilling and completing the well. Viking Petroleum v. Oil Conservation Comm'n, 100 N.M. 451, 672 P.2d 280 (1983).

Recognizing the need and right of the State, in the interest of the public welfare, to prevent waste of an irreplaceable natural resource, the legislature enacted those laws authorizing the Oil Conservation Commission to exercise control over oil and gas wells by limiting the total production in the pool, and making it the duty of the Commission to protect the correlative rights of all producers so far as it can be accomplished without waste to the pool. El Paso Natural Gas Co. v. Oil Conservation Comm'n, 76 N.M. 268, 414 P.2d 496 (1966).

⚡AUTHORITY

Authority of the Oil Conservation Commission to create spacing units is found in former 65-3-11 NMSA 1978 (now 70-2-12 NMSA 1978). Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

⚡COMPLIANCE

Oil conservation commission's order which granted gas producer's requested change in the proration formula in a gas pool was proper because the language in Continental Oil Co. v. Oil Conservation Com'n, 70 N.M. 310, 373 P.2d 809, was adhered to and a formula was adopted

in compliance with statutory requirements; the commission fulfilled its duty to limit production in such manner as to prevent waste, while affording to the owner of each property in the pool the opportunity to produce his just and equitable share of the gas in the pool. El Paso Natural Gas Co. v. Oil Conservation Comm'n, 76 N.M. 268, 414 P.2d 496 (1966).

✚CONTRACTS

Any agreement between owners and leaseholders may be modified by the oil conservation commission of the State of New Mexico. Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963).

✚DEFINITIONS

Former 65-3-14C NMSA 1978 (now 70-2-17 NMSA 1978) explicitly maintain the distinction between "spacing units" and "proration units" by the use of the phrase "spacing or proration unit," indicating that the terms are not synonymous and implying that a spacing unit may be created independently of a proration unit. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

✚GOVERNMENTAL POWERS

The Oil Conservation Commission has the power to pool separately owned tracts within a spacing or proration unit under former 65-3-14C NMSA 1978 (now 70-2-17 NMSA 1978), as well as concomitant authority to establish oversize non-standard spacing units under former 65-3-14.5C NMSA 1978 (now 70-2-18 NMSA 1978), and has authority to pool separately owned tracts within an oversize non-standard spacing unit. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

The Oil Conservation Commission has the power to fix spacing units without first creating proration units under former 65-3-14B NMSA 1978 (now 70-2-17 NMSA 1978), and a court affirmed orders that were inadvertently characterized as creating "non-standard proration units" but were intended to, and in fact did, create two non-standard spacing units. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Pursuant to 70-2-17 NMSA 1978, the oil conservation commission of the State of New Mexico is authorized to require pooling of property when such pooling has not been agreed upon by the parties. Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963).

✚PRACTICE AND PROCEDURE

The granting or refusal to grant forced pooling of multiple zones with an election to participate in less than all zones, the amount of costs to be reimbursed to the operator, and the percentage risk charge to be assessed, if any, are determinations to be made by the oil conservation commission of the state of New Mexico on a case-to-case basis and upon the particular facts in each case. Viking Petroleum v. Oil Conservation Comm'n, 100 N.M. 451, 672 P.2d 280 (1983).



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