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August 16, 1997

David Catanach  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Rand Carroll  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Case 11,751 (Application of NM&O Operating Company for  
compulsory pooling, Rio Arriba County, New Mexico)

Gentlemen:

Regarding your questions at the hearing on force pooling a record  
title owner of a federal lease, enclosed are the following:

1. 43 CFR §3105.2-3, attached as Exhibit A, which requires  
all "necessary parties" to sign a communitization  
agreement;
2. A portion of the BLM's communitization manual (Release 3-  
215, dated 7/7/88), attached as Exhibit B, stating that  
record title owners must execute a communitization  
agreement; and
3. A portion of a paper from a Rocky Mountain Mineral Law  
Foundation seminar,<sup>1</sup> attached as Exhibit C, which also  
states that record title owners must sign a  
communitization agreement.

Based on the foregoing, NM&O Operating Company needs a compulsory  
order regarding the record title owners described at the hearing,

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<sup>1</sup>T.C. Ezzell and G.J. Nibert, Paper 3A, Federal Onshore Oil and Gas Pooling  
and Unitization II, Vol. 1990, No. 1.

because they are unlocatable or refuse to sign, so that the BLM will approve the communitization agreement on the Gavilan Well No. 2.

Please call if you have any questions. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James Bruce".

James Bruce

Attorney for NM&O  
Operating Company

cc: Larry D. Sweet

circumstances shall it of the estimated costs and reclamation, the collected royalties due to the amount of monies due to previous violation outstanding.

17, 1988]

filed and number of

It be filed in the proper current form approved. A single copy executed or, in the case of surplus the principal and any is sufficient. A bond not currently in use able, unless such form is obsolete by the Director's filing of such bond. §§ 3104.2 and 3104.3(a) of or bond riders shall be Bureau State office having the lease or operations bond or rider. National be filed in any Bureau § 1821.2-1).

5, 1988]

In a default, the surety to the United States incurred under a lease, of the surety bond or and the surety's liability shall be reduced by the payment.

ult, where the obligation equals or is less than of the bond(s), the either post a new bond existing bond(s) to the sly held or a larger mined by the authorized thereof, the principal separate or substitute lease covered by the de- Where the obligation the face amount of principal shall make the United States for curred that are in ex- amount of the bond(s) a new bond in the y held or such larger mined by the author- restoration of a bond

or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17354, May 16, 1988]

#### § 3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17355, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

### Subpart 3105—Cooperative Conservation Provisions

#### § 3105.1 Cooperative or unit agreement.

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

#### § 3105.2 Communitization or drilling agreements.

##### § 3105.2-1 Where filed.

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

##### § 3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an

agreement shall be deemed to be operations or production as to each lease committed thereto.

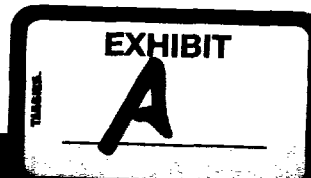
#### § 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

[53 FR 17355, May 16, 1988]



3160-9 - COMMUNITIZATION

Summary Information, Instructions, and  
Model Form of a Federal Communitization Agreement

Summary Information on Communitization

I. Conformance with Acceptable State Well Spacing.

The communitization of Federal leases is authorized only for areas where well-spacing or a well development program has been established. If the area is spaced by a State order, attach a copy of the order to each of the Federal copies of the agreement. If the area is not spaced by a State order, a report should be furnished in triplicate showing that the proposed communitized tract conforms with the existing spacing pattern for the area. The report should include a development map of the area showing wells completed in the zone or formation being communitized. Although a communitization agreement is approved for an initial 2-year term, committed Federal leases that would otherwise terminate during this period can only be extended if: (1) Paying communitized production is effected prior to such lease termination date, or (2) extension is applicable under other provisions of 43 CFR 3107.

II. Execution of the Agreement.

A. The operator of the communitized area **and all owners of record title and working interests in Federal leases as reflected by current records must execute the agreement.** If Exhibit B indicates a different ownership, all lessees and working interest owners on the effective date of the agreement should also execute the agreement. However, agreements may be approved with only the signatures of current interests if previous owners cannot be located or refuse to sign.

B. All working interest owners of non-Federal leases must execute the agreement, unless such interests have been effectively integrated or pooled by State order (an order that involuntarily "force-pools" all interests) or other pooling agreement. Copies of the State order or pooling agreement should be furnished and made a part of the agreement if such interest owners do not execute the agreement.

C. All basic royalty owners under non-Federal leases must execute the agreement, unless such interests have been effectively pooled by State order, a pooling clause in the lease, or other pooling agreement. Evidence of such pooling should be furnished and made a part of the agreement if such owners do not execute the agreement. Each such tract shown on Exhibit B of the standard form must include either the verbatim pooling provision of the lease, or the statement, "Lease contains a provision authorizing pooling in accordance with the acreage requirement of the agreement."

D. Execution by overriding royalty interests under Federal and non-Federal leases is not mandatory for Federal approval. However, execution by such parties as are provided should be accepted, as it will ensure more effective protection of the interests of other parties.



with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such agreement shall be deemed to be operations or production as to each such lease committed thereto.<sup>16/</sup>

This allows all mineral owners within the area comprising the state's spacing requirement to share in production from the well on the spacing or proration unit. Production is usually apportioned to and among the various tracts and leases on an acreage basis.

The common thread of all federal Communitization Agreements is that at least one federal or Indian lease or tract is involved. That federal or Indian lease is communitized with other leases that may be federal, Indian, state or fee. A Communitization Agreement requires the consent of all parties owning interests in the mineral estate underlying the area and in the formation that is to be communitized. These issues are discussed in more detail below.

### III. FORMAT AND CONTENT

#### **A. Required Information**

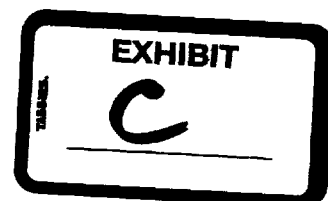
There is no prescribed form for a federal communitization agreement in the regulations; however, the BLM Manual has a standard communitization agreement form which should be used whenever possible.<sup>17/</sup> The regulations do require that certain information be included within the communitization agreement. The agreement must describe the separate tracts comprising the drilling or spacing unit, the apportionment of production or royalties, the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States.<sup>18/</sup> In addition, the agreement must be signed by or on behalf of all necessary parties.

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<sup>16/</sup>30 U.S.C. §226(m) (1989 Supp.).

<sup>17/</sup>United States Department of the Interior, Bureau of Land Management, Manual Transmittal Sheet Release 3-215 dated July 7, 1988, regarding 3160-9-Communitization contains a copy of the "Model Form of a Federal Communitization Agreement." This form is hereinafter referred to as the standard communitization agreement or standard form of communitization agreement and the Manual is herein referred to as the "BLM Manual."

<sup>18/</sup>43 C.F.R. §3105.2-3(a) (1988).



The necessary parties include all working interest owners, lessees of record and the royalty, overriding royalty, and production payment interest owners whose interests are not subject to commitment by the lessee. Where fee leases are concerned, the lessee may commit his lessor's interest under a pooling provision in the fee lease. Likewise, overriding royalty interest owners must join in the communitization agreement or the lessee may act on their behalf, if a pooling provision is contained in the instrument creating the overriding royalty interest. Rather than circulating the Communitization Agreement for execution by all the necessary parties, it is quite common to employ simple one page ratifications to evidence a party's joinder and consent. Although not specifically recognized by the regulations, such ratifications are accepted by the BLM. The state's compulsory pooling statutes may be utilized to commit a nonconsenting party's interest to the communitization agreement, although, without the consent of the Secretary of the Interior, the state commission may not have jurisdiction to force pool unleased interests of the United States, or leased or unleased interests of Indians.

With respect to state lands, approval from the appropriate state official must be obtained. The authorized officer of the Bureau of Land Management (BLM) must approve, on behalf of the Secretary, the communitization agreement with respect to federal leases. Where Indian leases are concerned, in addition to approval by the BLM and Bureau of Indian Affairs (BIA), the Indian tribe must consent where unallotted lands are concerned and the beneficial interest owner must consent when allotted lands are concerned. Communitization Agreements on Indian leases and lands are discussed in more detail in Part V below.

#### B. Standard Form of Communitization Agreement

An understanding of the form of Communitization Agreement contained in the BLM Manual is essential, even if circumstances dictate deviation from the form as printed. The more important provisions of the standard form of Communitization Agreement are discussed below.

Although not mandatory, the filing of a Preliminary Application for Approval to Communitize is recommended, particularly in instances where the standard form of communitization agreement is not followed precisely. The BLM Manual provides that a request for preliminary approval to communitize may be filed at any time with the authorized officer. It is recommended that preliminary approval be requested if there is some doubt as to whether the proposed tracts are logically subject to communitization, or if there is any doubt as to whether a communitization of multiple zones will be approved. In lieu of a request for preliminary approval, a preliminary conference with BLM personnel may resolve any such doubts. The preliminary approval procedure or the preliminary conference will certainly expedite final approval, and may avoid the necessity of