

## PROPOSED ADDITIONS TO DEFINITION OF TERMS

- (1) substitute "persons" for "party" where appropriate
- (2) substitute the term "spacing unit" for "spacing and proration unit"
- (3) adopt additional definitions:

**MINERAL ESTATE:** an owner of an interest in the "mineral estate" is the most complete ownership of oil and gas recognized in law and includes all the mineral interest owners and all the royalty interest owners.

**MINERAL INTEREST OWNERS:** are those persons holding an interest in the executive rights including oil & gas lessees, (ie "working interest owner") and mineral interest owners who have not signed an oil & gas lease.

**ROYALTY INTEREST OWNERS:** are those persons holding an interest in the non-executive rights including the lessor, a royalty interest owner and an overriding royalty interest owner. (ie "non-cost bearing")

**WORKING INTEREST OWNER:** means the owner of the operating interest under an oil and gas lease. The person who has the exclusive right to exploit the oil & gas minerals. ("cost bearing")

**PRORATION UNIT:** means the area in a pool that can be effectively and efficiently drained by one well as determined by the Commission (See NMSA 70-2-17.B) Also the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. Will be the same size and shape as a spacing unit. (All proration units are spacing units but not all spacing units are proration units)

**SPACING UNIT:** means the area located to a well under a well spacing order or rule. Under the Oil & Gas Act, (70-2-12.B(10)) the Commission has the power to fix spacing units without first creating proration units. See Rutter & Wilbanks, 87 NM 286 (1975). This is the area designated on the Division form C-102.

**ADJOINING SPACING UNIT:** means those spacing units that are touching at a point or line to the spacing unit which is the subject of the application.

**EXISTING SPACING UNIT:** means a spacing unit containing a producing well.

**PROSPECTIVE SPACING UNIT:** means a hypothetical spacing unit which does not yet have a producing well.

BEFORE THE OIL CONSERVATION COMMISSION Santa Fe, New Mexico	
Case No. <u>12177</u>	Exhibit No. <u>1</u>
Submitted by <u>NMOGA</u>	
Hearing Date <u>5-19-99</u>	

**COMPARISON OF NMOGA AND OCD  
PROPOSED CHANGES  
5/18/99**

**(1) 104.D Non-standard spacing units**

**NMOGA PROPOSAL:** uses this case to modify portions of current Rule 104 to be consistent with proposed changes to Rule 1207

**OCD PROPOSAL:** to make the proposed changes to Rule 1207 in the case set for Rule 104

**(2) RULE 104.F Unorthodox Well Locations**

**NMOGA PROPOSAL:** uses this case to modify portions of current Rule 104 to be consistent with proposed changes to Rule 1207

**OCD PROPOSAL:** to make the proposed **notice** changes to Rule 104 when the Commission considers the case dealing with Rule 104

**(3) RULE 303 Downhole Commingling**

**NMOGA PROPOSAL:** uses this case to modify portions of current Rule 303 to be consistent with proposed changes to Rule 1207

**OCD PROPOSAL:** no proposal

**(4) RULE 509 Pool Creation and Oil Discovery Allowable**

**NMOGA PROPOSAL:** current Rule 509 provides that the Director may approve such an application in the absence of an objection but fails to provide an obligation on the applicant to send notice. NMOGA proposes that notice to be sent to Division designated operators of all wells within one mile of the discovery well.

**OCD PROPOSAL:** no proposal

**(5) RULE 1203 ~~METHOD OF~~ INITIATING A HEARING**

**NMOGA and OCD PROPOSAL:**

- (1) file 2 copies instead of 3
- (2) must attach list of names and addresses of parties sent notice
- (3) similar "clean-up" suggestions (no material difference)

**(6) RULE 1204 PUBLICATION OF NOTICE OF HEARING**

**OCD PROPOSAL:** "links" Rule 1204 to Rule 1207 which results in applicant for an adjudication now having to publish notice in the newspaper.

**NMOGA and OCD SUGGESTED SOLUTION:** edit Rule 1204 such that the OCD publishes notice for the Rule 1207 cases and not the applicant

**(7) RULE 1205 CONTENTS OF NOTICE OF HEARING**

**NMOGA and OCD AGREE UPON:** similar "clean-up" suggestions (no material difference)

## **(8) RULE 1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS**

### **(a) Compulsory Pooling and Statutory Unitization**

#### **Current Rule:**

Does not specify when an individual has acquired a sufficient interest in the property to be pooled so as to give that individual standing in this type of case.

**Problem:** Creates the opportunity by a party to be pooled to avoid, delay or circumvent the compulsory pooling statute by waiting until after a pooling case has been filed and to then convey to others or create burdens or contend it has partners or owners not of record.

#### **NMOGA PROPOSAL:**

Clearly defines when and how a party to be pooled shall be determined by adopting requirements similar to those found in real property litigation.

"Notice shall be given to any interest owner whose interest is evidenced by a written document of conveyance either of record or delivered to the applicant as of the date the application is filed with the Division and whose interest has not been voluntarily committed to the proposed spacing unit or area to be unitized."

**PROBLEM:** uses "any interest owner" which is ambiguous.

#### **OCD PROPOSAL:**

(1) attempts to achieve the same solution as NMOGA proposal, but OCD language unnecessarily cumbersome

(2) OCD defines the affected parties as "every real property interest owner...."

**PROBLEM:**"real property interest owner also includes surface interest owners

#### **NMOGA and OCD PROPOSED SOLUTION:**

use NMOGA language but substitute "any owner of an interest in the mineral estate" for "any interest owner"... **AND** change "delivered" to "known"

**(b) RULE 1207.A(1)(b) ALTERNATE COMPULSORY POOLING PROCEEDINGS:**

current rule was to provide a means for an applicant to avoid bringing expert witness to a pooling hearing when he had parties he was unable to locate and the case was otherwise unopposed.

**problem** rule is ambiguous and has been argued to allow compulsory pooling this alternative procedure even when could find all of the parties.

**NMOGA and REVISED OCD PROPOSAL ARE IN AGREEMENT:**  
suggested changes to current alternative procedures to correct problems and to substitute "owner of an interest in the mineral estate" for "real property interest owner"

**(c) RULE 1207.A(2) UNORTHODOX WELL LOCATION HEARINGS:**

**Current Rule:**

"Affected Parties" are the following categories of parties in adjoining acreage towards whom the well encroaches: (See Illustration)

- (1) offset operators in adjoining spacing units;
- (2) in the absence of an offset operator, then the owner of an undrilled lease

**Problem:**

- (1) can be read to exclude working interest owner
- (2) limits notice only to adjoining lease which could be substantially less than the adjoining spacing unit.
- (3) different from the current requirements of Rule 104

**NMOGA PROPOSAL:**

(1) Adopts the concept of "existing adjoining spacing unit" and "prospective adjoining spacing unit"

(2) For existing adjoining spacing unit, the affected parties are:

(a) Division designated operator;

(b) In event applicant is also the operator of the adjoining spacing unit then to all working interest owners in spacing unit:<sup>1</sup>

(3) For prospective adjoining spacing units:

(a) all lessees of record and any unleased mineral owners of conveyance the existence of which is known to applicant or is of public record; and

(b) in event spacing unit is a rectangle, then only to those in that portion of the adjoining units which consists of a square and is closest to the unorthodox well location.

**Reason:**

Reduces the expense and burden of doing title searches for adjoining units in which there is no well. Solves the problem of notifying 3/4ths of the owners in an adjoining section with no producing well.

Gives notice to those parties who will be adversely affected.

Resolves the ambiguity and potential correlative rights violation of notice only to adjoining leases.

Clarifies notice is to Division designated operator of well in the same pool.

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<sup>1</sup> RPC of NMOGA is divided on this requirement. A number of committee members would delete this requirement.

## **OCD REVISED PROPOSAL:**

adopts the NMOGA proposal **except would require:**

(a) In event applicant is also the operator of the adjoining spacing unit then to all **working interest owners** in the adjoining spacing unit; and

(b) requires notice to all working interest owners and unleased mineral interest owners when the prospective spacing unit is a rectangle and does not limit notice to just those in the 1/2 nearest the unorthodox well location.

### **(d) RULE 1207.A(3) Non-Standard Proration and Spacing Unit Hearings:**

#### **Current Rule:**

Affected Parties are:

all categories of owners (WIO, ORR & R) in the standard spacing unit in which the proposed NSP is located and which is not included in the proposed NSP **and** offset operators **and** owners of undrilled tracts of adjoining units.

**NMOGA PROPOSAL:** Deletes notice to offset owners of undrilled tracts.

**OCD PROPOSAL:** deletes offset operator and owners of undrilled tracts and substitutes "such other affected persons as required by the Division"

**Problem w/ OCD proposal:** this open ended notice requirement is ambiguous.

**(e) RULE 1207.A(4) SPECIAL POOL RULE HEARINGS:**

Current Rule: Actual notice shall be given to all operators of wells and each unleased mineral owner within the existing or proposed pool boundaries and all operators of wells within 1 mile of such boundaries.

**Problems:**

(1) Current Rule fails to address the procedural due process ("notice issue") decision by the New Mexico Supreme Court in Uhden Case ( 1991) which dealt with Amoco's change of size of a coal/gas spacing unit from 160-acres to 320-acres in the Cedar Hills Coal-Gas Pool.

(2) Any operator desiring to change any of the rules regulating a specific pool is required to notify all operators, working interest owners, royalty interest owners, overriding royalty interest owners. Dilemma: It is impossible to satisfy such a requirement. See amendment to Blanco Mesaverde Pool Rules, Order R-10987-A dated February 1, 1999.

**NMOGA and REVISED OCD PROPOSAL:**

(1) complies with Uhden by specifying any increase or decrease in the size of a spacing unit for an existing producing well requires notice to all categories of owners.

(2) makes it feasible for an applicant to propose changes to special pool rules by providing notice only to operators.

**(f) RULE 1207.A(6) Downhole Commingling Hearings:**

**Current Rule:**

Affected parties are:

(1) all categories of owners in the spacing unit to be commingled provided there is a difference in identity or percentages; and

(2) all offset operators.

**NMOGA and OCD PROPOSALS:** Delete notice to offset operators

**(9) HOW OBJECTIONS TO ADMINISTRATIVE APPLICATIONS ARE SET FOR HEARING**

**Current Procedure:**

If an objection is timely filed, then the Division notifies applicant and (1) either puts on the docket and tells applicant to send new notices or (2) returns to applicant and tells applicant to refile for a hearing with new notices.

**NMOGA AND REVISED OCD PROPOSAL**

and a new Rule 1207.F which states: "Notwithstanding the foregoing, in the event of a timely filed objection to an application filed for administrative approval in accordance with Rule 104, Rule 303 or Rule \_\_\_\_, the Division shall notify the applicant and the objecting party in writing that the case has been set for hearing on the next available Examiner's docket. No further notice is required.

**Reason:**

Expedites the processing by avoiding the delay of sending new notices.

**(10) NMOGA PROPOSAL: Change all Objection Periods to 20 days**

OCD: No changes.

**(11) RULE 1207.B CONTENT OF NOTICE**

**NMOGA and REVISED OCD PROPOSAL:**

(1) would require applicant to sent a copy of actual application to affected parties

(2) various "clean-up" changes

## **(12) RULE 1208 PLEADINGS**

**Problem:** It is not unusual for a party to hand deliver or fax a pleading to the Division and then by regular mail, transmit a copy to opposing counsel. Because of the short notice periods, an opposing party will not have sufficient time to respond to the Division.

### **NMOGA and REVISED OCD PROPOSAL:**

- (1) Solves this issue by requiring pleadings to be served by delivery or facsimile to opposing counsel
- (2) suggested "clean-up" changes

## **(13) RULE 1210 CONDUCT OF HEARINGS**

### **(14) RULE 1210.B**

#### **OCD PROPOSES:**

**rule for pre-filed testimony in advance of a Commission hearing.**

## **(15) RULE 1211 PREHEARING CONFERENCE**

#### **OCD PROPOSES:**

#### **RULES FOR PREHEARING CONFERENCES**

**NMOGA Proposal: Make Prehearing conference at the discretion of the Division.**