UNIT OPERATING AGREEMENT
SAN JUAN 28-7 UNIT AREA

THIS AGREEMENT, made and entered into this 21 day of November, 1952, by and among El Paso Natural Gas Company, a Delaware corporation, hereinafter sometimes referred to as "Unit Operator", and such other parties owning working interests subject to the Unit Agreement for the Development and Operation of the San Juan 28-7 Unit Area as may execute this agreement, hereinafter sometimes called "Nonoperators", all parties being sometimes referred to as "Working Interest Owners",

W I T N E S S E T H :

WHEREAS, the parties hereto are also parties to that certain Unit Agreement for the Development and Operation of the San Juan 28-7 Unit Area, County of Rio Arriba, State of New Mexico, hereinafter called the "Unit Agreement",

New Mexico Principal Meridian:

Township 27 North, Range 7 West
All of Sections 1,2,3,4,5,6,7,8,9,10,11,12, W/2 of Section 15,
All of Sections 16, 17, 18, 19, 20, 21, W/2 of Section 22,
All of Sections 29 and 30, N/2 of Section 28 and NW/4 of Section 27

Township 28 North, Range 7 West
All of this Township
containing 30,684.76 acres, more or less.

WHEREAS, the parties hereto, in accord with the provisions of Sections 7 and 12 of the Unit Agreement, desire to provide for the apportionment of costs and benefits among Working Interest Owners and to establish related operating arrangements;

NOW, THEREFORE, premises considered, the parties hereto mutually agree that:

1. UNIT AGREEMENT CONFIRMED.

The Unit Agreement, including the exhibits thereto, is hereby confirmed and adopted and made a part of this agreement. Terms employed in this agreement shall bear the same meaning as given them in the Unit Agreement. The unit area shall be developed and operated for the production and handling of unitized substances in accord with the Unit Agreement and this Unit Operating Agreement. In the event of any inconsistency or conflict between provisions of this agreement and the Unit Agreement, the Unit Agreement shall prevail.

2. TITLES.

a. Each of the parties hereto represents to all other parties hereto that its ownership of oil, gas and mineral interests in the unit area is correctly stated in the schedule attached as Exhibit B to the Unit Agreement. In the event

such representation of any party is erroneous or the title of any party hereto fails, in whole or in part, the interests of the parties hereunder shall be accordingly adjusted to the end that no party shall be credited with interests that it does not own. Parties contributing acreage to the unit and receiving credit hereunder therefor shall, subject to the provisions of Section 2c below, bear the entire loss occasioned by any failure of title or defect in their title or encumbrance thereon and shall save the other parties hereto harmless from any obligation or liability on account thereof. All title curative expense and all costs and expenses incurred in defending or establishing title to any interest in the unitized substances shall be borne by the party or parties hereto who claim such interest.

b. Within fifteen (15) days following its execution of this agreement, each Working Interest Owner shall furnish to the Unit Operator copies of its leases, operating agreement or other documents upon which it relies as establishing its ownership of working interests, together with copies of its rental receipts or other evidence satisfactory to establish that such leases, agreements and/or other documents remain in full force and effect. It shall also furnish any title data in its possession relating to its working interest ownership, including the title opinion of its attorney and any curative instruments acquired in relation thereto. Where outstanding title requirements have not been satisfied, the Working Interest Owner whose title is affected shall proceed to satisfy such title requirements with due diligence and furnish proof of the satisfaction thereof to the Unit Operator.

c. As a prerequisite to the drilling of any well hereunder, Unit Operator shall obtain a title opinion by a competent attorney or attorneys selected by it, based upon examination of complete abstract of title certified to date and/or the official county and/or state or federal records as well as examination of the material submitted pursuant to Section 2b above, approving title for drilling purposes to the half section Drilling Block (where the well is to be drilled to the Mesaverde or shallower formations) or to the appropriate spacing unit (where the well is to be drilled to formations below the Mesaverde) upon which the well is to be located; provided, however, that Unit Operator shall not be required to re-examine title to any Drilling Block or spacing unit for the drilling of any second or subsequent well thereon. The party or parties owning working interests in such Drilling Block or spacing unit shall furnish such abstracts promptly as

required and shall satisfy title requirements made by the examining attorney, at such party's or parties' sole expense, without delay in order that the drilling obligation stated in the Unit Agreement shall be timely performed. Costs of title examination shall be charged as a part of the cost of drilling the well. Approving opinion of title as a prerequisite of drilling may be waived upon approval of the owners of eighty per cent (80%) of the working interest committed to the unit. Any party hereto interested in obtaining the drilling of a well may post a bond in form satisfactory to the Unit Operator in an amount equal to one and one-half times the estimated cost of the proposed well, conditioned to protect all parties hereto against any loss of their investment in the well by reason of title failure, whereupon the requirement herein for an approving opinion of title will be waived. If title subsequently fails to any tract or tracts, the title to which has been cleared for drilling under this section, the Working Interest Owner thereof shall bear the entire loss in participation in unitized substances produced after such title failure which would be attributable to the leasehold estate or working interest in such tract under the terms of this agreement, but shall not be obligated to save any parties hereto harmless from any other loss occasioned thereby except to the extent of any indemnity agreement which may have been executed as hereinabove provided.

3. APPORTIONMENT OF COSTS AND BENEFITS.

Except as herein otherwise expressly provided, all costs, expenses and liabilities accruing or resulting from exploration, development, operation and maintenance of the unitized land shall be borne, and all unitized substances produced hereunder and other benefits accruing hereunder shall be owned and shared, by the Working Interest Owners who have executed the Unit Agreement and this agreement, as follows:

a. Costs and benefits accruing in the development and operation of any Drilling Block (as defined in Section 11 of the Unit Agreement) prior to its admission into a participating area shall be borne and shared in the proportion that the acreage owned by each of such Working Interest Owners owning working interests in the Drilling Block bears to the total of working interests owned by all such Working Interest Owners owning working interests in the Drilling Block. Costs and benefits accruing or resulting from development and operation of any participating area shall be borne by such Working Interest Owners owning interests in such participating area in the

same proportion that the interest owned by each bears to the total of interests owned by all such Working Interest Owners in said participating area. Except for the adjustment in investment in the Field Facilities as hereinafter provided, no adjustment of investment or previously incurred costs shall be made upon the admission of a Drilling Block into the participating area, but upon such admission all equipment used for the operations of the participating area shall thenceforth be owned by the Working Interest Owners in the enlarged participating area in the same proportions as provided herein for their sharing of costs and benefits. Notwithstanding the foregoing, however, when any Drilling Block is admitted to the participating area prior to the completion thereon of a well capable of producing unitized substances in paying quantities from the formation to which such participating area is applicable, Unit Operator shall comply with the obligation imposed by the Unit Agreement to drill a well thereon to the horizon from which production is being secured in the participating area, and all costs of drilling, completing, testing and equipping such well to produce shall be charged to and borne by such Working Interest Owners owning working interests in such Drilling Block in the proportions which the interests of each bear to the aggregate of all the interests of all such Working Interest Owners within said Drilling Block. Any such well shall be owned and operated for the benefit of parties owning interests in the participating area in the same manner as other wells in such participating area. Upon admission of a Drilling Block into a participating area, there shall be an adjustment of the cost of Field Facilities among all such Working Interest Owners in the enlarged participating area so that the cost of Field Facilities allocable to the enlarged participating area shall be borne by such Working Interest Owners in proportion to their participation in costs and benefits of operation of the enlarged participating area. Where Field Facilities serve more than one participating area, costs and ownership thereof shall be allocated between participating areas on a well basis and shall be adjusted upon drilling of additional wells so that each participating area shall bear such costs and own such Field Facilities in the proportion that the number of wells within such participating area, which upon their completion, shall have been capable of producing unitized

substances in paying quantities, bears to the total number of such wells within the unit area. No adjustment between participating areas shall be made on account of the cessation of production in paying quantities from any well or wells. "Field Facilities", as that term is used in this section, shall mean facilities which are installed for serving the entire unit operation, such as, but not limited to, warehouses, field offices, camps, gathering systems, field tankage other than that serving a particular well or Drilling Block, power stations and power lines, water stations and water lines. Costs of Field Facilities shall be deemed to be the tangible and intangible costs thereof as reflected by the Operator's books, depreciated at the rate of four per cent (4%) per annum, or fractional portion thereof, up to the period an adjustment is required. In the event book costs cannot be determined on certain classifications of equipment, the current market prices in effect as of the date a Drilling Block is admitted to the participating area shall be used as a basis for pricing. Roads shall not be considered a part of Field Facilities. Costs of all road construction required for the drilling of the four Mesaverde test wells in accord with Section 9 of the Unit Agreement shall be allocated to the Working Interest Owners owning working interest in the four Drilling Blocks upon which said test wells are drilled on an acreage basis. Roads required for the drilling of subsequent wells shall be charged as a part of the drilling costs and borne by the same party or parties as are required to pay the costs of drilling such wells. There will be no reallocation of road costs. In the event any well or wells capable of producing unitized substances in paying quantities shall have been completed prior to the effective date of this agreement, such well or wells shall be turned over to the Unit Operator for operation hereunder on the first day of the month following the said effective date of this agreement, and the half section Drilling Block on which each such well is located shall constitute or become a part of the participating area for the formation in which such well is completed. Likewise, if any Working Interest Owner shall have started any well but it shall not have been completed on the effective date of this agreement, such Working Interest Owner shall proceed with due diligence to complete the drilling of such well and, if dry, to plug and abandon it or, if a producer, to test, complete and equip it to produce and then turn it over to the Unit Operator for operation hereunder. Adjustment for any such well or wells shall be only as hereinabove provided.

b. The cost of drilling, equipping and completing the initial test well projected to a depth below the base of Mesaverde formation and the cost of plugging and abandoning same if a dry hole shall be paid by all of such Working Interest Owners each in the proportion that its ownership of working interests on an acreage basis within the unit area bears to the total of all such interests of such parties; provided, however, that the Working Interest Owners of an area less than the area covered by the entire Unit Agreement, by agreement, may pay the cost of drilling, equipping and completing, or plugging and abandoning the initial test well projected to a depth below the base of the Mesaverde formation, and such costs shall be paid by all of such Working Interest Owners in the proportion provided by such agreement. Costs of drilling the second or any subsequent test well to formations lying below the Mesaverde, which is not required to be drilled by the terms of the Unit Agreement, shall be only in accord with an agreement to be reached by the parties participating in the drilling of such second or additional test wells. In the event any such test well so drilled shall encounter unitized substances in paying quantities so as to justify the establishment of a participating area or the enlargement of an existing participating area for the formation encountered, such participating area or enlargement shall be formed as provided in the Unit Agreement. On the establishment of any participating area, there shall be a retroactive adjustment of the cost of drilling, completing and equipping for production and operating of the said test well and of the cost of Field Facilities, to the end that the owners of working interests in the participating area newly established shall reimburse without interest the party or parties who paid for the costs and expenses of drilling, completing and equipping for production and operating the well less any income derived by said party or parties up to the date of settlement, and thereafter the costs incurred and benefits derived from the operation of the well shall be borne by and shall inure to the benefit of the Working Interest Owners in the participating area in proportion to their ownership of interests therein. On the enlargement of any participating area, there shall be an investment adjustment between the owners of working interests in the enlarged participating area, to the end that the investment within the enlarged participating area, including the investment in the allocated portion of Field Facilities, shall be paid for by the affected Working Interest Owners in the enlarged participating area in proportion to the interests of each therein and in proportion to their shares in the

costs of operation and revenue to be derived from the enlarged participating area, and also to the end that the parties who have previously paid said costs shall be reimbursed on the basis hereinafter set forth. The affected Working Interest Owners in the participating area before its enlargement shall receive credit for the intangible cost of drilling, completing and equipping for production all wells capable of producing unitized substances situated within said participating area. The costs to be so credited shall be measured by the average cost of drilling, completing and equipping for production wells of like character and depth in the field in a good and workmanlike manner at the time when said wells were drilled. Credit shall also be given for the casing and other tangible properties and facilities installed in the wells or used in connection with the operation thereof at a percentage of the original cost, such percentage to be determined as provided in the Accounting Procedure. The affected Working Interest Owners on any tract outside of the participating area that is to be admitted to the enlarged participating area shall likewise receive credit for the intangible cost of drilling, completing and equipping any wells on their respective lands so admitted, together with the value of the tangible equipment, facilities and structures located thereon and used in connection therewith, on the basis above set out. The sum total of all credit shall be the investment cost apportionable to the enlarged participating area. The investment adjustment shall be made by cash settlement among the Working Interest Owners through the Unit Operator. No credit shall be given for the previous cost of operating any wells or repairing or maintaining other property, nor shall there be any debit for or on account of production taken from wells prior to the effective date of the enlargement of the participating area.

4. ROYALTY AND OTHER PAYMENTS OUT OF PRODUCTION.

One-eighth (1/8) of all of the unitized substances produced hereunder, or the proceeds thereof, shall be set aside for the payment or delivery in kind, as the case may be, in accord with underlying leases and other documents requiring payment of royalties, by the Unit Operator or the Working Interest Owner in accord with Section 12 of the Unit Agreement. Where any working interest is burdened by royalties in excess of one-eighth (1/8) or by overriding royalties, oil payments or other payments out of production, the required payment in excess of one-eighth (1/8) shall be borne by the owner of the working interest so burdened. Before receiving its proportionate share of the unitized substances produced hereunder or the proceeds

thereof, each Working Interest Owner shall pay or secure the payment of any such excess royalties or other payments constituting a burden upon its working interest.

5. RENTALS.

Each Working Interest Owner whose interest is chargeable with rentals, minimum royalties in excess of the royalties on actual production, or other payments in the nature of rentals required to maintain its working interest rights, shall properly pay such rentals, minimum royalties or other payments. The inadvertent failure of any party to properly make such payments shall not subject such party to liabilities hereunder except to the extent hereinabove provided in the event of loss of title.

6. TEST WELLS.

Unit Operator is hereby authorized and directed to carry out the drilling program outlined in Section 9 of the Unit Agreement. Subject to obtaining the necessary approval of State and Federal authorities as therein required, it is agreed that locations for the required Mesaverde test wells shall be as follows:

Approximate Center SW/4 Section 14 T-28-N R-7-W
Approximate Center SW/4 Section 16 T-28-N R-7-W
Approximate Center NE/4 Section 35 T-28-N R-7-W
Approximate Center SW/4 Section 29 T-27-N R-7-W

Said wells shall be drilled in such sequence as may be determined by the Unit Operator. Location of the Dakota test well shall be determined by Unit Operator on the basis of geological data obtained in the drilling of Mesaverde wells on this and adjoining unit areas prior to the required date for commencement of operations for the drilling of said Dakota test well.

7. DETERMINATIONS BY MAJORITY VOTE.

In any matter in which the action of the Unit Operator requires the concurrence of the working interest parties hereto or any of them, Unit Operator will be governed by the decision of the owners of a majority of the working interest in the participating area, or the nonadmitted Drilling Block, as the case may be, unless otherwise specified herein or in the Unit Agreement, determined in the proportion that the acreage interest of each such party in the participating area or such affected Drilling Block bears to the total acreage interest in the participating area or affected Drilling Block. Matters affecting the unit area as a whole shall be determined in accordance with the proportionate acreage interest as above defined in

the entire unit area. In any case where one working interest party hereto holds such a majority in interest, but less than the full working interest in the area affected, his vote shall require the concurrence of one additional party in order to constitute the controlling vote.

In any case in which it is necessary to poll the working interest parties hereto, Unit Operator shall notify all affected Working Interest Owners in writing of the question for decision and its recommended course of action. Each such Working Interest Owner shall within ten (10) days of receipt of such notice advise Unit Operator in writing of its decision thereon. Within five (5) days thereafter Unit Operator shall notify each affected Working Interest Owner in writing of the result of such poll. In the event that any Working Interest Owner fails to advise Unit Operator in writing of its decision, within the 10-day period above provided, it shall be conclusively presumed that its decision is in accord with the course of action originally recommended by Unit Operator, except that, if the matter for decision is one where the nonresponding Working Interest Owner might elect, pursuant to the provisions of this agreement, not to participate originally in some element of cost or expense but instead to pay his share thereof out of production or the proceeds thereof, it shall be conclusively presumed that such nonresponding Working Interest Owner elects to follow that latter course.

The Unit Operator, except when otherwise required by governmental authority, shall not do any of the following without first obtaining the approval of such a majority interest, as provided above, in the affected participating area or Drilling Block or unit area, as the case may be:

a. Make any expenditure in excess of Five Thousand Dollars ($5,000.00) other than normal operating expenses, except in connection with a well, the drilling of which has been previously authorized by or pursuant to this agreement; provided, however, that nothing in this paragraph shall be deemed to prevent Unit Operator from making an expenditure in excess of said amount if such expenditure becomes necessary because of a sudden emergency which may otherwise cause loss of life or extensive damage to property. In the event of such emergency expenditure, Unit Operator shall, within fifteen (15) days after making such expenditure, give written notice to the other parties.

b. Make any arrangement for the use of facilities owned by the Working

Interest Owners in the operation and development outside the unit area or determine the amount of any charges therefor unless otherwise provided for in this agreement or in the Unit Agreement.

c. Dispose of any major items of surplus material or equipment having original cost of One Thousand Dollars ($1,000.00) or more, other than junk. Any such item or items of less cost may be disposed of without such consent.

d. Submit to the Supervisor, Commissioner or Commission any plan for further development of the unit area or any proposed expansion of the unit area.

e. Abandon any well which is producing unitized substances. Unit Operator shall not incur any costs or expenses for any single project costing in excess of Five Hundred Thousand Dollars ($500,000.00) without first obtaining the approval of the owners of eighty per cent (80%) of the working interests committed to the Unit.

8. DRILLING OF ADDITIONAL WELLS.

a. In addition to the required test wells, all other wells which Unit Operator is required to drill under the terms of the Unit Agreement or to comply with valid orders of governmental authorities having jurisdiction in the premises shall be drilled by Unit Operator for the account of the Working Interest Owners owning interests in the affected unit area, participating area or Drilling Block, as the case may be, as hereinabove provided. Unit Operator will also drill appropriate development wells within participating areas in accord with plans of development adopted by a majority vote of affected Working Interest Owners in accord with Section 7 above. Unit Operator will drill wells to the Mesaverde or any shallower formations at regular well locations outside of the applicable participating area upon request of the Working Interest Owner or Owners owning one hundred per cent (100%) of the working interest within the Drilling Block upon which the well is to be located. Such wells shall be drilled in order of their request and approval by applicable governmental authorities.

b. Unit Operator will not drill any well without the mutual consent of all the parties hereto other than as provided in Subsection "a" of this Section 8, except as hereinafter provided. Any Working Interest Owner owning a part of the working interests in a Drilling Block desiring that a well be drilled thereon to the Mesaverde or any shallower formation outside of the participating area

established hereunder for such formation, or any Working Interest Owner owning working interest in acreage constituting a spacing unit for wells drilled to any formation below the Mesaverde desiring that a well be drilled thereon to such deeper formation, shall so notify Unit Operator, specifying the proposed location, objective depth and estimated cost of such well. Upon receipt of such notice the Unit Operator shall advise those other Working Interest Owners parties hereto who, under the provisions of this agreement, would be required to share the cost and risk of the proposed well. Each such party shall, by responsive notice given to the Unit Operator within thirty (30) days of receipt of the aforesaid notice, elect as to whether such party desires to join in the drilling of such well. Failure to respond within said thirty (30) days shall be deemed an election not to join in the drilling of the proposed well. If all of said parties elect to join, the well shall be drilled for the account of all such parties in accord with the preceding provisions of this agreement. If less than all of such parties elect to join in the drilling of such well, Unit Operator shall, upon obtaining required governmental approvals, proceed with due diligence to drill such well at the sole cost and risk of the party or parties electing to share in the costs thereof, hereinafter called the "drilling parties". In the event any such well is a dry hole (and is not taken over for plug back or deepening), it shall be plugged and abandoned at the sole cost of the drilling parties. In the event such well is a producer, it shall be tested, completed and equipped to produce by the Unit Operator at the sole cost of the drilling parties, and such drilling parties each in proportion to its contribution to the cost of drilling, testing, completing and equipping the well shall be entitled to receive the proceeds of production from the well or, if it is capable of producing in paying quantities, shall be entitled to receive the proceeds of production allocable to the interests admitted to the participating area on account of such well, after deducting therefrom all royalties, overriding royalties, production payments and one hundred per cent (100%) of the operating expenses attributable thereto, until said drilling parties shall have received therefrom one hundred fifty per cent (150%) of the costs of drilling, testing, completing and equipping said well to produce. For the purposes of this section, where a party takes in kind the proceeds of production from such a well shall be computed upon the same price basis as that employed for payment of royalties to the United States on comparable

production from the unit area. When the drilling parties shall have been reimbursed for one hundred fifty per cent (150%) of said costs as hereinabove provided, proceeds from the well shall thereafter be shared by the Working Interest Owners within the participating area in the manner stipulated in Section 3 above. Any amounts which may be realized from sale or disposition of the well or equipment thereon, or required in connection with the drilling, testing, completing, equipping and operating thereof, shall be paid to the drilling parties and credited against the total unreturned portion of said one hundred fifty per cent (150%) with the balance thereof, if any, to be divided as provided in Section 3 above among the parties owning the well. Locations of all wells drilled under this provision must be in accord with the spacing pattern adopted by the Unit Operator for the formation to which the well is projected.

9. OPTION TO TAKE OVER WELLS.

If any well drilled under this agreement is a dry hole and the party or parties owning the well are ready to abandon it but the well can be plugged back or deepened to a different formation, Unit Operator shall so notify the Working Interest Owners in the affected unit area, participating area or Drilling Block, as the case may be, and such parties shall have the right to take over said well and cause the Unit Operator to plug back or deepen it, as the case may be, and to complete it for the account of the parties owning working interests in the unit area, participating area or Drilling Block, as the case may be, upon effecting an investment adjustment so as to reimburse the party or parties who shall have borne the cost of drilling said well for either their cost of drilling to a depth at which the well is taken over (computed in accordance with the Accounting Procedure attached hereto) or for the average cost of drilling from the surface to the formation in which the well is to be completed, whichever is the lesser amount. Working Interest Owners so notified hereunder shall respond as provided in Section 7. If one, but less than all, of the affected working interest parties elects to take the well over, then Unit Operator shall take it over and conduct the specified operation for the account of the electing party or parties, and such party or parties shall be entitled to recover one hundred fifty per cent (150%)of their costs in acquiring, deepening or plugging back, testing and completing the well in the same manner as provided in Section 8b above; provided, however, that where fifty per cent (50%)

of the affected Working Interest Owners elect to take the well over for use in satisfying the obligation to drill a test well hereunder, the well shall be drilled for the account of all of the affected Working Interest Owners. In the event any one well is completed as a paying producer in more than one formation, the Working Interest Owners of the respective participating areas established for such formations shall arrange for appropriate allocation of investment and operating costs of such well by separate agreement.

10. CHARGES FOR DRILLING OPERATIONS.

All wells drilled on the unit area shall be drilled on a competitive contract basis at the usual rates prevailing in the field. Any Working Interest Owner or Owners may bid and contract to use its or their tools and equipment in the drilling of any wells on the unit area. Unit Operator, if it so desires, may employ its own tools and equipment in the drilling of wells. In such event, the cost of drilling shall include, but shall not be limited to, the following charges: (a) all direct material and labor costs, (b) a proportionate amount of applicable departmental overheads and undistributed field costs, (c) rental charge on company equipment employed; all such charges to be determined in accordance with operator's accounting practice, provided that, in no event shall the total of such charges exceed the prevailing rate in the field and such work shall be performed by Unit Operator under the same terms and conditions as shall be customary and usual in the field in contracts of independent contractors who are doing work of a similar nature.

11. ACCESS TO OPERATIONS AND INFORMATION.

Representatives of each party hereto shall have free access to the entire unit area at all reasonable times to inspect and observe operations of every kind and character thereon. Each party hereto shall have access at all reasonable times to any and all information pertaining to wells drilled, production secured, and to the books, records and vouchers relating to the operation of the unit area. Unit Operator shall, upon request, furnish to the other parties hereto daily drilling reports, true and complete copies of well logs and other data relating to wells drilled, and shall also, upon request, make available samples and cuttings from any and all wells drilled on the unit area.

12. DISPOSITION OF PRODUCTION.

Each of the parties hereto shall take in kind or separately dispose of its proportionate share of the unitized substances produced hereunder, exclusive of production which may be used in development and producing operations of the unit area and in preparing and treating oil for marketing purposes, and production unavoidably lost. In the event any party hereto shall fail to make the arrangements

necessary to take in kind or separately dispose of its proportionate share of the unitized substances, Unit Operator shall have the right for the time being and subject to revocation at will by the party owning same to purchase such unitized substances or to sell the same to others at not less than the market price prevailing in the area. Each party hereto shall be entitled to receive directly payment for its proportionate share of the proceeds from the sale of unitized substances produced, saved and sold from the unit area, and on all purchases or sales each party shall execute any division order or contract of sale pertaining to its interest. Any extra expenditure incurred by reason of the taking in kind or separate disposition by any party hereto of its proportionate share of the production shall be borne by such party.

13. PIPE AND OTHER TUBULAR GOODS.

Notwithstanding any limitations of the Accounting Procedure, Exhibit A, during such times as tubular goods and other equipment are not available at the nearest customary supply point Unit Operator shall be permitted to charge the joint account of parties responsible hereunder for all tubular goods and other equipment transferred from Unit Operator's warehouse or other stocks to the unit area for use on a particular participating area or Drilling Block, as the case may be, with such costs and expenses as may have been incurred in purchasing, shopping, and moving the required tubular goods and other equipment to the unit area; provided, however, that each affected Working Interest Owner shall be given the opportunity, in lieu of bearing its proportionate part of such costs, of furnishing in kind or in tonnage, as the parties may agree, its share of such tubular goods and other equipment required.

14. ADVANCES.

Each of the parties hereto shall promptly pay and discharge its proportionate part of all cost and expense on the basis set forth in the Accounting Procedure attached as Exhibit A. Unit Operator, at its election, may require the parties hereto to advance their respective proportion of development and operating costs according to the following conditions: On or before the first day of each calendar month, Unit Operator shall submit an itemized estimate of such costs for the succeeding calendar month to each of the parties hereto with a request for the payment of such party's proportionate part thereof. Within ten (10) days thereafter each of such parties shall pay, or secure the payment in a manner satisfactory to

Unit Operator, such party's proportionate share of such estimate. Unit Operator shall credit each Working Interest Owner with the advances so made. Should any party fail to pay or secure the payment of such party's proportionate part of such estimate, the same shall bear interest at the rate of six per cent (6%) per annum until paid. Adjustments between estimates and actual costs shall be made by Unit Operator at the close of each calendar month and the accounts of the parties adjusted accordingly.

15. OPERATOR'S LIEN.

Unit Operator shall have a lien on the interest of each of the parties in the unit area, unitized substances produced therefrom, the proceeds thereof and the material and equipment thereon, to secure the payment of such party's proportionate part of the cost and expense of developing and operating the unitized lands and to secure the payment by any such party of such party's proportionate part of any advance estimate of such cost and expense. Unit Operator shall protect such party from all other liens arising from the operations hereunder.

16. INSURANCE.

Unit Operator, during the term hereof, shall purchase or provide protection comparable to that afforded under standard form policies of insurance for workmen's compensation with statutory limits, employer's liability insurance with a limit of at least $25,000 and general public liability insurance with limits of at least $30,000/$60,000. Unit Operator shall charge to the joint account an amount equal to the premium applicable to the protection so provided. All losses not covered by standard form policies of insurance for hazards set out above shall be borne by the parties hereto as their interests appear at the time of any loss.

17. SURRENDER.

No party hereto shall surrender any of its working interests insofar as they relate to lands located within a participating area. However, should any party hereto at any time desire to surrender any of the oil and gas leases or operating agreements subject hereto, or any interest therein, insofar as they cover lands located outside such a participating area but within the unit area, it shall notify all other parties hereto in writing. Within thirty (30) days following receipt of such notice by the other parties hereto, the party desiring to surrender such working interests insofar as they affect such land may proceed

to surrender the same if such right is reserved in the leases or operating agreement, unless any other party or parties hereto have, within said 30-day period, given written notice to the party desiring to surrender that they desire an assignment of said working interests insofar as they cover said land. In such event the party desiring to surrender shall assign, without express or implied warranty of title, and subject to existing covenants, contracts and reservations, all its interest in such working interests insofar as they cover such land and the wells, material and equipment located thereon, to the party or parties desiring an assignment. Thereupon such assigning party shall be relieved from all obligations thereafter accruing (but not theretofore accrued) hereunder with respect to the interest assigned. From and after the making of such assignment, the assigning party shall have no further interest in the property assigned but shall be entitled to receive from the assignees payment for its interest therein in an amount equal to the salvage value of any salvable material located on said land. If such assignment shall run in favor of more than one party hereto, the interest covered shall be shared by such parties in the proportions that the interest of each party assignee in the lands committed to the Unit Agreement bears to the total interest of all parties assignee in the lands committed to the Unit Agreement.

18. TAXES.

Unit Operator shall, for the joint account, render for ad valorem tax purposes the entire working interests in the unit area of all parties hereto and all personal property used in connection with operations hereunder, or such part thereof as may at any time be subject to taxation. Unit Operator shall also pay all such ad valorem taxes, at the time and in the manner required by law, which may be assessed upon or against all or any portion of such working interests and personal property. Each party shall pay its proportionate part of the total taxes so paid and expenses incurred in connection with the rendering and payment thereof in accord with Accounting Procedure, Exhibit A. Nothing herein shall relieve any Working Interest Owner of the consequence of any loss of title occasioned by failure of the landowner to pay ad valorem taxes levied against the land to which its working interest relates.

19. EMPLOYEES.

The number of employees, the selection of such employees, the hours of

labor and the compensation for service to be paid any and all such employees shall be determined by the Unit Operator. Such employees shall be employees of Unit Operator.

20. LIABILITIES.

The liability of the parties hereunder shall be several and not joint or collective. Each party shall be responsible only for its obligations as herein set out and shall be liable only for its proportionate share of the cost of developing and operating the unit area as determined by the provisions hereof.

21. FORCE MAJEURE.

This agreement and the respective rights and obligations of the parties hereunder shall be subject to all valid and applicable State and Federal laws, rules, regulations and orders, and in the event this agreement, or any provision thereof, is or the operations contemplated thereby are found to be inconsistent with or contrary to any such law, rule, regulation or order, the latter shall be deemed to control and this agreement shall be regarded as modified accordingly and as so modified shall continue in full force and effect. Unit Operator shall not be liable for any loss of property or of time caused by strikes, riots, fires, tornadoes, floods, inability to obtain tubular goods or other required materials or services or for any other cause beyond the reasonable control of Unit Operator in the exercise of due diligence.

22. NOTICES.

All notices that are required or authorized to be given hereunder shall be given in writing by United States mail or Western Union telegram, postage or charges prepaid, and addressed to the party to whom such notice is to be given at the address indicated for such party opposite its signature hereto. The originating notice to be given under any provision hereof shall be deemed given only when received by the party to whom such notice is directed, and the time for such party to give any response thereto shall run from the date the originating notice is received. The second or any subsequent responsive notice shall be deemed given when deposited in the United States post office or with the Western Union Telegraph Company with postage or charges prepaid.

23. FAIR EMPLOYMENT PRACTICES.

Unit Operator shall not discriminate against any employee or applicant for employment because of race, creed, color or national original and an identical provision shall be incorporated in all subcontracts.

24. UNLEASED INTERESTS.

Should the owner of any unleased interest in lands lying within the unit area become a party to the Unit Agreement and this agreement, such unleased interest shall be treated, for all purposes of this agreement, as if there were an oil and gas lease covering such unleased interest on a form providing for the usual and customary one-eighth (1/8) royalty and containing the usual and customary "lesser interest clause". This agreement shall in no way affect the right of the owner of any such unleased interest to receive an amount or share of unitized substances equivalent to the royalty which would be payable or due under the terms of the Unit Agreement if such unleased interest were subject to such an oil and gas lease.

25. EFFECTIVE DATE AND TERM.

This Unit Operating Agreement shall become effective as of the effective date of the Unit Agreement and shall remain in full force and effect during the life of such Unit Agreement. The terms hereof shall be considered as covenants running with the ownership of working interest committed hereto and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

26. EXECUTION BY COUNTERPARTS.

This agreement may be executed in counterparts with the same force and effect as if all parties executing any counterpart hereof had executed one original document. It shall be binding upon all parties executing any counterpart hereof whether or not signed by all parties listed below as owning working interests. Any party owning working interests within the unit area may execute this agreement at any time prior to its effective date. Any such Working Interest Owner desiring to join subsequent to the effective date hereof shall be permitted to join only in accord with such terms and conditions as may then be agreeable to the Unit Operator.

EXECUTED as of the day and year first above written.

Attest:

EL PASO NATURAL GAS COMPANY

Assistant Secretary

By _____
Vice President

Bassett Tower
El Paso, Texas

UNIT OPERATOR AND WORKING INTEREST OWNER

ATTEST:

~~Assistant~~ Secretary

P. O. Box 1360
Albuquerque, New Mexico

ATTEST:

Assistant Secretary

Corrigan Tower
Dallas, Texas

ATTEST:

~~Assistant~~ Secretary

1110 Tower Petroleum Building
Dallas, Texas

ATTEST:

Secretary

1655 Grant Street
Denver, Colorado

ATTEST:

Secretary

321 W. Douglas Street
Wichita, Kansas

ATTEST:

Secretary

408 Olive Street
St. Louis, Missouri

ATTEST:

Secretary

P. O. Box 644
Albuquerque, New Mexico

ATTEST:

~~Asst.~~ Secretary

Address: SAN JACINTO PETROLEUM CORP.
1107 SAN JACINTO BLDG.
HOUSTON 2, TEXAS

ATTEST:

Secretary

Address: MALCO REFINERIES, INC.
BOX 660
ROSWELL, NEW MEXICO

ATTEST:

Secretary

Address:

PUBCO DEVELOPMENT, INC.

By:
Vice President

DELHI OIL CORPORATION

By:
Vice President

THREE STATES NATURAL GAS COMPANY

By:
Vice President

THE BAY PETROLEUM CORPORATION

By:
President

WOOD RIVER OIL & REFINING CO., INC.

By:
President

ROCK HILL OIL COMPANY

By:
President

BROOKHAVEN OIL COMPANY

By:
President

SAN JACINTO PETROLEUM CORP.

By:
President

MALCO REFINERIES, INC.

By:
Vice President

By:
President

Witness:

William G. Wise

711 Mer. Bank. Bldg

Address: Dallas, Texas

J. Glenn Turner

Witness:

Barbara Mallon

1711 Mercantile Bank Bldg.

Address: Dallas, Texas

Alfred E. McLane

Witness:

Barbara Mallon

1711 Mercantile Bank Bldg.

Address: Dallas, Texas

W. C. McCord

Witness:

Address:

D. J. Simmons

Witness:

Address:

W. H. Riddle

Witness:

Betty Meade

Address: 1453 Esperson Bldg

Houston 2 Texas

R G Beamon

Witness:

Address:

Witness:

Address:

WORKING INTEREST OWNERS

STATE OF Texas)
(
COUNTY OF Dallas)

On this 29 day of November, 1952, before me appeared Frank a Schmitz, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Delhi Oil Corp and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Frank a Schmitz acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

R L Caldwell
Notary Public in and for
County, State of

R. L. CALDWELL
Notary Public Dallas County, Texas
My Commission Expires June 1, 1953

STATE OF New Mexico)
(
COUNTY OF Bernalillo)

On this 5th day of December, 1952, before me appeared Frank D. Gorham, Jr., to me personally known, who, being by me duly sworn, did say that he is the Vice President of Pubco Development, Inc. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Frank D. Gorham, Jr. acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:
My Commission Expires Nov. 7, 1956

Barbara Shaw Marks
Notary Public in and for Bernalillo
County, State of New Mexico

STATE OF Texas)
(
COUNTY OF El Paso)

On this 7th day of January, 1953, before me appeared C. F. Perkins, to me personally known, who, being by me duly sworn, did say that he is the Vice President of El Paso Natural Gas Company and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. F. Perkins acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

Louise M. Cress
Notary Public in and for
County, State of

LOUISE M. CRESS
Notary Public, in and for El Paso County, Texas
My commission expires June 1, 1953

STATE OF Texas)
(
COUNTY OF Dallas)

On this 21 day of November, 1952, before me appeared _____ H. A. Harman, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Three States Natural Gas Co. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said H. A. Harman acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

NANCY HARMAN
Notary Public, Dallas County, Texas
My Commission Expires June 1, 1953

Nancy Harman
Notary Public in and for Dallas
County, State of

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF New Mexico)
(
COUNTY OF Chaves)

On this 14th day of Jan., 1953, before me appeared Donald B. Anderson, to me personally known, who, being by me duly sworn, did say that he is the Vice President of [illegible] PETROLEUMS, INC. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Donald B. Anderson acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

June 30, 1956

H. E. Herrington
Notary Public in and for
County, State of

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF Texas)
(
COUNTY OF Harris)

On this 22 day of December, 1952, before me appeared _____ R. L. Martin, to me personally known, who, being by me duly sworn, did say that he is the _____ President of SAN JACINTO PETROLEUM CORP. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said R. L. Martin acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

RUTH YORK
Notary Public in and for
Harris County, Texas
My Commission Expires June 1, 1953

Ruth York
Notary Public in and for Harris
County, State of Texas

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me appeared _____ _____, to me personally known, who, being by me duly sworn, did say that he is the _____ President of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

STATE OF Texas)
(
COUNTY OF Dallas)

On this 14th day of November, 1952, before me personally appeared [illegible], to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

My Commission Expires:

[illegible]

Mary Lou Thomas
Notary Public in and for [illegible]
County, State of Texas

STATE OF Texas)
(
COUNTY OF Dallas)

On this 22nd day of November, 1952, before me personally appeared Alfred C. McLane, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

My Commission Expires:

June 1, 1953

Barbara Malloy
Notary Public in and for Dallas
County, State of Texas.
BARBARA MALLOY

STATE OF Texas)
(
COUNTY OF Dallas)

On this 24th day of November, 1952, before me personally appeared M. C. McClark, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

My Commission Expires:

[illegible]

Barbara Malloy
Notary Public in and for Dallas
County, State of Texas
BARBARA MALLOY

STATE OF)
(
COUNTY OF)

On this _____ day of _____, 1952, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

My Commission Expires:

_____

_____
Notary Public in and for
County, State of

RATIFICATION AND JOINDER OF UNIT OPERATING AGREEMENT UNDER UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE SAN JUAN 28-7 UNIT AREA, RIO ARRIBA COUNTY, NEW MEXICO

In consideration of the execution of the Unit Operating Agreement under Unit Agreement for the Development and Operation of the SAN JUAN 28-7 UNIT AREA, RIO ARRIBA COUNTY, STATE OF NEW MEXICO, by El Paso Natural Gas Company in form approved by the Secretary of the Interior, the undersigned owners of lands or leases or interests therein presently held or which may arise under existing option agreements or other interests in production covered by said Unit Operating Agreement, each to the extent of its particular ownership or interest, briefly described opposite its signature, have consented to the inclusion of said lands within the Unit Area therein defined, and do hereby approve, adopt and ratify the said Unit Operating Agreement in the form and as submitted to the United States Geological Survey in connection with the submission of Unit Agreement for the Development and Operation of the San Juan 28-7 Unit Area, Rio Arriba County, State of New Mexico.

This Ratification and Joinder of Unit Operating Agreement may be executed in any number of counterparts with the same force and effect as if all parties had signed the same document and shall be binding upon all those who execute a counterpart hereof, regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands affected hereby, and when so executed shall be binding upon the undersigned, its successors or assigns, subject to all the terms, provisions and conditions of said Unit Operating Agreement.

ATTEST:

Secretary

SOUTHERN PETROLEUM EXPLORATION, INC.

By: Paul W. Neuenschwander
Vice President

DATE:

January 29, 1953

ADDRESS:

Box 192

Sistersville, West Virginia

DESCRIPTION

Tract No.	Description	Serial or Lease No.
	T 27N - R 7W	
29	Sec. 2: Lot 2, SW/4 NE/4, NW/4 SE/4	NM E-290-3

STATE OF WEST VIRGINIA)
COUNTY OF TYLER) SS

On this 29th day of January, 1953, before me appeared PAUL W. NEUENSCHWANDER, to me personally known, who, being by me duly sworn, did say that he is President of SOUTHERN PETROLEUM EXPLORATION, INC., a corporation, and that the seal affixed to said instrument is the corporation seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that said PAUL W. NEUENSCHWANDER acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My commission expires JUNE 13, 1952

RATIFICATION AND JOINDER OF UNIT OPERATING AGREEMENT UNDER UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE SAN JUAN 28-7 UNIT AREA, RIO ARRIBA COUNTY, STATE OF NEW MEXICO

In consideration of the execution of the Unit Operating Agreement under Unit Agreement for the Development and Operation of the San Juan 28-7 Unit Area, Rio Arriba County, State of New Mexico, by El Paso Natural Gas Company in form approved by the Secretary of the Interior, the undersigned owners of lands or leases or interests therein presently held or which may arise under existing option agreements or other interests in production covered by said Unit Operating Agreement, each to the extent of their particular ownership or interest, briefly described opposite their signature, have consented to the inclusion of said lands within the Unit Area therein defined, and do hereby approve, adopt and ratify the said Unit Operating Agreement in the form and as submitted to the United States Geological Survey in connection with the submission of Unit Agreement for the Development and Operation of the San Juan 28-7 Unit Area, Rio Arriba County, State of New Mexico.

This Ratification and Joinder of Unit Operating Agreement may be executed in any number of counterparts with the same force and effect as if all parties had signed the same document and shall be binding upon all those who execute a counterpart hereof, regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands affected hereby, and when so executed shall be binding upon the undersigned, their successors or assigns, subject to all the terms, provisions and conditions of said Unit Operating Agreement.

D. J. Simmons

Thelma Simmons

DATE:

January 28, 1953

ADDRESS:

621 Ft. Worth National Bank Bldg.

Ft. Worth, Texas

DESCRIPTION

Tract No.	Description	Serial or Lease No.
	T 28 N - R 7 W	
22	Sec. 11: Lots 1,2,3,4, S/2 S/2	SF 079289-A
	Sec. 14: S/2	
	Sec. 15: S/2	
	Sec. 22: S/2	
24	Sec. 13: S/2	SF 079290
	Sec. 23: N/2	
	Sec. 24: N/2	
	Sec. 25: N/2	

(Joint Acknowledgment for New Mexico)

STATE OF Texas
COUNTY OF Tarrant } SS.:

On this 28th day of January, 1953, before me appeared D. J. Simmons, and Thelma Simmons his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged to me they executed the same as their free act and deed.

My Commission expires:

June 1, 1953

Mildred V. Jahn
Mildred V. Jahn

Notary Public in and for Tarrant County,

State of Texas

9-17

EXHIBIT "A"

Model Form-PASO-1949-1

Attached to and made a part of Unit Operating Agreement San Juan 28-7 Unit Area dated Nov. 21, 1952

ACCOUNTING PROCEDURE

(UNIT AND JOINT LEASE OPERATIONS)

I. GENERAL PROVISIONS

1. **Definitions**
The term "joint property" as herein used shall be construed to mean the subject area covered by the agreement to which this "Accounting Procedure" is attached.
The term "Operator" as herein used shall be construed to mean the party designated to conduct the development and operation of the leased premises for the joint account.
The term "Non-Operator" as herein used shall be construed to mean any one or more of the non-operating parties.

2. **Statements and Billings**
Operator shall bill Non-Operator on or before the last day of each month for its proportionate share of costs and expenditures during the preceding month. Such bills will be accompanied by statements, reflecting the total costs and charges as set forth under Sub-Paragraph C below:
A. Statement in detail of all charges and credits to the joint account.
B. Statement of all charges and credits to the joint account, summarized by appropriate classifications indicative of the nature thereof.
C. Statements, as follows:
(1) Detailed statement of material ordinarily considered controllable by Operators of oil and gas properties;
(2) Statement of all other charges and credits to the joint account summarized by appropriate classifications indicative of the nature thereof; and
(3) Statement of any other receipts and credits.

3. **Payments by Non-Operator**
Each party shall pay its proportion of all such bills within fifteen (15) days after receipt thereof. If payment is not made within such time, the unpaid balance shall bear interest at the rate of six per cent (6%) per annum until paid.

4. **Audits**
Payment of any such bills shall not prejudice the right of Non-Operator to protest or question the correctness thereof. All statements rendered to Non-Operator by Operator during any calendar year shall be conclusively presumed to be true and correct after eighteen months following the close of any such calendar year, unless within said eighteen months period Non-Operator takes written exception thereto and makes claim on Operator for adjustment. Failure on the part of Non-Operator to make claim on Operator for adjustment within such period shall establish the correctness thereof and preclude the filing of exceptions thereto or the making of claims for adjustment thereon. A Non-Operator, upon notice in writing to Operator and all other Non-Operators, shall have the right to audit Operator's accounts and records relating to the accounting hereunder, within eighteen months next following the close of any calendar year. Non-Operator shall have six months next following the examination of the Operator's records within which to take written exception to and make any and all claims on Operator. The provisions of this paragraph shall not prevent adjustments resulting from the physical inventory of property as provided for in Section VI, Inventories, hereof.

II. DEVELOPMENT AND OPERATING CHARGES

Subject to limitations hereinafter prescribed, Operator shall charge the joint account with the following items:

1. **Rentals and Royalties**
Delay or other rentals, when such rentals are paid by Operator for the joint account; royalties, when not paid direct to royalty owners by the purchaser of the oil, gas, casinghead gas, or other products.

2. **Labor, Transportation, and Services**
Labor, transportation, and other services necessary for the development, maintenance, and operation of the joint property. Labor shall include (A) Operator's cost of vacation, sickness and disability benefits of employees, and expenditures or contributions imposed or assessed by governmental authority applicable to such labor, and (B) Operator's current cost of established plans for employees' group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonus, and other benefit plans of like nature, applicable to Operator's field payroll; provided that the charges under Part (B) of this paragraph shall not exceed five per cent (5%) of the total of such labor charged to the joint account.

3. **Material**
Material, equipment, and supplies purchased or furnished by Operator, for use of the joint property. So far as it is reasonably practical and consistent with efficient and economical operation, only such material shall be purchased for or transferred to the joint property as required for immediate use, and the accumulation of surplus stocks shall be avoided.

4. **Moving Material to Joint Property**
Moving material to the joint property from Vendor's or from Operator's warehouse in the district or from the other properties of Operator, but in either of the last two events no charge shall be made to the joint account for a distance greater than the distance from the nearest reliable supply store or railway receiving point where such material is available, except by special agreement with Non-Operator.

5. **Moving Surplus Material from Joint Property**
Moving surplus material from the joint property to outside vendees, if sold f.o.b. destination, or minor returns to Operator's warehouse or other storage point. No charge shall be made to the joint account for moving major surplus material to Operator's warehouse or other storage point for a distance greater than the distance to the nearest reliable supply store or railway receiving point, except by special agreement with Non-Operator; and no charge shall be made to the joint account for moving material to other properties belonging to Operator, except by special agreement with Non-Operator.

6. **Use of Operator's Equipment and Facilities**
Use of and service by Operator's exclusively owned equipment and facilities as provided in Paragraph 4, of Section III, "Basis of Charges to Joint Account."

7. **Damages and Losses**
Damages or losses incurred by fire, flood, storm, or any other cause not controllable by Operator through the exercise of reasonable diligence. Operator shall furnish Non-Operator written notice of damage or losses incurred by fire, storm, flood, or other natural or accidental causes as soon as practicable after report of the same has been received by Operator.

8. **Litigation, Judgments, and Claims**
All costs and expenses of litigation, or legal services otherwise necessary or expedient for the protection of the joint interests, including attorney's fees and expenses as hereinafter provided, together with all judgments obtained against the joint account or the subject matter of this agreement; actual expenses incurred by any party or parties hereto in securing evidence for the purpose of defending against any action or claim prosecuted or urged against the joint account or the subject matter of this agreement.
   A. If a majority of the interests hereunder shall so agree, actions or claims affecting the joint interests hereunder may be handled by the legal staff of one or more of the parties hereto, and a charge commensurate with the services rendered may be made against the joint account, but no such charge shall be made until approved by the legal department of or attorneys for the respective parties hereto.
   B. Fees and expenses of outside attorneys shall not be charged to the joint account unless authorized by the majority of the interests hereunder.

9. **Taxes**
All taxes of every kind and nature assessed upon or in connection with the properties which are the subject of this agreement, the production therefrom or the operation thereof, and which taxes have been paid by the Operator for the benefit of the parties hereto.

10. **Insurance**
   A. Premiums paid for insurance carried for the benefit of the joint account, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including legal services, not recovered from insurance carrier.
   B. If no insurance is required to be carried, all actual expenditures incurred and paid by Operator in settlement of any and all losses, claims, damages, judgments, and any other expenses, including legal services, shall be charged to the joint account.

11. District and Camp Expense
District and camp expense which shall be in lieu of salaries and expenses of Operator's District Superintendent and other general district or field employees serving the joint property, whose time is not allocated direct to the joint property, and a proportionate share of maintaining and operating a district office and all necessary camps, including housing facilities for employees if necessary, in conducting the operations on the joint property and other leases owned and operated by Operator in the same locality; and Operator shall have the right to assess against the joint property covered hereby the following charges:

   A. $175.00 per month per drilling well, beginning on the date the well is spudded and terminating when it is on production or is plugged, as the case may be, except that no charge shall be made during the suspension of drilling operations for fifteen (15) or more consecutive days.
   B. $25.00 per well per month for the first five (5) producing wells.
   C. $20.00 per well per month for the second five (5) producing wells.
   D. $15.00 per well per month for all producing wells over ten (10).
   E. Status of wells shall be determined in accordance with provisions of Item 12 E of this Exhibit.

be charged at the producing well rate during the time required for the plugging operation.

(4) Wells being plugged back or drilled deeper shall be included in overhead schedule the same as drilling wells.

(5) Various wells may be shut down temporarily and later replaced on production. If and when a well is shut down (other than for proration) and not produced or worked upon for a period of a full calendar month, it shall not be included in the overhead schedule for such month.

(6) Salt water disposal wells shall not be included in overhead schedule.

F. The above overhead schedule on producing wells shall be applied to individual leases; provided that, whenever leases covered by this agreement are operated as a unitized project in the interest of economic development, the schedule shall be applied to the total number of wells, irrespective of individual leases.

G. The above specific overhead rates may be amended from time to time by agreement between Operator and Non-Operator if, in practice, they are found to be insufficient or excessive.

13. **Warehouse Handling Charges** None

14. **Other Expenditures**
Any other expenditure incurred by Operator for the necessary and proper development, maintenance, and operation of the joint property.

III. BASIS OF CHARGES TO JOINT ACCOUNT

1. **Purchases**
Material and equipment purchased and service procured shall be charged at price paid by Operator, after deduction of all discounts actually received.

2. **Material Furnished by Operator**
Material required for operations shall be purchased for direct charge to joint account whenever practicable, except that Operator may furnish such material from Operator's stocks under the following conditions:

A. New Material (Condition "A")
   (1) New material transferred from Operator's warehouse or other properties shall be priced f. o. b. the nearest reputable supply store or railway receiving point, where such material is available, at current replacement cost of the same kind of material. This will include material such as tanks, rigs, pumps, sucker rods, boilers, and engines. Tubular goods (2" and over), shall be priced on carload basis effective at date of transfer and f. o. b. railway receiving point nearest the joint account operation, regardless of quantity transferred.
   (2) Other material shall be priced on basis of a reputable supply company's Preferential Price List effective at date of transfer and f. o. b. the store or railway receiving point nearest the joint account operation where such material is available.
   (3) Cash discount shall not be allowed.

B. Used Material (Condition "B" and "C")
   (1) Material which is in sound and serviceable condition and is suitable for reuse without reconditioning shall be classed as Condition "B" and priced at 75% of new price.
   (2) Material which cannot be classified as Condition "B" but which,
      (a) After reconditioning will be further serviceable for original function as good second hand material (Condition "B"), or
      (b) Is serviceable for original function but substantially not suitable for reconditioning,
      shall be classed as Condition "C" and priced at 50% of new price.
   (3) Material which cannot be classified as Condition "B" or Condition "C" shall be priced at a value commensurate with its use.
   (4) Tanks, derricks, buildings, and other equipment involving erection costs shall be charged at applicable percentage of knocked-down new price.

3. **Warranty of Material Furnished by Operator**
Operator does not warrant the material furnished beyond or back of the dealer's or manufacturer's guaranty; and, in case of defective material, credit shall not be passed until adjustment has been received by Operator from the manufacturers or their agents.

4. **Operator's Exclusively Owned Facilities**
The following rates shall apply to service rendered to the joint account by facilities owned exclusively by Operator:

A. Water service, fuel gas, power, and compressor service: At rates commensurate with cost of providing and furnishing such service to the joint account but not exceeding rates currently prevailing in the field where the joint property is located.

B. Automotive Equipment: Rates commensurate with cost of ownership and operation. Such rates should generally be in line with schedule of rates adopted by the Petroleum Motor Transport Association, or some other recognized organization, as recommended uniform charges against joint account operations and revised from time to time. Automotive rates shall include cost of oil, gas, repairs, insurance, and other operating expense and depreciation; and charges shall be based on use in actual service on, or in connection with, the joint account operations. Truck, tractor, and pulling unit rates shall include wages and expenses of driver.

C. A fair rate shall be charged for the use of drilling and cleaning-out tools and any other items of Operator's fully owned machinery or equipment which shall be ample to cover maintenance, repairs, depreciation, and the service furnished the joint property; provided that such charges shall not exceed those currently prevailing in the field where the joint property is located.

D. Whenever requested, Operator shall inform Non-Operator in advance of the rates it proposes to charge.

E. Rates shall be revised and adjusted from time to time when found to be either excessive or insufficient.

IV. DISPOSAL OF LEASE EQUIPMENT AND MATERIAL

The Operator shall be under no obligation to purchase interest of Non-Operator in surplus new or secondhand material. Derricks, tanks, buildings, and other major items shall not be removed by Operator from the joint property without the approval of Non-Operator. Operator shall not sell major items of material to an outside party without giving Non-Operator an opportunity either to purchase same at the price offered or to take Non-Operator's share in kind.

1. **Material Purchased by Operator**
Material purchased by Operator shall be credited to the joint account and included in the monthly statement of operations for the month in which the material is removed from the joint property.

2. **Material Purchased by Non-Operator**
Material purchased by Non-Operator shall be invoiced by Operator and paid for by Non-Operator to Operator immediately following receipt of invoice. The Operator shall pass credit to the joint account and include the same in the monthly statement of operations.

3. **Division in Kind**
Division of material in kind, if made between Operator and Non-Operator, shall be in proportion to their respective interests in such material. Each party will thereupon be charged individually with the value of the material received or receivable by each party and corresponding credits will be made by the Operator to the joint account, and such credits shall appear in the monthly statement of operations.

4. **Sales to Outsiders**
Sales to outsiders of material from the joint property shall be credited by Operator to the joint account at the net amount collected by Operator from Vendee. Any claims by Vendee for defective material or otherwise shall be charged back to the joint account, if and when paid by Operator.

V. BASIS OF PRICING MATERIAL TRANSFERRED FROM JOINT ACCOUNT

Material purchased by either Operator or Non-Operator or divided in kind, unless otherwise agreed, shall be valued on the following basis:

1. **New Price Defined**
New price as used in the following paragraphs shall have the same meaning and application as that used above in Section III, "Basis of Charges to Joint Account."

2. **New Material**
New material (Condition "A"), being new material procured for the joint account but never used thereon, at 100% of current new price.

3. **Good Used Material**
Good used material (Condition "B"), being used material in sound and serviceable condition, suitable for reuse without reconditioning,
   A. At 75% of current new price if material was charged to joint account as new, or
   B. At 75% of current new price less depreciation consistent with their usage on and service to the joint property, if material was originally charged to the joint property as secondhand at 75% of new price.

4. **Other Used Material**
Used Material (Condition "C"), being used material which
   A. After reconditioning will be further serviceable for original function as good secondhand material (Condition "B"), or
   B. Is serviceable for original function but substantially not suitable for reconditioning,
   at 50% of current new price.

5. **Bad-Order Material**
Used material (Condition "D"), being material which cannot be classified as Condition "B" or Condition "C", shall be priced at a value commensurate with its use.

6. **Junk**
Junk (Condition "E"), being obsolete and scrap material, at prevailing prices.

7. **Temporarily Used Material**
When the use of material is of a temporary nature and its service to the joint account does not justify the reduction in price as provided in Paragraph 3B, above, such material shall be priced on a basis that will leave a net charge to the joint account consistent with the value of the service rendered.

VI. INVENTORIES

1. **Periodic Inventories**
Periodic inventories shall be taken by Operator of the joint account material, which shall include all such material as is ordinarily considered controllable by operators of oil and gas properties.

2. **Notice**
Notice of intention to take inventory shall be given by Operator at least ten days before any inventory is to begin, so that Non-Operator may be represented when any inventory is taken.

3. **Failure to be Represented**
Failure of Non-Operator to be represented at the physical inventory shall bind Non-Operator to accept the inventory taken by Operator, who shall in that event furnish Non-Operator with a copy thereof.

4. **Reconciliation of Inventory**
Reconciliation of inventory with charges to the joint account shall be made by each party at interest, and a list of overages and shortages shall be jointly determined by Operator and Non-Operator.

5. **Adjustment of Inventory**
Inventory adjustments shall be made by Operator with the joint account for overages and shortages, but Operator shall only be held accountable to Non-Operator for shortages due to lack of reasonable diligence.

6. **Special Inventories**
Special inventories may be taken, at the expense of the purchaser, whenever there is any sale or change of interest in the joint property, and it shall be the duty of the party selling to notify all other parties hereto as quickly as possible after the transfer of interest takes place. In such cases both the seller and the purchaser shall be represented and shall be governed by the inventory so taken.

TURNER, WHITE, ATWOOD, McLANE AND FRANCIS

ATTORNEYS AND COUNSELORS AT LAW

17TH FLOOR MERCANTILE BANK BUILDING

DALLAS 1, TEXAS

J. GLENN TURNER
W. D. WHITE
FELIX ATWOOD
ALFRED E. McLANE
EDWARD L. FRANCIS
JAMES B. FRANCIS
JULIAN M. MEER
TREVOR REES-JONES
HARRY S. WELCH
THOS. R. HARTNETT III
H. L. HITCHINS, JR.
WILLIAM L. McINERNEY
WILLIAM G. WEBB
LEWIS CHANDLER
SNOWDEN M. LEFTWICH, JR.
WILLIAM C. HERNDON, JR.

May 29, 1954

Oil Conservation Commission
of the State of New Mexico
Capitol Building
Santa Fe, New Mexico

Re: San Juan 28-7 Unit Agreement
Rio Arriba County, New Mexico
No. 14-08-001-459

Gentlemen:

Please find enclosed herewith one copy of Brief in support of Pubco Development, Inc.'s notice of appeal in connection with El Paso Natural Gas Company's determination that the San Juan 28-7 Unit No. 9 well was deemed capable of producing unitized substances in paying quantities, such appeal having been filed with the Honorable Secretary of the Interior on May 10, 1954, a copy of which was transmitted to you by letter dated May 6, 1954. Due to the confidential nature of Exhibit "B" attached to the enclosed Brief, we will greatly appreciate the courtesy if you will treat the information contained therein in a confidential manner.

With best wishes, we are

Yours very truly,

TURNER, WHITE, ATWOOD, McLANE and FRANCIS

By William G. Webb

WGW:fc

Enc.

Registered Letter
Return Receipt Requested

UNITED STATES DEPARTMENT OF THE INTERIOR

UNITED STATES GEOLOGICAL SURVEY

RE: UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE SAN JUAN 28-7 UNIT AREA COUNTY OF RIO ARRIBA, STATE OF NEW MEXICO NUMBER 14-08-001-459, EFFECTIVE AS OF JANUARY 29, 1953

RE: DETERMINATION BY UNIT OPERATOR OF CAPABILITY OF PRODUCTIVITY IN PAYING QUANTITIES OF SAN JUAN 28-7 NUMBER 9 WELL, LOCATED SW/4 SECTION 14, T-28-N, R-7-W, N.M.P.M. RIO ARRIBA COUNTY, NEW MEXICO DATED MARCH 11, 1954

BRIEF IN SUPPORT OF APPEAL

Comes now Pubco Development, Inc. (N.S.L.), a New Mexico corporation, whose office and principal place of business is located in Albuquerque, New Mexico, a working interest owner under the captioned Unit Agreement, through its undersigned attorneys and files this its Brief in support of its Appeal from the decision of the Director of the United States Geological Survey dated April 9, 1954, rejecting Appellant's Protest of El Paso Natural Gas Company's Determination dated March 11, 1954, as Unit Operator under the captioned Unit Agreement, that the San Juan 28-7 Unit Well No. 9 was considered capable of producing unitized substances in paying quantities within the scope of the captioned Unit Agreement, such Appeal having been filed with the Honorable Secretary of the United States Department of the Interior on May 10, 1954.

POINT ONE RESTATED

The Director of the United States Geological Survey in rejecting Appellant's Protest of the Unit Operator's aforementioned

Determination has abused and violated the authority and discretion vested in him by virtue of the terms and provisions of the captioned Unit Agreement in that the Director knew or should have known that a well with an initial open flow potential of only seven hundred sixty-eight thousand (768,000) cubic feet of gas per day is not a well which may be justifiably included within the participating area for the Mesaverde Formation under the captioned Unit Agreement.

ARGUMENT

The Honorable Director of the United States Geological Survey has at his disposal voluminous data as to the productive life and history of hundreds of gas wells situated within the San Juan Basin Area of New Mexico and producing natural gas from the Mesaverde Formation. Notwithstanding the availability of this data he has, in rendering his decision, as mentioned hereinabove, refused to take into consideration the incontrovertible fact that a well with an initial open flow potential of only seven hundred sixty-eight thousand (768,000) cubic feet of gas per day and drilled to the Mesaverde Formation, which in this case was to a total depth of 5,529 feet, cannot possibly repay to the Operator thereof the cost of drilling, completing and equipping same plus the normal costs of operation within the contemplated life of the reservoir from which such well is producing. It is Appellant's contention that before a well may be included within the Mesaverde participating area established under the subject Unit Agreement, it must have an initial open flow potential of sufficient volume in order that the Operator may reasonably contemplate that same will return to him out of the sale of the gas produced therefrom, his original investment plus the normal operating expenses thereof within the productive life of the reservoir.

Based upon the experience of the Appellant, which experience and supporting data relative thereto are and have been available to the Director, in the drilling and operation of similar wells in the same area in which the subject well is located, it is Appellant's contention that in order to be properly recognizable as a well capable of producing unitized substances in paying quantities, same must have an initial open flow potential of at least one million five hundred thousand (1,500,000) cubic feet of gas per day. Appellant has attached hereto as Exhibit B an earning and investment return analysis based upon its operating experience during the calendar year 1953. This analysis clearly demonstrates in detail the conservative approach of Appellant's sample analysis set forth hereinbelow. However, in order to more concisely and clearly demonstrate the wisdom and virtue of Appellant's contention that in order to be properly recognizable as a well capable of producing unitized substances in paying quantities, same must have an initial open flow potential of at least one million five hundred thousand (1,500,000) cubic feet of gas per day, Appellant has set forth hereinbelow a comparative analysis of returns to the Operator from a well with an initial open flow potential of seven hundred sixty-eight thousand (768,000) cubic feet of gas per day as compared with a well with an initial open flow potential of one million five hundred thousand (1,500,000) cubic feet of gas per day. The assumed calculations are purposely made on an extremely conservative level.

a. The average cost of drilling, completing and equipping a Mesaverde Formation gas well in this area may reasonably be expected to be:

$35,000.00

b. At the pressures presently existing in the gathering systems operating in this area the daily sale of gas

from any individual well will approximate 22% of any such well's initial open flow potential:

(1) 765 MCF x .22 = 169 MCF per day

(2) 1,500 MCF x .22 = 330 MCF per day

c. Without regard to any pressure decline factor in the producing reservoir, but only contemplating reasonable shut-down periods due to regulatory tests, mechanical failures and minor workovers, it may be assumed that any particular well will only be on production for a total of 300 days during any calendar year:

(1) 169 MCF per day x 300 = 50,700 MCF, annual gross production

(2) 330 MCF per day x 300 = 99,000 MCF, annual gross production

d. The annual gross production from any particular well must, of course, be reduced by the basic landowner's royalty of 12.5% of the gross production and approximately 5% to be allocated to State ad Valorem, Severance and Conservation Taxes, making a total deduction of 17.5%:

(1) 50,700 MCF - 17.5% = 41,828 MCF, net annual production

(2) 99,000 MCF - 17.5% = 81,675 MCF, net annual production

Based upon the above factors and computing the well head sales at 12¢ per MCF escalated at 1¢ per MCF each 5 years as established under presently existing gas purchase contracts and deducting therefrom normal lease operating expenses of $720.00 per year and an additional sum as estimated Federal Income Taxes payable by the Operator, the Appellant sets forth the following estimated return on his basic investment:

(1)	First	5 yrs.	@ $2,825.00 =	$14,125.00
	Second	5 yrs.	@ $3,089.00 =	$15,445.00
	Third	5 yrs.	@ $3,353.00 =	$16,765.00
	Succeeding	10 yrs. 8 mos.	@ $3,618.00 =	$38,592.00
Total		25 yrs. 8 mos.		$84,927.00

(2)	First	5 yrs.	@ $5,846.00 =	$29,230.00
	Second	5 yrs.	@ $6,361.00 =	$31,805.00
	Succeeding	3.5 yrs.	@ $6,877.00 =	$24,070.00
Total		13.5 yrs.		$85,105.00

The contemplated producing life of the Mesaverde Formation in this area has been generally recognized to be 15 years. It is apparent from the above calculations that it cannot reasonably be contemplated that a well with an initial open flow potential of only seven hundred sixty-eight thousand (768,000) cubic feet of gas per day will return to the Investor his initial investment without any recognition given to normal pressure decline factors.

It is not contended by Appellant that all wells heretofore included within the Mesaverde participating area under the captioned Unit Agreement which have an initial open flow potential of less than 1,500 MCF of gas per day should be now excluded from such participating area. It is only Appellant's contention, based upon the experience of Appellant in operating in this area, that subsequent determinations should be based upon sound and well-reasoned engineering and production practices, and Appellant stands ready to make available to the Secretary or the Director all requisite data and information to furnish a basis for such determinations. The only area which is involved in this Appeal is that shown in green on the attached Exhibit A and Appellant does not contend in any manner that the balance of the Mesaverde participating area as shown in red on the attached Exhibit A is involved or is affected by this Appeal.

POINT TWO RESTATED

The Director in refusing to recognize the provisions of the Unit Agreement relative to the disposition of wells incapable of producing unitized substances in paying quantities has construed as meaningless the provisions of the Unit Agreement relative thereto.

ARGUMENT

The captioned Unit Agreement makes the following provision for wells which are incapable of producing unitized substances in paying quantities:

> ...Upon completion of a well capable of producing unitized substances from the Mesaverde or shallower formation or as soon thereafter as required by the Supervisor or the Commissioner, the Unit Operator shall determine whether said well is capable of producing unitized substances in paying quantities and shall advise the Supervisor, the Commissioner and the Commission of its conclusion in that regard, giving the data upon which its conclusion is based and identifying the Drilling Blocks upon which said well is located. Protests against said conclusion may be filed with the Director, the Commissioner and the Commission within 15 days thereafter but unless the Director, the Commissioner or the Commission shall, within 30 days after the filing of the original statement of conclusion by Unit Operator, disapprove of such conclusion, the decision of the Unit Operator shall thereafter be binding upon the parties hereto.... For the purposes hereof, it shall be deemed that the capability of a well to produce unitized substances in paying quantities has been established when so determined by the Unit Operator and when notice of such determination shall have been delivered to the Supervisor, the Commissioner and the Commission,..... whenever it is determined, in the manner provided in this agreement, that a well drilled under this agreement is not capable of production in paying quantities and inclusion of the Drilling Block on which it is situated in a participating area is unwarranted, production from such well shall, for the purposes of settlement among royalty interest owners, be allocated to the Drilling Block on which the well is located so long as such land is not within a participating area established for the pool or deposit from which such production is obtained. Settlement for working interest benefits from such a well shall be made as provided in the unit operating agreement...

Under well-established principles of contract law an agreement is to be read, construed and interpreted as an entirety. To disregard any portion of an agreement which may bear on a particular problem cannot be countenanced in view of the overwhelming weight of authority. "The writing will be read as a whole and every part will be interpreted with reference to the whole; and, if possible, it will be so interpreted as to give effect to its general purpose." 3 Williston on Contracts, Rev., 1936, 1779. If possible, a court will give effect to all parts of an instrument and a construction which gives a reasonable meaning to all its provisions will be preferred to one which leaves a portion

of the writing useless or inexplicable." E. I. DuPont de Nemours and Co. v. Claiborne-Reno Co., 64 Fed. 2d 224 (CCA 8th, 1933), 12 Am. Jur. § 241. "A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument and not from detached portions, it being necessary to consider all of its parts in order to determine the meaning of any particular part as well as the whole." 17 C.J.S. Section 297.

The above-quoted authorities are so well recognized and the principle enunciated therein is so well established that extensive citation of additional authorities would be both useless and time consuming. However, the Director in rendering his decision as aforesaid has seen fit to wholly disregard this well-established principle and in effect has said the above-quoted provisions of the Unit Agreement are of no force or effect and will not be considered by him and need not be considered by the Unit Operator in rendering any decision relative to marginal wells. If this construction is adopted then an integral part of the Agreement has been erased therefrom, the same as if by judicial decree, for such is the tenor and effect of the Director's conclusion in his decision dated April 9, 1954, "It is not believed workable or administratively advisable to fix a rigid figure which would be used as a standard to control a paying well classification in this area, especially in view of the fact that variable factors which you (Appellant) mentioned necessarily will be given different values by different operators." As stated above, we are not attempting to adjudicate the paying well classification for every gas well drilled in this area, but we are primarily concerned with one individual well which the calculations listed hereinabove irrefutably show to be such a well as cannot be reasonably envisioned to return to the Operator his initial investment.

If the Director's interpretation is adopted, then a Unit Operator may conceivably make a determination that a well of 1 MCF of gas per day is a well capable of producing unitized substances in paying quantities and, therefore, entitled to be included within the participating area, for the difference between such a well and the subject well is only one of degree and if the Director takes the position, and he is affirmed by the Honorable Secretary, that it is not "administratively advisable" to attempt to refute the Operator's Determination, then the above-quoted provisions of the Unit Agreement may as well be blotted from the record.

POINT THREE RESTATED

The Director has refused to interject himself between the Appellant and the Unit Operator and in so doing he has abdicated his function as the protective force afforded by the Unit Agreement against the arbitrary and capricious acts of the Operator.

ARGUMENT

El Paso Natural Gas Company, who is the Unit Operator under the captioned Unit Agreement, has a wide and varied experience in the operation of gas wells both in this and other areas, and Appellant does not contend that El Paso is not an Operator of extreme prudence and entirely without malice in conducting its function as Unit Operator under the subject Unit Agreement. However, Appellant respectfully suggests that the subject Determination by El Paso is not wholly in line with its experience as the Operator of similar wells in this area, but is rather predicated upon a course of expedience rather than upon one of sound petroleum practices. It is latently apparent that the cry of the rejected Owner and Operator (of the subject well) might fall upon more recipient ears than is

the small voice of Appellant whose interests are being diminished by the complained-of Determination.

The above agreement contemplates in its entirety that the Honorable Director, the Commissioner of Public Lands of the State of New Mexico and the New Mexico Oil Conservation Commission will act as a bulwark against the expeditious and fallacious acts of the Unit Operator. If this bulwark is removed by a categorical denial of the Director's review powers, then Appellant, as well as all other Owners of interests lying within this and other unit areas similarly situated, will be henceforth subject to whatever action, no matter how unjustifiable or capricious, to which any Unit Operator may care to subject them.

Appellant respectfully suggests that when and if any objection is made to any Determination by the Unit Operator that the Unit Operator be required to substantiate his Determination by established petroleum engineering calculations and that if such calculations reasonably support the Operator's Determination, then that same be recognized, but, if they do not support the Determination, that same be summarily refused by the Director and any such well then placed in its proper category as a non-commercial well and operated individually by the individual Owner affected. In this manner, all portions of the Unit Agreement will be given their true and just meaning, intent and purpose and the Director will be fulfilling the function delegated to him and contemplated by the parties in the execution of the above-captioned Unit Agreement.

Based upon the foregoing contentions, Appellant respectfully requests that its Appeal from the Decision of the Director of the United States Geological Survey be confirmed and that such Decision of the Director be reversed and overruled and

that appropriate instructions be issued to the Director to the end that the aforementioned Determination may be properly rejected.

Respectfully submitted,

TURNER, WHITE, ATWOOD, McLANE and FRANCIS

By _____
William G. Webb
Attorneys for Appellant
PUBCO DEVELOPMENT, INC. (N.S.L.)

Copies of the foregoing Brief in Support of Appeal have been mailed by registered mail this 29th day of May, 1954, to the Supervisor of the United States Geological Survey at Roswell, New Mexico, the Commissioner of Public Lands of the State of New Mexico at Santa Fe, New Mexico, the Oil Conservation Commission of the State of New Mexico at Santa Fe, New Mexico, all Working Interest Owners within the captioned Unit Area and the Unit Operator under the captioned Unit Agreement.