

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LEA

FIFTH JUDICIAL DISTRICT
CLERK OF DISTRICT COURT
LEA COUNTY, NEW MEXICO

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Michael L. Klein,
John H. Hendrix, John H.
Hendrix Corporation, Ronnie
H. Westbrook,

Petitioners,

v.

New Mexico Oil Conservation
Commission and Robert E.
Chandler Corporation

Respondents.

CV 86-1061 FR
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PETITION FOR REVIEW OF A DECISION OF THE
NEW MEXICO OIL CONSERVATION COMMISSION

Petitioners state:

1. This Petition is brought pursuant to the provisions of Section 70-2-25, NMSA, 1978 Compilation for review of a decision of the Respondent, Oil Conservation Commission (hereinafter Commission).

2. Petitioners are adversely affected by such decision of the Commission.

3. On October 3, 1985, on the Application of Respondent, Robert E. Chandler Corporation (hereinafter Chandler), the New Mexico Oil Conservation Division (hereinafter Division) entered its compulsory pooling Order No. R-8047, pooling the NE/4 SW/4 of Section 7, Township 23 South, Range 38, NMPM, Lea County, New Mexico (hereinafter

pooled unit). A copy of Order No. R-8047 is attached hereto as Exhibit A and incorporated herein by reference.

4. Petitioners hold and own a net profits interest within the pooled unit.

5. On May 9, 1986, the Division entered its Order No. R-8047-A, on the Application of Chandler, amending Order No. R-8047 to clarify the treatment of various interests included in the pooled unit. A copy of Order R-8047-A is attached hereto as Exhibit B and incorporated herein by reference.

6. On June 13, 1986, upon the Application of Petitioners, the Division entered its Order R-8047-B staying Division Orders Nos. R-8047 and R-8047-A in their entirety. A copy of Order R-8047-B is attached hereto as Exhibit C and incorporated herein by reference.

7. On August 22, 1986, the Commission, upon the Application of Petitioners for a hearing de novo, issued its Order No R-8046-C. A copy of Order No. R-8047-C is attached hereto as Exhibit D and incorporated herein by reference.

8. On September 10, 1986, Petitioners filed their Motion for Rehearing of Order No. R-8047-C which motion was refused by the Commission by failing to act on the motion. A copy of Motion for Rehearing is attached hereto as Exhibit E and incorporated herein by reference.

9. Petitioners have exhausted their administrative remedies before the Commission and now seek judicial review of the Commission's decision in Order R-8047-C.

10. Petitioners' net profits interest in the pooled unit is not a working interest or other operating interest pursuant to Section 70-2-17 (C) NMSA, 1978 Compilation under which a risk penalty may be assessed by the decision of the Commission.

11. Petitioners' interest in the pooled unit is a carried interest whereby Petitioners are not required to pay their proportionate share of well costs in advance of drilling and completing the proposed well; in order to prevent assessment of the risk penalty, the decision of the Commission requires Petitioners to pay their proportionate share of well costs in advance.

12. The Commission lacks authority and jurisdiction to subject Petitioners' interest to any cost, or other expense, including the risk penalty under the decision of the Commission, which is not specifically covered by the instrument creating Petitioners' net profits interest.

13. The action of the Commission in issuing its decision constitutes an unlawful and unconstitutional taking of property without just compensation because such action impermissibly changes the nature of the Petitioners' interest from a carried interest to a full working or operating interest.