

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 13555  
ORDER NO. R-12438**

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR  
ADOPTION OF A NEW RULE CONCERNING INFILL WELLS AND  
COMPULSORY POOLED UNITS**

**ORDER OF THE COMMISSION**

**BY THE COMMISSION:**

**THIS CASE** came on for hearing at <sup>9:00</sup>~~8:15~~ a.m. on September 15, 2005, at Santa Fe, New Mexico, before the Commission Chairman Mark E. Fesmire, Commissioner Jami Bailey and Commissioner Frank T. Chavez.

**NOW**, on this 14<sup>th</sup> day of October 2005, the Commission, having considered the testimony, reviewed the submitted exhibits and the record,

**FINDS THAT:**

- (1) Due public notice has been given, and the Commission has jurisdiction of this case and of the subject matter.
- (2) The New Mexico Oil Conservation Division (hereinafter, "Applicant") seeks an order amending OCD Rule 7.W [19.15.1.7.W. NMAC] defining "working interest" of the Rule of the Division and adoption of a new Rule 36 [19.15.1.36 NMAC] to provide for proposal and drilling of infill wells within spacing units pooled by order of the Division or of the Commission.
- (3) The proposed Rule 36 was formulated by a workgroup constituted by the Division to study the issue of infill wells in compulsory pooled units. The workgroup was composed of representatives of operators, including large and small operators and operators in various parts of the state. The proposed Rule 36 represents the consensus of the group.

- (4) The Division invited representatives of other stakeholders, as well as industry groups, to a public workshop to consider this proposal. No significant opposition surfaced.
- (5) The Division, by timely notice, invited public comment on these proposals, but received none.
- (6) No person other than the Division appeared at the hearing.
- (7) Proposed Rule 36 will encourage full development of the State's oil and gas resources in accordance with spacing rules, prevent waste and protect correlative rights, and should be adopted.
- (8) The proposed amendment of Rule 7W could create confusion concerning the rights and responsibilities where government agencies own unleased interests. As the amendment of Rule 7W is not necessary to achieve the goals of proposed Rule 36, the amendment to Rule 7W ought not to be adopted.

**IT IS THEREFORE ORDERED THAT:**

- (1) Pursuant to the application of the New Mexico Oil Conservation Division, proposed rule 19.15.1.36 NMAC, as amended by the Commission, shall be and hereby is **ADOPTED** in its entirety, as set out in the attached Exhibit A.
- (2) The application of the New Mexico Oil Conservation Division to amend 19.15.1.7.W.NMAC is hereby **DENIED**.
- (3) Jurisdiction of this case is retained for the entry of such further orders as may be deemed necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



S E A L

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E., CHAIR

A handwritten signature in black ink, appearing to read "Jami Bailey".

JAMI BAILEY, CPG, MEMBER

BILL OLSON, MEMBER

**Exhibit A**

**19.15.1.36 COMPULSORY POOLING. SUBSEQUENT OPERATIONS.**

A. Definitions. For purposes of 19.15.1.36 NMAC only:

(1) Operator shall mean the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

(2) Infill well shall mean a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

(3) Pooled working interest shall mean a working interest or unleased mineral interest that is pooled by order of the division or commission and not by voluntary agreement of the owner thereof, except for an unleased mineral interest on federal, state or tribal lands.

B. Subsequent operations. Whenever 19.15.3.104 NMAC or any applicable pool rule authorizes one or more infill wells within a proration or spacing unit pooled by order of the division or the commission pursuant to Section 70-2-17 NMSA 1978, either the operator or any owner of a pooled working interest may, at any time after completion of the initial well provided in the pooling order, propose drilling of an infill well.

C. Proposal by the operator. If the operator proposes an infill well, it shall give notice of such proposal to each pooled working interest owner by certified mail, return receipt requested, specifying the location and depth of the proposed well and including therewith a schedule of estimated well costs and a statement of each pooled working interest owner's gross working interest percentage. Each pooled working interest owner may elect to participate in the proposed infill well by notice in writing to the operator within 30 days after such owner receives the proposal, provided that such election to participate shall not be effective unless the owner so electing pays to the operator the amount of such owner's share of estimated well costs within 30 days after the date of transmission of its notice of election to participate. Any pooled working interest owner not electing to participate in the proposed infill well as above provided shall be deemed to have elected to become a non-consenting owner with respect to the infill well. The operator shall withhold from the proceeds of production of such well accruing to the working interest of any non-consenting owner such non-consenting owner's share of well costs, as defined in 19.15.1.35 NMAC, of such infill well, together with a risk charge computed at the same rate as provided in the pooling order with respect to the initial well. The operator shall distribute the amounts withheld from the non-consenting owner's share of production for well costs and risk charges proportionately to the persons who have advanced the cost of the infill well. Unless it withdraws the proposal the operator shall commence drilling of the proposed infill well no later than 120 days after the expiration of the initial notice period of 30 days. The division director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for such extension, without notice or hearing. If the operator has not commenced drilling within the time provided no election previously made shall be binding on any party. If the operator still desires to drill such infill well, it must resubmit written notice proposing the well as if no prior proposal had been made.

D. Proposal by pooled working interest owner. If a pooled working interest owner proposes an infill well, it shall give written notice of such proposal to the operator by certified mail, return receipt requested, specifying the location and depth of the proposed well and including therewith a schedule of estimated well costs. The proposing owner shall mail a copy of such proposal to each of the other pooled working interest owners, or their successors in title as identified by documents of record in the office of the clerk of the county where the proposed well will be located, at the same time that it mails such proposal to the operator. The operator shall, within 60 days after receipt of such notice, either propose an infill well at the specified location and depth as an operator proposal pursuant to Subsection C of 19.15.1.36 NMAC, or

notify the owner proposing the well that it declines to do so. If the operator proposes the well and less than all working interest owners elect to participate, the operator may withdraw the proposal unless the originally proposing owner, within thirty days of receipt of notice of such occurrence, advances the share of estimated well costs allocable to all non-consenting owners of pooled working interests. If the operator proposes the well and (1) all owners consent thereto or (2) the originally proposing owner advances the share of well costs allocable to any otherwise unsubscribed interest, the operator shall commence drilling the proposed infill well within 120 days after it receives notice that either such condition has occurred. The division director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for such extension, without notice or hearing. Well costs applicable to any non-consenting owner of a pooled working interest, together with the risk charge provided in the original pooling order, shall be recoverable out of the non-consenting owner's share of production as in other cases. If the operator declines to propose a well proposed to it by a pooled working interest owner, or fails to commence such well within the time provided, the proposing owner may apply to the division for an order authorizing the drilling of the proposed infill well under the terms of the compulsory pooling order. The owner filing such application shall give notice thereof as provided in 19.15.14.1210NMAC to all owners of working interests in the proration or spacing unit, including those whose interests in the proration or spacing unit are pooled by agreement, and, if the proration or spacing unit includes federal or state minerals, to the United States bureau of land management and the state land office, as applicable.

E. Refund of money advanced. If the operator does not commence an infill well proposed pursuant to 19.15.1.36NMAC within the time provided, including any extension allowed by the division, it shall refund any amounts it has received from any pooled party as advance payment of well costs for such well within 10 days after the expiration of the time provided for commencement of drilling, together with interest thereon calculated at the rate of bank of America prime plus three percentage points.

F. Determination of reasonable costs. The provision of the applicable compulsory pooling order regarding reporting of actual well costs to the division and to pooled working interest owners, opportunity for objections thereto, determinations of reasonableness of well costs and adjustment of the amount paid to any participating pooled working interest owner to reflect reasonable well costs shall apply to any well drilled pursuant to 19.15.1.36 NMAC.