

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

**APPLICATION OF FLAT CREEK RESOURCES, LLC  
FOR APPROVAL OF A NON-STANDARD HORIZONTAL  
SPACING UNIT AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**Case No. 25255**

**LEGAL BRIEF**

No provision of the Oil and Gas Act (“Act”) or the Division rules prohibits pooling over a depth severance. Rather, the Division has broad authority “over all matters relating to the conservation of oil and gas.” NMSA 1978, § 70-2-6 (1979). In exercising its authority, the Division is

*empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of [the Act], whether or not indicated or specified in any section hereof.*

In *Viking Petroleum, Inc. v. Oil Conservation Comm'n of State of N.M.*, 1983-NMSC-091, ¶ 21, 100 N.M. 451, our Supreme Court recognized that the Division has discretion to pool over multiple zones and determine whether participation can be elected in less than all zones. *Id.* (“The granting or refusal to grant forced pooling of multiple zones with an election to participate in less than all zones, the amount of costs to be reimbursed to the operator, and the percentage risk charge to be assessed, if any, are determinations to be made by the Commission on a case-to-case basis and upon the particular facts in each case.”) Indeed, in 2015, the Division refused to approve applications that sought to pool one depth-severed interval within a formation. *See* Order No. R-13823-A at 2, ¶¶ 5(b), 6; *id.* at 3, ¶ 8; *see also id.* at 2, ¶ 7 (“[T]here is no Division rule allowing

the vertical subdivision or contraction of a Spacing Unit.”); *accord* Order No. R-14023 at 2, ¶ 5(g); *id.* at 3, ¶ 9.

Notably, Flat Creek is not asking the Division to pool over a depth severance. Although a depth severance exists for interests held by Flat Creek and one other entity, Flat Creek did not ask the Division to force pool over the depth severance because there is a voluntary agreement between the two owners with a depth severance (Flat Creek and one other owner). Thus, we are not seeking to forcepool the only other interest owner with a depth severance. We are only seeking to pool interest owners who have an interest in the entire Bone Spring. Allocation of production is on a surface acreage basis for all of the parties being forcepooled. The Division will therefore be in compliance with Section 70-2-17(C) by approving the application. For the same reason, any subsequent proceeding to forcepool additional owners will not create an issue because the Division is not forcepooling over a depth severance. Rather, there is a voluntary agreement governing the depth severance between the only parties with an interest affected by the depth severance.

Section 70-2-17 recognizes that “the owner of each property in a pool” is not guaranteed an allocation of production: “[T]he division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas . . . in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas . . . under such property bears to the total recoverable oil or gas . . . in the pool . . .” *See Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 70 N.M. 310 (stating that the right of a property owner under Section 70-2-17(A) “is not absolute or unconditional”). Thus, pooling over the depth severance is not precluded by Section 70-2-17,

particularly when the parties with an interest in the depth-severed interest have a voluntary agreement.

Section 70-2-17(C) expressly provides that if the owners have not agreed to pool their interests, the Division “*shall pool* all or any part of such lands or interests or both in the spacing or proration unit as a unit” when one owner “has drilled or proposes to drill a well on said unit.” That is the case here. The application should therefore be approved, in order to prevent waste and protect correlative rights.

Respectfully submitted,

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