

Entered January 4, 1978  
JLR

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

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

CASES NOS. 6017 DE NOVO  
6035 DE NOVO  
6036 DE NOVO  
Order No. R-5579-A

APPLICATION OF E. L. LATHAM, JR. AND ROY G. BARTON, JR.  
FOR COMPULSORY POOLING OR 40-ACRE SPACING, LEA COUNTY,  
NEW MEXICO; AND, APPLICATION OF SOUTHERN UNION SUPPLY  
CO., FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 1 p.m. on December 27, 1977,  
at Santa Fe, New Mexico, before the Oil Conservation Commission  
of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 4th day of January, 1978, the Commission,  
a quorum being present, having considered the testimony  
presented and the exhibits received at said hearing, and being  
fully advised in the premises,

FINDS:

(1) That due public notice having been given as required  
by law, the Commission has jurisdiction of this cause and the  
subject matter thereof.

(2) That upon receipt of the application of E. L. Latham,  
Jr., and Roy G. Barton, Jr., hereinafter referred to as Latham  
& Barton, for an order pooling all mineral interests underlying  
the E/2 NE/4 of Section 30, Township 9 South, Range 33 East,  
NMPM, Flying M-San Andres Pool, Lea County, New Mexico, the  
Commission set the same for hearing as Case No. 6017 on  
August 31, 1977.

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(3) That subsequent to receiving the application of Latham & Barton, the Commission received the application of Southern Union Supply Co., hereinafter referred to as Southern Union, for an order pooling all mineral interests in the San Andres formation underlying the N/2 NE/4 of Section 30, Township 9 South, Range 33 East, NMPM, Flying M-San Andres Pool, Lea County, New Mexico, and set the same for hearing as Case No. 6035 on September 14, 1977.

(4) That, subsequent to receiving the application of Southern Union, the Commission received the application of Latham & Barton for an order pooling all mineral interests in the Flying M-San Andres Pool underlying the E/2 NE/4 of Section 30, Township 9 South, Range 33 East, Lea County, New Mexico, to be dedicated to a well to be drilled at an unorthodox location for said pool within 200 feet of the center of the NE/4 NE/4 of said Section 30, or an order pooling only the NE/4 NE/4 of Section 30 to form a non-standard 40-acre unit to be dedicated to the aforesaid well, or in the alternative, the amendment of the Flying M-San Andres Pool Rules to provide for 40-acre spacing, and an order pooling the aforesaid NE/4 NE/4 of Section 30 as a standard unit for said pool to be dedicated to a well to be drilled at a standard location thereon, and set the same for hearing as Case No. 6036 on September 14, 1977.

(5) That at the August 31, 1977, hearing of Case No. 6017, said case was continued to the September 14, 1977, Examiner hearing so that Case No. 6017, Case No. 6035 and Case No. 6036 could be heard at the same time.

(6) That these matters came on for hearing at 9:00 a.m. on September 14, 1977, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

(7) That Cases 6017, 6035 and 6036 were consolidated, testimony was heard by the Commission examiner concerning each case, and, pursuant to said hearing, Commission Order No. R-5569 was entered on November 22, 1977, approving the application of Latham & Barton for compulsory pooling of all mineral interests in the San Andres formation underlying the E/2 NE/4 of said Section 30 and the drilling of a well at an unorthodox location in the NE/4 NE/4 of said Section, within the Flying M-San Andres Pool, and denying or dismissing all other applications considered in the consolidated cases.

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(8) That on December 9, 1977, application for hearing DE NOVO was made by Southern Union and the matter was set for hearing before the Commission.

(9) That the matter came on for hearing De Novo on December 27, 1977.

(10) That the evidence presented was insufficient to prove either the necessity for or the propriety of the amendment of the Special Rules and Regulations for said Flying M-San Andres Pool and that that part of the application in Case No. 6036 should be denied.

(11) That the evidence presented demonstrated that, due to the existing pattern of development, the correlative rights of the interest owners under the NE/4 NE/4 of said Section 30 cannot be protected unless a well is drilled thereon, and that portion of Case No. 6017 relating to a standard location for the Flying M-San Andres Pool, in the SE/4 NE/4 of Section 30 should be dismissed.

(12) That while the applicants, Latham & Barton, were the only applicants originally seeking to drill a well within the NE/4 NE/4 of said Section 30, Southern Union amended its application at the hearing and now also seeks to drill a well at said unorthodox location and such location should be approved.

(13) That the evidence presented was insufficient to prove either the necessity for or the propriety of the granting of a non-standard oil proration unit in said Flying M-San Andres Pool consisting of the NE/4 NE/4 of said Section 30 and that part of the application in Case No. 6036 should be denied.

(14) That the entire NE/4 of said Section 30 may reasonably be presumed to be capable of the production of oil from the San Andres formation.

(15) That contradictory expert testimony was presented attempting to show that each of the two proposed 80-acre pooling units (N/2 NE/4 and E/2 NE/4 of said Section 30) was a more logical drilling unit geologically.

(16) That such geologic testimony was largely interpretive in nature and did not conclusively prove the geologic superiority of either of the two proposed 80-acre pooling units.

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(17) That the special rules and regulations for said Flying M-San Andres Pool would permit the establishment of standard 80-acre oil proration units consisting of the E/2 NE/4 (Tract 1) and the W/2 NE/4 (Tract 2), or the N/2 NE/4 (Tract 3) and the S/2 NE/4 (Tract 4) of said Section 30.

(18) That the percentage working interest ownership under each of the standard 80-acre oil proration units described in Finding No. (17) above is as follows:

<u>OWNER</u>	<u>TRACT NO.</u>			
	1	2	3	4
Latham & Barton	73.44%	0%	23.44%	50.00%
Southern Union	0%	78.13%	40.62%	37.50%
Shell Oil Co.	26.56%	21.87%	35.94%	12.50%

(19) That Section 65-3-10, NMSA 1953 Compilation, requires in part that the Commission protect correlative rights.

(20) That Section 65-3-29 (H), NMSA 1953 Compilation defines correlative rights as follows:

"Correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy."

(21) That approval of the application of Latham & Barton for an order pooling all mineral interests underlying the E/2 NE/4 of said Section 30 in said Flying M-San Andres Pool and for an unorthodox oil well location within 200 feet of the center of the NE/4 NE/4 of said Section 30 will afford the various owners of interest under the E/2 NE/4 of said Section 30 the best opportunity to produce their just and equitable share of the oil in the subject pool, thereby

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protecting the correlative rights of such owners, and will not result in waste.

(22) That the owners of mineral interests under the W/2 NE/4 of said Section 30 in said Flying M-San Andres Pool may protect their correlative rights under such tract by drilling and completing a well or wells thereon.

(23) That Latham & Barton object to the pooling of their working interest under the NE/4 NE/4 with the NW/4 NE/4 (under which they have no interest) to form an 80-acre oil proration unit in said Flying M-San Andres Pool.

(24) That the application of Latham & Barton in Case No. 6017 for the pooling of all mineral interests under the E/2 NE/4 of said Section 30 is for approval of an 80-acre proration unit which would permit Latham & Barton to develop the acreage in which they have a 73.44 percent working interest and in which Southern Union has no working interest, and, due to the absence of any conclusive geologic evidence against such pooling or any conclusive evidence that such pooling will violate correlative rights or cause waste, such application should be approved.

(25) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(26) That the applicants, Latham & Barton, should be designated the operator of the subject well and unit.

(27) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(28) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 25 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(29) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

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(30) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(31) That \$1,000.00 per month while drilling and \$125.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(32) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(33) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 31, 1978, the order pooling said unit should become null and void and of no effect whatsoever.

(34) That the application of Southern Union in Case No. 6035 for an order pooling all mineral interests in the San Andres formation underlying the N/2 NE/4 of said Section 30 in said Flying M-San Andres Pool should be denied.

IT IS THEREFORE ORDERED:

(1) That the application of E. L. Latham, Jr., and Roy G. Barton, Jr., in Case No. 6036 for an amendment of the Special Rules and Regulations for the Flying M-San Andres Pool, Lea County, New Mexico, to provide for a change from 80-acre spacing units to 40-acre spacing units is hereby denied.

(2) That the application of E. L. Latham, Jr., and Roy G. Barton, Jr., in Case No. 6036 for approval of a 40-acre non-standard oil proration unit consisting of the NE/4 NE/4 of Section 30, Township 9 South, Range 33 East, Flying M-San Andres Pool, Lea County, New Mexico, is hereby denied.

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(3) That that portion of the application of E. L. Latham, Jr., and Roy G. Barton, Jr., in Case No. 6017 relating to a standard Flying M-San Andres Pool location in the SE/4 NE/4 of said Section 30 is hereby dismissed.

(4) That the application of Southern Union Supply Co. in Case No. 6035 for an order pooling all mineral interests in the San Andres formation underlying the N/2 NE/4 of said Section 30 in said Flying M-San Andres Pool to be dedicated to a well to be drilled in the NW/4 NE/4 of said Section is hereby denied.

(5) That all mineral interests, whatever they may be, in the San Andres formation underlying the E/2 NE/4 of Section 30, Township 9 South, Range 33 East, NMPM, Flying M-San Andres Pool, Lea County, New Mexico, are hereby pooled to form a standard 80-acre oil spacing and proration unit to be dedicated to a well to be drilled at an unorthodox location within 200 feet of the center of the NE/4 NE/4 of said Section 30.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 31st day of March, 1978, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the San Andres formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 31st day of March, 1978, Order (5) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (5) of this order should not be rescinded.

(6) That E. L. Latham, Jr., and Roy G. Barton, Jr., are hereby designated the operator of the subject well and unit.

(7) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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(8) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(9) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(10) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(11) That the operator is hereby authorized to withhold the following costs and charges from production:

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 25 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.



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(12) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(13) That \$1,000.00 per month while drilling and \$125.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(14) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(15) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(17) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

PHIL R. LUCERO, Chairman

  
EMERY C. ARNOLD, Member

  
JOE D. RAMEY, Member & Secretary

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