

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

*CASE NO. 10432
ORDER NO. R-6388-B*

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION ON
ITS OWN MOTION TO CONSIDER
AMENDMENTS TO ITS SPECIAL RULES AND
PROCEDURES FOR THE DESIGNATION OF
"TIGHT FORMATIONS," PROMULGATED BY
DIVISION ORDER NO. R-6388-A.**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 9, 1992, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 31st day of March, 1992 the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) By Order No. R-6388, dated June 30, 1980, the New Mexico Oil Conservation Division first promulgated its "Special Rules and Procedures for Tight Formation Designation Under Section 107 of the Natural Gas Policy Act of 1978" which was predicated upon the interim regulations issued February 20, 1980, by the Federal Energy Regulatory Commission (FERC) and was intended to be amended should the final regulations promulgated by the FERC differ substantially from the aforementioned interim regulations.

(3) By Order No. R-6388-A, dated February 10, 1981, the Division re-promulgated said special rules as the results of FERC Order No. 99, issued August 15, 1980, which incorporated those differences in the final rule from the interim regulations.

(4) Since the inception of said rules the Division has entertained thirty-six cases calling for the designation of tight formation areas throughout the state. At the time of this hearing twenty-nine areas have been designated by the FERC. All but two of these approved areas were designated on or before January 18, 1985, when the "incentive" to file for a tight formation area was essentially pricing. Coincidentally, applications for tight formation areas in New Mexico all but ceased about this time.

(5) Since the Federal Revenue Reconciliation Act of 1990 was signed into law on November 5, 1990, which revised the federal tax code allowing for a tax credit on tight formation gas even if the price for such gas is unregulated, five applications for tight formation designations have been filed with the Division.

(6) Procedures in the way the FERC reviews such final determinations submitted by the various state jurisdictional agencies when said areas contain lands administered by the U.S. Bureau of Land Management ("BLM") have evidently changed in the interim.

(7) Current procedures require both the State Jurisdictional Agency and the reviewing BLM office to concur on the area to be designated prior to submittal to the FERC. This change, unbeknownst to the Division, has led to a certain amount of confusion, misunderstanding, delay and waste of time for the applicant, Division, FERC and BLM in the processing of the last five tight formation applications.

(8) The procedures now in effect for initial review of such areas through the Division's hearing and ordering process are very ineffective and cumbersome when such concurrence with the BLM can only be obtained after the Division has issued a determination based on evidence submitted by an applicant at a hearing.

(9) To rectify this situation, a procedure should be adopted allowing the Division to review such applications along with the BLM more freely and to enter into a negotiable stance either with the applicant and/or the BLM in mediating an area to be submitted to the FERC for final review.

(10) The Division at this time proposes to place the previous Rules and Procedures for Tight Formation Designations, Order No. R-6388-A, in abeyance until further notice and to adopt an administrative procedure allowing for a more flexible approach in reviewing such applications and to amend said procedures to include any changes or amendments to the process in which the FERC, Internal Revenue Service, or any other federal entity sees fit to do so from time to time. Said procedures will therefore not be incorporated into this order.

IT IS THEREFORE ORDERED THAT:

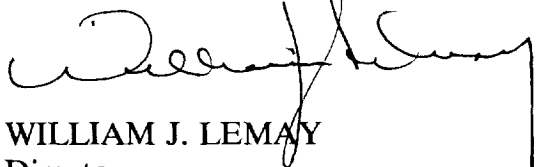
(1) The "Special Rules and Procedures for Tight Formation Designation Under Section 107 of the Natural Gas Policy Act of 1978", as promulgated by Division Order No. R-6388-A, dated February 10, 1981, is hereby placed in abeyance until further notice and upon a hearing to reinstate said provisions.

(2) An administrative procedure to allow for more flexibility shall be adopted concomitantly by the Division at this time and shall be amended from time to time as applicable to laws enacted which effect said process.

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY
Director

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