

Entered August 22, 1983
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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 7922
Order No. R-7335

APPLICATION OF RIO PECOS CORPORATION
INC. FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on July 20, 1983, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 22nd day of August, 1983, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

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

(2) That the applicant, Rio Pecos Corporation, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 2, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well at a standard location thereon.

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

(5) That the evidence establishes that after receiving notice of the subject compulsory pooling application, Ralph Nix and Loneta Curtis created a 50 percent overriding royalties burden on their interest to Ralph Nix, Jr. and Sarah Garretson, their son and daughter, respectively, in the NE/4 NW/4 of said Section 2.

(6) That the evidence presented established that all other working interest owners in the N/2 of said Section 2 had voluntarily agreed to a 6.25 percent overriding royalty interest.

(7) That the evidence established that a reasonable overriding royalty interest in this proration and spacing unit would be not in excess of 12.5 percent.

(8) That for each \$800.00 of income attributable to a well which might be drilled and completed on the N/2 of said Section 2 under terms of this order, the operator would receive, exclusive of expenses and taxes, \$37.50 attributable to the NE/4 NW/4.

(9) That as to any comparable 40-acre tract comprising the N/2 of said Section 2, the operator would receive \$81.25.

(10) That if the owners in the NE/4 NW/4 of said Section 2 proved to be non-consenting participants in the proposed well, the payout period for their interest in well costs would be 76 percent longer than for comparable interests in other tracts in the N/2 of said section.

(11) That it would not be just and reasonable to require the owners of participating interests in the proposed proration and spacing unit to bear extra costs and risks associated with well cost payout requiring 76 percent more time than others in the unit.

(12) That the smaller share of operating income attributable to the NE/4 NW/4 of said Section 2 could result in operating expenses exceeding operating income as to said tract while the rest of the unit was being operated profitably.

(13) That compulsorily pooling the proposed proration unit under such conditions would not be just or reasonable.

(14) That to compulsorily pool the entire N/2 of said Section 2 would cause the operator of the well to bear an unreasonable, and therefore unnecessary, cost burden as to that portion of the proration unit bearing said 50 percent overriding royalty.

(15) That in order to protect correlative rights, prevent waste, and to avoid compulsory pooling under terms that are not just or reasonable, any compulsory pooling order issuing in this case should provide for voluntary reduction of the overriding royalty for the NE/4 NW/4 to a reasonable figure,

within a reasonable time, or for the pooling of the N/2 of said Section 2 exclusive of the NE/4 NW/4.

(16) That, subject to conditions contained in Finding No. (15) above, to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any Wolfcamp or Pennsylvanian Pool lying under the proposed proration unit, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(17) That as requested by the applicant, Costa Resources, Inc., should be designated the operator of the subject well and unit.

(18) 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.

(19) That any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(20) 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.

(21) That following determination of reasonable well costs, any non-consenting working interest owner who 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.

(22) That \$4,000.00 per month while drilling and \$400.00 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.

(23) 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.

(24) 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 December 1, 1983, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 2, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 1st day of December, 1983, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Pennsylvanian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of December, 1983, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division 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 Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Costa Resources Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish to the Division; Ralph Nix, Loneta Curtis, Ralph Nix, Jr., and Sarah Garretson, and any other known working interest owner an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to Ralph Nix, Jr. and Sarah Garretson, each shall make an election to voluntarily reduce their share of the 50 percent overriding royalty to an overriding royalty not in excess of a total 12.5 percent for their 40 acre lease and that in the event they do not make that election, the NE/4 NW/4 of said Section 2 shall be excluded from the proration and spacing unit and the Division shall automatically approve the unit as a non-standard proration and spacing unit consisting of all of the N/2 of Section 2 except the NE/4 NW/4.

(5) That the operator shall notify the Division of the decision of Ralph Nix, Jr. and Sarah Garretson requesting approval of the non-standard proration unit if said parties chose to not amend their overriding royalty interest.

(6) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner participating in the well under terms of this order 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.

(7) That the operator shall furnish the Division 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 Division and the Division 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 Division will determine reasonable well costs after public notice and hearing.

(8) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner who 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.

(9) 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, 200 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.

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

(11) That \$4,000.00 per month while drilling and \$400.00 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.

(12) 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.

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

(14) That all proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

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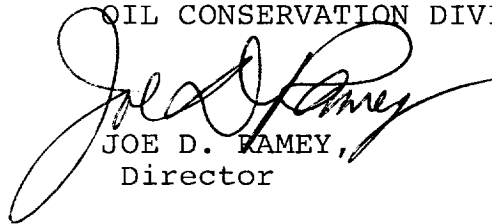
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(15) That jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



JOE D. FAMEY,
Director

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