

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

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

CASE NO. 10346
ORDER NO. R-9584

**APPLICATION OF BHP PETROLEUM
(AMERICAS), INC. FOR COMPULSORY
POOLING, SAN JUAN COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on July 25, 1991, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 23rd day of September, 1991 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) Division Case Nos. 10345 and 10346 were consolidated at the time of the hearing for the purpose of testimony.
- (3) The applicant, BHP Petroleum (Americas), Inc. ("BHP"), seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the E/2 of Section 23, Township 29 North, Range 13 West, NMPM, San Juan County, New Mexico, forming a standard 320-acre gas spacing and proration unit for said pool. Said unit is to be dedicated to its existing Gallegos Canyon Unit Well No. 391 located in Unit A of said Section 23.
- (4) There is one working interest owner in the proposed proration unit who has not agreed to pool her interest.

(5) Louise Y. Locke dba Locke-Taylor Drilling Company ("Locke") owns the oil and gas leasehold rights from the surface to the base of the Pictured Cliffs formation underlying the N/2 of said Section 23.

(6) Ms. Locke also operates the Tycksen Well No. 1 located 990 feet from the North and East lines (Unit A) of said Section 23 which is open-hole completed in the West Kutz-Fruitland Sand Pool and is spaced on 160 acres.

(7) The applicant commenced the drilling of its Gallegos Canyon Unit Well No. 391, located at a standard coal gas well location 975 feet from the North line and 870 feet from the East line of said Section 23, on December 12, 1990, and drilled said well to a depth of 1370 feet to test the Basin-Fruitland Coal Gas Pool.

(8) Because the applicant was unable to reach terms with Louise Locke it ceased all operations on the No. 391 well, and said well has not yet been completed.

(9) At the time of the hearing Locke appeared through legal counsel and provided technical evidence to support her objection to this application on the following basis:

- (a) BHP had no right to drill the Gallegos Canyon Unit Well No. 391 in the NE/4 of Section 23;
- (b) Completion of the Gallegos Canyon Unit Well No. 391 will effect the producing capabilities of the Tycksen Well No. 1 which is only 121 feet from the subject well; and,
- (c) Should the application be granted, a risk penalty of 23 percent should be imposed on the uncommitted interests within the designated E/2 proration unit.

(10) All of said Section 23 is within the Basin-Fruitland Coal Gas Pool which is governed by special rules and regulations as promulgated by Division Order No. R-8768, as amended. Said rules provide for 320-acre spacing and restricted well location requirements to either the NE/4 or SW/4 of a section.

(11) The SE/4 of said Section 23 is committed to the Gallegos Canyon Unit ("the GCU"), and the applicant is the suboperator of the GCU as to formations from the surface to the base of the Pictured Cliffs formation, which includes the Fruitland Coal interval.

(12) In addition, the working interest of the E/2 NE/4, SW/4 NE/4 and 13 acres in the southern portion of the NW/4 NE/4 of said Section 23 is committed to the GCU, and thus the applicant as GCU suboperator has the right to drill and operate the No. 391 well in the Basin-Fruitland Coal Gas Pool. Furthermore the applicant has the right to orient the spacing and proration unit as an E/2 standup unit, as permitted by said Order No. R-8768, as amended.

(13) Both the Basin-Fruitland Coal Gas Pool and West Kutz-Fruitland Sand Pool are distinct and separate reservoirs and are designated as such under the applicable rules of the Oil Conservation Division. Further, any gas well, including the Tycksen Well No. 1 and Gallegos Canyon Unit Well No. 391, must be operated and completed in such a manner as to prevent communication within the wellbore of production with any other specific pool or horizon.

(14) Any commingling or confusion of production is strictly prohibited and would be a violation of General Rule 303 and the provisions set forth by said Order No. R-8768, as amended.

(15) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford the owner of each interest in said spacing and proration unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(16) The applicant should be designated the operator of the subject well and unit.

(17) 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.

(18) BHP requested a standard Basin-Fruitland Coal Gas penalty of 156 percent be imposed on the interest of Locke should she not voluntarily participate in the drilling of the well.

(19) The 156 percent penalty that the Division has applied in orders force pooling tracts in the Basin-Fruitland Coal Gas Pool is based on a penalty calculation presented by Meridian Oil, Inc. in prior cases involving the pooling of Basin-Fruitland Coal Gas interests. Unlike this case, the wells had not already been drilled, which further reduces the risk in this matter.

(20) Based on evidence presented at the hearing and utilizing the criteria established in previous Division compulsory pooling orders imposing risk penalties on Basin-Fruitland Coal Gas wells, neither the 156 percent factor requested by BHP nor the 23 percent requested by Locke are appropriate in this case. A risk penalty of 101 percent properly reflects the risk in this particular situation.

(21) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of reasonable well costs plus an additional 101 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

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

(23) 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.

(24) \$3300.00 per month while drilling and \$350.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); 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.

(25) 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.

(26) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect.

(27) The operator of the well and unit should notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the Basin-Fruitland Coal Gas Pool, underlying the E/2 of Section 23, Township 29 North, Range 13 West, NMPM, San Juan County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit for said pool.

(2) Said unit shall be dedicated to the existing Gallegos Canyon Unit Well No. 391 located at a standard coal gas well location 975 feet from the North line and 870 feet from the East line (Unit A) of said Section 23.

(3) BHP Petroleum (Americas), Inc. is hereby designated the operator of the subject well and unit.

(4) Within 30 days after the effective date of this order the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(5) 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 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.

(6) Any non-consenting working interest owner may, at least 45 days after receiving the schedule of actual well costs but not more than 90 days after such receipt, file with the Division an objection to such costs; if no objection to the actual well costs is received by the Division and the Division has not objected within the period from at least 45 to 90 days following receipt of said schedule, the actual well costs shall be reasonable well costs; provided however, if there is an objection to actual well costs within the aforesaid 45th to 90th day period, the Division will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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; and
- (B) As a charge for the risk involved in the drilling of the well, 101 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.

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

(10) \$ 3300.00 per month while drilling and \$350.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); 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.

(11) Any unleased 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.

(12) 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.

(13) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; 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.

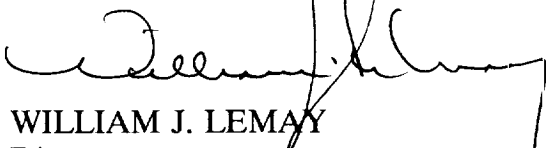
(14) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(15) The operator of the subject well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

(16) 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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