

**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. 10615
Order No. R-9811**

**APPLICATION OF PRO NEW MEXICO INC.
FOR A NON-STANDARD GAS PRORATION
UNIT OR, IN THE ALTERNATIVE, 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 December 3, 1992, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 18th day of December, 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) The applicant, Pro New Mexico, Inc., seeks an exception to Rule No. (4) of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, as promulgated by Division Order No. R-8768, as amended, approving the creation of a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5, Township 25 North, Range 11 West, NMPM, San Juan County, New Mexico.

(3) IN THE ALTERNATIVE, the applicant seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5 forming a standard 320-acre gas spacing and proration unit for said pool.

(4) In either instance, a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet from the West line (Unit K) of Section 5 is to be dedicated to the resulting gas spacing and proration unit.

(5) The operating rights in the SW/4 of Section 5 are owned and controlled solely by the applicant. The NW/4 of Section 5 is owned by certain Navajo Indian Allottees and is administered in trust by the Bureau of Indian Affairs (BIA).

(6) *By letter dated September 21, 1992 the applicant requested that the BIA include the NW/4 of Section 5 in a competitive bid lease sale. The applicant has also requested, by letter dated October 9, 1992, that the BIA voluntarily commit the NW/4 of Section 5 to the proposed 320-acre proration unit comprising the W/2 equivalent of Section 5.*

As of the date of the hearing, the BIA has not responded to any of the requests by the applicant as cited above.

FINDING: The applicant has made a good faith effort to secure the leasehold rights within the NW/4 of Section 5 or the voluntary joinder by the BIA of said acreage in order to form a standard proration unit and provide the Indian Allottees the opportunity to participate in the production from their lands.

(7) The evidence presented indicates that extensive Basin-Fruitland Coal Gas Pool development has occurred and is occurring within the acreage offsetting the proposed proration unit.

(8) While the formation of a non-standard unit comprising the SW/4 of Section 5 would not necessarily preclude the drilling of a well on a non-standard 160-acre proration unit in the NW/4 of Section 5, it appears at the present time that such drilling may or may not ultimately occur.

(9) If the formation of a non-standard 160-acre proration unit in the NW/4 of Section 5 and the drilling of a well within said acreage does not occur, or occurs in the distant future, those interest owners within the NW/4 will be harmed by drainage from offset wells without any compensation.

(10) In order to offer the interest owners within the NW/4 of Section 5 some degree of protection of its correlative rights, the W/2 equivalent of Section 5 should be compulsory pooled thereby forming a standard 320-acre gas spacing and proration unit.

(11) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, 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 production in any pool completion resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(12) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 should be dismissed.

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

(14) At the time of the hearing the applicant requested that, subsequent to the issuance of a compulsory pooling order, the Bureau of Indian Affairs not be given an election period in which to decide to join in the drilling of the subject well.

(15) This request is based upon the necessity of drilling the subject well prior to January 1, 1993.

(16) It is not fair and reasonable to deny the Bureau of Indian Affairs the opportunity to elect to join in the drilling of the subject well subsequent to the issuance of this order, however, due to the time constraints on the drilling of the subject well, it is reasonable to reduce such election period.

(17) Within 15 days from the date the schedule of estimated well costs is furnished to it, as required by this order, the Bureau of Indian Affairs should have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(18) 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 156 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(19) Any non-consenting working 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.

(20) 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.

(21) \$4000.00 per month while drilling and \$400.00 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.

(22) 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.

(23) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before March 15, 1993, the order pooling said unit should become null and void and of no effect whatsoever.

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

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

(26) All notices to working interest owners required under the provisions of this order should be made to the Bureau of Indian Affairs.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5, Township 25 North, Range 11 West, NMPM, are hereby pooled forming a standard 320-acre gas spacing and proration unit for said pool. Said unit shall be dedicated to a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet from the West line (Unit K) of Section 5.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of March, 1993, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Basin-Fruitland Coal Gas Pool.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of March, 1993, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director 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 Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Pro New Mexico, Inc. is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and the Bureau of Indian Affairs an itemized schedule of estimated well costs.

(4) Within 15 days from the date the schedule of estimated well costs is furnished to it, the Bureau of Indian Affairs shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and if it elects to pay its share of estimated well costs as provided above it shall remain liable for operating costs but shall not be liable for risk charges.

(5) 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; 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, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well 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.

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

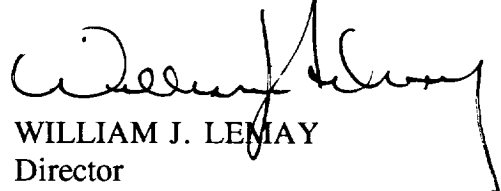
- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 15 days from the date the schedule of estimated well costs is furnished to him.
 - (B) As a charge for the risk involved in the drilling of the well, 156 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.
- (8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.
- (9) \$4000.00 per month while drilling and \$400.00 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.
- (10) 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.
- (11) 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.
- (12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately 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.
- (13) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.
- (14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 is hereby dismissed.

(16) Jurisdiction is hereby 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

S E A L