Entered March 30, 1976

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:

CASE NO. 5622
Order No. R-5186

APPLICATION OF TEXACO INC. FOR
DETERMINATION OF CHARGES AND
COSTS, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on February 4, 1976, at Santa Fe, New Mexico, before Examiner, Richard L. Stamets.

NOW, on this 30th day of March, 1976, the Commission, a quorum being present, 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 Commission has jurisdiction of this cause and the subject matter thereof.

(2) That by Order No. R-4980, dated March 11, 1975, the Commission pooled all mineral interests, whatever they may be, in the Pennsylvanian formation underlying the E/2 of Section 3, Township 18 South, Range 26 East, NMPM, Eddy County, New Mexico, to form a standard 320-acre gas spacing and proration unit to be dedicated to a well to be drilled on said unit by William G. Ross, hereinafter referred to as "Ross," who was named by said order as operator of the well and unit.

(3) That said order also provided that if any non-consenting working interest owner should not have paid to operator (Ross) his share of estimated well costs within certain specified time limits, then Ross would be authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to such non-consenting working interest owner.

(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 such non-consenting working interest owner.

(4) That subsequent to the issuance of said order, Ross did drill the A. Q. Rogers Well No. 1, located in Unit P of said Section 3, and completed the same capable of producing from the Morrow formation on August 13, 1975.

(5) That Texaco Inc., hereinafter referred to as "Texaco," did not-pay its share of estimated well costs within the specified time limits, and thereby elected to have withheld from production the costs and charges described in Finding No. (3), paragraphs (A) and (B).

(6) That pursuant to the provisions of said Order No. R-4980, Ross on November 13, 1975, did furnish to Texaco as a non-consenting working interest owner in the pooled unit and the well thereon, an itemized schedule of the actual well costs.

(7) That Order No. R-4980 provides that the actual well costs shall be reasonable well costs unless objection to such actual costs is received by the Commission. Further, that if objection to such actual costs is received, the Commission will determine reasonable well costs.

(8) That, on December 31, 1975, Texaco filed with the Commission an objection to the actual well costs submitted by Ross to Texaco.

(9) That the statement of actual costs paid to date November 13, 1975, totalled $372,650.92, in addition to which Ross listed "ADDITIONAL ESTIMATED EXPENSE[s]" totalling $16,100.00.

(10) That included in the actual costs to date are three items totalling $26,883.59, said items being:

Rental of Surface Equipment	$ 7,354.59
Gas Production Unit	14,181.00
Storage Tanks	5,348.00

(11) That Texaco does not question the reasonableness of the aforesaid costs, but does question the applicability of the 200 percent risk factor to these items, which are down-stream from the wellhead.

(12) That a fourth item included in the actual costs to date is entitled "Legal Expense to Date," and is in the amount of $1,834.24.

(13) That Texaco does not object to the applicability of the 200 percent risk factor to the aforesaid legal expense if it was incurred in the forced pooling action.

(14) That of the three items under "ADDITIONAL ESTIMATED EXPENSE[S]" totalling $16,100.00, only one item, "Legal Expense-Operating Agreements-Division Order Title Examination etc. $7,300.00," is questioned by Texaco as being a reasonable expense,

and the remaining two items are presumed to be reasonable pending actual billing and receipt of invoices.

(15) That the first two paragraphs of Section 65-3-14, subsection (c) NMSA 1953 Comp. provide that "(c) When two (2) or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the Commission, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interest or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. . . . ."

(16) That the second paragraph of aforesaid subsection (c) further provides that "Such pooling order of the Commission shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production to the parties advancing the costs of development and operation which shall be limited to the actual expenditures required for such purpose . . . . . and may include a charge for the risk involved in the drilling of such well which charge for risk shall not exceed two hundred percent (200%) of the non-consenting owner or owners' pro rata share of the cost of drilling and completing the well." [Emphasis added.]

(17) That the aforesaid second paragraph of subsection (c), in providing that the order of the Commission may include a 200 percent charge for the risk involved in the drilling of such well, and also providing for withholding actual expenditures required for such purpose, is obviously relating such well and such purpose back to the original precept of this paragraph, i.e., that the order shall make provision for the carried interest owner to compensate, out of production, the parties who advanced the costs of development of the pooled unit; in other words, that the "costs of development" of the pooled unit are synonymous to the "cost of drilling and completing" the unit well, and are to be compensated for out of production.

(18) That the "cost of drilling and completing" the unit well being synonymous to the "cost of development" of the pooled unit, it then follows that inasmuch as the cost of drilling and completing the unit well is subject to the authorized risk factor, the cost of development of the unit is also subject to the authorized risk factor.

(19) That the pooled unit cannot be considered "developed" until it is on production or in producing condition.

(20) That a gas well may be considered as capable of producing gas when it has been completed and has installed thereon a well head, but it is illogical to consider that the unit upon which it is located is in producing condition, and the unit is developed until all of the appurtenant equipment, flowlines, separators, tanks, etc., have been installed and are in producing condition.

(21) That such items as flowlines, separators, tanks, etc., are items necessary to the development of the unit.

(22) That although such items are normally purchased and installed only after production has been obtained, there is still risk involved in drilling and completing the well, i.e., development of the pooled unit, inasmuch as at the time such equipment is purchased and installed, there is no assurance that the well will produce in sufficient quantities to pay out the cost of development.

(23) That such items as flowlines, separators, tanks, etc., being items necessary to the development of the pooled unit, and also subject to possible non-payout as discussed in Finding No. (22) above, should also be subject to the risk factor authorized by Section 65-3-14(c) NMSA 1953 Comp.

(24) That the items described in Finding No. (10) above, being items necessary to the development of the pooled unit, should be subject to the 200 percent risk factor imposed by Order No. R-4980.

(25) That the item described in Finding No. (12) above, being legal expense incurred in the formation of the pooled unit, was also an expense necessary to the development of the pooled unit.

(26) That said item described in Finding No. (12) above should also be subject to the 200 percent risk factor imposed by Order No. R-4980.

(27) That the item described in Finding No. (14) above as being "Legal Expense-Operating Agreements-Division Order Title Examination etc. - $7,300.00" is vague, and there exists insufficient information in the record of this case to determine what portion thereof is reasonable or unreasonable, what Texaco's proportionate share would be, and what portion, if any, should be subject to the 200 percent risk factor.

(28) That the remaining two items mentioned in Finding No. (14) above, being (1) additional estimated expense for additional well head equipment, $2,300.00, and (2) additional estimated expense for well head hookup, dirt work, and trucking charges, $6,500.00, are items necessary to the development of the pooled unit.

(29) That the actual expenditures finally incurred and invoiced for the items described in Finding No. (28) above should be subject to the 200 percent risk factor imposed by Order No. R-4980.

(30) That issuance of an order embodying the above findings is in the interest of conservation, will prevent waste, and will protect correlative rights, and should be effected.

IT IS THEREFORE ORDERED:

(1) That the charges of $7,354.59 for "Rental of Surface Equipment," $14,181.00 for a "Gas Production Unit," $5,348.00 for "Storage Tanks," and $1,834.24 for "Legal Expense to Date" all related to the drilling and completion of the William G. Ross A. Q. Rogers Well No. 1 located in Unit P of Section 3, Township 18 South, Range 26 East, Eddy County, New Mexico, are hereby approved as reasonable charges.

(2) That said charges, as well as actual reasonable costs of legal services related to the pooling order, operating agreements, and division order title examination for said William G. Ross A. Q. Rogers Well No. 1 shall be subject to the charge for risk described in Order (7) of Commission Order No. R-4980.

(3) 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

S E A L

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