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August 16, 1997

David Catanach
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Rand Carroll
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Case 11,751 (Application of NM&O Operating Company for compulsory pooling, Rio Arriba County, New Mexico)

Gentlemen:

Regarding your questions at the hearing on force pooling a record title owner of a federal lease, enclosed are the following:

1. 43 CFR §3105.2-3, attached as Exhibit A, which requires all "necessary parties" to sign a communitization agreement;
2. A portion of the BLM's communitization manual (Release 3-215, dated 7/7/88), attached as Exhibit B, stating that record title owners must execute a communitization agreement; and
3. A portion of a paper from a Rocky Mountain Mineral Law Foundation seminar,¹ attached as Exhibit C, which also states that record title owners must sign a communitization agreement.

Based on the foregoing, NM&O Operating Company needs a compulsory order regarding the record title owners described at the hearing,

¹T.C. Ezzell and G.J. Nibert, Paper 3A, Federal Onshore Oil and Gas Pooling and Unitization II, Vol. 1990, No. 1.

because they are unlocatable or refuse to sign, so that the BLM will approve the communitization agreement on the Gavilan Well No. 2.

Please call if you have any questions. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James Bruce". The signature is written in dark ink and is positioned above the printed name.

James Bruce

Attorney for NM&O
Operating Company

cc: Larry D. Sweet

circumstances shall it
of the estimated costs
and reclamation, the
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s the amount of monies
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ng outstanding.

17, 1988]

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A single copy executed
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§§ 3104.2 and 3104.3(a) of
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he lease or operations
bond or rider. Nation-
be filed in any Bureau
§ 1821.2-1).

5, 1988]

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Where the obligation
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restoration of a bond

or posting of a new bond shall be made
within 6 months or less after receipt of
notice from the authorized officer.
Failure to comply with these require-
ments may subject all leases covered
by such bond(s) to cancellation under
the provisions of § 3108.3 of this title.

[48 FR 33662, July 22, 1983, as amended at 53
FR 17354, May 16, 1988]

**§ 3104.8 Termination of period of li-
ability.**

The authorized officer shall not give
consent to termination of the period of
liability of any bond unless an accept-
able replacement bond has been filed or
until all the terms and conditions of
the lease have been met.

[48 FR 33662, July 22, 1983, as amended at 53
FR 17355, May 16, 1988; 53 FR 31867, Aug. 22,
1988]

**Subpart 3105—Cooperative
Conservation Provisions**

**§ 3105.1 Cooperative or unit agree-
ment.**

The suggested contents of such an
agreement and the procedures for ob-
taining approval are contained in 43
CFR part 3180.

**§ 3105.2 Communitization or drilling
agreements.**

§ 3105.2-1 Where filed.

(a) Requests to communitize separate
tracts shall be filed, in triplicate, with
the proper BLM office.

(b) Where a duly executed agreement
is submitted for final Departmental ap-
proval, a minimum of 3 signed counter-
parts shall be submitted. If State lands
are involved, 1 additional counterpart
shall be submitted.

§ 3105.2-2 Purpose.

When a lease or a portion thereof
cannot be independently developed and
operated in conformity with an estab-
lished well-spacing or well-develop-
ment program, the authorized officer
may approve communitization or drill-
ing agreements for such lands with
other lands, whether or not owned by
the United States, upon a determina-
tion that it is in the public interest.
Operations or production under such an

agreement shall be deemed to be opera-
tions or production as to each lease
committed thereto.

§ 3105.2-3 Requirements.

(a) The communitization or drilling
agreement shall describe the separate
tracts comprising the drilling or spac-
ing unit, shall show the apportionment
of the production or royalties to the
several parties and the name of the op-
erator, and shall contain adequate pro-
visions for the protection of the inter-
ests of the United States. The agree-
ment shall be signed by or on behalf of
all necessary parties and shall be filed
prior to the expiration of the Federal
lease(s) involved in order to confer the
benefits of the agreement upon such
lease(s).

(b) The agreement shall be effective
as to the Federal lease(s) involved only
if approved by the authorized officer.
Approved communitization agreements
are considered effective from the date
of the agreement or from the date of
the onset of production from the
communitized formation, whichever is
earlier, except when the spacing unit is
subject to a State pooling order after
the date of first sale, then the effective
date of the agreement may be the ef-
fective date of the order.

(c) The public interest requirement
for an approved communitization
agreement shall be satisfied only if the
well dedicated thereto has been com-
pleted for production in the
communitized formation at the time
the agreement is approved or, if not,
that the operator thereafter com-
mences and/or diligently continues
drilling operations to a depth sufficient
to test the communitized formation or
establish to the satisfaction of the au-
thorized officer that further drilling of
the well would be unwarranted or im-
practicable. If an application is re-
ceived for voluntary termination of a
communitization agreement during its
fixed term or such an agreement auto-
matically expires at the end of its fixed
term without the public interest re-
quirement having been satisfied, the
approval of that agreement by the au-
thorized officer shall be invalid and no
Federal lease shall be eligible for ex-
tension under § 3107.4 of this title.

[53 FR 17355, May 16, 1988]



3160-9 - COMMUNITIZATION

Summary Information, Instructions, and
Model Form of a Federal Communitization Agreement

Summary Information on Communitization

I. Conformance with Acceptable State Well Spacing.

The communitization of Federal leases is authorized only for areas where well-spacing or a well development program has been established. If the area is spaced by a State order, attach a copy of the order to each of the Federal copies of the agreement. If the area is not spaced by a State order, a report should be furnished in triplicate showing that the proposed communitized tract conforms with the existing spacing pattern for the area. The report should include a development map of the area showing wells completed in the zone or formation being communitized. Although a communitization agreement is approved for an initial 2-year term, committed Federal leases that would otherwise terminate during this period can only be extended if: (1) Paying communitized production is effected prior to such lease termination date, or (2) extension is applicable under other provisions of 43 CFR 3107.

II. Execution of the Agreement.

A. The operator of the communitized area **and all owners of record title and working interests in Federal leases as reflected by current records must execute the agreement.** If Exhibit B indicates a different ownership, all lessees and working interest owners on the effective date of the agreement should also execute the agreement. However, agreements may be approved with only the signatures of current interests if previous owners cannot be located or refuse to sign.

B. All working interest owners of non-Federal leases must execute the agreement, unless such interests have been effectively integrated or pooled by State order (an order that involuntarily "force-pools" all interests) or other pooling agreement. Copies of the State order or pooling agreement should be furnished and made a part of the agreement if such interest owners do not execute the agreement.

C. All basic royalty owners under non-Federal leases must execute the agreement, unless such interests have been effectively pooled by State order, a pooling clause in the lease, or other pooling agreement. Evidence of such pooling should be furnished and made a part of the agreement if such owners do not execute the agreement. Each such tract shown on Exhibit B of the standard form must include either the verbatim pooling provision of the lease, or the statement, "Lease contains a provision authorizing pooling in accordance with the acreage requirement of the agreement."

D. Execution by overriding royalty interests under Federal and non-Federal leases is not mandatory for Federal approval. However, execution by such parties as are provided should be accepted, as it will ensure more effective protection of the interests of other parties.



with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such agreement shall be deemed to be operations or production as to each such lease committed thereto.^{16/}

This allows all mineral owners within the area comprising the state's spacing requirement to share in production from the well on the spacing or proration unit. Production is usually apportioned to and among the various tracts and leases on an acreage basis.

The common thread of all federal Communitization Agreements is that at least one federal or Indian lease or tract is involved. That federal or Indian lease is communitized with other leases that may be federal, Indian, state or fee. A Communitization Agreement requires the consent of all parties owning interests in the mineral estate underlying the area and in the formation that is to be communitized. These issues are discussed in more detail below.

III. FORMAT AND CONTENT

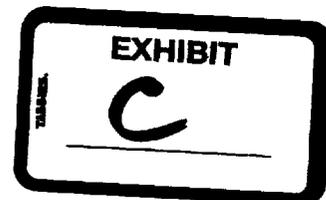
A. Required Information

There is no prescribed form for a federal communitization agreement in the regulations; however, the BLM Manual has a standard communitization agreement form which should be used whenever possible.^{17/} The regulations do require that certain information be included within the communitization agreement. The agreement must describe the separate tracts comprising the drilling or spacing unit, the apportionment of production or royalties, the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States.^{18/} In addition, the agreement must be signed by or on behalf of all necessary parties.

^{16/30} U.S.C. §226(m) (1989 Supp.).

^{17/}United States Department of the Interior, Bureau of Land Management, Manual Transmittal Sheet Release 3-215 dated July 7, 1988, regarding 3160-9-Communitization contains a copy of the "Model Form of a Federal Communitization Agreement." This form is hereinafter referred to as the standard communitization agreement or standard form of communitization agreement and the Manual is herein referred to as the "BLM Manual."

^{18/43} C.F.R. §3105.2-3(a) (1988).



The necessary parties include all working interest owners, lessees of record and the royalty, overriding royalty, and production payment interest owners whose interests are not subject to commitment by the lessee. Where fee leases are concerned, the lessee may commit his lessor's interest under a pooling provision in the fee lease. Likewise, overriding royalty interest owners must join in the communitization agreement or the lessee may act on their behalf, if a pooling provision is contained in the instrument creating the overriding royalty interest. Rather than circulating the Communitization Agreement for execution by all the necessary parties, it is quite common to employ simple one page ratifications to evidence a party's joinder and consent. Although not specifically recognized by the regulations, such ratifications are accepted by the BLM. The state's compulsory pooling statutes may be utilized to commit a nonconsenting party's interest to the communitization agreement, although, without the consent of the Secretary of the Interior, the state commission may not have jurisdiction to force pool unleased interests of the United States, or leased or unleased interests of Indians.

With respect to state lands, approval from the appropriate state official must be obtained. The authorized officer of the Bureau of Land Management (BLM) must approve, on behalf of the Secretary, the communitization agreement with respect to federal leases. Where Indian leases are concerned, in addition to approval by the BLM and Bureau of Indian Affairs (BIA), the Indian tribe must consent where unallotted lands are concerned and the beneficial interest owner must consent when allotted lands are concerned. Communitization Agreements on Indian leases and lands are discussed in more detail in Part V below.

B. Standard Form of Communitization Agreement

An understanding of the form of Communitization Agreement contained in the BLM Manual is essential, even if circumstances dictate deviation from the form as printed. The more important provisions of the standard form of Communitization Agreement are discussed below.

Although not mandatory, the filing of a Preliminary Application for Approval to Communitize is recommended, particularly in instances where the standard form of communitization agreement is not followed precisely. The BLM Manual provides that a request for preliminary approval to communitize may be filed at any time with the authorized officer. It is recommended that preliminary approval be requested if there is some doubt as to whether the proposed tracts are logically subject to communitization, or if there is any doubt as to whether a communitization of multiple zones will be approved. In lieu of a request for preliminary approval, a preliminary conference with BLM personnel may resolve any such doubts. The preliminary approval procedure or the preliminary conference will certainly expedite final approval, and may avoid the necessity of