

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



GARREY CARRUTHERS
GOVERNOR

January 9, 1991

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Attorneys at Law
Post Office Box 10
Roswell, New Mexico 88201

Re: CASE NO. 8668 (Reopened)
ORDER NO. R-8031-A

Applicant:
Howard Olsen

Dear Sir:

Enclosed herewith are two copies of the above-referenced
Division order recently entered in the subject case.

Sincerely,

Florene Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other William F. Carr, J. E. Gallegos

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 TO
CONSIDER THE APPLICATION OF:

CASE NO. 8668 (Reopened)

ORDER NO. R-8031-A

DOYLE HARTMAN FOR COMPULSORY POOLING,
LEA COUNTY, BEING REOPENED UPON THE
APPLICATION OF HOWARD OLSEN TO RECONSIDER
THE PROVISIONS OF DIVISION ORDER NO. R-8031

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on September 6, 1989, at Santa Fe, New Mexico before Examiner Michael E. Stogner.

NOW, on this 8th day of January, 1991, the Division Director, having considered the evidence as contained in 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) Olsen filed his application to reopen this case seeking strict compliance with Order No. R-8031 on August 17, 1987. Olsen specifically seeks enforcement of the Division's order requiring the submission by the operator of estimated well costs prior to drilling, the effect of which will enable him now to receive well costs, challenge those costs and make a decision about whether or not to join the well, knowing the productive ability and approximate current payout status of the well.

(3) The parties in this case, appearing by counsel, have submitted depositions and have stipulated to a Chronological Statement of Key Facts, and there are no factual disputes about the order of events.

(4) Howard Olsen did not appear and enter any objection at the original compulsory pooling hearing held on July 31, 1985, nor does he challenge the validity of the order.

(5) Howard Olsen was a party force-pooled by Order R-8031 into a standard proration unit in the Langlie-Mattix Pool, being the SE/4 SE/4 of Section 23, Township 25 South, Range 37 East, NMPM, Lea County, New Mexico, upon the application of Doyle Hartman.

(6) Doyle Hartman commenced drilling the Carlson Federal No. 4 well, (the "subject well"), on said proration unit on September 10, 1985, which is after Case 8668 was heard but seventeen days prior to the entry by the Division of Order No. R-8031.

(7) Although Hartman provided Olsen with an AFE for the subject well prior to the compulsory pooling hearing, he did not do so after the order was entered and at least thirty days prior to drilling the well in accordance with the provisions of the order.

(8) The uncontroverted evidence is that Olsen was aware of Hartman's plans to drill the subject well and had entered into negotiations to sell his interest to Hartman prior to the drilling of the well, but he did not continue with those negotiations after the well was drilled. There is additional evidence that Olsen refused communications from Hartman regarding operations on this well.

(9) Olsen did not file his application to reopen until August 1987, almost two years after the well was spudded.

(10) In October and November of 1987 a certified public accountant retained by Mr. Olsen examined the financial records of Doyle Hartman relating to the costs of the subject well. Olsen has not filed any objection to the costs of said well, and the actual well costs should be determined to be reasonable.

(11) The Division will normally require strict compliance with its orders, but it must rely on affected parties to bring non-compliance to its attention.

(12) Olsen did not diligently pursue his remedy although the evidence shows that he had substantive knowledge of sufficient information to enable him to protect his interests.

This failure on his part to seek relief makes it impossible for the Division to compel strict compliance with the terms of Order R-8031.

(13) It is the intent of compulsory pooling orders entered by the Division to give parties pooled thereunder the opportunity to pay their costs and share in the risks and benefits of drilling the well, or in the alternative to allow those parties paying the costs and taking the risk to be compensated for that risk.

(14) It is not clear from the evidence that Olsen had a reasonable opportunity to participate in drilling the well, and he should be afforded the opportunity at this time to pay his pro rata share of the well costs and receive his pro rata share of the proceeds of production, if he so elects to participate.

(15) Hartman has incurred and paid those costs attributable to Olsen's interest, and, considering the time that has passed because this matter has not been diligently pursued, if Olsen elects to pay his pro rata share of well costs, he should compensate Hartman for the use of his money with a reasonable interest charge.

(16) If Olsen elects to pay his share of the costs of the well, he should be entitled to receive his share of the proceeds of production together with reasonable interest thereon.

(17) A reasonable rate of interest is the rate provided for in New Mexico statutes for interest on judgments.

IT IS THEREFORE ORDERED THAT:

(1) Order R-8031 shall remain in full force and effect.

(2) The actual well costs incurred by Hartman are determined to be reasonable well costs.

(3) Applicant to reopen this case, Howard Olsen, may elect to participate in the Carlson Federal No.4 well by paying to Doyle Hartman within thirty (30) days the pro rata share of drilling, completion and operating costs of said well as provided in Order R-8031 attributable to his interest, together with interest thereon from the date such costs were

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Order No. R-8031-A
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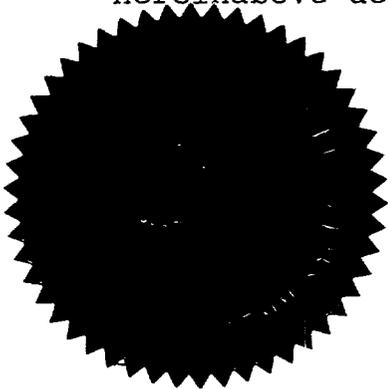
incurred to the date of this order at the rate of interest on judgments as set forth in New Mexico statutes.

(4) If Olsen elects to join the well and pays those costs to Hartman, Hartman shall, within thirty (30) days of delivery of such payment, account for and pay to Olsen the proceeds from production attributable to Olsen's interest with interest thereon at the judgment rate from the date of receipt of such proceeds by Hartman, or from the date such proceeds were placed in suspense by Hartman or any purchaser, to the date of the delivery of payment of costs by Olsen to Hartman.

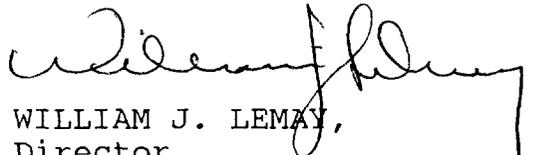
(5) If Olsen fails to pay his pro rata share of costs as provided herein, his interest shall be deemed to be non-consent pursuant to the provisions of Order R-8031.

(6) Jurisdiction of this cause is retained for 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

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. 8668
Order No. R-8031

APPLICATION OF DOYLE HARTMAN FOR
COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on July 31, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 27th day of September, 1985, 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, Doyle Hartman, seeks an order pooling all mineral interests from the surface to the base of the Langlie-Mattix Pool underlying the SE/4 SE/4 of Section 23, Township 25 South, Range 37 East, NMPM, Lea County, New Mexico.

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

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

(5) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent 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 oil 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.

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

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) \$5,500.00 per month while drilling and \$550.00 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.

(12) 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.

(13) 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 January 1, 1986, the order pooling said unit should become null and void and of no effect whatsoever.

(14) 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.

(15) 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, from the surface to the base of the Langlie-Mattix Pool underlying the SE/4 SE/4 of Section 23, Township 25 South, Range 37 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 40-acre oil 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 January, 1986, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Queen formation;

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of January, 1986, 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) Doyle Hartman 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 each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) 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.

(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 an 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 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 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.

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

(9) \$5,500.00 per month while drilling and \$500.00 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 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.

(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 Lea 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 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 force pooling provisions of this order.

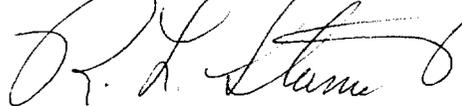
(15) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

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Case No. 8668
Order No. R-8031

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



R. L. STAMETS
Director

S E A L

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