

**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. 12910
ORDER NO. R-11850**

**APPLICATION OF RICHARDSON PRODUCTION COMPANY FOR
COMPULSORY POOLING, SAN JUAN COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on August 22, 2002 and on September 19, 2002, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 22nd day of October, 2002, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) Richardson Production Company, ("Applicant"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Pictured Cliffs formation underlying the E/2 of Section 14, Township 29 North, Range 14 West, NMPM, San Juan County, New Mexico, in the following manner:

The E/2, forming a standard 326.47-acre gas spacing and proration unit ("the 326.47-Acre Unit) for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the Basin-Fruitland Coal Gas Pool.

The NE/4, forming a standard 166.47-acre gas spacing and proration unit ("the 166.47-Acre Unit) for all formations or pools spaced on 160 acres within this vertical extent, including but not necessarily limited to the West Kutz-Pictured Cliffs Gas Pool.

(3) The above-described units ("the Units") are to be dedicated to Applicant's existing Navajo 14 Well No. 2 located at a standard well location within the SE/4 NE/4 of Section 14.

(4) Two or more separately owned tracts are embraced within each of the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in each of the Units that are separately owned.

(5) Applicant is an owner of an oil and gas working interest within each of the Units. Applicant has the right to drill and has drilled its Navajo 14 Well No. 2 ("the well") to a common source of supply at a standard well location 1948 feet from the North line and 1037 feet from the East line (Unit H) of Section 14.

(6) There are interest owners in each of the proposed units that have not agreed to pool their interests.

(7) At the hearing, Mary Fischer, an owner of an unleased mineral interest within the proposed units, appeared in person and by attorney, opposing the creation of the proposed units. No other interest owner appeared.

(8) Mary Fischer offered testimony from which it might reasonably be concluded that she owns or may own a larger acreage interest in the proposed units than that credited to her in the exhibits and testimony offered by Applicant.

(9) Mary Fischer claims an undivided one-half mineral interest in 56.91 acres (28.455 net acres) within the proposed units, based on (a) the acreage shown on the original Department of Interior survey plat of Lot 1 of Section 14 (Exhibit 2-D-1) and (b) the abutting portion of the bed of the San Juan River to the center of the channel, according to the 1881 meander lines of the river as reconstructed on the United States Bureau of Land Management dependent resurvey plat dated September 29, 1999 (Exhibit 2-B).

(10) Applicant credits Mary Fischer with an undivided one-half mineral interest in 35.511 acres (17.7555 net acres) based on the assumption that the South boundary line of Mary Fischer's lot is the center of the channel of the San Juan River as it presently exists, as calculated from a Supplemental Plat dated February 14, 2001, prepared by the United States Bureau of Land Management (Exhibit 2-A).

(11) Neither party offered any evidence indicating whether the apparent migration of the river channel was the result of erosion/accretion or of an avulsive event.

(12) The Oil Conservation Division has no jurisdiction to determine the validity of any title or claim of title. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.

(13) However, it is the duty of the Division to order pooling 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, her or its just and fair share of the oil or gas, or both.

(14) In view of the apparent uncertainty regarding the actual interest owned by Mary Fischer, Applicant should be required to deposit into the escrow account for which provision is herein made the difference between the total of amounts payable to Mary Fischer under the terms of this order upon the assumption that she owns the maximum interest she claims, and the amounts so payable upon the assumption that she owns only the interest credited to her by Applicant.

(15) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the Units.

(16) Pursuant to the request of Applicant, Richardson Operating Company should be designated the operator of the well and of the Units.

(17) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 100% thereof as a reasonable charge for the risk involved in drilling the well.

(18) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,000 per month while drilling and \$500 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Richardson Production Company, all uncommitted mineral interests from the surface to the base of the Pictured Cliffs formation underlying the E/2 of Section 14, Township 29 North, Range 14 West, N.M.P.M., San Juan County, New Mexico, are hereby pooled, as follows:

- (a) The E/2, forming a standard 326.47-acre gas spacing and proration unit for all formations or pools spaced on 320 acres within this vertical extent which presently include but are not necessarily limited to the Basin-Fruitland Coal Gas Pool.
- (b) The NE/4, forming a standard 166.47-acre gas spacing and proration unit for all formations or pools spaced on 160 acres within this vertical extent, including but not necessarily limited to the West Kutz-Pictured Cliffs Gas Pool.

The Units shall be dedicated to Applicant's existing Navajo 14 Well No. 2 located at a standard gas well location 1948 feet from the North line and 1037 feet from the East line (Unit H) of Section 14.

(2) Pursuant to the request of Applicant, Richardson Operating Company is hereby designated the operator of the well and of the Units.

(3) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests in the Units, including unleased mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the Units an itemized schedule of actual costs of drilling, completing and equipping the well ("well costs").

(4) Within 30 days from the date the schedule of well costs is received, any non-consenting working interest owner shall have the right to pay its share of actual well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of actual well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) Costs of drilling the well from the surface to a depth sufficient to test the Fruitland Coal formation, and costs of surface production equipment shall be allocated 50% to the Fruitland Coal formation and 50% to the Pictured Cliffs formation. Costs of drilling below that depth shall be allocated to the Pictured Cliffs formation. Down-hole costs of completion shall be allocated to the formation to which such costs are applicable. Costs allocated to the Fruitland Coal shall be charged to each non-consenting working interest owner in proportion to such owner's ownership interest in the 326.47-Acre Unit,

and costs allocated to the Pictured Cliffs formation shall be charged to each non-consenting working interest owner in proportion to such owner's ownership interest in the 166.47-Acre Unit. However, costs and charges allocable to a non-consenting interest owner that are to be paid out of such owner's share of production may be withheld from such owner's total share of production without regard to the allocation of production between formations.

(6) 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 the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after notice and hearing.

(7) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of actual well costs in advance as provided above shall receive from the operator its share of the amount that paid, actual well costs exceed reasonable well costs.

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

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of actual well costs within 30 days from the date the schedule of actual well costs is received; and
- (b) as a charge for the risk involved in drilling the well, 100% of the above costs.

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

(10) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,000 per month while drilling and \$500 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III. 1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(11) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that 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 the escrow agent within 30 days from the date of first deposit with the escrow agent.

(12) 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 this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(13) The interest of Mary Fischer shall be separately computed as a 28.455-net-acre interest and as a 17.7555-net-acre interest in the Units. Except as provided in Ordering Paragraph (17), all proceeds of production that would be payable to Mary Fisher or her heirs or assigns hereunder, either as working interest or royalty interest, shall be paid based on a 17.7555-net-acre interest. The excess of amounts that would be payable to her interest computed as a 28.455-net-acre interest, over and above the amounts paid pursuant to the preceding sentence, shall be deposited into the escrow account created pursuant to Ordering Paragraph (14), to be held by the escrow agent until the apparent uncertainty regarding the title or interest of Mary Fischer is resolved by agreement by and between Applicant and Mary Fischer, or their respective successors or assigns, or otherwise directed by a court of competent jurisdiction.

(14) Notwithstanding the provisions of Ordering Paragraph (16), if Mary Fischer elects to pay her share of actual well costs within thirty (30) days of receipt of the schedule of such costs, as provided in Ordering Paragraph (7), based upon her claimed 28.455-net-acre interest in the Units, then proceeds of production attributable to her deemed seven-eighths working interest, computed on the basis of 28.455 net acres, shall be paid to her, and not placed in escrow, until she or her heirs or assigns has received from such proceeds the amount of actual well costs so paid by her.

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

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

(17) Jurisdiction of this case 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

LORI WROTENBERY
Director

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