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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**AMENDED APPLICATION OF THE NEW MEXICO OIL CONSERVATION
DIVISION, THROUGH THE ENGINEERING BUREAU CHIEF, FOR
ADOPTION OF A NEW RULE RELATING TO COMPULSORY POOLING AND
PRESCRIBING RISK CHARGES**

CASE NO. 13069

APPLICATION FOR ADOPTION OF NEW RULE

1. The Oil Conservation Division ("the Division") has authority pursuant to NMSA 1978 Sections 70-2-17 and 70-2-18, as amended, to issue compulsory pooling orders pooling the oil and gas interests and tracts within a spacing unit.
2. NMSA 1978 Section 70-2-17.C, as amended, provides that the Division may provide, in compulsory pooling orders, for a charge to be assessed against the interest of any party who elects not to pay its share of wells costs in advance as an allowance for the risk involved in the drilling of such well. The amount of such charge is left to the discretion of the Division, but may not exceed 200% of well costs.
3. It has been the practice of the Division to determine the amount of the risk charge on a case-by-case basis based on the evidence adduced at the hearing of each case. However, the Division has developed certain well-established parameters for determining such charges.
4. In the interest of efficiency both for the Division and for applicants, the Division now proposes to adopt a rule prescribing standard parameters for risk charges to be provided in compulsory pooling cases.

5. A proposed rule that adopts the parameters heretofore followed by the Division in such cases is attached hereto as Exhibit A and proposed for adoption. Exhibit A hereto is hereby substituted as the Division's proposal for Exhibit A attached to the original application in this case.

WHEREFORE, the Engineering Bureau Chief of the Division hereby applies to the Commission to enter an order:

A. Adopting a new rule governing risk charges in compulsory pooling orders, substantially as set forth in Exhibit A hereto, with such changes, if any, to the specific parameters therein provided, as the Commission, after hearing, may determine to be appropriate.

B. Granting such other and further relief as the Commission deems appropriate.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "David K. Brooks", is written over a horizontal line.

David K. Brooks
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Conservation Division

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Exhibit A to Application

Rule 35. COMPULSORY POOLING. CHARGE FOR RISK

A. General Rule. Compulsory pooling orders entered by the Division pursuant to NMSA 1978 Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of any party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion, or working over and recompletion of each unit well for which provision is made in the order. Unless otherwise ordered pursuant to subsection B of this section, the charge for risk shall be:

1. 200% of well costs in the case of a well to be drilled or deepened (or a plugged and abandoned well to be re-entered) and completed in any pool other than the Basin-Fruitland Coal Gas Pool.
2. 156% of well costs in the case of a well to be drilled or deepened (or a plugged and abandoned well to be re-entered) and completed in the Basin-Fruitland Coal Gas Pool.
3. 100% of well costs in the case of a well that has been drilled, including any well that has penetrated the objective formation prior to the date of the hearing.

"Well costs" shall mean all reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well, completing the well in any formation pooled by the order and equipping the well for production. If, however, any well was previously completed in another formation or bottom-hole location, or was previously abandoned without completion, well costs as to such well shall mean only the reasonable costs of re-entering, deepening, diverting or plugging back the well, completion in the pooled formation or formations and, if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances. If a well is completed in two or more pools having diverse ownership or a different risk charge percentage the order shall provide for allocation of well costs between the pools. As to any interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, "well costs" shall include costs of any subsequent reworking, diverting, deepening, plugging back, completion or recompletion of that well undertaken prior to the time that the entire amount of such non-consenting owner's share of well costs and applicable risk charge have been recovered from such non-consenting owner's share of production from such well.

Well costs shall also include reasonable costs of drilling, completing, testing and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth, and the substitute well is located within 330 feet of the original well and drilling thereof is commenced within ten (10) days of the abandonment of the original well.

An applicant for compulsory pooling shall not be required to present technical evidence justifying the risk charge provided in this subsection.

B. Exceptions.

1. At the Request of Applicant. Any applicant for a compulsory pooling order who seeks a different risk charge than that provided in subsection A of this section shall so state in its application, a copy of which shall be served on each person required to be notified of the filing of the application, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence.

2. At the Request of a Responding Party. Any person responding to a compulsory pooling application who seeks a different risk charge than that provided in subsection A shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.N.1208.B NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing officer shall have discretion to allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that provided in subsection A, but in such cases a continuance of the hearing shall be allowed, if requested, to enable the applicant to present rebuttal evidence.