

**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:**

**APPLICATION OF APACHE CORPORATION FOR  
APPROVAL OF A PROJECT AREA ENCOMPASSING  
COMMUNITIZED LANDS IN TOWNSHIP 17 SOUTH,  
RANGE 31 EAST, NMPM, EDDY COUNTY, NEW MEXICO.**

**Case No. 15316**

**RESPONSE OF NESTEGG ENERGY CORPORATION TO  
APACHE CORPORATION'S HEARING BRIEF**

This response is submitted by Nestegg Energy Corporation ("Nestegg") as requested by the Oil Conservation Division (the "Division").

**I. INTRODUCTION.**

In this case Apache Corporation ("Apache") seeks approval of a horizontal drilling project area covering several thousand acres of federal land in Eddy County.

In the late afternoon before the first hearing in this matter, held on June 25, 2015, Apache filed its Hearing Brief. The brief asserted that Nestegg lacks standing to oppose the application filed herein because (1) federal law, not state law, governs approval of federal communitization agreements, and (2) Nestegg cannot challenge federal communitization agreements approved by the Bureau of Land Management (the "BLM").

Nestegg will briefly discuss communitization agreement issues in the second part of its argument. However, Apache's argument is superfluous, because in this case Apache seeks approval of a multi-well project area, which is under the jurisdiction of the Division, rather than approval of a communitization agreement.

**II. ARGUMENT.**

A. Well Units and Project Areas: The federal regulations provide as follows with respect to federal oil and gas leases:

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it

is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

**43 CFR §3105.2-2.**

In New Mexico, under a memorandum of understanding between the Division and the BLM, well spacing on federal lands is governed by Division rules and regulations.<sup>1</sup> The Division's regulations define well units and project areas (for horizontal wells). **NMAC 19.15.2.7.S(9) and 19.15.16.7.L**, attached hereto as Exhibits A and B. Note that each definition applies to a spacing unit or project area for a single well. Because Apache seeks a multiple well project area, it must seek an exception to Division rules.

Because Division rules are involved in Apache's application, so is the Oil and Gas Act. **NMSA 1978 §§70-2-1 et seq.** Under the Act, the Division must prevent waste and protect correlative rights. Correlative rights apply to all owners in property within a pool, not just working interest owners. **NMAC 19.15.2.7.C(15)**, attached hereto as Exhibit C. Since the Division's jurisdiction is invoked in this application, the correlative rights of Nestegg come into play, and Nestegg has standing to oppose the application.

In addition, for adjudications such as this the Division's notice rules apply. **NMAC 19.15.4.12**. The rules do not specifically address approval of multiple well project areas. However, under **NMAC 19.15.4.12.A(9)**, attached hereto as Exhibit D, in such cases an applicant must give notice as the Division requires. Because the Division required notice of this application be given to overriding royalty interest owners, Nestegg has standing to object to the application filed herein.

B. Communitization Agreements: Apache is correct that federal law governs approval of communitization agreements with respect to federal lands, and that the BLM only requires approval of lessees of record and working interest owners in order for it to approve communitization agreements.

However, that doesn't mean that overriding royalty interest owners in a well unit are automatically subject to a communitization agreement. For an overriding royalty interest owner to be subject to the agreement, there must be a "pooling" provision in the instrument creating the override, or the overriding royalty interest owner must ratify the communitization agreement.<sup>2</sup> In this case the instrument creating Nestegg's override did contain a pooling clause. See Apache's Hearing Brief. [Question: If an overriding royalty interest owner is automatically subject to a communitization agreement, why would a pooling provision in an assignment be necessary?]

Unfortunately for Apache, the pooling provision affecting Nestegg's interest only allows pooling for "a well spacing or proration unit *under the rules or regulations of the New Mexico*

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<sup>1</sup> Of course, the Division controls spacing on state and fee lands.

<sup>2</sup> The same applies to royalty owners in fee leases, whose leases must contain pooling provisions or they must ratify a communitization agreement or "pooling designation" (which is an instrument covering fee lands).

*Oil Conservation Division.*" (Emphasis added.) Again, because the Division's rules are invoked, the correlative rights of Nestegg must be considered, and Nestegg has standing.

Finally, note that the pooling provision in Nestegg's assignment refers only to "well units," not "project areas." Thus, it is uncertain that Nestegg's interest can be committed to the proposed project area and the subject communitization agreement by the working interest owners.

### III. CONCLUSION.

State laws are invoked in Apache's application, and thus Nestegg's correlative rights must be considered by the Division. Therefore, Nestegg has standing to contest Apache's application.

Respectfully submitted,



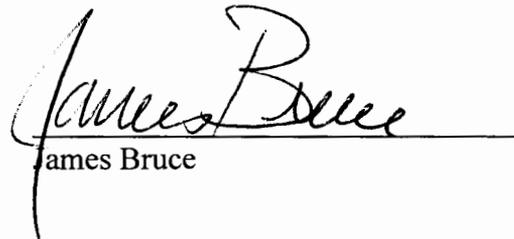
James Bruce  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

Attorney for Nestegg Energy Corporation

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was hand delivered to the following counsel of record this 23rd day of July, 2015:

Earl E. DeBrine, Jr.  
Jennifer L. Bradfute



James Bruce

- (3) "Regulated NORM" means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.
- (4) "Release" means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.
- (5) "Remediation plan" means a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.
- (6) "Responsible person" means the owner or operator who shall complete a division-approved corrective action for pollution from releases.
- (7) "Royalty interest owner" means the owner of an interest in the non-executive rights including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.
- (8) "Run-on" means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.
- S. Definitions beginning with the letter "S".
- (1) "SAR" means the sodium adsorption ratio.
- (2) "Secondary recovery" means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.
- (3) "Sediment oil" means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.
- (4) "Shallow pool" means a pool that has a depth range from zero to 5000 feet.
- (5) "Shut-in" means the status of a production well or an injection well that is temporarily closed down, whether by closing a valve or disconnection or other physical means.
- (6) "Shut-in pressure" means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.
- (7) "Significant modification of an abatement plan" means a change in the abatement technology used excluding design and operational parameters, or relocation of 25 percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.
- (8) "Soil" means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.
- (9) "Spacing unit" means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, NMSA 1978, Section 70-2-12(B)(10), the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil reservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.
- (10) "Subsurface water" means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.
- (11) "Surface waste management facility" means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:
- a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;
  - a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;
  - a temporary pit as defined in 19.15.17 NMAC;
  - a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;
  - a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;
  - a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;
  - a facility operating pursuant to a division emergency order;
  - a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or
  - a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.
- T. Definitions beginning with the letter "T".
- (1) "Tank bottoms" means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains in excess of two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.
- (2) "TDS" means total dissolved solids.
- (3) "Temporary abandonment" means the status of a well that is inactive.
- (4) "Top proration unit allowable for gas" means the maximum number of allocation units that a gas producing unit in an allocated gas pool.
- (5) "Top proration unit allowable for oil" means the maximum number of b

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**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 16 DRILLING AND PRODUCTION**

**19.15.16.1 ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, Oil Conservation Division.  
 [19.15.16.1 NMAC - Rp, 19.15.3.1 NMAC, 12/1/08]

**19.15.16.2 SCOPE:** 19.15.16 NMAC applies to persons engaged in the drilling and production of oil and gas wells within New Mexico.  
 [19.15.16.2 NMAC - Rp, 19.15.3.2 NMAC, 12/1/08]

**19.15.16.3 STATUTORY AUTHORITY:** 19.15.16 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.  
 [19.15.16.3 NMAC - Rp, 19.15.3.3 NMAC, 12/1/08]

**19.15.16.4 DURATION:** Permanent.  
 [19.15.16.4 NMAC - Rp, 19.15.3.4 NMAC, 12/1/08]

**19.15.16.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
 [19.15.16.5 NMAC - Rp, 19.15.3.5 NMAC, 12/1/08]

**19.15.16.6 OBJECTIVE:** To regulate the drilling and production of oil and gas wells within the state.  
 [19.15.16.6 NMAC - Rp, 19.15.3.6 NMAC, 12/1/08]

**19.15.16.7 DEFINITIONS:** These definitions apply specifically to 19.15.16 NMAC. For additional definitions that may apply see 19.15.2 NMAC.

- A. "Azimuth" means the deviation in the horizontal plane of a well bore expressed in terms of compass degrees.
- B. "Completed interval" means that portion of a well bore or lateral that is:
- (1) cased, cemented and perforated;
  - (2) an open hole; or
  - (3) isolated by a packer or other non-permeable means and open to the formation.
- C. "Deviated well" means a well bore that is intentionally deviated from vertical but not with an intentional azimuth.
- D. "Directional well" means a well bore that is intentionally deviated from vertical with an intentional azimuth.
- E. "Horizontal well" means a directional well bore with one or more laterals that extend a minimum of 100 feet horizontally in the target zone. A well with multiple laterals from a common well bore in the same or different target zones or formations shall be considered one well.
- F. "Kick-off point" means the point at which a directional well is intentionally deviated from vertical.
- G. "Lateral" means a portion of a directional well past the point where the well bore has been intentionally departed from the vertical.
- H. "Non-standard project area" means a project area that is not a standard project area.
- I. "Open hole" means that portion of a well bore or lateral that is:
- (1) not cased, or
  - (2) cased, but the casing is not cemented in place, and is not otherwise isolated from the formation.
- J. "Penetration point" means the beginning of the completed interval of a horizontal or other directional well or lateral.
- K. "Producing area" means the portion of a project area that lies within a window formed by plotting the measured distance from the project area's outer boundaries, inside of which a well bore can be drilled and produced in conformity with the setback requirements from the outer boundary of a standard spacing unit for the applicable pool.
- L. "Project area" means an area the operator designates on form C-102, well location and acreage dedication plat that comprises:
- (1) one or more complete, contiguous spacing units (in one section or in more than one section) that are developed by the horizontal well; or
  - (2) an entire voluntary or statutory unit for an approved enhanced recovery or pressure maintenance project, an approved state exploratory unit, or a participating area in a federal unit.
- M. "Standard project area" means a project area that:
- (1) is described in Paragraph (2) of Subsection L of 19.15.16.7 NMAC;
  - (2) consists of a single spacing unit;
  - (3) consists of two or more spacing units within a single section that collectively comprise:
    - (a) the entire section, a half-section or half-section equivalent, or a quarter section;
    - (b) the north, south, east or west half of a half-section or half-section equivalent;
  - (4) consists of a combination of two or more otherwise standard project areas, if the rectangle; provided that a project area consisting of three 40-acre units within a single section and

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(5) "Below-grade tank" means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(6) "Berm" means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) "Biopile", also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through the use of biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) "BLM" means the United States department of the interior, bureau of land management.

(9) "Bottom hole pressure" means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10) "Bradenhead gas well" means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11) "BS&W" means basic sediments and water.

(12) "BTEX" means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) "Carbon dioxide gas" means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) "Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) "Cm/sec" means centimeters per second.

(4) "CPD" means central point delivery.

(5) "Combination multiple completion" means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(6) "Commission" means the oil conservation commission.

(7) "Commission clerk" means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(8) "Common purchaser for gas" means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(9) "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(10) "Common source of supply". See pool.

(11) "Condensate" means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(12) "Contiguous" means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(13) "Conventional completion" means a well completion in which the production string of casing has an outside diameter in excess of 2.875 inches.

(14) "Conventional multiple completion" means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(15) "Correlative rights" means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(16) "Cubic feet of gas or cubic foot of gas" means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) "Deep pool" means a common source of supply that is situated 5000 feet or more below the surface.

(2) "Depth bracket allowable" means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) "Director" means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) "Division" means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) "Division clerk" means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) "Downstream facility" means a facility associated with the transportation (including a refinery, gas plant, compressor station or crude oil pump station); brine production

(7) "DRO" means diesel range organics.

E. Definitions beginning with the letter "E".

(1) "EC" means electrical conductivity.

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before the hearing by:

- (1) posting notice on the division's website;
  - (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and
  - (3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.
- [19.15.4.9 NMAC - Rp, 19.15.14.1207 NMAC, 12/1/08]

**19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:**

- A. The parties to an adjudicatory proceeding shall include:
- (1) the applicant;
  - (2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and
  - (3) a person who properly intervenes in the case.
- B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.
- C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.
- D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.
- [19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/08]

**19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:**

- A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:
- (1) the intervenor's name;
  - (2) the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;
  - (3) the nature of intervenor's interest in the application; and
  - (4) the extent to which the intervenor opposes issuance of the order applicant seeks.
- B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.
- C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.
- [19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/08]

**19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:**

- A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that 19.15.4.9 NMAC requires, as follows.
- (1) Compulsory pooling and statutory unitization.
    - (a) The applicant shall give notice to an owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).
    - (b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, the proposed unit is not larger in size than provided in 19.15.15 NMAC or applicable special pool orders, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:
      - (i) a statement that the applicant expects no opposition including the reasons why;
      - (ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;
      - (iii) the names and last known addresses of the interest owners to be pooled and an attestation that the applicant has conducted a diligent search of all public records in the county directories, including computer searches;
      - (iv) the names of the formations and pools to be pooled;
      - (v) a statement as to whether the pooled unit is for gas or oil production;
      - (vi) written evidence of attempts the applicant made to gain vol

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relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

(e) At an interested person's request or upon the division's own initiative, the division shall set a pooling application for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) Affected persons are the following persons owning interests in the adjoining spacing units:

(i) the division-designated operator;

(ii) in the absence of an operator, a lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he files the application; and

(iii) in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application.

(b) In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then affected persons include working interest owners in that spacing unit.

(c) If the proposed location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than special pool orders provide, the applicant shall notify affected persons.

(3) Non-standard proration unit. The applicant shall notify owners of interest in the mineral estate to be excluded from the proration unit in the quarter-quarter section for 40-acre pools or formations, the one-half quarter section for 80-acre pools or formations, the quarter section for 160-acre pools for formations, the half section for 320-acre pools or formations or section for 640-acre pools or formations in which the non-standard unit is located and to such other persons as the division requires.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify surface owners within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

**B.** Type and content of notice. The applicant shall send a notice 19.15.4.9 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place; and the means by which protests may be made. When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

**C.** At the hearing, the applicant shall make a record, either by testimony or affidavit, that the applicant or its authorized representative has signed, that the applicant has:

(1) complied with notice provisions of 19.15.4.9 NMAC;

(2) conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and

(3) given notice at that correct address as 19.15.4.9 NMAC requires; in addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

**D.** Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening