

**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. 12659
ORDER NO. R-11604**

**APPLICATION OF THE TRILOGY OPERATING, INC. FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on May 17, 2001 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 13th day of June, 2001, 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 its subject matter.

(2) The applicant, Trilogy Operating, Inc. ("Trilogy"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Abo formation underlying the SE/4 SW/4 (Unit N) of Section 24, Township 19 South, Range 38 East, NMPM, Lea County, New Mexico, to form a standard 40-acre oil spacing and proration unit ("unit") for any and all formations and/or pools developed on 40-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated South Nadine-Drinkard Abo Pool and Nadine-Drinkard Abo Pool.

(3) This application was filed pursuant to Division Rule 1207.A (1) (b), (c), and (d) and was advertised such that this case would be taken under advisement in the absence of objection. The applicant was represented by legal counsel at the hearing.

(4) Trilogy is the owner of an interest in the unit and has drilled a well thereon to a common source of supply. Accordingly, Trilogy has the right to develop this acreage and to recover oil underlying the same, and is entitled to seek compulsory pooling.

(5) There are two or more separately owned tracts of land located within the unit and/or there are undivided interests in oil and gas minerals in the unit, which are separately owned. At this time, certain parties owning approximately 1.6% of the total mineral interests in the subject 40-acre unit have not agreed to pool their interests. It appears that despite its good faith efforts, Trilogy was unable to locate all of these interest owners and, of those parties contacted, none has responded.

(6) This unit will be dedicated to Trilogy's Ruby Well No. 1 (**API No. 30-025-35508**), which was recently drilled to a total depth of 7,800 feet (April 29, 2001) and is located on the unit at a standard oil well location 330 feet from the South line and 2310 feet from the West line of Section 24.

(7) No affected party appeared at the hearing in opposition to this application.

(8) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste, and afford to the owner of each interest in this 40-acre unit the opportunity to recover or receive without unnecessary expense its just and fair share of the oil underlying the unit, the application should be approved by pooling all mineral interests, whatever they may be, within this unit.

(9) Trilogy should be designated the operator of the subject well and 40-acre unit.

(10) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Any non-consenting working interest owner should be afforded the opportunity to pay its share of actual well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(11) The applicant requested that a risk penalty of 200 percent be assessed against all uncommitted mineral interest owners.

(12) Inasmuch as the subject well has already been drilled, based on precedent established in previous compulsory pooling cases involving existing wellbores, the risk penalty should be reduced to 100 percent.

(13) Any non-consenting working interest owner who does not pay its share of actual well costs should have withheld from production its share of reasonable well costs plus an additional 100 percent thereof as a reasonable charge for the risk involved in the drilling of the Ruby Well No. 1 and the risk involved in obtaining payout.

(14) 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.

(15) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of actual costs should receive from the operator any amount that paid actual well costs exceed reasonable well costs.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$4,500.00 per month while drilling and \$450.00 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*." The operator should be 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.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Trilogy Operating, Inc. ("Trilogy"), all uncommitted mineral interests, whatever they may be, from the surface to the base of the Abo formation underlying the SE/4 SW/4 (Unit N) of Section 24, Township 19 South, Range 38 East, NMPM, Lea County, New Mexico, are hereby pooled to form a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated South Nadine-Drinkard Abo Pool and Nadine-Drinkard Abo Pool. This unit will be dedicated to the recently drilled Ruby Well No. 1 (**API No. 30-025-35508**) located at a standard oil well location 330 feet from the South line and 2310 feet from the West line of Section 24.

(2) Trilogy is hereby designated the operator of the subject well and 40-acre unit.

(3) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Within 30 days after the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the unit an itemized schedule of actual well costs.

(4) Within 30 days from the date the schedule of actual well costs is furnished, 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, 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) 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 described in the forgoing paragraph, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 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 its share of actual costs in advance as provided above shall receive from the operator its share of the amount, if any, that actual well costs exceed reasonable well costs.

(7) 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 furnished; and
- (b) as a charge for the risk involved in the drilling of the well and the risk involved in obtaining payout, 100 percent of the above costs.

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

(9) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$4,500.00 per month while drilling and \$450.00 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*." The operator is hereby 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.

(10) 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.

(11) 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.

(12) All proceeds from production from the well that are not disbursed for any reason shall 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 the escrow agent within 30 days from the date of first deposit with the escrow agent.

(13) 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.

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

(15) 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.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenberg
LORI WROTENBERY
Director