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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
CASE 10,615

EXAMINER HEARING

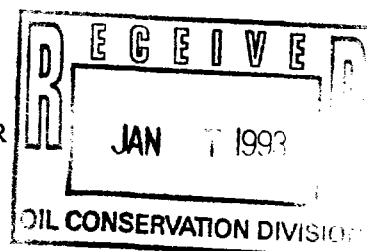
IN THE MATTER OF:

Application of Pro New Mexico, Inc., for a non-
standard gas proration unit or, in the
alternative, for compulsory pooling, San Juan
County, New Mexico

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

BEFORE: DAVID R. CATANACH, EXAMINER



STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

December 3rd, 1992

A P P E A R A N C E S

FOR THE DIVISION:

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EXHIBITS

APPLICANT'S EXHIBITS:

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1 WHEREUPON, the following proceedings were had
2 at 8:57 a.m.:

3 EXAMINER CATANACH: At this time we'll call
4 Case 10,615, Application of Pro New Mexico, Inc., for a
5 nonstandard gas proration unit or, in the alternative,
6 for compulsory pooling, San Juan County, New Mexico.

7 Are there appearances in this case?

8 MR. GALLEGOS: Mr. Examiner, J.E. Gallegos,
9 Santa Fe, New Mexico, appearing on behalf of Pro New
10 Mexico. We have two witnesses.

11 EXAMINER CATANACH: Are there additional
12 appearances in this case?

13 Will the two witnesses please stand to be
14 sworn in?

15 (Thereupon, the witnesses were sworn.)

16 MR. GALLEGOS: We call Jolene Dicks.

17 JOLENE DICKS,
18 the witness herein, after having been first duly sworn
19 upon her oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GALLEGOS:

22 Q. State your name, please.

23 A. Jolene Dicks

24 Q. Where do you live?

25 A. In Santa Fe, New Mexico.

1 Q. Are you employed by Pro New Mexico?

2 A. I am.

3 Q. In what capacity?

4 A. I am called the contract representative
5 officially, but as the only employee I do a little bit
6 of everything.

7 Q. And what is the business of Pro New Mexico,
8 Inc.?

9 A. Pro New Mexico is engaged in oil and gas
10 development, production and sales in San Juan Basin.

11 Q. Okay. Ms. Dicks, let me draw your attention
12 to Exhibit Number 1, a letter dated September 21, 1992.

13 Would you tell the Examiner what had occurred
14 just prior to this letter that motivated the writing of
15 it?

16 A. Prior to this letter, we had -- Pro New
17 Mexico had had engineering studies done and found that
18 we could possibly have an commercially viable Fruitland
19 well in the southwest quarter of Section 4.

20 We --

21 Q. Section 5?

22 A. Section 5, excuse me.

23 We had contacted the BIA about the ownership
24 of the northwest quarter and determined that it was
25 currently unleased and that the BIA was going to or had

1 intentions of putting it up for auction.

2 Just prior to this letter, we made another
3 phone call and found out that they didn't know when
4 they were going to be able to put it up for auction, if
5 ever.

6 Q. All right. In the letter there's mention of
7 the Internal Revenue Code, Section 29 provisions.

8 What effect would that have on Pro's position
9 at this -- at the time of the writing of this letter?

10 A. Well, Pro wanted to drill its Fruitland well
11 if it could prior to the end of the year so that it
12 would qualify for the tax credit.

13 Q. Okay, and does this letter inform the
14 representative of the BIA of Pro's position, its
15 ownership, and call to the BIA's attention the
16 advantages to it if it went forward with the leasing of
17 that acreage?

18 A. It certainly does.

19 Q. Okay, and was the BIA informed with this
20 letter by an exhibit of the development of Fruitland
21 wells surrounding this acreage?

22 A. Yes, we attached an exhibit that showed the
23 development in the offsetting area.

24 Q. Okay. Was any response received from the BIA
25 to this letter?

1 A. We received no response.

2 Q. Okay, why was it directed to this particular
3 individual, Mary Lou Drywater?

4 A. Mary Lou Drywater was the individual who had
5 informed me that she was looking into and trying to put
6 together a package to put up for auction.

7 Q. All right. Let me turn your attention next
8 to Exhibit Number 2. Would you explain generally what
9 that letter provided and why it was written?

10 A. Well, the letter was basically written
11 because we hadn't had a response from the BIA, and we
12 were looking at the time again.

13 We directed the attention of the BIA to the
14 provisions providing for force-pooling, and again asked
15 them that they either lease their acreage or agree to
16 pooling voluntarily its mineral interests.

17 We pointed out also that since our last
18 letter the well in Section 32, which at that time was a
19 location, it had been drilled.

20 Q. It's a Fruitland well?

21 A. It's a Fruitland well.

22 Q. Okay. Was there any response from the BIA to
23 the letter of October 2, 1992?

24 A. Again, not a word.

25 Q. All right. I call your attention, then, to

1 Exhibit Number 3. Is that a letter of October 9, 1992,
2 again to Ms. Drywater with the BIA, from Pro New
3 Mexico?

4 A. It is.

5 Q. And what was proposed to the BIA by Exhibit
6 Number 3?

7 A. In Exhibit Number 3, we again asked the BIA
8 to consider leasing its acreage to Pro New Mexico or,
9 alternatively, to voluntarily pool its mineral
10 interests with Pro New Mexico's in the southwest
11 quarter to form a standard Fruitland Coal proration
12 unit.

13 We sent to them in that regard a well cost
14 estimate for drilling the well and a proposed joint
15 operating agreement. We did not send them a
16 communitization agreement because that's a standard
17 form, and we said that we would use the same agreement
18 that the BIA and Giant had entered into concerning
19 Fruitland wells in the same area.

20 Q. That's basically a standard federal form?

21 A. Uh-huh.

22 Q. Did the letter advise the BIA that if there
23 was no response by a date certain, that application
24 would be made to this Commission?

25 A. Yes, it did. We gave them a deadline of

1 October 21st to respond.

2 Q. Okay, and did it also inform them that the
3 Application would seek a nonstandard proration unit to
4 consist of only the southwest quarter of Section 5?

5 A. It did.

6 Q. All right.

7 A. And also alternatively to compulsory pool of
8 the northwest quarter.

9 Q. Ms. Dicks, if the matter were to proceed on a
10 compulsory pooling basis, would the joint operating
11 agreement that was provided to the BIA back in October
12 and the well cost estimate still hold?

13 A. Yes, it would.

14 Q. All right, does Exhibit Number 4 simply
15 illustrate the acreage and ownership in the event that
16 the Application were granted for a nonstandard
17 proration unit --

18 A. It does.

19 Q. -- of 160 acres?

20 And does Exhibit Number 5 illustrate the
21 acreage and ownership position if the alternative in
22 the Application were granted? That is, for compulsory
23 pooling of the northwest quarter?

24 A. It does. In addition, it's not -- only on
25 this exhibit shows the working interest. The BIA would

1 also have a one-eighth royalty interest in compulsory
2 pooling.

3 Q. The pooling would actually be of a mineral
4 interest?

5 A. Uh-huh.

6 Q. All right. Did Pro New Mexico comply with
7 Rule 1207 regarding giving notice to the required
8 interested parties?

9 A. Yes, we did.

10 Q. Does Exhibit 6 demonstrate that by an
11 affidavit signed by you?

12 A. Yes, it does.

13 Q. In connection with Exhibit 6 and the
14 Application attached to it, is there an Exhibit A which
15 is a map of the property in question and surrounding
16 acreage?

17 A. Yes, there is.

18 Q. All right. And does that show and color-code
19 it at the bottom, the acreage owned by Pro New Mexico
20 and the northwest quarter acreage that the BIA holds?

21 A. Yes, it does, and it shows the proposed
22 location of the well and the offsetting existing and
23 proposed or waiting-on-connection wells.

24 MR. GALLEGOS: That completes my questions of
25 this witness, Mr. Examiner.

EXAMINATION

BY EXAMINER CATANACH:

Q. Ms. Dicks, you've had no response from the BIA?

A. No, sir.

Q. The -- I assume the east half of the section is currently dedicated to a well; is that correct?

A. Let me recall here. Yes, it is. That's a Giant well in the northwest quarter.

Q. Does your company have a preference as to which way they would like to go on this Application?

A. Yes, sir, we would prefer to go with the nonstandard proration unit.

Q. The drilling of this well will be commenced before the end of the year?

A. We hope so.

EXAMINER CATANACH: I believe that's all I have for now.

MR. GALLEGOS: Okay, we call Bob Fielder.

ROBERT E. FIELDER,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALLEGOS:

Q. Would you state your name and where you live?

1 A. My name is Robert E. Fielder. I live in
2 Farmington, New Mexico.

3 Q. What is your occupation?

4 A. I'm a consulting petroleum engineer.

5 Q. What is your education and experience, Mr.
6 Fielder?

7 A. I have a bachelor of science in petroleum
8 engineering from New Mexico Tech at Socorro, New
9 Mexico.

10 Q. And what has your work experience been --

11 A. I --

12 Q. -- briefly summarized?

13 A. After graduating in 1970 from Socorro, I
14 returned to Farmington and went to work for El Paso
15 Natural Gas Company in their production department as a
16 well test and production engineer from -- 1974, I
17 worked there till 1974.

18 From 1974 till 1977 I worked for Northwest
19 Pipeline in their production department as a production
20 engineer.

21 And then from 1977 to 1985 I worked for
22 Southland Royalty Company in a variety of positions,
23 from engineer, district engineer, and finally as the
24 district operations manager in the Farmington area.

25 And from 1986 till present I've -- a co-owner

1 and work for Property Management Consulting, a
2 consulting company in Farmington.

3 Q. Have you previously testified as an expert
4 before the Oil Conservation Division?

5 A. Yes, I have.

6 MR. GALLEGOS: Examiner Catanach, we offer
7 Mr. Fielder as an expert witness.

8 EXAMINER CATANACH: Mr. Fielder is so
9 qualified.

10 Q. (By Mr. Gallegos) Are you familiar with Pro
11 New Mexico's Application in this proceeding?

12 A. Yes, I am.

13 Q. What does Pro New Mexico seek by its
14 Application?

15 A. Pro New Mexico seeks a nonstandard proration
16 unit for the Basin Fruitland Coal formation or, in the
17 alternative, a compulsory pooling to form a standard
18 proration unit, in order to allow them to develop their
19 mineral interests in the southwest quarter of Section
20 5, 25-11.

21 Q. Okay. And the nonstandard proration unit
22 request would include waiver of the special pool rules
23 regarding the Basin Fruitland formation?

24 A. Yes, sir, it would.

25 Q. All right, sir, what was your original

1 connection with this proposed well in Section 5?

2 A. Our original involvement was -- started, I
3 believe, sometime in July. We were contacted by Pro,
4 New Mexico to do an evaluation of the Fruitland Coal
5 potential on their acreage in this area. They had this
6 tract, another tract in Section 8 of 26-11 that we also
7 evaluated.

8 At that time we researched the other
9 completions, primarily by Giant Exploration and
10 Production, made some determinations as far as the
11 economic viability of Pro New Mexico drilling their
12 acreage in the southwest quarter of 11, and
13 subsequently provided a recommendation in August to Pro
14 that they should proceed with the development of their
15 southwest quarter acreage.

16 Q. Let me have you refer to an exhibit that was
17 sponsored by Ms. Dicks. It's Exhibit 6 but, in
18 particular, the map that's attached to that. Do you
19 have a copy of that?

20 A. I have a copy.

21 Q. Okay. Would you generally explain to the
22 Examiner what is shown by this map and what the
23 activity has been in development of the Fruitland
24 formation in acreage in the vicinity of the acreage in
25 question?

1 A. This map basically shows the area immediately
2 around the proposed -- or the area that's the subject
3 of this Application.

4 The standard proration unit for this section
5 under the special pool rules for the Basin Fruitland
6 Coal is outlined in green, which is the west half of
7 Section 5.

8 In particular, this shows by the triangles
9 colored blue in the exhibit that all of the offsetting
10 Fruitland Coal proration units have been developed, or
11 are proposed to be developed.

12 Q. Is the proposed location for the well in
13 question a standard coal gas well location?

14 A. Yes, it is. It's a standard location as
15 staked right now for either the 160-acre nonstandard
16 proration unit or the conventional 320 Fruitland Coal
17 proration unit.

18 Q. And would that location be consistent with
19 the development pattern in that area?

20 A. Yes, it would.

21 Q. I direct your attention to Exhibit Number 7,
22 Mr. Fielder. What is that, and explain what it shows.

23 A. Exhibit Number 7 is an isopach map of the
24 thickness of the Fruitland Coal Formation that has been
25 completed in the area surrounding this location. The

1 isopach was constructed using a 1.75 cutoff on the --
2 from the formation density logs where we could find
3 them on offset wells in the area.

4 The well symbols are colored blue on this, as
5 they were in the previous exhibit. The color code
6 basically, we tried to stick with the same thing.

7 This shows -- basically, the numbers, where
8 you have a double number by a well location -- take for
9 instance, the location in the northeast of 32, 26-11.
10 the 18 foot represents the amount of perforated feet,
11 and the 22 foot represents the net coal as determined
12 by the 1.75 cutoff.

13 Other codes that are shown in Section 33, the
14 two locations there are shown with an LOC, which is an
15 abbreviation for pending location.

16 The WOCT in the -- for the well in the
17 southwest quarter of 32 represents that that well is
18 waiting on completion.

19 The NL on that well says that there was no
20 log available at the Aztec District office for that
21 well location.

22 The single numbers under some of the other
23 locations are net feet of coal, determined by the 1.75
24 cutoff as open logs on those wells.

25 Q. What is Exhibit 7A?

1 A. Exhibit 7A is the list of all the Basin
2 Fruitland Coal locations that are shown on Exhibit 7,
3 and it shows their current status, the well name, the
4 operator, the current status, the location, the exact
5 footage location, the section, township and range, the
6 date the well was spudded and the completion date if
7 that's applicable, the initial potential in MCF per
8 day, the shut-in casing pressure in p.s.i.g., and the
9 date the wells were first put on production.

10 Q. Does Exhibit C contain a reference to other
11 exhibits you prepared showing cross-sections of logs of
12 analogous offsetting wells?

13 A. Exhibit 7?

14 Q. Exhibit 7.

15 A. Yes, it does.

16 Q. Okay. Your A-A', B-B- lines?

17 A. Yes, the A-A' represents a cross-section from
18 the northwest to the southeast. The B-B' represents a
19 cross-section through the proposed drill site from the
20 northeast to the southwest.

21 MR. GALLEGOS: Okay. Mr. Examiner, could Mr.
22 Fielder have permission to spread on the table his
23 cross-section exhibits? I think that way --

24 MR. STOVALL: Do you want to put them on the
25 wall?

1 MR. GALLEGOS: I thought it may be faster if
2 he just spread them out there and stood there, stood by
3 you and kind of pointed out what they show.

4 EXAMINER CATANACH: Yeah, that would be all
5 right.

6 MR. GALLEGOS: I think it just saves a little
7 time.

8 Q. (By Mr. Gallegos) If you'd just step up
9 there and spread the first exhibit, A.

10 A. This is Exhibit A-A', Exhibit Number 10, I
11 believe.

12 Q. Exhibit 8.

13 A. Exhibit 8.

14 Q. Exhibit 8.

15 A. This is a cross-section from the well, A,
16 representing -- is the East Bisti Coal 6 Number 1,
17 which is the producing well in the northeast quarter of
18 Section 6, 25-11. It's basically an immediate offset
19 to the proposed drill site.

20 A' is a log on the East Bisti Coal 8 Number
21 1, which is located in the northeast of Section 8,
22 25-11.

23 What we've shown on the -- attempted to show
24 on the cross-section is the continuity of the formation
25 in question, the Basin Fruitland Coal.

1 We've selected a datum in the Fruitland Coal
2 formation that is consistent with the -- all the logs
3 we looked at in the area. We've labeled that as the
4 datum on there.

5 And then the line here shows basically the
6 top of the Basin Fruitland Coal formation as shown by
7 the 1.75 density cutoff, and the lower line is the
8 base.

9 The vertical line down the center between the
10 two logs is the approximate location of the proposed
11 location in the southwest quarter.

12 The distance between these two line shows
13 that there should be about 18 feet of coal at this
14 proposed location.

15 And then at the very bottom is the distance
16 between each well, A to the proposed location, and the
17 proposed location to A'.

18 Q. Okay. Would you take Exhibit 9, now, and
19 make a similar explanation, please.

20 A. Exhibit 9 is the B-B' cross-section. The
21 well identified as B is the Buena Suerte 5B Com Number
22 1. It's located in the northeast of 5, 25-11, also a
23 direct offset to this well, the proposed well.

24 B' is the East Bisti Coal 7 Number 1. This
25 well is located in the northeast of 7, 25-11.

1 This cross-section basically shows the same
2 thing as on the previous exhibit. The datum picked is
3 the same. The lines at the upper and lower limits of
4 the Fruitland Coal are depicted on the same 1.75 cutoff
5 on the density log.

6 The vertical line in between shows the
7 proposed location of the southwest quarter well.

8 Q. And what opinion does that information lead
9 you to in connection with the occurrence of the
10 Fruitland formation at the proposed location?

11 A. The same conclusion as the A-A', you know,
12 that there is 18 foot of coal present in this well.

13 It does show by the B' log that -- and that's
14 also shown on the isopach -- that you're seeing a
15 thinning of the coal to the south, and that's evident
16 on the B' log. But at the proposed location we're
17 still in the 18-foot net coal thickness.

18 Q. Okay, thank you, Mr. Fielder. If you would
19 like to return to the witness chair.

20 Let me turn your attention next, if I might,
21 to Exhibit Number 10. What is that?

22 A. Exhibit Number 10 is a well cost estimate.
23 This was prepared by Jeff Albers, Property Management
24 Consulting, and supplied to Pro New Mexico.

25 This is the estimate to drill the -- the cost

1 to drill the well in the southwest quarter of Section
2 5, 25-11.

3 Q. And in your opinion is this estimate still
4 valid, and will it be through December?

5 A. Yes, it will. The -- Several items on here
6 were bid prices, the pipe bids, the footage drilling
7 price. All those, at -- The last time we checked, all
8 those were still valid prices.

9 This cost estimate with a total of \$96,484 is
10 consistent with the range that we've seen on Giant
11 AFEs, which were in the \$95,000-to-\$100,000 range.

12 Q. Okay. Has Giant been the predominant
13 developer of Fruitland wells in this vicinity?

14 A. Yes, they have.

15 Q. Direct your attention to Exhibit Number 11,
16 Mr. Fielder. What is that?

17 A. Exhibit Number 11 is a copy of the
18 Application for Permit to Drill to the Bureau of Land
19 Management in the Farmington Resource Area for the
20 subject location.

21 This well -- This permit was delivered to the
22 BLM on 11-25-92. The notice of staking regarding this
23 location was supplied to the BLM on October 30th, 1992.
24 That will cover the -- which will make the public
25 comment period allowed by the BLM, will expire on

1 November 30th or has -- did expire on November 30th.

2 So this -- Basically this permit is
3 approvable as soon as the BLM can work their way
4 through it.

5 On the bottom of the front page we've noted
6 that the surface ownership is Tribal Trust. This
7 covers the entire southwest quarter.

8 We have contacted the tribe, and we have a
9 preliminary settlement of damages. As soon as that's
10 taken care of, we'll get the concurrence letter from
11 the tribe, and that will take care of all the surface
12 stipulations or surface requirements for this APD.

13 And the only thing that we'll be lacking then
14 will be for approval by the BLM, will be basically the
15 ruling noted on the C-102, the second page of the
16 Application, which we -- where we noted on item 3 that
17 the acreage was not all tied up and that it was a
18 force-pooling, pending on the -- to have all the
19 acreage consolidated.

20 Q. So --

21 A. -- for a 320-acre proration unit.

22 Q. So notification from the OCD would be the
23 only remaining required step before the permit is
24 actually issued?

25 A. Right.

1 Q. In your experience with the BLM, would it be
2 likely that the permit would be issued on notification
3 from the OCD, even if a formal order is not yet out?

4 A. Yes, they've done that in the past with a
5 phone call from the Oil Commission, they've proceeded
6 with the permit process.

7 Q. Tell the Examiner what the schedule of Pro
8 New Mexico is on the drilling of this and the other
9 well that you mentioned that's contemplated.

10 A. Pro new Mexico has an additional well, the
11 Gracia Navajo 8L Number 1 in Section 8 of 26-11. The
12 permit is approved for that well.

13 It's anticipated right now that we will start
14 drilling operations on that well on December 14th. And
15 we would then like to move the rig from there to this
16 location, which would be approximately December 18th,
17 to go ahead and get both wells drilled before we run
18 into the holiday season at the end of the year.

19 Q. Okay. In your opinion, is the granting of
20 the Application for a nonstandard proration unit
21 consistent with the protection of correlative rights
22 and the prevention of waste?

23 A. Yes, it is. By the granting of the
24 nonstandard proration unit, the lack of any response
25 from the BIA at all indicates that this will be the

1 only way that Pro New Mexico will be able to develop
2 their acreage in the southwest quarter of Section 5,
3 25-11.

4 Q. On the alternative portion of the
5 Application, if a compulsory pooling were ordered by
6 the Division, are special conditions and terms
7 requested by Pro New Mexico?

8 A. Yes, they are. Since this is a pending
9 permit to drill for this location, we would need an
10 immediate response, an immediate order, and -- with no
11 allowance for a grace period for any response from the
12 BIA to that order, to that pooling order.

13 Q. Or the setting of a very short grace period?

14 A. Or a very short grace period.

15 Q. In your opinion, is that justified in light
16 of the fact that in October the BIA was already
17 supplied with a well cost estimate, joint operating
18 agreement, and the nature of the communitization
19 agreement?

20 A. Yes, I believe the BIA is well aware that --
21 of the location, proposed location, and the proposed
22 plan with the location. So that should be considered
23 the grace period, response period.

24 MR. GALLEGOS: That completes my direct
25 examination.

EXAMINATION

BY MR. STOVALL:

Q. Mr. Fielder, do you have any proposed -- If it's a compulsory pooling, any proposed overhead rates for the --

A. I believe we probably just have the standard overhead rates that are normally associated with a joint operating agreement.

Q. Do you have any idea --

A. I believe the rates are proposed in a joint operating agreement to the BIA.

MR. GALLEGOS: That would be in Exhibit 3, I think it was? Yes.

MR. STOVALL: Well, except for one thing, that Exhibit 3 doesn't contain any numbers.

Does that -- Do we assume that to mean that there's zero overhead?

MR. GALLEGOS: No.

THE WITNESS: No, I don't think that's a good assumption.

MR. STOVALL: If you go to the accounting provision --

MR. GALLEGOS: Oh, it's over in the --

MR. STOVALL: It's in the accounting provision, the COPAS --

1 MR. GALLEGOS: I know it's got some -- it
2 doesn't --

3 MR. STOVALL: Page 4 of the COPAS has no --
4 has zero numbers in it.

5 MR. GALLEGOS: That's not -- That wouldn't be
6 the overhead rate. I guess it doesn't in this copy. I
7 don't know...

8 What has been in most of these has been --
9 Yeah, the \$4000 per month drilling rate and \$400 per
10 month producing well rate, and I think that's -- I
11 don't know why these copies didn't have that.

12 Q. (By Mr. Stovall) Well let's restate that
13 now, then.

14 Mr. Fielder as the witness, is that your --
15 on behalf of -- and I realize that your client is also
16 your attorney so...

17 I assume that since he has said that, you
18 would concur that that's what you'd represent on his
19 behalf?

20 A. That's right, the proposed drilling rate
21 would be \$4000 a month, the operating rate \$400.

22 Q. Do you know how that compares to other
23 comparable rates in that -- for wells of that depth in
24 that area?

25 A. I believe that's probably consistent with

1 wells in the area.

2 Q. In the *Ernst & Young* report -- This is a
3 fairly shallow coal well, isn't it?

4 A. Yes, this will be about 1100, 1200 feet.

5 Q. Do you know what the *Ernst & Young* rates are
6 for that depth in that area?

7 A. No, I don't.

8 Q. Your Application, if I go through that, seeks
9 a 200-percent risk penalty. I assume that you're at
10 the moment asking for that?

11 A. Yes, we're asking for the 200-percent risk
12 penalty or, you know, we realize that the Oil
13 Commission has normally in the past granted something
14 in the 150 --

15 Q. About 156, I think, is the number.

16 A. -- magic number. And that number is
17 agreeable.

18 Q. So you would modify the request from the
19 Application at this time to accept 156-percent risk?

20 A. Right.

21 Q. Okay. Mr. Fielder, if the nonstandard
22 proration unit were granted, what do you think would
23 happen to that northwest quarter as far as development
24 of any coal gas rates?

25 A. My best guess is, it will probably sit there.

1 Q. You wouldn't anticipate that even if the BIA
2 leased it, there would be any additional wells drilled
3 in that northwest quarter?

4 A. I would imagine probably what they would have
5 to do if they would lease it was, they would have to --
6 with the nonstandard proration unit already in
7 existence, they would probably put a development
8 stipulation in the lease, you know. They would --
9 Whoever got the lease of the well would go in and...

10 Q. You're required by the BIA to drill as a part
11 of that?

12 A. Right. But I think -- You know, I think it's
13 just been historic in this area that there are a lot of
14 other tracts like this that are just sitting out there
15 unleased. And I can't remember when the last BIA sale
16 was.

17 Q. Well, I think it's been since I've been in
18 private industry, and that's been five years, so...

19 Are you recommending that the BIA -- Again,
20 if it's treated as a force-pooling, the BIA not be
21 given an opportunity, an election to join? Is that how
22 you understood your request?

23 A. They can be given the election to join.
24 However, the -- We're asking that the time period that
25 they be given to join, which I understand is normally

1 30 days, be restricted to a very short time period.

2 They've been provided cost estimate and the
3 operating agreement in October. They should be very
4 familiar with that. You could fax them a copy of the
5 Order and say you had --

6 Q. Or you could.

7 A. Or we could, and give them, you know, give
8 them a very short time period to respond to the order.

9 Q. Or we could put in the 30-day provision and
10 then you'd have to make a decision whether to drill
11 before you had a decision from them, wouldn't you?

12 A. That's correct.

13 MR. STOVALL: I don't think I have any other
14 questions for Mr. Fielder.

15 EXAMINATION

16 BY EXAMINER CATANACH:

17 Q. Mr. Fielder, what is the typical initial
18 producing rate of a similar well in this area?

19 A. It would be 135 to 150 MCF a day.

20 Q. Do you have an opinion as to whether the
21 proposed well in the southwest quarter will drain
22 reserves from the northwest quarter?

23 A. That's hard to determine right now, with the
24 data that's available.

25 Q. I notice that there's a slight difference in

1 your well location as contained in the advertisement
2 for this case and as contained in your application to
3 drill to the BLM. Is the APD to the BLM correct?

4 A. Yes, it is.

5 Q. 1830 from the west line?

6 A. Right, 1845 from the south.

7 I believe the Application footage was just on
8 a -- put in there on an approximate basis to show
9 basically just a standard location in a 160-acre
10 spacing unit. I don't believe at that time we had
11 the -- actually had the well staked.

12 MR. STOVALL: And that remains standard?

13 THE WITNESS: Yes, it is staked as a
14 standard, with a 790-foot setback from the proration
15 unit boundary in both the 160-acre spacing or the 320-
16 acre spacing.

17 Q. (By Examiner Catanach) And you do anticipate
18 reaching an agreement with the tribe as to the
19 location?

20 A. Yes, we have a verbal commitment from the
21 tribe already.

22 Q. And the BLM should follow that?

23 A. Yes. Well, the BLM will -- the surface group
24 in the Farmington Resource Area, they wait for the
25 concurrence letter from the Navajo tribe, which

1 satisfies all the surface requirements of the permit to
2 drill.

3 And we have that verbally from the tribe. As
4 soon as we send them the check then they'll send a
5 concurrence letter to the BLM.

6 MR. STOVALL: Now, the surface is actually --
7 It's tribal trust as opposed to allotted --

8 THE WITNESS: Right.

9 MR. STOVALL: -- BIA supervision; is that
10 correct?

11 THE WITNESS: That's correct. The northwest
12 quarter is of allotted land under BIA supervision.

13 And we've been talking to them from primarily
14 concerning pipeline right of way through this location.

15 MR. STOVALL: To the BIA or to the tribe?

16 THE WITNESS: To the BIA.

17 Q. (By Examiner Catanach) Approximately how
18 long will the well take to be drilled?

19 A. Four days.

20 Q. Is there a reason why the well could not wait
21 on completion until the BIA has made an election?

22 A. (No response)

23 MR. STOVALL: What is the tax -- Do you know
24 what the tax requires?

25 THE WITNESS: I think --

1 MR. STOVALL: Mr. Gallegos, you can answer
2 that if it's a legal question.

3 Does that well just have to be drilled and
4 completed, or does it just have to be spudded or --

5 MR. GALLEGOS: In my opinion, it would just
6 have to be drilled to depth. I don't think that you'd
7 have to come in with a completion.

8 MR. STOVALL: In other words, you could drill
9 it to depth before December 31st and qualify for the
10 tax credit, and then complete it subsequent to that
11 time?

12 THE WITNESS: Nobody knows that answer
13 absolutely, but I think that's the general consensus of
14 opinion.

15 MR. STOVALL: You'll find out when call
16 your --

17 THE WITNESS: Right, right. There's no
18 letter ruling, no decision on it, but I think that's
19 sort of the general view.

20 EXAMINER CATANACH: I believe that's all I
21 have.

22 MR. STOVALL: I would like to apologize for
23 not being in the room at the time Ms. Dicks testified,
24 but I would like to follow up with some questions. And
25 there may be some repetition. I'll try to check my

1 notes and...

2 EXAMINER CATANACH: We'll recall Ms. Dicks at
3 this time.

4 JOLENE DICKS (Recalled),
5 the witness herein, having been previously duly sworn
6 upon her oath, was examined and testified as follows:

7 EXAMINATION

8 BY MR. STOVALL:

9 Q. When did Pro New Mexico acquire its interest
10 in this lease to be in a position to initiate drilling
11 proposals?

12 A. We -- If I recall correctly, it was three
13 transactions. We started in March with one entity's
14 interest. I think we got all of our interest as of May
15 or -- I think May of this year.

16 Q. And you initiated contact with the BIA in
17 July? In July, is that correct?

18 A. I think someone from Mr. Fielder's office
19 first started talking to the BIA in late July, and then
20 I started talking to -- well, a few people, and then to
21 Ms. Drywater in August and September.

22 Q. Have they -- Have you been able to get the
23 identity of the allottees from the BIA?

24 A. No, sir.

25 Q. Are they unwilling to give it to you, or have

1 you asked, or --

2 A. I don't believe I asked that specifically,
3 no.

4 Q. So you've had no -- Your only contact with
5 the entire -- with the owners of the tract has been
6 through the BIA --

7 A. Yes, sir.

8 Q. -- is that correct?

9 A. Uh-huh.

10 Q. Now, you may have expressed the opinion
11 before, and again it may be better for Mr. Gallegos to
12 answer, but the -- jurisdictionally, do you think we've
13 got the authority to pool the Indian allottees?

14 MR. GALLEGOS: I think that's an open
15 question. You know, the statute broadly says any
16 unleased mineral acreage. But I don't know --

17 MR. STOVALL: I don't think state statute
18 would govern. It would probably be --

19 MR. GALLEGOS: I don't know --

20 MR. STOVALL: -- Indian law or federal law.

21 MR. GALLEGOS: That's right. And I don't
22 know whether -- If it were US land, even -- and of
23 course it is US as a trustee -- I don't know whether
24 this agency has that power or not. I think that's a
25 real interesting jurisdictional question.

1 MR. STOVALL: Well, tell you quite frankly,
2 my concern is that in dealing with the BIA, I think
3 they don't have a reputation for excellence in looking
4 out for their beneficiaries.

5 And I'm concerned that if the beneficiaries
6 know nothing about it, then they have no pressure to
7 bear on the BIA from their side.

8 And in fact, if it's a nonstandard proration
9 unit, it may not be -- they may never get their
10 minerals developed in this area.

11 MR. GALLEGOS: We were trying to point that
12 out to the BIA by these letters, that they have a
13 fiduciary duty and that they should lease the acreage
14 and participate. That was our original approach, and
15 that's what...

16 You weren't in the room for the testimony.
17 Ms. Dicks testified that originally she was advised in
18 August that the land would be put up for bid to be
19 leased, and then --

20 MR. STOVALL: Well, I think BIA has been
21 saying that for several years at that point, and on
22 several tracts that I'm aware of. So..

23 MR. GALLEGOS: Yeah.

24 MR. STOVALL: I guess my concern is with
25 respect to -- I think there's several issues involved,

1 and number one is notice. And I'm not sure but what
2 the allottees themselves may not be entitled to hear
3 about this.

4 Is notice to the BIA truly adequate to
5 protect the allottees' interest? And again, that's the
6 legal interest. I'll put your client and your attorney
7 on the spot on that one.

8 MR. GALLEGOS: Yeah, well, I would -- Under
9 ordinary trust law, the trustee actually holds legal
10 title in anything involving the trust assets. It's not
11 required that you notice beneficiaries because the
12 obligation, of course, from the trustee is to look out
13 for them.

14 MR. STOVALL: That's state law, and that's
15 largely a commonlaw basis --

16 MR. GALLEGOS: That's right.

17 MR. STOVALL: -- evolved into statute.

18 MR. GALLEGOS: That's right.

19 MR. STOVALL: We're talking federal Indian
20 law, and that's another issue.

21 I guess the second issue would be -- If you
22 grant the nonstandard, obviously, that eliminates some
23 of these concerns, although I'd say that perhaps they
24 might still be entitled to notice to -- or might need
25 notice to practically protect their interest.

1 But the second question would be, if we
2 force-pooled their interest, once any risk or --
3 recovery of costs the and risk were paid out, do you
4 have any idea how you would be able to pay the
5 allottees?

6 MR. GALLEGOS: I have no idea. Oftentimes,
7 other tracts that we've seen that we are participants
8 in, somebody else is the operator, the allottees are
9 spread, you know, all over the place.

10 MR. STOVALL: Well, the cases I am familiar
11 with, the payment actually goes through the Minerals
12 Management Service.

13 And my experience is, Minerals Management
14 Service can't accept payment until they get a lease.

15 And so you would have no mechanism by which
16 to pay them, which would --

17 MR. GALLEGOS: And then Mineral Management is
18 the paying agency to the allottees?

19 MR. STOVALL: And then they distribute to the
20 BIA, who then distributes to the allottees.

21 But I'm not sure whether that's -- You know,
22 I question whether there is a mechanism to pay them.

23 What I would suggest you do and let us know
24 is, if we were to grant this force-pooling Application,
25 and you include the northeast quarter -- because I

1 think there's a problem. If you don't include the
2 northeast quarter, it sounds like the Indian allottees
3 just simply are not going to get -- recover their
4 share, they're not going to get the opportunity.

5 But if we do force-pool the northeast
6 quarter, is there any mechanism by which they can be
7 paid?

8 I know of cases where there's some
9 communitizations that have occurred, and the BIA has
10 not approved those, and it's -- actually, they weren't
11 approved on leased land. So it's real tough.

12 MR. GALLEGOS: But I think it all comes down
13 to responsibility of the allottees' trustee. And if
14 that trustee is not performing that responsibility, you
15 know, neither the state nor individual owners who want
16 to develop resources should be hamstrung by that.

17 So I think if the allottees are -- some way
18 don't receive the benefit of this resource, they have
19 to look to the BIA.

20 MR. STOVALL: Oh, I think that's right. I
21 certainly don't intend to say that you're delinquent in
22 your efforts to protect them. I just...

23 I don't think there's anything further I can
24 add to the record of this that would -- I think it's
25 some administrative resolution problems that occur.

1 MR. GALLEGOS: Yeah, and I guess this is not
2 uncommon, as Mr. Fielder pointed out, with these
3 particular types of land.

4 MR. STOVALL: As I say, I know of several
5 instances where another operator has been unable to
6 even get a communitization approved through the BIA on
7 lands leased and wells drilled already, where the
8 allottees aren't even getting...

9 So I sympathize with your problem. And I
10 think we recognize the fact that if -- Either way, they
11 may not -- the true owners, the people entitled to the
12 money, may never get it, so...

13 MR. GALLEGOS: Yeah, these jurisdictional
14 issues are exactly the ones that we wrestled with as we
15 formulated the Application, because, of course, your
16 first inclination is compulsory pooling.

17 But then all the questions came to our mind
18 that come to you. Can you even do that?

19 That's why we thought that probably the best
20 solution was a non-standard unit.

21 MR. ERNEST CARROLL: Mr. Stovall, I know I
22 haven't entered an appearance, but I have a little
23 information --

24 MR. STOVALL: Identify yourself, as long as
25 you're going to be on the record, Mr. Carroll, if you

1 would identify yourself.

2 MR. CARROLL: My name is Ernest Carroll with
3 the Losee law firm of -- Losee, Carson, Haas & Carroll
4 of Artesia.

5 There is presently pending a lawsuit that is
6 entitled Frank Ettcity vs. an ungodly number of people
7 in federal district court.

8 The lawsuit has been pending for about seven
9 or eight years. Judge Hanson has now been given that
10 lawsuit. There was a pretrial conference that occurred
11 about a week to ten days ago.

12 It directly touches on the issues that you're
13 talking about and probably one of the reasons the BIA
14 is not responding.

15 A number of the Indians, Mr. Ettcity, et al.,
16 the plaintiffs, have brought suit against the BIA,
17 challenging their authority to issue leases on these --
18 on allotted lands.

19 Yates Petroleum holds one of these older
20 leases. That's why I'm involved in it. They're trying
21 to force Yates to become a -- They're trying to force
22 us into a defendant class action, and Yates is trying
23 to give the leases back to the allottees right now,
24 because we don't want to be involved in it.

25 But the only reason I bring that to your

1 attention is to let you know that there's -- You're not
2 going to get the questions that you've been talking
3 about answered anytime soon, just because this lawsuit
4 has been pending for such a long period of time.

5 Judge Hanson -- It's just been dropped on his
6 lap. He had all the many attorneys involved a week or
7 ten days ago. They're preparing different kinds of
8 briefs, just trying to give the judge some insight,
9 where do we go now?

10 MR. STOVALL: Now the issue -- Let me
11 interrupt you there. I don't know if we need all the
12 morbid details, but the issue is specifically the BIA's
13 authority to issue leases on behalf of allottees?

14 MR. CARROLL: That is one of the main issues,
15 yes, sir. There are many issues, but that is one of
16 the main ones, and that is -- The reason I tell you
17 this is, I'm not sure that you are going to be able to
18 answer that question for some time yet.

19 And to also give you notice that there's a
20 case where this issue is being dealt with, there are
21 attorneys that you might get some guidance as to what's
22 going to happen.

23 But again, I don't think you're going to get
24 help anytime soon, to help either one --

25 And that's all I have.

1 MR. STOVALL: I'm not sure if that would
2 reinforce my feeling that the allottees themselves
3 would have to be notified, or just throw up our hands
4 and say, Oh, well.

5 I appreciate the information.

6 MR. CARROLL; The spelling of Ettcity is
7 E-t-t-c-i-t-y. But it's a federal court case down in
8 Albuquerque. At this time Judge Hanson has it. I
9 don't have the cite.

10 MR. GALLEGOS: We can get that.

11 MR. STOVALL: I don't think we can -- I don't
12 think there's anything else we can add to this record
13 that will help.

14 At this point I've got -- You know, I want to
15 perhaps have some discussion with you, Mr. Gallegos --

16 MR. GALLEGOS: Okay.

17 MR. STOVALL: -- on some possible solutions.

18 But I think at that point we can take the
19 case under advisement.

20 MR. GALLEGOS: All right, and we'll certainly
21 -- or I'll certainly be available if you want to look
22 at any additional law or how we approach this.

23 MR. STOVALL: I think it's fairly well
24 established that the law is not established in this
25 area.

1 MR. GALLEGOS: That's what's established.
2 Nobody knows.

3 EXAMINER CATANACH: There being nothing
4 further, Case 10,615 will be taken under advisement.

5 And let's take a ten-minute break here.

6 (Thereupon, these proceedings were concluded
7 at 9:52 a.m.)

8 * * *

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I do hereby certify that the foregoing is
a complete report of the proceedings in
the Examiner hearing of Case No. 10615.
heard by me on December 3, 1992.

David R. Catanch, Examiner
Oil Conservation Division

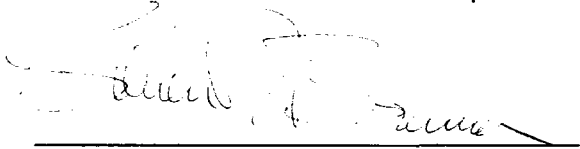
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court
Reporter and Notary Public, HEREBY CERTIFY that the
foregoing transcript of proceedings before the Oil
Conservation Division was reported by me; that I
transcribed my notes; and that the foregoing is a true
and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or
employee of any of the parties or attorneys involved in
this matter and that I have no personal interest in the
final disposition of this matter.

WITNESS MY HAND AND SEAL December 17th, 1992.


STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1994

**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. 10615
Order No. R-9811**

**APPLICATION OF PRO NEW MEXICO INC.
FOR A NON-STANDARD GAS PRORATION
UNIT OR, IN THE ALTERNATIVE, FOR
COMPULSORY POOLING, SAN JUAN COUNTY,
NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on December 3, 1992, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 18th day of December, 1992, 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, Pro New Mexico, Inc., seeks an exception to Rule No. (4) of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, as promulgated by Division Order No. R-8768, as amended, approving the creation of a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5, Township 25 North, Range 11 West, NMPM, San Juan County, New Mexico.

(3) IN THE ALTERNATIVE, the applicant seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5 forming a standard 320-acre gas spacing and proration unit for said pool.

(4) In either instance, a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet from the West line (Unit K) of Section 5 is to be dedicated to the resulting gas spacing and proration unit.

(5) The operating rights in the SW/4 of Section 5 are owned and controlled solely by the applicant. The NW/4 of Section 5 is owned by certain Navajo Indian Allottees and is administered in trust by the Bureau of Indian Affairs (BIA).

(6) By letter dated September 21, 1992 the applicant requested that the BIA include the NW/4 of Section 5 in a competitive bid lease sale. The applicant has also requested, by letter dated October 9, 1992, that the BIA voluntarily commit the NW/4 of Section 5 to the proposed 320-acre proration unit comprising the W/2 equivalent of Section 5.

As of the date of the hearing, the BIA has not responded to any of the requests by the applicant as cited above.

FINDING: The applicant has made a good faith effort to secure the leasehold rights within the NW/4 of Section 5 or the voluntary joinder by the BIA of said acreage in order to form a standard proration unit and provide the Indian Allottees the opportunity to participate in the production from their lands.

(7) The evidence presented indicates that extensive Basin-Fruitland Coal Gas Pool development has occurred and is occurring within the acreage offsetting the proposed proration unit.

(8) While the formation of a non-standard unit comprising the SW/4 of Section 5 would not necessarily preclude the drilling of a well on a non-standard 160-acre proration unit in the NW/4 of Section 5, it appears at the present time that such drilling may or may not ultimately occur.

(9) If the formation of a non-standard 160-acre proration unit in the NW/4 of Section 5 and the drilling of a well within said acreage does not occur, or occurs in the distant future, those interest owners within the NW/4 will be harmed by drainage from offset wells without any compensation.

(10) In order to offer the interest owners within the NW/4 of Section 5 some degree of protection of its correlative rights, the W/2 equivalent of Section 5 should be compulsory pooled thereby forming a standard 320-acre gas spacing and proration unit.

(11) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid 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 production 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.

(12) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 should be dismissed.

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

(14) At the time of the hearing the applicant requested that, subsequent to the issuance of a compulsory pooling order, the Bureau of Indian Affairs not be given an election period in which to decide to join in the drilling of the subject well.

(15) This request is based upon the necessity of drilling the subject well prior to January 1, 1993.

(16) It is not fair and reasonable to deny the Bureau of Indian Affairs the opportunity to elect to join in the drilling of the subject well subsequent to the issuance of this order, however, due to the time constraints on the drilling of the subject well, it is reasonable to reduce such election period.

(17) Within 15 days from the date the schedule of estimated well costs is furnished to it, as required by this order, the Bureau of Indian Affairs should have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(18) 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 156 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(19) Any non-consenting working 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.

(20) 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.

(21) \$4000.00 per month while drilling and \$400.00 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.

(22) 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.

(23) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before March 15, 1993, the order pooling said unit should become null and void and of no effect whatsoever.

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

(25) 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 forced pooling provisions of this order.

(26) All notices to working interest owners required under the provisions of this order should be made to the Bureau of Indian Affairs.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5, Township 25 North, Range 11 West, NMPM, are hereby pooled forming a standard 320-acre gas spacing and proration unit for said pool. Said unit shall be dedicated to a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet from the West line (Unit K) of Section 5.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of March, 1993, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Basin-Fruitland Coal Gas Pool.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of March, 1993, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director 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 Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Pro New Mexico, Inc. 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 the Bureau of Indian Affairs an itemized schedule of estimated well costs.

(4) Within 15 days from the date the schedule of estimated well costs is furnished to it, the Bureau of Indian Affairs shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and if it elects to pay its share of estimated well costs as provided above it 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 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 well 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 15 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, 156 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) \$4000.00 per month while drilling and \$400.00 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 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 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 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 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 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 Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 is hereby dismissed.

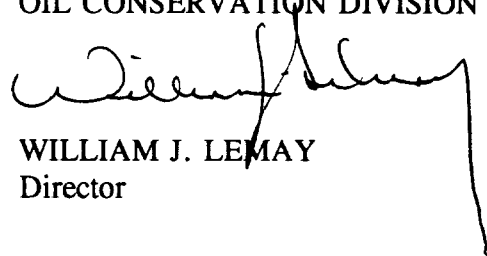
(16) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY
Director

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:

DR 12/14/92
OK 12/18/92
WJR 12/18/92
CASE NO. 10615
Order No. R-9811

APPLICATION OF PRO NEW MEXICO INC.
FOR A NON-STANDARD GAS PRORATION
UNIT OR, IN THE ALTERNATIVE, FOR
COMPULSORY POOLING, SAN JUAN COUNTY,
NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on December 3, 1992, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this _____ day of December, 1992, 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, Pro New Mexico, Inc., seeks an exception to Rule No. (4) of the Special Rules and Regulations for the Basin-Fruitland Coal Gas Pool, as promulgated by Division Order No. R-8768, as amended, approving the creation of a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5, Township 25 North, Range 11 West, NMPM, San Juan County, New Mexico.

(3) IN THE ALTERNATIVE, the applicant seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5 forming a standard 320-acre gas spacing and proration unit for said pool.

(4) In either instance, a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet

from the West line (Unit K) of Section 5 is to be dedicated to the resulting gas spacing and proration unit.

(5) The operating rights in the SW/4 of Section 5 are owned and controlled solely by the applicant. The NW/4 of Section 5 is owned by certain Navajo Indian Allottees and is administered in trust by the Bureau of Indian Affairs (BIA).

(6) By letter dated September 21, 1992 the applicant requested that the BIA include the NW/4 of Section 5 in a competitive bid lease sale. The applicant has also requested, by letter dated October 9, 1992, that the BIA voluntarily commit the NW/4 of Section 5 to the proposed 320-acre proration unit comprising the W/2 equivalent of Section 5.

As of the date of the hearing, the BIA has not responded to any of the requests by the applicant as cited above.

FINDING: The applicant has made a good faith effort to secure the leasehold rights within the NW/4 of Section 5 or the voluntary joinder by the BIA of said acreage in order to form a standard proration unit and provide the Indian Allottees the opportunity to participate in the production from their lands.

(7) The evidence presented indicates that extensive Basin-Fruitland Coal Gas Pool development has occurred and is occurring within the acreage offsetting the proposed proration unit.

(8) While the formation of a non-standard unit comprising the SW/4 of Section 5 would not necessarily preclude the drilling of a well on a non-standard 160-acre proration unit in the NW/4 of Section 5, it appears at the present time that such drilling may or may not ultimately occur.

(9) If the formation of a non-standard 160-acre proration unit in the NW/4 of Section 5 and the drilling of a well within said acreage does not occur, or occurs in the distant future, those interest owners within the NW/4 will be harmed by drainage from offset wells without any compensation.

(10) In order to offer the interest owners within the NW/4 of Section 5 some degree of protection of its correlative rights, the W/2 equivalent of Section 5 should be compulsory pooled thereby forming a standard 320-acre gas spacing and proration unit.

(11) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid 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 production 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.

(12) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 should be dismissed.

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

(14) At the time of the hearing the applicant requested that, subsequent to the issuance of a compulsory pooling order, the Bureau of Indian Affairs not be given an election period in which to decide to join in the drilling of the subject well.

(15) This request is based upon the necessity of drilling the subject well prior to January 1, 1993.

(16) It is not fair and reasonable to deny the Bureau of Indian Affairs the opportunity to elect to join in the drilling of the subject well subsequent to the issuance of this order, however, due to the time constraints on the drilling of the subject well, it is reasonable to reduce such election period.

(17) Within 15 days from the date the schedule of estimated well costs is furnished to it, as required by this order, the Bureau of Indian Affairs should have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(18) 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 156 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(19) Any non-consenting working 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.

(20) 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.

(21) \$4000.00 per month while drilling and \$400.00 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.

(22) 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.

(23) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before March 15, 1993, the order pooling said unit should become null and void and of no effect whatsoever.

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

(25) 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 forced pooling provisions of this order.

(26) All notices to working interest owners required under the provisions of this order should be made to the Bureau of Indian Affairs.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the Basin-Fruitland Coal Gas Pool underlying the W/2 equivalent of Section 5, Township 25 North, Range 11 West, NMPM, are hereby pooled forming a standard 320-acre gas spacing and proration unit for said pool. Said unit shall be dedicated to a well to be drilled at a standard coal gas well location 1845 feet from the South line and 1830 feet from the West line (Unit K) of Section 5.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 15th day of March, 1993, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Basin-Fruitland Coal Gas Pool.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 15th day of March, 1993, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director 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 Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Pro New Mexico, Inc. 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 the Bureau of Indian Affairs an itemized schedule of estimated well costs.

(4) Within 15 days from the date the schedule of estimated well costs is furnished to it, the Bureau of Indian Affairs shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and if it elects to pay its share of estimated well costs as provided above it 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 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 well 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 15 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, 156 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) \$4000.00 per month while drilling and \$400.00 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 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 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 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 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 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 Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) The application of Pro New Mexico, Inc., for a non-standard 160-acre gas spacing and proration unit comprising the SW/4 of Section 5 is hereby dismissed.

(16) Jurisdiction is hereby 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

WILLIAM J. LEMAY
Director

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