

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 TO
CONSIDER THE APPLICATION OF:

CASE NO. 8769 (Reopened)
ORDER NO. R-8091-A

DOYLE HARTMAN FOR COMPULSORY POOLING,
LEA COUNTY, BEING REOPENED UPON THE
APPLICATION OF HOWARD OLSEN TO RECONSIDER
THE PROVISIONS OF DIVISION ORDER NO. R-8091

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on September 6, 1989, at Santa Fe, New Mexico before Examiner Michael E. Stogner.

NOW, on this 8th day of January, 1991, the Division Director, having considered the evidence as contained in 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) Olsen filed his application to reopen this case seeking strict compliance with Order No. R-8091 on August 17, 1987. Olsen specifically seeks enforcement of the Division's order requiring the submission by the operator of estimated well costs prior to drilling, the effect of which will enable him now to receive well costs, challenge those costs and make a decision about whether or not to join the well, knowing the productive ability and approximate current payout status of the well.

(3) The parties in this case, appearing by counsel, have submitted depositions and have stipulated to a Chronological Statement of Key Facts, and there are no factual disputes about the order of events.

(4) Howard Olsen did not appear and enter any objection at the original compulsory pooling hearing held on November 21, 1985, nor does he challenge the validity of the order.

(5) Howard Olsen was a party force-pooled by Order R-8091 into a standard proration unit in the Langlie-Mattix Pool, being the SE/4 NE/4 of Section 26, Township 25 South, Range 37 East, NMPM, Lea County, New Mexico, upon the application of Doyle Hartman.

(6) Doyle Hartman commenced drilling the Carlson Federal No. 5 well, (the "subject well"), on said proration unit on December 10, 1985, which is four days after the entry by the Division of Order No. R-8091.

(7) Although Hartman provided Olsen with an AFE for the subject well prior to the compulsory pooling hearing, he did not do so after the order was entered and at least thirty days prior to drilling the well in accordance with the provisions of the order.

(8) The uncontroverted evidence is that Olsen was aware of Hartman's plans to drill the subject well and had entered into negotiations to sell his interest to Hartman prior to the drilling of the well, but he did not continue with those negotiations after the well was drilled. There is additional evidence that Olsen refused communications from Hartman regarding operations on this well.

(9) Olsen did not file his application to reopen until August 1987, almost two years after the well was spudded.

(10) In October and November of 1987 a certified public accountant retained by Mr. Olsen examined the financial records of Doyle Hartman relating to the costs of the subject well. Olsen has not filed any objection to the costs of said well, and the actual well costs should be determined to be reasonable.

(11) The Division will normally require strict compliance with its orders, but it must rely on affected parties to bring non-compliance to its attention.

(12) Olsen did not diligently pursue his remedy although the evidence shows that he had substantive knowledge of sufficient information to enable him to protect his interests. This failure on his part to seek relief makes it impossible

for the Division to compel strict compliance with the terms of Order R-8091.

(13) It is the intent of compulsory pooling orders entered by the Division to give parties pooled thereunder the opportunity to pay their costs and share in the risks and benefits of drilling the well, or in the alternative to allow those parties paying the costs and taking the risk to be compensated for that risk.

(14) It is not clear from the evidence that Olsen had a reasonable opportunity to participate in drilling the well, and he should be afforded the opportunity at this time to pay his pro rata share of the well costs and receive his pro rata share of the proceeds of production, if he so elects to participate.

(15) Hartman has incurred and paid those costs attributable to Olsen's interest, and, considering the time that has passed because this matter has not been diligently pursued, if Olsen elects to pay his pro rata share of well costs, he should compensate Hartman for the use of his money with a reasonable interest charge.

(16) If Olsen elects to pay his share of the costs of the well, he should be entitled to receive his share of the proceeds of production together with reasonable interest thereon.

(17) A reasonable rate of interest is the rate provided for in New Mexico statutes for interest on judgments.

IT IS THEREFORE ORDERED THAT:

- (1) Order R-8091 shall remain in full force and effect.
- (2) The actual well costs incurred by Hartman are determined to be reasonable well costs.
- (3) Applicant to reopen this case, Howard Olsen, may elect to participate in the Carlson Federal No. 5 well by paying to Doyle Hartman within thirty (30) days the pro rata share of drilling, completion and operating costs of said well as provided in Order R-8091 attributable to his interest, together with interest thereon from the date such costs were incurred to the date of this order at the rate of interest on

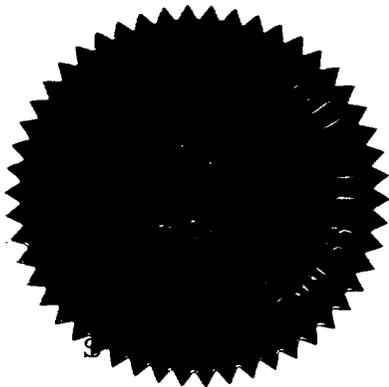
judgments as set forth in New Mexico statutes.

(4) If Olsen elects to join the well and pays those costs to Hartman, Hartman shall, within thirty (30) days of delivery of such payment, account for and pay to Olsen the proceeds from production attributable to Olsen's interest with interest thereon at the judgment rate from the date of receipt of such proceeds by Hartman, or from the date such proceeds were placed in suspense by Hartman or any purchaser, to the date of the delivery of payment of costs by Olsen to Hartman.

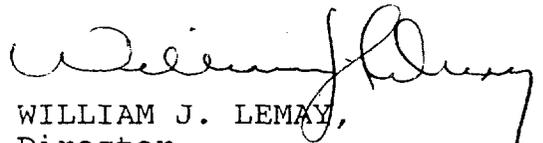
(5) If Olsen fails to pay his pro rata share of costs as provided herein, his interest shall be deemed to be non-consent pursuant to the provisions of Order R-8091.

(6) Jurisdiction of this cause is retained for 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