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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE 9129 (DE NOVO)
Order No. R-8653-A

APPLICATION OF VIRGINIA P. UHDEN, HELEN ORBESEN, AND CARROLL O. HOLMBERG TO VACATE DIVISION ORDER NOS. R-7588 AND R-7588-A, AND/OR FOR THE FORMATION OF SIX 160-ACRE GAS PRORATION UNITS, SAN JUAN COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on July 14, 1988, before the New Mexico Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 19th day of September, 1988, the Commission, a quorum being present, having considered the testimony presented and the exhibits and briefs received, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) By Order No. R-7588, entered in Case No. 8014 on July 9, 1984, the Oil Conservation Division ("Division") created, defined and promulgated the temporary special pool rules and regulations for the Cedar Hill-Fruitland Basal Coal Gas Pool, San Juan County, New Mexico, including a provision for 320-acre gas spacing and proration units, with an effective date of February 1, 1984.

(3) By Order No. R-7588-A entered in Case No. 8014 (reopened) on March 7, 1986, the Division made permanent the temporary special rules and regulations promulgated by said Order No. R-7588.

(4) The applicants, Virginia P. Uhden, Helen Orbesen, and Carroll O. Holmberg, applied to the Division for an order vacating the 320-acre spacing provisions of Orders No. R-7588

and R-7588-A as to the applicants and establishing 160-acre spacing and proration units consisting of the NW/4 and the SW/4 of Section 33, and the NW/4, NE/4, SW/4, and the SE/4 of Section 28, all in Township 32 North, Range 10 West, NMPM, San Juan County, New Mexico; or in the alternative to make those spacing orders effective as to the applicants as of the date notice was provided to the applicants, that being May, 1986.

(5) Amoco Production Company; C & E Operators, Inc., et. al. ("C & E"); and Meridian Oil Inc. ("Meridian") have appeared in this matter in opposition to the application.

(6) Record in this case shows that the applicants are the fee owners and lessors of certain mineral interests in the W/2 of said Section 33 and in all of said Section 28, and that Amoco Production Company is lessee and owner of the working interest operating rights in the leases.

(7) C & E and Meridian are lessees and working interest owners in 160-acre tracts which have been pooled into 320-acre spacing units and have paid their proportionate share of the costs. If the application is granted, their interests will be excluded from the existing proration units and they will not receive their share of production from the wells drilled thereon.

(8) The parties in this case before the Commission have stipulated to incorporate the record made in the hearing before the Division, which record includes the record in Case 8014 and 8014 (reopened), and the Commission permitted the parties to file written briefs subsequent to the hearing.

(9) Each of the parties identified above has submitted a Brief in support of their respective positions.

(10) The Oil Conservation Division and the Oil Conservation Commission are charged with the responsibility of preventing waste and protecting correlative rights, and to that end are given broad authority to regulate oil and gas operations, including the authority to space wells. Division Rule 104 L authorizes the Division, after notice and hearing and in order to prevent waste, to fix different spacing requirements and require greater acreage for drilling tracts in any defined gas pool than is provided for in the statewide rules.

(11) In order to establish spacing requirements different from statewide standard spacing, it must be affirmatively demonstrated at hearing that a well is capable of draining the

acreage proposed to be established as a standard size spacing unit for the pool.

(12) In Case 8014, the record of which is incorporated into this case by agreement of the parties, the Division found that one well in the subject pool should be capable of effectively and efficiently draining 320 acres and that in order to prevent the economic loss caused by the drilling of unnecessary wells and to prevent waste and protect correlative rights, the Cedar Hill-Fruitland Basal Coal Pool should be created with provisions for 320-acre spacing units.

(13) Pursuant to Order R-7588 in Case 8014, the case was reopened by the Division in February, 1986, and in that reopened hearing the Division found that one well in the Cedar Hill-Fruitland Basal Coal Pool can efficiently and economically drain and develop 320 acres and economic waste caused by the drilling of unnecessary wells can be prevented by continuing in effect the special pool rules promulgated by Order R-7588 providing for 320-acre spacing in the Cedar Hill-Fruitland Basal Coal Pool.

(14) The applicants filed their application in the instant case before the Division and on hearing presented geological evidence for the purpose of showing that one well could not effectively drain 320 acres in the Cedar Hill-Fruitland Basal Coal Pool.

(15) The Division found in the instant case that the applicants presented no evidence showing that the areas in Sections 28 and 33 are geologically distinct from the remaining acreage within the Cedar Hill-Fruitland Basal Coal Pool nor did they present any engineering data which would indicate that 160-acre spacing is appropriate for the described area, Sections 28 and 33. The applicants further testify that 320-acre spacing may ultimately be the appropriate spacing for the Cedar Hill-Fruitland Basal Coal Pool.

(16) Applicants argue that their property interest has been taken by State action without due process of law, and that as royalty owners they are entitled to actual personal notice of any hearing which would establish pooling or spacing units which would affect the lands from which their royalty interest is derived.

(17) In Case No. 9134, a case concerned with notice required to be given to royalty owners in cases before the Commission, the Commission took evidence regarding the contractual relationship between lessors and lessees and the

nature of the lessor, royalty owner's property interest in oil and gas covered by the lease.

(18) The record in Case 9134 and in the instant case shows that an oil and gas lease creates a contractural relationship between lessors and lessees and their mutual rights and obligations are defined therein. Lessors in granting the oil and gas leases transfer to lessees the exclusive right to investigate, explore, drill and develop the hydrocarbons within the leasehold estate. The transferor conveys all operating rights and working interest including the exclusive right to make all operational decisions regarding the timing and location of drilling, together with the obligation to pay all costs incurred therein.

(19) Oil and gas lessors retain the right to receive free of cost a fractional share of hydrocarbons produced from the leased premises or a fractional share of the proceeds from the sale of said production, and so long as they receive their proportionate share of production based upon their interest in the spacing unit, they have not been deprived of property.

(20) Oil and gas leases commonly contain provisions whereby the lessee is granted the authority to pool the leased lands with other lands to form spacing or proration units. The specific contractual provisions of a lease may define the power granted to the lessee and may further define the manner in which the production is to be allocated.

(21) By virtue of the lease terms stated above, applicants have no right to enter the leasehold premises for the purpose of exploration or drilling for oil, gas or other hydrocarbons. They may receive their share of production from the same well as other interest owners.

(22) If the applicants request is granted, the owners of interests in the offsetting tracts to be excluded from the 320-acre proration units which were established pursuant to Order No. R-7588, including C and E Operators and Meridian Oil Inc., and the lessor royalty owners under their leases, may have their correlative rights impaired and not be able to recover their fair share of the oil and gas underlying the 320-acre tract unless the owner of the working interest operating rights drills an additional well on the excluded tract in order to produce the hydrocarbons underlying that tract. It has been demonstrated that said additional well would not be necessary to produce the hydrocarbons underlying said tract and that an additional well would not significantly increase the cumulative production of oil, gas and other

hydrocarbons underlying the 320 acres committed to the two wells.

(23) If the applicants request is granted, and if the offsetting working interest owners elect to drill a well on their 160-acre tract, the total recovery from the well on the applicant's tract is likely to be substantially reduced because a portion of the production underlying the 320-acre proration unit will be produced by the well drilled on the offsetting 160-acre tract, and therefore the applicants total share of production from the 320 acres will be substantially the same, whether there is one well or two wells producing on that 320 acres.

(24) If it is later determined that an additional well could recover additional oil, gas or other hydrocarbons from under the 320-acre tract, the special pool rules for the Cedar Hill-Fruitland Basal Coal Pool could be amended to allow an additional well to be drilled on a 320-acre proration unit and applicants would be entitled to their fair share of production of that additional well.

(25) The New Mexico Oil & Gas Act, specifically Section 70-2-18 N.M.S.A. 1978, requires the operator of a well to obtain voluntary pooling or a forced pooling order from the Division when separately owned tracts are embraced within a spacing unit. The Division may also establish non-standard units. When lands are force-pooled or a non-standard unit is formed, Division rules require notice to all affected interest owners, including royalty owners who have not given the lessees the right to pool the lands, and in the case of non-standard units notice must be given to offset operators.

(26) The record in this case shows that the lessors (applicants) have in addition granted to the lessees the right to pool the leased lands with other lands to create spacing and proration units of not greater than 640 acres. The language of the lease specifically provides that the royalties shall be prorated to the lessors in the same proportion that their acreage bears to the total acreage of the production unit.

(27) The applicants have not presented any evidence to show that they are not receiving their royalty share in accordance with the terms of their lease.

(28) The special pool rules entered for the Cedar Hill-Fruitland Basal Coal Pool establishing 320-acre spacing units will not deprive the applicants in this case of any property in which they have interest. They will be entitled to receive their royalty share of the oil and gas and other hydrocarbons

produced from the lands which are covered by their lease with Amoco.

(29) The correlative rights of owners of oil and gas production, including royalty and overriding royalty owners, can be protected by voluntary pooling of interests within a drilling tract or spacing unit, or by exercising remedies available under the New Mexico forced pooling statutes and rules of the Division.

(30) Royalty owners are proper but not necessary parties to the case before the Division or the Commission which involved the establishment or modification of Statewide or Special Pool Rules establishing spacing and proration units.

(31) The evidence adduced in the instant case indicates that Division Order No. R-8653 entered May 11, 1988, should be affirmed.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-8653, entered May 11, 1988, is hereby affirmed.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

WILLIAM R. HUMPHRIES, Member

ERLING A. BROSTUEN, Member

WILLIAM J. LEMAY, Chairman and Secretary

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