

**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. 11233
CASE NO. 11234
Order No. R-10358**

**APPLICATION OF NEARBURG EXPLORATION
COMPANY FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

**APPLICATION OF YATES PETROLEUM
CORPORATION FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on April 6, 1995, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 2nd day of May, 1995, 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) Division Case Nos. 11233 and 11234 were consolidated at the time of the hearing for the purpose of testimony, and, inasmuch as approval of one application would necessarily require denial of the other, one order should be entered for both cases.

(3) The applicant in Case No. 11233, Nearburg Exploration Company (Nearburg), seeks an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the SW/4 of Section 13, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160 acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated North Dagger Draw-Upper Pennsylvanian Pool. Said unit is to be dedicated to the proposed Fairchild "13" Well No. 2 to be drilled at a standard oil well location within the SE/4 SW/4 (Unit N) of Section 13.

(4) The applicant in Case No. 11234, Yates Petroleum Corporation (Yates), seeks an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the SW/4 of Section 13, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Undesignated North Dagger Draw-Upper Pennsylvanian Pool. Said unit is to be dedicated to the proposed Bert "APB" Well No. 1 to be drilled at a standard oil well location within the SW/4 SW/4 (Unit M) of Section 13.

(5) At the commencement of the hearing in the subject cases, it was brought to the attention of the Division that there is a disputed issue between Yates and Nearburg regarding the ownership of a certain 16 percent interest, more or less, within the proposed spacing unit previously owned by Mr. Walter Bert Holmquist. Both Yates and Nearburg claim ownership of such interest.

(6) The issue of such ownership is currently being litigated by Yates and Nearburg in District Court in Eddy County, New Mexico.

(7) With regards to this issue, the Division Examiner allowed Counsel for both Yates and Nearburg to offer tenders of proof as to why such interest should be credited to each respective party.

(8) Ultimately, the Division Examiner denied both parties' tenders of proof and ordered that for the purpose of deciding this pooling matter, neither Yates nor Nearburg shall be entitled to claim credit for this interest.

(9) Both Yates and Nearburg have the right to drill a well in Section 13, both seek to be designated the operator of the proposed proration unit, and both seek the adoption of drilling and production overhead charges and risk penalties.

(10) Yates and Nearburg have been unable to reach a voluntary agreement as to whom should drill and operate a well within the SW/4 of Section 13.

(11) The proposed wells are located within one mile of the outer boundary of the North Dagger Draw-Upper Pennsylvanian Pool and are therefore subject to the Special Rules and Regulations for said pool as promulgated by Division Order No. R-4691, as amended, which require standard 160-acre spacing and proration units with wells to be located no closer than 660 feet from the outer boundary of the spacing unit nor closer than 330 feet from any quarter-quarter section line or subdivision inner boundary.

(12) Both parties agreed at the hearing that overhead rates of \$5400.00 while drilling and \$540.00 while producing should be adopted in this case. In addition, both parties proposed that a risk penalty of 200 percent be assessed against non-consenting interest owners.

(13) Excluding the Holmquist interest, ownership within the SW/4 of Section 13 is outlined as follows:

Yates Petroleum Corporation	23.33 %
Yates Drilling Company	3.33 %
Abo Petroleum Corporation	3.33 %
Myco Industries Inc.	<u>3.33 %</u>
SUB TOTAL:	33.32 %

Nearburg Exploration Company 50.0 %

TOTAL: 83.32 %

(14) The issues in dispute in this case include the following:

- a) Well Location: Nearburg has proposed drilling its Fairchild "13" Well No. 2 at a standard oil well location 660 feet from the South line and 1980 feet from the West line (Unit N) of Section 13, while Yates has proposed drilling its Bert "APB" Well NO. 1 at a standard oil well location 660 feet from the South and West lines (Unit M) of Section 13;
- b) Drilling Costs: Yates and Nearburg submitted AFE's which reflect the following drilling costs for the proposed Fairchild "13" Well No. 2 and the Bert "APB" Well No. 1:

<u>WELL NAME</u>	<u>COMPLETED WELL COST</u>
Fairchild "13" No. 2	\$627,680.00
Bert "APB" No. 1	\$741,200.00

(15) Yates initially proposed the drilling of the Bert "APB" to Nearburg on or about March 2, 1995. Nearburg proposed the drilling of the Fairchild "13" Well No. 2 to Yates on or about March 7, 1995.

(16) On March 3, 1995, Yates filed a compulsory pooling application for the subject acreage with the Division. On March 13, 1995, Nearburg filed a similar compulsory pooling application.

(17) It appears that very little negotiation has taken place between Yates and Nearburg in this particular dispute.

(18) Nearburg's geologic interpretation of the Canyon dolomite reservoir is based upon limited well control in this area and geophysical data possessed by Nearburg. Nearburg's geophysical data is based upon a seismic shot line running in an east-west direction which passes in close proximity to both of the proposed well locations. Nearburg's geologic evidence and testimony indicates that a well drilled at its proposed location should encounter the Canyon dolomite reservoir approximately 40 feet higher structurally than a well drilled at Yates' proposed location. In addition, Nearburg's geologic evidence indicates that a well drilled at Yates' proposed location will be located at or near the western limit of productive Canyon reservoir.

(19) Yates' geologic interpretation of the Canyon dolomite reservoir is based upon limited well control in this area only. Yates' geologic evidence indicates that a well drilled at its proposed location should encounter the Canyon dolomite reservoir approximately 30-40 feet higher structurally than a well drilled at Nearburg's location. In addition, Yates' geologic evidence indicates that both well locations should have similar dolomite thickness.

(20) Yates contends that the geophysical data utilized by Nearburg is of very limited value in choosing a Cisco/Canyon well location in this area.

(21) Yates submitted as evidence actual drilling costs Yates incurred in drilling fourteen wells in this area jointly owned by both parties. In addition, it presented actual drilling costs Nearburg incurred in drilling four wells in this area jointly owned by both parties.

(22) The actual drilling cost data presented indicates that the average drilling cost for Cisco/Canyon well drilled by Yates in this area is approximately \$673,398.00. The average drilling cost for a Cisco/Canyon well drilled by Nearburg in this area is approximately \$719,894.00.

(23) This evidence indicates that the AFE's presented by both parties are not necessarily indicative of actual drilling costs which may ultimately be incurred while drilling a Cisco/Canyon well in this area.

(24) Estimated drilling costs and the parties' willingness to negotiate a voluntary settlement should not be critical factors in determining the outcome of this case.

(25) The evidence and testimony presented by both parties in this case does indicate that:

- a) excluding the Holmquist interest, Nearburg is the majority interest owner within the SW/4 of Section 13 at the present time;
- b) Nearburg is in possession of geophysical data not available to Yates. Although there is some question as to the value of this geophysical data, Nearburg testified that it has successfully utilized seismic data previously in the North Dagger Draw-Upper Pennsylvanian Pool to aid in determining well locations. This suggests that this data is of some value and that Nearburg's geologic interpretation is more accurate than that presented by Yates;
- c) Nearburg has recently completed drilling its Fairchild "24" Well No. 1 located in Unit E of Section 24, Township 19 South, Range 25 East, NMPM, which is located directly south of the proposed proration unit. This well, which is located at least three miles from known North Dagger Draw-Upper Pennsylvanian Pool production, has been completed as a Cisco/Canyon producing well.
- d) Yates' closest producing well in this pool is located more than three miles away. Nearburg, by virtue of recently drilling the aforesaid Fairchild "24" Well No. 1, has more operations and surface facilities in this newly discovered area of the pool than does Yates;

(26) Nearburg testified and Yates concurred that previous disputes over operatorship of spacing units in the North Dagger Draw-Upper Pennsylvanian Pool have been voluntarily resolved utilizing as criteria majority interest ownership and location of operations and surface facilities relative to the spacing unit.

(27) Based upon interest ownership, geologic interpretation and location of operations and surface facilities, Nearburg should be designated the operator of the Fairchild "13" Well No. 2 and spacing unit.

(28) The application of Yates Petroleum Corporation should be denied.

(29) 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 application of Nearburg Exploration Company should be approved by pooling all mineral interests, whatever they may be, within said unit.

(30) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(31) 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 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(32) 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.

(33) 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.

(34) \$5400.00 per month while drilling and \$540.00 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.

(35) 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.

(36) Upon the failure of Nearburg to commence the drilling of the Fairchild "13" Well No. 2 on or before August 1, 1995, the order pooling said unit should become null and void and of no effect whatsoever.

(37) 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.

(38) 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.

IT IS THEREFORE ORDERED THAT:

(1) The application of Nearburg Exploration Company in Case No. 11233 for an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the SW/4 of Section 13, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent which presently includes but is not necessarily limited to the Undesignated North Dagger Draw-Upper Pennsylvanian Pool is hereby approved. Said unit shall be dedicated to the Fairchild "13" Well No. 2 to be drilled at a standard oil well location 660 feet from the South line and 1980 feet from the West line (Unit N) of Section 13.

(2) The application of Yates Petroleum Corporation in Case No. 11234 for an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the SW/4 of Section 13, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, forming a standard 160-acre spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent which presently includes but is not necessarily limited to the Undesignated North Dagger Draw-Upper Pennsylvanian Pool is hereby denied.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 1st day of August, 1995, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Cisco/Canyon formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of August, 1995, 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) Nearburg Producing Company 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 each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided above 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 30 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, 200 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) \$5400.00 per month while drilling and \$540.00 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 Eddy 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.

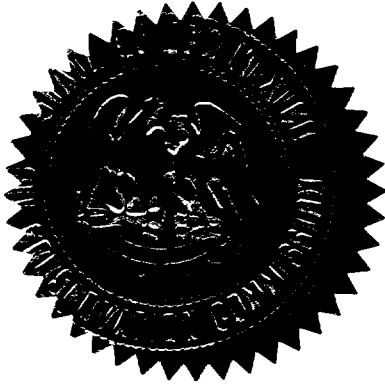
(13) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(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.

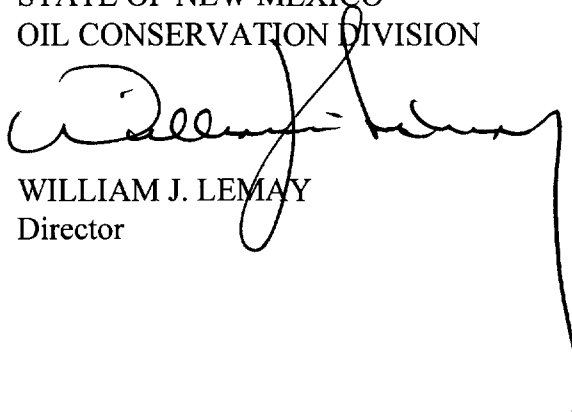
(15) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "William J. Lemay", written over the typed name and title.

WILLIAM J. LEMAY
Director