

**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 11233

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

CASE NO. 11234

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

ORDER NO. R-__

**NEARBURG EXPLORATION COMPANY'S
PROPOSED
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 _____ day of April, 1995, The Division Director, having considered the testimony, the recorded 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, the parties hereto and the subject matter thereof.

(2) The applicant in Case 11233, Nearburg Exploration Corporation ("Nearburg"), seeks an order pooling all mineral interests in the North Dagger Draw-Upper Pennsylvanian Pool underlying the SW/4 of Section 13, T19S, R25E, forming a standard 160-acre oil/gas spacing unit for said pool with the subject well to be drilled at a standard location 660 feet FSL and 1980 feet FWL of said section, Eddy County, New Mexico.

(3) The applicant in Case 11234, Yates Petroleum Corporation ("Yates"), seeks an order pooling all mineral interests in the same pool in the same spacing unit **but** with the subject well to be drilled at a standard location 660 feet FSL and West lines of said Section 13.

(4) The working interest owners in this spacing unit are as follows:

Nearburg Exploration Company	50.00%
Yates Petroleum Corporation	23.34%
Yates Drilling Company	3.33%
Abo Petroleum Corporation	3.33%
Myco Industries, Inc.	3.33%
** Holmquist Interest	16.67%

(5) At the hearing of this case the Examiner addressed a dispute between Nearburg and Yates in which each claims to have the Holmquist interest leased as follows:

Counsel for Nearburg offered a tender of proof that Nearburg should be credited with the Holmquist interest based upon the following:

- (a) that on January 26, 1995, Nearburg received a Drilling Title Opinion from Rudi Woerndle, a New Mexico attorney specializing in preparing oil and gas title opinions that the Holmquist interest was unleased;
- (b) that on February 7, 1995 Holmquist signed a lease to Nearburg for a primary term of three years which was recorded on March 3, 1995;
- (c) that at the time Nearburg obtained the Holmquist lease, Nearburg was without knowledge that Yates had obtained from Holmquist a lease dated October 24, 1991 but which was not recorded until March 30, 1995;
- (d) that on March 3, 1995 Holmquist had verified with Nearburg that his interest was **not** leased to Yates; and
- (e) that on March 23, 1995, Nearburg received Mr. Woerndle's Supplemental Title Opinion showing the Holmquist 16.67% interest to be credited to and leased by Nearburg which now had 66.667% of the working interest in the spacing unit.

Counsel for Yates offered a tender of proof that Yates should be credited with the Holmquist interest based upon the following:

- (a) that on December 10, 1981 Yates obtained a five year lease from Holmquist which was recorded on February 9, 1982;
- (b) that on February 1, 1987 Yates obtained a five year lease from Holmquist which was recorded on February 18, 1987;

(c) that on October 24, 1991 Yates obtained a five year lease to expire on January 31, 1997 from Holmquist which was **not** recorded until March 30, 1995;

(d) that on December 27, 1994, Nearburg had proposed to Yates a Morrow gas well for the S/2 of said Section 13 which included a Joint Operating Agreement with an attached Exhibit "A" showing Nearburg with only 72.265625% and the balance to be leased by Yates et al;

(e) that on March 3, 1995, Nearburg received Yates' well proposal for the SW/4 of said Section 13 which included a proposed JOA with an attached Exhibit "A" showing the Holmquist lease interest credited to Yates and which was then used by Nearburg in this counter-proposal to Yates dated March 7, 1995; and

(f) therefore Yates should be credited with the disputed 16.67% Holmquist interest because Yates contended that Nearburg had knowledge of Yates' unrecorded Holmquist lease before Nearburg obtained its lease from Holmquist.

(6) The Division Examiner denied counsel for Nearburg and counsel for Yates respective offers of proof and ordered that for purposes of deciding this pooling matter, neither Nearburg nor Yates shall be entitled to claim credit for this interest.

(7) No portion of Section 13 is currently dedicated to production from this pool.

(8) The development of this spacing unit in the Cisco/Canyon formation is subject to the Special Rules and Regulations for the North Dagger Draw-Upper Pennsylvanian Pool pursuant to Division Order R-4691-D issued effective April 1, 1991.

(9) Each applicant (Nearburg and Yates) has the right to drill and each proposes to drill a well in this spacing unit, as described above in

Findings (2) and (3), to a depth sufficient to test the Upper Pennsylvanian formation (ie Cisco/Canyon).

(10) Cases Nos. 11233 and 11234 were consolidated for the purpose of hearing and should be consolidated for purpose of issuing an order since the granting of one application would require the denial of the other because these cases involve a dispute over operatorship and development of the same 160-acre spacing unit and since it is the long established practice of the Division not to have different operators in the same spacing unit even though multiple wells can be drilled therein. (See Order R-9673-A).

(11) Because of the dispute over the location of the proposed well and who should operate the well, Nearburg and Yates have been unable to agree on a voluntary basis for the pooling of their respective interests in either proposed well or spacing unit.

(12) The Division should decide this case based upon its statutory obligation to prevent waste and protect correlative rights utilizing the following criteria and analysis:

(a) Prospect Development and Well Proposals:

(i) Nearburg and Yates presented uncontested evidence: that this prospect area was originally developed by Nearburg with the successful completion in January, 1995 of its Fairchild "24" Well No. 1 in the southern offsetting spacing unit which extended the Cisco oil production in this pool some three miles farther east than was expected to exist; that on March 1, 1995 Yates filed and obtained OCD approval of an application for permit to drill its proposed well; that Yates then on March 3, 1995 proposed its well closely followed by Nearburg's well proposal on March 7, 1995; with Nearburg filing its pooling application prior to Yates' application.

(ii) The Division finds that this case cannot be decided based upon which applicant first developed this prospect then proposed its well and then filed a pooling application because each proposal was

made within less than a week of the other with each party filing a compulsory pooling application within ten days of the first well proposal;

(iii) Such activity by Yates and Nearburg is contrary to the Division's policy and practice that compulsory pooling be used as a last resort rather than as an initial "negotiating weapon" to be used against each other.

(b) Efforts to obtain voluntary agreement and willingness to negotiate a voluntary agreement:

(i) Nearburg and Yates presented uncontested evidence that: Nearburg had previously proposed to Yates that their mutual dispute over operatorship in six other spacing units in this same pool be resolved based upon which operator had the majority interest and in each of these cases Yates agreed to and accept that criteria for resolving the matter; that by letter dated March 29, 1995, Nearburg proposed to Yates that their dispute in these pending NMOCD cases be resolved in the same manner; that Yates ignored Nearburg's proposed settlement and required that this dispute be resolved by the Division.

(ii) The Division finds that in this case, Nearburg should receive credit for its attempt to reach a voluntary agreement and its willingness to settle this dispute and correspondingly Yates should be penalized for refusing to settle this case based upon the same criteria by which Yates obtained operatorship of the other six disputed spacing units.

(c) Party with Majority Interest:

(i) While Nearburg urged being credited with the 16.67% Holmquist interest which is disputed by Yates, it is uncontested by Nearburg and Yates that if that interest is excluded from both parties, then Nearburg has a majority interest of 50% compared to a 33.33% interest for Yates, et al.

(ii) The Division Finds that it is of significance in deciding this case that Yates has previously settled with Nearburg based upon the majority ownership criteria and should bound by such criteria in this case and that Nearburg has a substantially larger working interest in this spacing unit.

(d) Geologic evidence-Well Location:

(i) Nearburg's geologist, Jerry Elger, presented subsurface geologic evidence including a structure map and cross section integrated with seismic data which established that:

the trapping mechanism for the presence of oil at the Fairchild "24" Well No. 1 location was predicated upon the non-productive limits of the dolomite being immediately updip to the west of that well;

the seismic data which has data reference points in close proximity to both well locations showed a reflection between shale and carbonate indicating the top of the Canyon Bank which was then projected to the dolomite reservoir from which it was determined that the Nearburg location had a structural advantage of approximately 40 feet over the Yates' location;

the presence of oil-water contact at approximately -4380 feet subsea and the close proximity of the western limit of the productive dolomite to the Yates' proposed location made the Yates' location too risky to drill; and

the Nearburg location was the optimum location and substantially better geologically than the Yates' location.

(ii) Yates' geologist, Brent May, presented a geologic interpretation:

which did not include a cross section and which contained a structure map prepared without the benefit of any seismic data and which failed to demonstrate the nature of the trapping mechanism to explain why the Fairchild "24" Well No. 1 produced oil in the dolomite interval;

and which failed to demonstrate any geologic difference between the Yates's location and the Nearburg location;

and then Mr. May admitted in cross examination that Nearburg's geologist in all probability had correctly defined the trapping mechanism to explain the presence of oil at the Fairchild "24" Well No. 1 location;

(iii) The Division finds that Nearburg should receive credit for its proposed location because Nearburg had more geologic evidence (seismic data) than Yates and because Yates conceded that Nearburg's geologic explanation for the trapping mechanism was the only one which explained why oil could be produced by the Fairchild "24" Well No 1.

(iv) The Division further finds that the Nearburg's location helps both Nearburg and Yates obtain the primary objective of either proposed well in this spacing unit which is a development oil well in this pool to encounter the same productive portion of the dolomite as is now producing in the Nearburg Fairchild "24" Well No. 1 at a point in the spacing unit which represents the optimum structural position and reservoir thickness while being away from the edge of the dolomite.

(e) Estimated Well Costs ("AFE"):

(i) Nearburg presented its petroleum engineer who prepared its AFE who testified that the Nearburg AFE was a total of \$110,000