

**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. 11263
CASE NO. 11265
Order No. R-10434**

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

**APPLICATION OF NEARBURG EXPLORATION
COMPANY 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 July 27, 1995 at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 10th day of August, 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. 11263 and 11265 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. 11263, Yates Petroleum Corporation (Yates), seeks an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the NE/4 of Section 21, 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 North Dagger Draw-Upper Pennsylvanian Pool. Said unit is to be dedicated to the applicant's proposed Ross "EG" Federal Com Well No. 14 to be drilled at a standard oil well location within the NW/4 NE/4 (Unit B) of Section 21.

(4) The applicant in Case No. 11265, Nearburg Exploration Company (Nearburg), seeks an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the NE/4 of Section 21, 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 North Dagger Draw-Upper Pennsylvanian Pool. Said unit is to be dedicated to the applicant's proposed Alto "21" Well No. 2 to be drilled at a standard oil well location within the NE/4 NE/4 (Unit A) of Section 21.

(5) Both Yates and Nearburg have the right to drill a well in the NE/4 of Section 21, 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.

(6) Yates and Nearburg have been unable to reach a voluntary agreement as to whom should drill and operate a well within the NE/4 of Section 21.

(7) At the time of the hearing, Nearburg requested that the Division expedite a decision in this case inasmuch as it stands to lose a 4.6875 percent interest committed to it by Kerr-McGee Corporation unless a well is commenced prior to September 14, 1995.

(8) The proposed wells are located within the boundaries 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.

(9) 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.

(10) The ownership within the NE/4 of Section 21 is outlined as follows:

SHALLOW DEPTH---SURFACE-7.704'

Yates Petroleum Corporation-----53.125 %
(Includes all Yates affiliates)

Nearburg Exploration Company-----43.750%

Conoco Inc.-----3.1250%

INTERMEDIATE DEPTH-7.704'-7.800'

Yates Petroleum Corporation-----50.781250%
(Includes all Yates affiliates)

Nearburg Exploration Company-----46.093750%

Conoco Inc.-----3.125%

DEEP DEPTH--BELOW 7.800'

Yates Petroleum Corporation-----47.656250%
(Includes all Yates affiliates)

Nearburg Exploration Company-----46.093750%

Conoco Inc.-----6.250%

(11) At the time of the hearing, Yates testified that Conoco Inc. has signed Yates' AFE (Authority for Expenditure) for the drilling of the Ross "EG" Federal Com Well No. 14 and should therefore be considered a voluntary participant in Yates' proposal.

(12) Subsequent to the hearing, Yates submitted a copy of a signed AFE from Conoco Inc. for the drilling of the Ross "EG" Federal Com Well No. 14.

(13) Although Conoco Inc. has not yet signed Yates' operating agreement for the drilling of the Ross "EG" Federal Com Well No. 14, its interest should be considered to be committed to Yates at this time.

(14) Both Yates and Nearburg presented AFE's for the drilling of their respective wells in the NE/4 of Section 21. These drilling costs are summarized as follows:

<u>PARTY</u>	<u>DRY HOLE COSTS</u>	<u>COMPLETED WELL COSTS</u>
Yates	\$238,745	\$508,745
Nearburg	\$343,895	\$722,985

(15) Evidence and testimony presented indicates that certain costs associated with surface equipment were excluded from Yates' AFE, and that Nearburg's AFE contains substantial contingency costs. A more detailed comparison of AFE's indicates that there is not a substantial difference in both parties' proposed well costs.

(16) Evidence submitted by Yates indicates that its average drilling costs for a well in this pool are approximately \$665,000. Testimony by Nearburg indicates that it has incurred drilling costs of just under \$700,000 for the last two wells it has drilled in this pool.

(17) The optimum location in which to drill the first producing well on the subject proration unit is also at issue in this case.

(18) Yates has proposed drilling its Ross "EG" Federal Com Well No. 14 at a standard oil well location 660 feet from the North line and 1980 feet from the East line (Unit B) of Section 21 while Nearburg has proposed drilling its Alto "21" Well No. 2 at a standard oil well location 660 feet from the North and East lines (Unit A) of Section 21

(19) There are two Cisco-Canyon disposal wells in this area which have a direct bearing on the proposed well locations, these wells are described as follows:

- a) Yates Petroleum Corporation Osage SWD Well No. 1 located 1980 feet from the North and East lines (Unit G) of Section 21. Yates received Division approval to commence injection into this well through the perforated interval from approximately 7,672 feet to 7,813 feet by Division Order No. SWD-336 on March 3, 1988; and,

- b) Anadarko Petroleum Corporation Dagger Draw SWD Well No. 1 located 1495 feet from the North line and 225 feet from the West line (Unit E) of Section 22, Township 19 South, Range 25 East, NMPM. Anadarko received Division approval to commence injection into this well through the perforated interval from approximately 7,800 feet to 8,040 feet by Division Order No. R-7637 dated August 23, 1984.

(20) The evidence indicates that approximately 6.5 million barrels of water have cumulatively been injected into the Osage SWD Well No. 1. Yates testified that it has voluntarily suspended injection operations into this well as of April, 1995. Approximately 1.5 million barrels of water have cumulatively been injected into the Dagger Draw SWD Well No. 1.

(21) Yates contends that its proposed well location is superior to that of Nearburg's for the following reasons:

- a) a well at both proposed locations should encounter approximately 350 feet of dolomite within the North Dagger Draw-Upper Pennsylvanian Pool, however, a well at Yates' proposed location should encounter the top of the dolomite pay section higher structurally than a well at Nearburg's proposed location;
- b) the risk associated with drilling the Ross "EG" Federal Com Well No. 14 is less than that of drilling the Alto "21" Well No. 2 inasmuch as Yates' well will be located closer to known production within the pool;
- c) due to the fact that the Alto "21" Well No. 2 is located in close proximity to both the Osage SWD Well No. 1 and the Dagger Draw SWD Well No. 1, while the Ross "EG" Federal Com Well No. 14 is located in close proximity only to the Osage SWD Well No. 1, the Yates well location presents less of a risk in terms of encountering water encroachment into the reservoir which may have occurred as a result of injection.

(22) Nearburg contends that its proposed well location is superior to that of Yates' for the following reasons:

- a) a well at Nearburg's proposed location should encounter approximately 90 feet more of gross dolomite and should encounter the top of the dolomite pay section approximately 30 feet higher structurally than a well at Yates' proposed location;
- b) a well at Nearburg's proposed location should encounter the top of the dolomite pay section at a structurally higher position than both the Osage SWD Well No. 1 and the Dagger Draw SWD Well No. 1, thereby decreasing the risk of encountering water encroachment into the reservoir which may have occurred as a result of injection; and,
- c) the Osage SWD Well No. 1 has cumulatively injected some 4.0 million barrels more than the Dagger Draw SWD Well No. 1. Due to the fact that the Ross "EG" Federal Com Well No. 14 is located in closer proximity to the Osage SWD Well No. 1 than is the Alto "21" Well No. 2, the potential for encountering water encroachment into the reservoir which may have occurred as a result of injection are greater at Yates' proposed well location.

(23) The geologic evidence and testimony presented by both parties in this case indicates that:

- a) the geologic interpretation of the Cisco-Canyon reservoir provided by Nearburg appears to more accurately honor the well data in this area;
- b) the structural differences within the reservoir between the proposed Ross "EG" Federal Com Well No. 14 and the Alto "21" Well No. 2 are not sufficient to preclude one or the other from being a producing well within the pool;
- c) the geology in itself cannot predict whether or not injection into the Osage SWD Well No. 1 and the Dagger Draw SWD Well No. 1 has had or will have an adverse affect on a well located at either of the proposed locations.
- d) it is likely that both of the proposed well locations will ultimately be drilled to develop the oil and gas reserves underlying the NE/4 of Section 21.

(24) The respective well locations proposed by Yates and Nearburg both represent geologically viable locations in which to initially explore for hydrocarbon production within the North Dagger Draw-Upper Pennsylvanian Pool underlying the NE/4 of Section 21.

(25) Excluding the interest of Conoco Inc., Yates is the majority interest owner within the NE/4 of Section 21 with approximately 51 percent ownership (Intermediate Depth).

(26) Conoco Inc., presented with both the Nearburg and Yates drilling options, has elected to voluntarily participate with Yates in its proposal.

(27) Yates, with the inclusion of the Conoco Inc. interest, currently controls approximately 54 percent of the ownership within the NE/4 of Section 21 compared to Nearburg's 46 percent.

(28) In the absence of other compelling factors, Conoco's willingness to participate with Yates in its drilling proposal and by virtue of Yates controlling the majority of interest within the proposed spacing unit, the application of Yates in Case No. 11263 should be granted.

(29) The application of Nearburg in Case No. 11265 should be denied.

(30) 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 Yates Petroleum Corporation in Case No. 11263 should be approved by pooling all mineral interests, whatever they may be, within said unit.

(31) Yates Petroleum Corporation should be designated the operator of the Ross "EG" Federal Com Well No. 14 and unit.

(32) 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.

(33) 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.

(34) 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.

(35) 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.

(36) \$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.

(37) 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.

(38) At the time of the hearing, Nearburg requested that if Yates prevails in its application, it be required to commence drilling the Ross "EG" Federal Com Well No. 14 by September 14, 1995.

(39) Yates should be required, as per the request of Nearburg, to commence drilling the Ross "EG" Federal Com Well No. 14 by September 14, 1995.

(40) Upon the failure of Yates to commence the drilling of the well to which said unit is dedicated on or before September 14, 1995, the order pooling said unit should become null and void and of no effect whatsoever.

(41) 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.

(42) 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. 11265 for an order pooling all mineral interests from the surface to the base of the Canyon formation underlying the NE/4 of Section 21, 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, said unit to be dedicated to the proposed Alto "21" Well No. 2 to be drilled at a standard oil well location within the NE/4 NE/4 (Unit A) of Section 21, is hereby denied.

(2) The application of Yates Petroleum Corporation in Case No. 11263 for an order pooling all mineral interests, whatever they may be, from the surface to the base of the Canyon formation underlying the NE/4 of Section 21, 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 North Dagger Draw-Upper Pennsylvanian Pool, said unit to be dedicated to the proposed Ross "EG" Federal Com Well No. 14 to be drilled at a standard oil well location 660 feet from the North line and 1980 feet from the East line (Unit B) of Section 21, is hereby approved.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 14th day of September, 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 14th day of September, 1995, Ordering Paragraph No. (2) 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. In the event Yates Petroleum Corporation files for such an extension, it shall also provide a copy of such request to Nearburg Exploration Company.

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. (2) of this order should not be rescinded.

(3) Yates Petroleum Corporation is hereby designated the operator of the Ross "EG" Federal Com Well No. 14 and unit.

(4) After the effective date of this order and within 30 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(10) \$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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

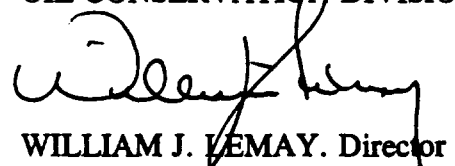
(15) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(16) 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


WILLIAM J. LEMAY. Director

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