

**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. 12073  
Order No. R-11089**

**APPLICATION OF NEARBURG EXPLORATION  
COMPANY L.L.C. FOR COMPULSORY POOLING,  
AND AN UNORTHODOX SURFACE LOCATION  
AND SUBSURFACE DRILLING WINDOW, EDDY  
COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on November 5, 1998, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 23<sup>rd</sup> day of November, 1998, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

**FINDS THAT:**

(1) Due public notice has been given and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, Nearburg Exploration Company, L.L.C, seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 11, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, thereby forming a standard 320-acre gas spacing and proration unit for any formations and/or pools spaced on 320 acres within that vertical extent, which presently include the Undesignated Eagle Creek-Atoka Gas Pool and Undesignated East Eagle Creek Atoka-Morrow Gas Pool. This unit is to be dedicated to the applicant's proposed Eagle Creek "11" Well No. 1 which is proposed to be directionally drilled from an unorthodox surface location 1070 feet from the North line and 2110 feet from the West line (Unit C) of Section 14, Township 17 South, Range 25 East, NMPM, to an unorthodox bottomhole location no closer than 660 feet from the South line and 1980 feet from the East line (Unit O) of Section 11, Township 17 South, Range 25 East, NMPM.

(3) The applicant has the right to drill on this unit and proposes to directionally drill its Eagle Creek "11" Well No. 1 to an unorthodox bottomhole location described above.

(4) There are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in the unit the opportunity to recover or receive without unnecessary expense its just and fair share of the production in any pool completion resulting from this order, this application should be approved by pooling all mineral interests, whatever they may be, within the unit.

(6) The applicant presented geologic and engineering evidence and testimony which indicate that the proposed directional drilling and unorthodox bottomhole well location are necessary for the following described topographic and geologic reasons:

- a) the primary target within the Eagle Creek "11" Well No. 1 is the Upper "C" Sand interval of the Morrow formation;
- b) the Upper "C" Sand interval is a channel sand which traverses the SE/4 of Section 11 in a northwest to southeast direction;
- c) a well drilled to the proposed unorthodox bottomhole location should encounter a thicker sand section within the Upper "C" Morrow Sand interval than a well drilled at a standard location within the SE/4 of Section 11, thereby increasing the likelihood of obtaining commercial gas production; and
- d) due to the proximity to the Artesia airport and applicable FAA restrictions, it is unable to drill the Eagle Creek "11" Well No. 1 from a surface location within the SE/4 of Section 11.

(7) Pursuant to Division Rule No. 111, the applicant has filed an administrative application to directionally drill the Eagle Creek "11" Well No. 1.

(8) No offset operator and/or interest owner appeared at the hearing in opposition to the proposed unorthodox bottomhole location.

(9) Approval of the proposed unorthodox bottomhole location will provide the applicant the opportunity to produce its just and equitable share of the gas in the affected pool and will not violate correlative rights.

(10) Nearburg Producing Company should be designated the operator of the well and unit.

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

(12) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(13) 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.

(14) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its 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.

(15) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000.00 per month while drilling and \$600.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) All proceeds from production from the well that 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.

(17) If the operator of the pooled unit fails to commence drilling the well to which the unit is dedicated on or before February 1, 1999, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

(18) The operator of the well and unit should notify 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) All mineral interests, whatever they may be, from the surface to the base of the Morrow formation underlying the E/2 of Section 11, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, are hereby pooled thereby forming a standard 320-acre gas spacing and proration unit for any formations and/or pools spaced on 320 acres within that vertical extent, which presently include the Undesignated Eagle Creek-Atoka Gas Pool and Undesignated East Eagle Creek Atoka-Morrow Gas Pool. This unit shall be dedicated to the applicant's Eagle Creek "11" Well No. 1 which will be directionally drilled from an unorthodox surface location 1070 feet from the North line and 2110 feet from the West line (Unit C) of Section 14, Township 17 South, Range 25 East, NMPM, such that the unorthodox bottomhole location at the base of the Morrow and the producing interval within the Morrow formation is located no closer than 660 feet from the south, west or east boundaries of the spacing unit comprising the E/2 of Section 11.

**PROVIDED HOWEVER THAT,** the operator of the unit shall commence drilling the well on or before February 1, 1999, and shall thereafter continue drilling the well with due diligence to a depth sufficient to test the Morrow formation.

**PROVIDED FURTHER THAT,** in the event the operator does not commence drilling the well on or before February 1, 1999, Ordering Paragraph (1) shall be of no effect unless the operator obtains a time extension from the Division Director for good cause shown.

**PROVIDED FURTHER THAT,** should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(2) Nearburg Producing Company is hereby designated the operator of the well and unit.

(3) After the effective date of this order and within 90 days prior to commencing the well, the operator shall furnish the Division and each known working interest owner in the unit an itemized schedule of estimated well costs.

(4) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its 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 the schedule, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 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 its share of estimated well costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its 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 proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in drilling the well, 200 percent of the above costs.

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

(9) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,000.00 per month while drilling and \$600.00 per month while producing. The operator is hereby authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the 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 this order.

(11) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the well that 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 the escrow agent within 30 days from the date of first deposit with the escrow agent.

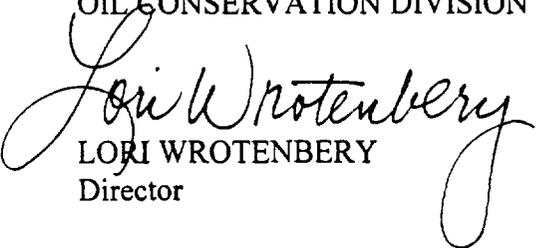
(13) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(14) The operator of the well and unit shall notify the 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.

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

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

  
LORI WROTENBERY  
Director



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