

**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. 12087
ORDER NO R-_____**

**APPLICATION OF NEARBURG EXPLORATION
COMPANY, L.L.C. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

**NEARBURG'S
PROPOSED
ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on November 19, 1998 at Santa Fe, New Mexico, before Examiner Mark Ashley.

NOW, on this _____ day of November, 1998, the Division Director, having considered the testimony, the recorded 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 Section 3, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, in the following manner: the N/2 to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320 acre spacing within said vertical extent, which presently includes but is not necessarily limited to the East Gem-Morrow Gas Pool; the

NE/4 to form a standard 160-acre gas spacing and proration unit for any and all formations and /or pools developed on 160-acre spacing within said vertical extent; and the SW/4NE/4 to form a standard 40-acre oil spacing and proration unit for any and all formations and /or pools developed on 40-acre oil spacing within said vertical extent. The unit(s) is to be dedicated to its proposed Viper "3" Federal Well No. 1 to be drilled in accordance with Rule 111 (directional wellbore) from an unorthodox surface location to a standard subsurface location in the NE/4 of this section.

(3) Nearburg Exploration Company, L.L.C. has the right to drill a well in the proposed spacing unit and has provided all working interest owners with a written well proposal including an AFE but has not been able to obtain a signed voluntary agreement from all working interest owners.

(4) Nearburg Exploration Company, L.L.C. seeks a compulsory pooling order against the following parties and their respective interests:

Samson Resources Company 75% WI
Two W. Second Street
Tulsa, Oklahoma 74103

Merit Energy Company 6.389000% WI
Merit Energy Partners, L.P.
Merit Energy Partners III, L.P.
Merit Energy Partners VII, L.P.
Merit Partners, L.P. (formerly MeritNet Partners, L.P.)
12222 Merit Drive, Suite 1500
Dallas, Texas 75251

(5) The parties listed in paragraph (3) above, were properly served with notice of this proceeding and this hearing but failed to appear.

(6) In support of its application, Nearburg Exploration Company, L.L.C. provided land and geologic testimony which demonstrated that:

(a) On September 17, 1998, Nearburg Exploration Company, L.L.C. proposed this well and its spacing unit to Samson Resources Company and to Merit Energy Company, individually and as general partner for the Merit entities.

(b) As of the hearing, Nearburg had not yet received from Samson Resources Company a signed agreement and had been unable to reach a voluntary agreement with the Merit entities.

(c) Nearburg testified that Merit had an internal "net profits interest" the details of which had not been disclosed to Nearburg which might be an unnecessary burden on Merit's working interest.

(d) Nearburg requested that Merit's working interest including its "net profits interest" be subject to the risk factor penalty.

(e) All of Section 3 consists of a single federal oil & gas lease with the N/2 of this section being within a "measured potash" area where the Bureau of Land Management will not allow a well to be drilled vertically but will allow the well to be located and drilled directionally as proposed by Nearburg.

(f) there is substantial geologic risk associated with the lower Morrow because of water production in the area and with the Middle Morrow because of the absence of immediate well control in three directions.

(7) The Division finds that:

(a) Nearburg has engaged in good faith efforts to obtain voluntary agreement and despite its efforts has not been able to obtain such an agreement.

(b) there is substantial risk involved in this well and the maximum 200% risk factor should be awarded.

(c) Merit's working interest, including its ~~net profits interest~~, should be subject to the risk factor penalty.

any internal

(8) 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.

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

(10) 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.

(11) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its 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.

(12) 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.

(13) 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.

(14) Reasonable charges for supervision (combined fix 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.

(15) 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.

(16) If the operator of the pooled unit fails to commence drilling the well to which the unit is dedicated on or before the expiration of the 90-day period following issuance of this order, or if all parties to this compulsory pooling reach voluntary agreement subsequent to the entry of this order, this order should become of void.

(17) The operator of the well and unit should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of the 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 Section 3, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, **are hereby pooled** in the following manner: the N/2 to form a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320 acre spacing within said vertical extent, which presently includes but is not necessarily limited to the East Gem-Morrow Gas Pool; the NE/4 to form a standard 160-acre gas spacing and proration unit for any and all formations and /or pools developed on 160-acre spacing within said vertical extent; and the SW/4NE/4 to form a standard 40-acre oil spacing and proration unit for any and all formations and /or pools developed on 40-acre oil spacing within said vertical extent. The unit(s) is to be dedicated to its proposed Viper "3" Federal Well No. 1 to be drilled in accordance with Rule 111 (directional wellbore) from an unorthodox surface location to a standard subsurface location in the NE/4 of this section.

PROVIDED HOWEVER THAT, the operator of the unit shall commence drilling the well on or before the ___ day of _____, 1998, and shall continue drilling the well with due diligence to a depth sufficient to test the Morrow formation.

PROVIDED FURTHER THAT, in the said operator does not commence drilling the well on or before 90 days following issuance of this order, Ordering Paragraph(1) shall be void, unless the operator obtains an extension of time from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should the well not be drilled to completion, or abandonment, 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 subject well and unit.

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

(4) Within 30 days from the date the schedule of estimated well costs is sent to it, 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 operation costs but shall not be liable for risk charges.

(5) The operator shall send the Division and each known working interest owner of record 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 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 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 thirty (30) days from the date the schedule of estimated well costs is sent; 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 fix rates) are hereby fixed at \$6,000.00 per monthly 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 the terms of this order.

including any net profits interest carved out of the working interest

*including the
not assigned to
carved out of
that working
interest*

(11) Any well costs or charges that 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 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 said escrow agent within 30 days from the date of first deposit with the escrow agent.

(13) Should all parties to this ~~forced~~ ^{compulsory} 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 compulsory 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