

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. 12206*  
*ORDER NO. R-11227*

APPLICATION OF NEARBURG EXPLORATION COMPANY, L.L.C. FOR  
COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION,  
LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on July 8, 1999 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 27th day of July, 1999, 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 uncommitted mineral interests from the surface to the base of the Morrow formation underlying the following acreage in Section 24, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico:

- (a) the E/2 to form a standard 320-acre stand-up gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Quail Ridge-Atoka Gas Pool, Undesignated Quail Ridge-Morrow Gas Pool, Undesignated East Gem-Morrow Gas Pool, and Undesignated North Quail Ridge-Morrow Gas Pool;

- (b) 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 that vertical extent, which presently include but are not necessarily limited to the Undesignated Quail Ridge-Yates Gas Pool; and
- (c) the NE/4 NE/4 to form a standard 40-acre oil spacing and proration unit for formations and/or pools developed on 40-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated East Gem-Delaware Pool and Undesignated East Gem-Bone Spring Pool.

NOTE: After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners."

(3) These units are to be dedicated to the proposed Sagebrush "24" Federal Com. Well No. 1 to be drilled 660 feet from the North line and 990 feet from the East line (Unit A) of Section 24. This location is standard for the proposed 40-acre oil and 160-acre gas units but unorthodox for the proposed 320-acre gas unit pursuant to Division Rules 104.B(1)(a) and 104.C(2)(b) and to the special pool rules governing the Quail Ridge-Morrow Gas Pool set forth in Division Order No. R-3890, issued in Case No. 4261 and dated December 3, 1969.

(4) The applicant is a working interest owner within the 320-acre, 160-acre, and 40-acre units and therefore has the right to drill for and develop the minerals underlying these units.

(5) Nearburg Exploration Company, L.L.C., further requests that Nearburg Producing Company, a corporation also owned by Charles E. Nearburg that operates the various wells of which Nearburg Exploration Company, L.L.C. is the owner, be designated as operator of the subject well and units.

(6) Harvey E. Yates Company, Spiral, Inc., Explorers Petroleum Corporation, HEYCO Employees, Ltd., James H. Yates, Inc., and Cokelan Corporation, all of Roswell, New Mexico and all owning interests within the proposed units, appeared at the hearing through legal counsel, but offered no testimony.

(7) At this time, however, not all of the working interest owners in these units have agreed to pool their interests.

(8) The geologic evidence and testimony presented by the applicant in this case indicate that:

- (a) the primary objective of the proposed Sagebrush "24" Federal Com. Well No. 1 is the Morrow "C" sand, and the secondary target is the Morrow Upper "B" sand;
- (b) this well should encounter over 20 feet of net sand in the Morrow "C" at either an orthodox location or the proposed unorthodox location;
- (c) the Matador Petroleum Corporation (Matador) Esmeralda Federal "24" Well No. 1 (**API No. 30-025-34484**), located 1650 feet from the South line and 1980 feet from the West line (Unit K) of Section 24, was drilled in 1998 and was wet in the Morrow "C" sand; moving the applicant's well to the proposed unorthodox location will enable it to gain approximately 70 feet in structure on the Matador well, thereby increasing the chances that it will not be wet;
- (d) the proposed location also places the well at the same approximate structural position as Matador's Pipeline Deep Unit Federal Well No. 2 (**API No. 30-025-26235**), located 760 feet from the North line and 2050 feet from the East line (Unit B) of Section 18, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico, which is an economic Morrow "C" producer;
- (e) moving the proposed well to the north of an orthodox location will also enable it to penetrate approximately 30 feet of net sand in the Morrow Lower "B" sand and be on trend with economic Morrow Lower "B" producers two to three miles southeast of the proposed well, thus lessening the risk in that zone; and

- (f) stacking of Morrow zones is important in this area to increase the chances of drilling a commercial well.
- (9) The evidence also showed that:
- (a) the parties being pooled do not object to the unorthodox location;
  - (b) Matador, an offset operator, waived objection to the location; and
  - (c) no other offset operator and/or interest owner appeared at the hearing in opposition to the unorthodox location.
- (10) The unorthodox location should be approved.
- (11) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in the 320-acre, 160-acre, and 40-acre units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbon production in any pool resulting from this order, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within these units.
- (12) Nearburg Producing Company should be designated the operator of the subject well and units.
- (13) 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.
- (14) 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.
- (15) Any non-consenting 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.

(16) 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.

(17) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,400.00 per month while drilling and \$ 540.00 per month while producing, provided that this rate should be adjusted annually pursuant to Nearburg Exhibit 3-B, Section III.1.A.3. of Exhibit "C" (*Accounting Procedure Joint Operations*) of the Operating Agreement dated May 1, 1999. 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.

(18) 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.

(19) If the operator of the pooled units fails to commence drilling the well to which the units are dedicated on or before October 31, 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.

(20) The operator of the well and units 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) Pursuant to the application of Nearburg Exploration Company, L.L.C., all uncommitted mineral interests, whatever they may be, from the surface to the base of the Morrow formation underlying the following described acreage in Section 24, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico, are hereby pooled in the following manner:

- (a) the E/2 to form a standard 320-acre stand-up gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated Quail

- Ridge-Atoka Gas Pool, Undesignated Quail Ridge-Morrow Gas Pool, Undesignated East Gem-Morrow Gas Pool, and Undesignated North Quail Ridge-Morrow Gas Pool;
- (b) 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 that vertical extent, which presently include but are not necessarily limited to the Undesignated Quail Ridge-Yates Gas Pool; and
- (c) the NE/4 NE/4 to form a standard 40-acre oil spacing and proration unit for formations and/or pools developed on 40-acre spacing within that vertical extent, which presently include but are not necessarily limited to the Undesignated East Gem-Delaware Pool and Undesignated East Gem-Bone Spring Pool.

NOTE: After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners."

(2) These units are to be dedicated to the applicant's proposed Sagebrush "24" Federal Com. Well No. 1, hereby authorized to be drilled 660 feet from the North line and 990 feet from the East line (Unit A) of Section 24. This location is standard for the proposed 40-acre oil and 160-acre gas units but unorthodox for the proposed 320-acre gas unit pursuant to Division Rules 104.B(1)(a) and 104.C(2)(b) and to the special pool rules governing the Quail Ridge-Morrow Gas Pool set forth in Division Order No. R-3890, issued in Case No. 4261 and dated December 3, 1969.

PROVIDED HOWEVER THAT, the operator of the units shall commence drilling the well on or before October 31, 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 October 31, 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.

(3) Nearburg Producing Company is hereby designated the operator of the subject well and units.

(4) 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 non-consenting working interest owner in the units an itemized schedule of estimated well costs.

(5) 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.

(6) The operator shall furnish the Division and each known non-consenting 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.

(7) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated 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.

(8) 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.

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

(10) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,400.00 per month while drilling and \$540.00 per month while producing provided that this rate shall be adjusted annually pursuant to Nearburg Exhibit 3-B, Section III.1.A.3. of Exhibit "C" (*Accounting Procedure Joint Operations*) of the Operating Agreement dated May 1, 1999. 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.

(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 this order.

(12) 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.

(13) All proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Lea 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.

(14) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, that portion of this order authorizing compulsory pooling shall thereafter be of no further effect.

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

(16) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

Case No. 12206  
Order No. R-11227  
Page 9

---

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

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

  
LORI WROTENBERY  
Director

SEAL

...