

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: )  
APPLICATION OF AMERISTATE OIL AND )  
GAS, INC., FOR COMPULSORY POOLING, )  
LEA COUNTY, NEW MEXICO )

CASE NO. 12,330

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

January 20th, 2000

Santa Fe, New Mexico

OIL CONSERVATION DIV.  
00 FEB - 7 PM 4:43

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, January 20th, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

## I N D E X

January 20th, 2000  
 Examiner Hearing  
 CASE NO. 12,330

	PAGE
APPEARANCES	3
APPLICANT'S WITNESSES:	
<u>MARK K. NEARBURG</u> (President, Ameristate; Landman)	
Direct Examination by Mr. Carr	4
Examination by Examiner Ashley	12
<u>JOHN F. HERBIG, JR.</u> (Geologist)	
Direct Examination by Mr. Carr	13
Examination by Examiner Ashley	18
REPORTER'S CERTIFICATE	20

\* \* \*

## E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	6	12
Exhibit 2	7	12
Exhibit 3	7	12
Exhibit 4	8	12
Exhibit 5	10	12
Exhibit 6	15	18
Exhibit 7	16	18

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

## FOR THE APPLICANT:

CAMPBELL, CARR, BERGE and SHERIDAN, P.A.  
Suite 1 - 110 N. Guadalupe  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 11:36 a.m.:

3           EXAMINER ASHLEY: The Division calls Case 12,330.

4           MR. CARROLL: Application of Ameristate Oil and  
5 Gas, Inc., for compulsory pooling, Lea County, New Mexico.

6           EXAMINER ASHLEY: Call for appearances.

7           MR. CARR: May it please the Examiner, my name is  
8 William F. Carr with the Santa Fe law firm Campbell, Carr,  
9 Berge and Sheridan. We represent Ameristate Oil and Gas,  
10 Inc., in this matter, and I have two witnesses.

11           EXAMINER ASHLEY: Additional appearances?

12           Will the witnesses please rise to be sworn in?

13           (Thereupon, the witnesses were sworn.)

14                     MARK K. NEARBURG,

15 the witness herein, after having been first duly sworn upon  
16 his oath, was examined and testified as follows:

17                     DIRECT EXAMINATION

18 BY MR. CARR:

19           Q.    Would you state your full name for the record,  
20 please?

21           A.    Mark Nearburg.

22           Q.    Where do you reside?

23           A.    Austin, Texas.

24           Q.    By whom are you employed?

25           A.    Ameristate Oil and Gas, Inc.

1 Q. And what is your position with Ameristate?

2 A. President.

3 Q. Mr. Nearburg, have you previously testified  
4 before this Division?

5 A. Yes.

6 Q. At the time of that testimony, were your  
7 credentials as an expert in petroleum land matters accepted  
8 and made a matter of record?

9 A. Yes.

10 Q. Are you familiar with the Application filed in  
11 this case on behalf of Ameristate?

12 A. Yes.

13 Q. Are you familiar with the status of the lands in  
14 the proposed unit to be pooled in this case?

15 A. Yes.

16 MR. CARR: Are Mr. Nearburg's qualifications  
17 acceptable?

18 EXAMINER ASHLEY: They are.

19 MR. CARR: Initially, Mr. Examiner, we are  
20 amending the Application by deleting portions of it. At  
21 this point in time, we are only seeking an order pooling  
22 all formations and pools developed on 320-acre spacing  
23 units under the east half of Section 13, Township 17 South,  
24 Range 35 East. The portions of the Application related to  
25 160-acre spacing, 80-acre spacing and 40-acre spacing can

1 be dismissed.

2 Q. (By Mr. Carr) Mr. Nearburg, did I correctly  
3 state what we're seeking in this case?

4 A. Yes, sir.

5 Q. Now, to what well do you propose to dedicate this  
6 320-acre unit?

7 A. We want to dedicate the east half of Section 13,  
8 Township 17 South, Range 35 East, to the State 13 Number 1  
9 well.

10 Q. Will that well be drilled at a standard location?

11 A. Yes, it will be drilled at a standard location in  
12 the northeast quarter.

13 Q. Let's go to what has been marked for  
14 identification as Ameristate Exhibit Number 1, and I'd ask  
15 you to identify that and review it for Mr. Ashley.

16 A. It's a land map. The proration unit is outlined  
17 in the dash, representing the east half. The orange dot is  
18 the well location. Acreage shown in green is controlled by  
19 Ameristate. Acreage shown in orange is controlled by  
20 Marathon, who has agreed to participate. And acreage shown  
21 -- the 40 acres in the southeast-southeast, in purple, is  
22 owned by Phillips 66.

23 Q. What is the primary objective in the proposed  
24 well?

25 A. The Atoka-Morrow formation.

1 Q. Let's go to what has been marked for  
2 identification as Exhibit Number 2, and I'd ask you to  
3 identify the exhibit and then point out those interest  
4 owners who have not voluntarily committed their interest to  
5 the well.

6 A. This is a summary of the companies that we're  
7 dealing with to drill the well, that have an ownership  
8 under the east half, Section 13. Everyone has agreed to  
9 participate. TMBR/Sharp Drilling Company will operate, and  
10 Southwest Energy and Phillips 66 have not agreed to any  
11 written agreement at this time in the east half.

12 Q. You're still in negotiation with them?

13 A. Yes.

14 Q. What percentage of the working interest is  
15 voluntarily committed to the well?

16 A. Seven-eighths.

17 Q. And then does Phillips and Southwestern represent  
18 the other one-eighth?

19 A. Yes, sir.

20 Q. Let's go to Exhibit Number 3. Could you identify  
21 that?

22 A. This is an authorization for expenditure to drill  
23 the State 13 well, \$585,509 dryhole cost, \$351,718  
24 completion cost, for a total well cost of \$937,227.

25 Q. Are these costs in line with what has been

1 incurred in the drilling of similar wells in this area?

2 A. Yes.

3 Q. Would you identify Exhibit Number 4 and then  
4 summarize the efforts you have made to reach a voluntary  
5 agreement with Phillips and Southwestern?

6 A. Exhibit Number 4 is the letter that was mailed  
7 December 15th, 1999, to the owners of an interest under the  
8 east half of Section 13. This letter was preceded by  
9 numerous contacts with these companies to secure their  
10 participation in the well. At the time we mailed this  
11 letter, we had been working through November to get  
12 everyone's agreement.

13 Q. Since that time, have you been in contact with  
14 Phillips and Southwestern?

15 A. Yes, subsequent to this letter being mailed, we  
16 were in daily communication with Southwestern and Phillips.  
17 I've had numerous meetings with them, and up through  
18 yesterday and including last week, since the new year, we  
19 had almost daily conversations with Southwest and Phillips.

20 Q. Where do your negotiations at this point stand  
21 with Phillips?

22 A. We are reviewing a proposal by Phillips to give  
23 Ameristate a term assignment of their interest. However,  
24 at this point the terms of the assignment are unacceptable.

25 Q. And when did you receive that from Phillips?

1 A. Yesterday morning.

2 Q. Do you intend to continue the negotiations with  
3 Phillips?

4 A. Yes, sir.

5 Q. If an agreement is reached with them that would  
6 commit their interest, you will advise the Division, will  
7 you not?

8 A. Yes, sir.

9 Q. What is the interest of Southwestern Energy in  
10 this property?

11 A. Southwest represents that they have an agreement  
12 with Phillips to participate as to Phillips' interest. If  
13 Southwest does not participate, then the right to  
14 participate with the Phillips working interest reverts to  
15 Phillips. Southwest has indicated that they will not  
16 participate in the drilling of this well.

17 So the decision to participate or farm out or  
18 make an assignment to Ameristate, as we understand the  
19 agreement between Southwest and Phillips, has reverted to  
20 Phillips. We have requested but not been provided the  
21 agreement, so that's a verbal understanding.

22 Q. Southwestern, to your understanding, has  
23 basically some sort of a contingent interest in the  
24 Phillips tract?

25 A. We have to assume that, in the absence of seeing

1 the agreement.

2 Q. And if you're able to reach an agreement with  
3 Phillips, will you also seek a ratification of that from  
4 Southwestern?

5 A. Yes, sir.

6 Q. And you would advise the Division if those were  
7 obtained?

8 A. Yes.

9 Q. In your opinion, have you made a good-faith  
10 effort to obtain the voluntary participation in this well  
11 of the Phillips/Southwestern interest?

12 A. Yes, sir.

13 Q. Has Ameristate drilled other Atoka-Morrow wells  
14 in this area?

15 A. We have generated and caused to be drilled seven  
16 Atoka wells in this area, with TMBR/Sharp operating, within  
17 the last two years.

18 Q. Is Exhibit Number 5 a copy of an affidavit with  
19 attached letters confirming that notice of this application  
20 and hearing have been provided to both Phillips and  
21 Southwestern as required by the rules of the Oil  
22 Conservation Division?

23 A. Yes.

24 Q. Attached to this exhibit as the last page thereof  
25 is a letter from Marathon. Is that Marathon's letter

1 agreeing to participate?

2 A. Yes.

3 Q. Have you made an estimate of the overhead and  
4 administrative costs to be incurred while drilling the well  
5 and also while producing it, if it is successful?

6 A. \$5000 drilling rate and \$500 producing rate.

7 Q. And how do these compare to the Ernst and Young  
8 figures?

9 A. They are slightly less than the Ernst and Young  
10 figures.

11 Q. And that's the 1998-1999 survey?

12 A. Yes.

13 Q. Do you recommend that these figures be  
14 incorporated into any order which results from today's  
15 hearing?

16 A. Yes.

17 Q. Mr. Nearburg, how soon does TMBR/Sharp hope to  
18 spud this well?

19 A. We have a lease on which the drill site is  
20 located. It expires March 1st, 2000. That's a state  
21 tract. We would request an expedited order so that we can  
22 allow the 30 days to run after the order and commence our  
23 well prior to March 1st.

24 Q. Were Exhibits 1 through 5 either prepared by you  
25 or compiled under your direction?

1 A. Yes.

2 Q. Can you testify to their accuracy?

3 A. Yes.

4 MR. CARR: At this time, Mr. Ashley, we would  
5 move the admission into evidence of Ameristate Exhibits 1  
6 through 5.

7 EXAMINER ASHLEY: Exhibits 1 through 5 will be  
8 admitted as evidence.

9 MR. CARR: And that concludes my direct  
10 examination of Mr. Nearburg.

11 EXAMINATION

12 BY EXAMINER ASHLEY:

13 Q. Mr. Nearburg, you said that Phillips offered a  
14 term assignment to Nearburg, but Nearburg said that was  
15 unacceptable. Is that the way that worked?

16 A. Well, we received the term assignment yesterday  
17 morning. It's 24 pages long. It's for a very short term,  
18 and all of the terms of that assignment are not acceptable.  
19 It's a very tough agreement, and we're not sure we  
20 understand the entire agreement yet.

21 We also want the agreement to be approved by all  
22 the parties that have agreed to drill the well. So there's  
23 quite a bit of work left to be done on that agreement.

24 Q. Okay. And Nearburg is seeking this pooling  
25 order, but yet TMBR/Sharp Drilling would be the operator?

1 Is that the way I understand it?

2 A. Yes, sir, and I would like to clarify that it's  
3 Ameristate, not --

4 Q. Excuse me.

5 A. That gets confusing. But yes, Ameristate has  
6 generated the prospect in conjunction with the geologist  
7 that will testify.

8 Q. Okay.

9 A. And TMBR/Sharp is who we have operate the wells  
10 for us. They're a partner and operator.

11 EXAMINER ASHLEY: Okay, I have nothing further.  
12 Thank you.

13 THE WITNESS: Thank you.

14 MR. CARR: At this time we call John Herbig,  
15 H-e-r-b-i-g.

16 JOHN F. HERBIG, JR.,

17 the witness herein, after having been first duly sworn upon  
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CARR:

21 Q. Would you state your name for the record, please?

22 A. John F. Herbig, Jr.

23 Q. And where do you reside?

24 A. Midland, Texas.

25 Q. By whom are you employed?

1 A. I'm self-employed.

2 Q. And what is your relationship to Ameristate or  
3 this project?

4 A. I'm a partner in the generation of the prospects  
5 in this area.

6 Q. Have you previously testified before this  
7 Division?

8 A. No, I have not.

9 Q. Could you summarize for Mr. Ashley your  
10 educational background?

11 A. I graduated from Texas A&M University in 1983  
12 with a bachelor of science in geology.

13 Q. Since that time, for whom have you worked?

14 A. I was employed by a small independent in Houston,  
15 Texas, for two years after graduation. In 1986 I became an  
16 independent, and I've been self-employed for that time  
17 period as a petroleum geologist, working primarily the  
18 Permian Basin.

19 Q. Are you familiar with the Application filed in  
20 this case?

21 A. Yes, sir.

22 Q. Have you made a geological study of the area  
23 which is the subject of this Application?

24 A. Yes, sir.

25 Q. And are you prepared to review the results of

1 that work with Mr. Ashley?

2 A. Yes, sir.

3 MR. CARR: We tender Mr. Herbig as an expert  
4 witness in petroleum geology.

5 EXAMINER ASHLEY: Mr. Herbig is so qualified.

6 Q. (By Mr. Carr) Mr. Herbig, are you prepared to  
7 make a recommendation to the Examiner as to the risk  
8 penalty that should be assessed against any  
9 nonparticipating interest owner?

10 A. Yes, sir.

11 Q. And what do you recommend that penalty be?

12 A. Two hundred percent.

13 Q. Now, let's look at your geological study. And  
14 this is the information that you are basing that  
15 recommendation on; is that correct?

16 A. Yes, sir.

17 Q. Let's go to Exhibit Number 6, your structure map.  
18 Would you review that for the Examiner?

19 A. This is a structure map based on the top of the  
20 Morrow limestone, and it indicates gentle monoclinal  
21 northeast dip.

22 Q. How near to the subject area is the closest  
23 Atoka-Morrow production?

24 A. Two and a half miles.

25 Q. And this particular exhibit, was this prepared

1 from subsurface information or from seismic?

2 A. From well-control data.

3 Q. And generally this is based on the well-control  
4 data shown on this exhibit and your general experience  
5 mapping the area?

6 A. Yes, sir.

7 Q. What significance is structure in making a well  
8 in this particular area?

9 A. Very little in the Atoka-Morrow formation.

10 Q. Let's go to Exhibit Number 7, your isopach map,  
11 and I'd ask you to review this for the Examiner.

12 A. This isopach map is a gross Atoka sandstone map.  
13 Basically, it indicates a continuation of a channel from  
14 the north and trending northwest-southeast, which is  
15 similar to other trends in this area.

16 Q. This proposed location, is it fair to  
17 characterize it as being in the center of the channel or in  
18 the fairway?

19 A. Yes, sir.

20 Q. And basically what you have done here is simply  
21 project the extension of a channel to the south and the  
22 east?

23 A. Yes, sir.

24 Q. And is that consistent with the regional mapping  
25 in the area?

1 A. Yes, sir, it is.

2 Q. And again, this exhibit was prepared based on  
3 subsurface information?

4 A. That's correct.

5 Q. Due to the fact there's no Atoka-Morrow  
6 production for over two miles, is it fair to characterize  
7 this as a rank wildcat?

8 A. Yes, sir.

9 Q. In your opinion, is it possible that a well at  
10 this location could be drilled that would not be a  
11 commercial success?

12 A. Yes, sir.

13 Q. And is this the reason you're requesting the 200-  
14 percent risk penalty?

15 A. Yes, sir.

16 Q. Does Ameristate Oil and Gas seek to be designated  
17 operator of the well?

18 A. No, sir.

19 Q. And that will be who?

20 A. TMBR/Sharp Drilling.

21 Q. In your opinion, will granting this Application  
22 and the drilling and the drilling of the proposed well be  
23 in the best interest of conservation, the prevention of  
24 waste and the protection of correlative rights?

25 A. Yes, sir.

1 Q. Were Ameristate Exhibits 6 and 7 prepared by you?

2 A. Yes, sir.

3 MR. CARR: Mr. Ashley, at this time I would move  
4 the admission into evidence of Ameristate Exhibits 6 and 7.

5 EXAMINER ASHLEY: Exhibits 6 and 7 will be  
6 admitted as evidence.

7 MR. CARR: And that concludes my examination of  
8 this witness.

9 EXAMINATION

10 BY EXAMINER ASHLEY:

11 Q. Mr. Herbig, you said the primary target is the  
12 Atoka-Morrow. Do you have any secondary targets?

13 A. Yes, sir, Abo, Drinkard, Wolfcamp formations and  
14 Cisco, as shallower horizons.

15 MR. CARR: Mr. Examiner, I would point out that  
16 those formations are not spaced on 320. They are secondary  
17 objectives in the well, but Nearburg -- Ameristate, does  
18 control all that acreage.

19 EXAMINER ASHLEY: Nearburg owns 100 percent of  
20 those -- I mean, Ameristate owns 100 percent of --

21 MR. CARR: Yes, sir.

22 EXAMINER ASHLEY: -- the smaller units?

23 MR. CARR: Correct.

24 EXAMINER ASHLEY: Thank you.

25 Q. (By Examiner Ashley) And what's the TD of this

1 well?

2 A. 12,900 feet.

3 Q. If this well is completed as a producer, are  
4 there plans to further develop this formation?

5 A. Yes, there would be, based on acreage  
6 availability.

7 EXAMINER ASHLEY: Okay, I have nothing further.  
8 Thank you.

9 THE WITNESS: Thank you.

10 MR. CARR: That concludes our presentation in  
11 this case.

12 EXAMINER ASHLEY: There being nothing further in  
13 this case, Case 12,330 will be taken under advisement.

14 And at this time we'll adjourn for lunch and  
15 reconvene at 1:00 p.m.

16 (Thereupon, these proceedings were concluded at  
17 11:54 a.m.)

18 \* \* \*

19

20 I do hereby certify that the foregoing is  
21 a complete record of the proceedings in  
22 the Examiner hearing of Case No. 12330,  
heard by me on 1-20 19 2000.

23 Mark Ashley, Examiner  
24 Of Conservation Division

24

25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL January 26th, 2000.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002