

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. 11012*  
*ORDER NO. R-10191*

**APPLICATION OF NEARBURG EXPLORATION COMPANY FOR COMPULSORY  
POOLING AND AN UNORTHODOX GAS WELL LOCATION, EDDY COUNTY,  
NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on June 23, 1994 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 21<sup>st</sup> day of September, 1994, 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) The applicant, Nearburg Exploration Company, seeks an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Morrow formation underlying Lots 1 and 2, the NE/4, and E/2 NW/4 (N/2 equivalent) of Section 18, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico, thereby forming a 319.94-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 Undesignated West Four Mile-Strawn Gas Pool and the Undesignated Boyd-Morrow Gas Pool and dedicating said unit to the Nearburg Producing Company's proposed Fairchild 18 "D" Well No. 1 to be drilled at an unorthodox gas well location 660 feet from the North and West lines (Unit D) of said Section 18.

(3) Nearburg Exploration Company, a company based in Dallas, Texas that is a sole proprietorship owned by Charles E. Nearburg, is listed as owning certain mineral interests in the N/2 equivalent of said Section 18 and as such has the right to drill for and develop the minerals underlying the proposed spacing unit.

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

(5) At the time of the hearing the applicant, Nearburg Exploration Company, renewed its request originally sought in its application to the Division for this case to designate Nearburg Producing Company, a corporation also owned by Charles E. Nearburg that operates the various wells under which Nearburg Exploration Company is the owner, as operator of the subject well and unit.

(6) According to the testimony presented by the applicant, the primary objective for this well is the oil bearing Cisco and Canyon formations of the Upper Pennsylvanian System, which in this area is currently governed by general statewide 40-acre oil spacing. The deeper Morrow horizon is a secondary objective. Further, the proposed location is considered a standard oil well location for both the Cisco and Canyon formations; however, geologic interpretation places this well at a more favorable position within the Upper Pennsylvanian zone than the closest standard gas well location for this 319.94-acre unit 660 feet to the East.

(7) No interested or affected party to this matter appeared at the hearing in opposition to either the unorthodox location or the forced pooling provisions of this application.

(8) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent 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 gas in any pool resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said 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 his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

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

(12) 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.

(13) 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.

(14) \$5664.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates) while drilling and \$560.00 per month should be fixed as a reasonable charge for supervision while producing, provided that this rate should be adjusted annually based upon the percentage increase or decrease in the average weekly earnings of crude petroleum and gas production workers; 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.

(15) 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.

(16) Upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before December 31, 1994, the order pooling said unit should become null and void and of no further effect whatsoever.

(17) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect.

(18) The operator of the well and unit should notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, from the top of the Wolfcamp formation to the base of the Morrow formation underlying Lots 1 and 2, the NE/4, and E/2 NW/4 (N/2 equivalent) of Section 18, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 319.94-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 Undesignated West Four Mile-Strawn Gas Pool and the Undesignated Boyd-Morrow Gas Pool. Said unit is to be dedicated to the Nearburg Producing Company's proposed Fairchild 18 "D" Well No. 1 to be drilled at an unorthodox gas well location 660 feet from the North and West lines (Unit D) of said Section 18.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the thirty first day of December, 1994, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test from the top of the Wolfcamp formation to the base of the Morrow formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the thirty-first day of December, 1994, Decretory Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

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 Decretory Paragraph No. (1) of this order 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 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.

(4) 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.

(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 said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is an 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 his share of estimated 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.

(7) 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; and
- (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.

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

(9) \$5664.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) while drilling, and \$560.00 per month is hereby fixed as a reasonable charge for supervision while producing, provided that this rate shall be adjusted on the first day of April of each year following the effective date of this order; the adjustment shall be computed by multiplying the rate currently in use by the percentage increase or decrease in the average weekly earnings of crude petroleum and gas production workers for the last calendar year compared to the preceding calendar year as shown by "The Index of Average Weekly Earnings of Crude Petroleum and Gas Production Workers", as published by the United States Department of Labor, Bureau of Labor Statistics, and the adjusted rate shall be the rate currently in use, plus or minus the computed adjustment; 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.

(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.

(11) 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.

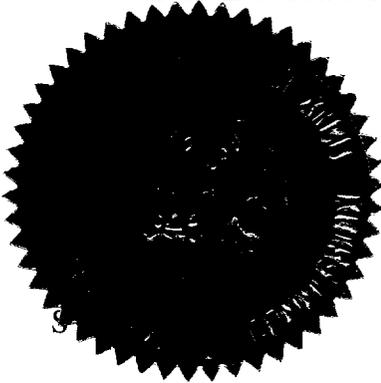
(12) All proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

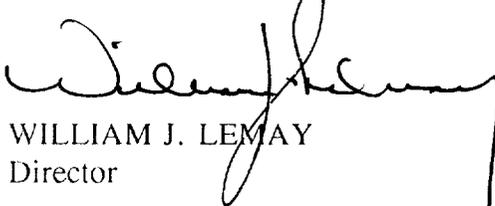
(14) The operator of the subject well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the force-pooling provisions of this order.

(15) Jurisdiction of this cause is 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

  
WILLIAM J. LEMAY  
Director