

**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. 9867  
CASE NO. 9868  
Order No. R-9124**

**APPLICATION OF MALLON OIL  
COMPANY FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.**

**APPLICATION OF GEORGE MITCHELL  
d/b/a G.P. II ENERGY, INC. FOR  
COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This cause came on for hearing at 8:15 a.m. on February 7 and 21, 1990, at Santa Fe, New Mexico, before Examiners David R. Catanach and Michael E. Stogner, respectively.

NOW, on this 27<sup>th</sup> day of February, 1990, 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) Division Case Nos. 9867 and 9868 were consolidated at the time of the hearing for the purpose of testimony, and inasmuch as both cases concern the same acreage, namely the NW/4 NE/4 of Section 28, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico, one order should be entered for both cases.

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**(3) The applicant in Case No. 9867, Mallon Oil Company (Mallon), seeks an order pooling all mineral interests in the Brushy Draw-Delaware Pool underlying the NW/4 NE/4 (Unit B) of Section 28, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico, forming a standard 40-acre oil spacing and proration unit for said pool. Said unit is to be dedicated to the Amoco Red Bluff Federal Well No. 3 located at a previously approved unorthodox oil well location 130 feet from the North line and 1805 feet from the East line (Unit B) of said Section 28.**

**(4) The applicant in Case No. 9868, George Mitchell d/b/a G.P. II Energy, Inc. (Mitchell), seeks an order pooling all mineral interests from the surface to the base of the Cherry Canyon formation underlying the NW/4 NE/4 (Unit B) of Section 28, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent which presently includes but is not limited to the Brushy-Draw Delaware Pool. Said unit is to be dedicated to a well to be drilled at a standard well location thereon.**

**(5) Within the NW/4 NE/4 of said Section 28, Mallon owns or controls a 71.54% working interest, while Mitchell owns or controls a 28.46% working interest.**

**(6) Despite ongoing negotiations between Mallon and Mitchell which commenced in July, 1989, both parties have been unable to reach an agreement concerning the subject acreage. The following chronology of events prior to the hearing on February 7, 1990, is relevant to this order:**

- a. July 12, 1989; Mallon formally proposed to Mitchell the drilling of the Amoco Red Bluff Federal Well No. 3 by sending AFE and operating agreement and requested that Mitchell participate by voluntary agreement.**
- b. August, 1989; Mitchell met with Mallon to discuss concerns about the estimated well costs for the proposed Amoco Red Bluff Federal Well No. 3.**
- c. October 26, 1989; Mitchell sent its own AFE for the subject well to Mallon and requested that it be allowed to operate the well and possibly take over all of Mallon's operations in New Mexico.**

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- d. November 28, 1989; Mallon sent an amended AFE to Mitchell denoting a change in the proposed well location and requested that Mitchell respond by December 10, 1989.
- e. December 5, 1989; Mitchell advised Mallon that he would not be participating in the drilling of the subject well but would consider farming out his interest.
- f. December 26, 1989; Mallon advised Mitchell that the terms of the farmout proposal are probably not acceptable.
- g. December 29, 1989: Mallon advised Mitchell that forced pooling proceedings would be initiated.

Amoco Red Bluff Federal Well No. 3 was spudded in compliance with a drilling deadline provision contained within Amoco Production Company-Mallon farmout agreement.

- h. January 3, 1990; Mallon filed forced pooling application with the Division.

(7) Testimony and evidence presented indicates that as of the date of the hearing, the Amoco Red Bluff Federal Well No. 3, as described in Finding No. (3) above, has been drilled to the Delaware formation by Mallon and is currently waiting on completion.

(8) In its attempt to be named operator of the subject proration unit, Mitchell has presented evidence and testimony which indicates that it has experience in drilling and operating Delaware wells in this area and can in fact drill Delaware wells for substantially less cost than Mallon.

(9) Insofar as the question of operatorship is concerned, the drilling cost evidence presented by Mitchell is irrelevant in this case inasmuch as the well has already been drilled and the costs already incurred.

(10) As indicated by Finding No. (6) above, Mallon was the first to propose drilling the subject well and in fact has drilled the well, and has made a good faith effort to secure voluntary agreement with Mitchell.

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(11) In addition, Mallon is the majority interest owner in the subject proration unit, and as such, stands to gain or lose substantially more than Mitchell.

(12) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid 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 production in any pool completion resulting from this order, the application of Mallon Oil Company should be approved by pooling all mineral interests, whatever they may be, within said unit.

(13) The application of George Mitchell d/b/a G.P. II Energy, Inc. for compulsory pooling should be denied.

(14) Mallon Oil Company should be designated the operator of the subject well and unit.

(15) 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.

(16) In addition to the issues in this case presented heretofore, Mitchell has attempted, via subpoena issued by the Division on February 5, 1990, upon request by Mitchell, to obtain certain documents from Mallon regarding the Amoco Red Bluff Federal Well No. 3, including well logs, daily drilling reports, completion data, and production data.

(17) Upon motion by Mallon, the Division has ruled to quash the subpoena, inasmuch as such data would give Mitchell an unfair advantage in deciding whether or not to voluntarily join in Mallon's well at this point in time, and would in fact relieve Mitchell of any risk penalty the Division determines might be appropriately assessed against him.

(18) Mallon has proposed that a risk penalty of 200% be assessed against Mitchell in this case.

(19) Mitchell has proposed that no risk penalty be assessed in this case inasmuch as the subject well has already been drilled, and no risk exists at the present time.

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(20) The geologic evidence presented in this case might justify a 200% risk penalty; however, the fact that Mallon had sufficient opportunity to obtain a forced pooling order and establish a risk penalty prior to drilling the subject well, and the fact that Mallon had sufficient confidence in the probability of drilling a successful well that it carried Mitchell's interest at the time the well was drilled, indicates that the maximum risk penalty of 200% is not appropriate in this case.

(21) Mallon did, nonetheless, assume some risk at the time the subject well was drilled.

(22) The risk penalty assessed against Mitchell should be adjusted in accordance with Finding Nos. (20) and (21) above.

(23) Any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 75 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(24) 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.

(25) 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.

(26) \$3056.00 per month while drilling and \$334.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); 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.

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(27) 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.

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

(29) 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 forced pooling provisions of this order.

**IT IS THEREFORE ORDERED THAT:**

(1) The application of George Mitchell, d/b/a G.P. II Energy, Inc. (Mitchell), for an order pooling all mineral interests from the surface to the base of the Cherry Canyon formation underlying the NW/4 NE/4 (Unit B) of Section 28, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within said vertical extent which presently includes but is not limited to the Brushy-Draw Delaware Pool, said unit to be dedicated to a well to be drilled at a standard well location thereon, is hereby denied.

(2) All mineral interests, whatever they may be, in the Brushy Draw-Delaware Pool underlying the NW/4 NE/4 (Unit B) of Section 28, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a standard 40-acre oil spacing and proration unit for said pool. Said unit shall be dedicated to the existing Amoco Red Bluff Federal Well No. 3 located at a previously approved unorthodox oil well location 130 feet from the North line and 1805 feet from the East line (Unit B) of said Section 28.

(3) Mallon Oil Company is hereby designated the operator of the subject well and unit.

(4) Within 7 days after the effective date of this order, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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(5) Within 14 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.

(6) 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 objection to actual well costs within said 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 his share of estimated well 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.

(8) 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 14 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 75 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.

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

(10) \$3056.00 per month while drilling and \$334.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); 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.

(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 the terms of this order.

(12) 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.

(13) All proceeds from production from the subject well which 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 said escrow agent.

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

(15) 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 forced pooling provisions of this order.

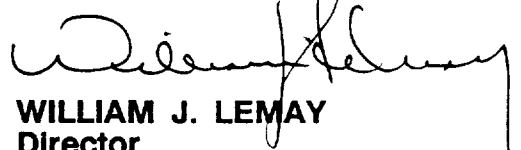
(16) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.



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

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY  
Director

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