

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 NEARBURG EXPLORATION
COMPANY FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case No. 11521

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

Case No. 11533

Order No. R-10626

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on June 13, 1996, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 31st day of July, 1996, 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. 11521 and 11533 were consolidated at the time of the hearing for the purpose of testimony, and, in order to provide a comprehensive decision in these cases, one order should be entered for both cases.

(3) In Case No. 11533, the applicant, Mewbourne Oil Company ("Mewbourne"), originally requested from the Division an order pooling all mineral

interests from the surface to the base of the Morrow formation underlying the N/2 (equivalent) for all formations developed on 320-acre spacing, the NW/4 (equivalent) for all formations developed on 160-acre spacing, the S/2 NW/4 for all formations developed on 80-acre spacing, and the SW/4 NW/4 for all formations developed on 40-acre spacing, all in Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico. The applicant further proposed to dedicate these pooled units to a well to be drilled at an unorthodox gas well location 1650 feet from the North line and 990 feet from the West line (Unit E) of said Section 4 to test any and all formations from the surface to the base of the Morrow formation, Illinois Camp-Morrow Gas Pool.

(4) At the time of the hearing said Case 11533 was revised such that Mewbourne now seeks an order pooling all mineral interests from a depth of 5,000 feet to the base of the Morrow formation, being the primary zone of interest, underlying the following described acreage in Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico and in the following manner:

(a) Lots 1, 2, 3, and 4 and the S/2 N/2 (N/2 equivalent) of said Section 4 thereby forming a standard 320.48-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 Empire-Pennsylvanian Gas Pool; and,

(b) Lots 3 and 4 and the S/2 NW/4 (NW/4 equivalent) of said Section 4 to form a standard 160.36-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent.

Said units are to be dedicated to Mewbourne's proposed Scoggin Draw "4" State Com Well No. 1 to be drilled 1650 feet from the North line and 990 feet from the West line (Unit E) of said Section 4. Said well location is considered to be "standard" for the proposed 160.36-acre unit but is "unorthodox" for the proposed 320.48-acre gas spacing and proration unit. By Division Administrative Order **NSL-3679**, dated June 11, 1996, this location was approved for the Empire-Pennsylvanian Gas Pool in the subject 320.48-acre unit.

(5) Similarly, in Case No. 11521 the applicant, Nearburg Exploration Company ("Nearburg"), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying Lots 1, 2, 3, and 4 and the S/2 N/2 (N/2 equivalent) of Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico thereby forming a standard 320.48-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 Empire-Pennsylvanian Gas Pool, said unit to be dedicated to Nearburg's proposed Hummer State "4" Com Well No. 1 to be drilled at a location 1310 feet from the North line and 1650 feet from the East line (Lot 2/Unit B) of said Section 4.

(6) *The ownership within the N/2 equivalent of said Section 4 as to the relevant potential producing depth is outlined as follows:*

<i>(a) Nearburg Exploration Company</i>	<i>14.06250%</i>
<i>(b) Mewbourne Oil Company</i>	<i>37.50000%</i>
<i>(c) Arco Permian Corporation</i>	<i>6.25000%</i>
<i>(d) Amoco Production Company</i>	<i>6.25000%</i>
<i>(e) OXY USA Inc.</i>	<i>25.00000%</i>
<i>(f) Fina Oil and Chemicals</i>	<i>09.37500%</i>
<i>(g) Earl R. Bruno, Jr.</i>	<i>00.78125%</i>
<i>(h) Robert H. Marshall</i>	<i>00.78125%</i>

FINDING: In that Mewbourne and Nearburg each own an interest in the N/2 equivalent of said Section 4 and, as such, both have the right to drill for and develop the minerals underlying the proposed spacing unit(s).

(7) Mewbourne and Nearburg have been negotiating and have both attempted to reach a mutually acceptable agreement in this matter; however, they have been unable to voluntarily reach an agreement as to which location should be drilled within the N/2 equivalent of said Section 4.

(8) Both parties agreed at the hearing that overhead rates of \$6,000.00 while drilling and \$600.00 while producing should be adopted in this case. In addition, both parties proposed that a risk penalty of 200 percent be assessed against any non-consenting interest owners.

(9) Nearburg has proposed that Mewbourne be allowed the first opportunity to drill its preferred location because in excess of 70% of the working interest owners have agreed to the Mewbourne location with only 14% agreeing to the Nearburg location, and that if Mewbourne fails to timely commence such a well or in the event it is not commercially productive in the Morrow formation, that Nearburg then be given the opportunity to commence its well at its preferred location.

(10) Mewbourne is in agreement with Nearburg's proposal with the exception that Mewbourne wants the ability to extend its commencement date for spudding its well

beyond the normal 90-day commencement period provided in standard compulsory pooling orders issued by the Division.

(11) Mewbourne's technical witnesses testified at the hearing that Mewbourne had represented to Nearburg that Mewbourne can commence the drilling of the subject well within the normal 90-day period following the issuance of a compulsory pooling order and was unaware of any reason it could not do so.

(12) The Division finds that Nearburg's proposal is fair and reasonable and should be adopted by the Division in order to provide a comprehensive solution for the exploration of this section with the parties owning the overwhelming majority being provided the opportunity to drill their preferred location first.

(13) Both applications for compulsory pooling should be granted with Mewbourne being granted the first opportunity to commence a well at its specified location and then, if said well is not timely commenced or if commenced should fail to be completed in the Morrow formation as a commercial well, then Nearburg should be granted its opportunity to drill a Morrow well at its preferred location without the necessity of again pooling the N/2 of Section 4.

(14) Since the location proposed by Mewbourne was previously approved by an administrative order (NSL-3679) with no objections being filed during that process, no production penalty will be imposed on Mewbourne's Scoggin Draw "4" State Com Well No. 1.

(15) *Nearburg's proposed gas well location (1310 feet from the North line and 1650 feet from the East line (Lot 2/Unit B) of said Section 4) is considered to be "unorthodox", pursuant to Division General Rules 104.B(1)(a) and 104.C(2)(b).*

FINDING: In that the unorthodox location for the Nearburg well is internal within its proposed standard 320.48-acre gas spacing and proration unit and not encroaching on any offsetting deep gas units and it appearing that Nearburg's presentation of this case at the hearing has served to meet the notification requirements for an administrative application pursuant to Division General Rule 104.F, the subject location should also be approved at this time and without any further administrative action by Nearburg.

(16) Mewbourne should be required to commence its well within 90 days following the issuance of an order in this case but in no event later than November 1, 1996.

(17) 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(s) the opportunity to recover or receive without unnecessary expense his just and fair share of hydrocarbon production in any pool resulting from this order, the applications of Mewbourne and Nearburg should be approved by pooling all mineral interests, whatever they may be, within said unit(s), subject to the terms and conditions set forth below.

(18) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs first to Mewbourne and then to Nearburg, as the operator, respectively, in lieu of paying his share of reasonable well costs out of production.

(19) 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(s).

(20) 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.

(21) 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.

(22) \$6,000.00 per month while drilling and \$600.00 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.

(23) All proceeds from production from the applicable 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.

(24) Upon the failure of Mewbourne to commence drilling of its Scoggin Draw "4" State Com Well No. 1 on or before the expiration of the 90-day period following

issuance of this order, or November 1, 1996, whichever comes sooner, then Nearburg shall commence the drilling of its proposed Hummer State "4" Com Well No. 1 on or before January 20, 1997, and if neither party timely commences their respective well then this order pooling said unit(s) should become null and void and of no further effect whatsoever.

(25) 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.

(26) The operator of its applicable well and unit(s) 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) The application of Mewbourne Oil Company ("Mewbourne") in Case No. 11533 for an order pooling all mineral interests from a depth of 5,000 feet to the base of the Morrow formation, being the primary zone of interest, underlying the following described acreage in Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico and in the following manner:

(a) Lots 1, 2, 3, and 4 and the S/2 N/2 (N/2 equivalent) of said Section 4 thereby forming a standard 320.48-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 Empire-Pennsylvanian Gas Pool; and,

(b) Lots 3 and 4 and the S/2 NW/4 (NW/4 equivalent) of said Section 4 to form a standard 160.36-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent;

is hereby approved.

Said units are to be dedicated to Mewbourne's proposed Scoggin Draw "4" State Com Well No. 1 to be drilled 1650 feet from the North line and 990 feet from the West line (Unit E) of said Section 4. Said well location is considered to be "standard" for the proposed 160.36-acre unit but is "unorthodox" for the proposed 320.48-acre gas spacing and proration unit. By Division Administrative Order **NSL-3679**, dated June 11, 1996, this location was approved for the Empire-Pennsylvanian Gas Pool in the subject 320.48-acre unit.

(2) In the event Mewbourne either fails to commence drilling its Scoggin Draw "4" State Com Well No. 1 or fails to complete said well as a commercially producing gas well dedicated to the N/2 equivalent of said Section 4, then the application of Nearburg Producing Company ("Nearburg") in Case No. 11521 for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying Lots 1, 2, 3, and 4 and the S/2 N/2 (N/2 equivalent) of Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico thereby forming a standard 320.48-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 Empire-Pennsylvanian Gas Pool, is hereby approved, said unit to be dedicated to Nearburg's proposed Hummer State "4" Com Well No. 1 to be drilled at an unorthodox gas well location for said pooled 320.48-acre unit 1310 feet from the North line and 1650 feet from the East line (Lot 2/Unit B) of said Section 4.

PROVIDED HOWEVER THAT, Mewbourne as the operator of its proposed units shall commence the actual drilling of said Scoggin Draw "4" State Com Well No. 1 within 90 days following the issuance of this order or on November 1, 1996, whichever is sooner, and is so commenced, diligently drilled and completed as a commercial gas well within the Morrow formation.

PROVIDED FURTHER THAT, in the event Mewbourne as the said operator does not commence the drilling of said well at the previously approved unorthodox gas well location on or before 90 days following issuance of this order, or the first day of November, 1996, whichever is sooner, then Nearburg shall have the right to commence its well at its location on or after said date, subject to Nearburg allowing all parties subject to this order to elect to participate in said well and pay their share of all well costs, or electing to be a non-consenting party and pay their share of well costs out of production.

(3) After the effective date of this order and within 30 days prior to commencing its Scoggin Draw "4" State Com Well No. 1, Mewbourne shall furnish the Division and each known working interest owner in the subject unit(s) 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 Mewbourne 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) In the event Mewbourne fails to spud its well on or before 90 days from the date of this order, or if so commenced fails to diligently drill and timely complete a producing gas well therein dedicated to the N/2 equivalent of said Section 4, then its right to operate shall immediately terminate and Nearburg is hereby designated the operator of the subject 320.48-acre deep gas spacing unit and within 30 days prior to commencing said well, Nearburg shall furnish the Division and each known working interest owner in the subject 320.48-acre unit an itemized schedule of estimated well costs and shall allow all parties subject to this order to elect to participate in said well and pay their share of all well costs or in the absence of said election shall be a non-consenting party and pay their share of well costs out of production.

(6) In either the event of notification by Mewbourne or Nearburg, and within thirty (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 Mewbourne or Nearburg, as the case may be, 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.

(7) Whoever the operator may be shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the applicable 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.

(8) 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 applicable 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.

(9) The applicable 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.

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

(11) \$6,000.00 per month while drilling and \$600.00 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.

(12) 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.

(13) 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.

(14) 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.

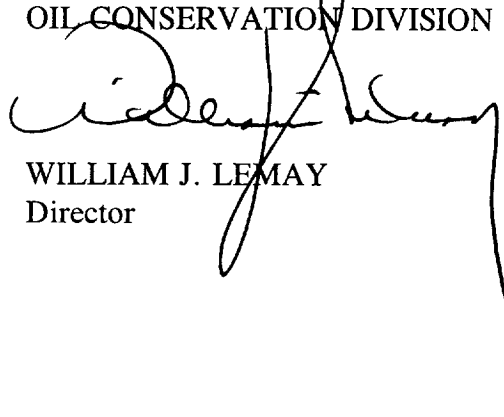
(15) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the subject well and unit(s) 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.

(17) 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

A handwritten signature in black ink, appearing to read 'William J. Lemay', is written over the printed name and title. The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

WILLIAM J. LEMAY
Director

S E A L