

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. 10788  
Order No. R-9964

APPLICATION OF NEARBURG PRODUCING  
COMPANY 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 August 12, 1993, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 21st day of September, 1993, 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 Producing Company (Nearburg), seeks an order pooling all mineral interests from the surface to the base of the Cisco-Canyon (Upper Pennsylvanian) formation underlying the E/2 of Section 2, Township 22 South, Range 24 East, NMPM, Eddy County, New Mexico, forming a non-standard 344.66-acre spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes the Undesignated McKittrick Hills-Upper Pennsylvanian Gas Pool and Undesignated Indian Basin-Upper Pennsylvanian Associated Pool. Said unit is to be dedicated to the applicant's proposed Big Walt "2" State Well No. 2 to be drilled at a standard location for the Indian Basin-Upper Pennsylvanian Associated Pool 1650 feet from the

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South line and 1980 feet from the East line (Unit J) of Section 2.

(3) Companion Case No. 10790, heard in conjunction with Case No. 10788, is the application of Yates Petroleum Corporation (Yates) for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the S/2 of Section 2, Township 22 South, Range 24 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes the Undesignated McKittrick Hills-Upper Pennsylvanian Gas Pool, the Undesignated Indian Basin-Upper Pennsylvanian Associated Pool, and the Undesignated McKittrick Hills-Morrow Gas Pool. Said unit is to be dedicated to the applicant's proposed Androcles "AND" State Com Well No. 1 to be drilled at a standard location 1980 feet from the South line and 2130 feet from the East line (Unit J) of Section 2.

(4) Case Nos. 10788 and 10790 were consolidated at the time of the hearing for the purpose of testimony.

(5) The evidence indicates that the SE/4 of Section 2 is owned by Yates and its various other entities. The remainder of Section 2 is owned by Nearburg.

(6) Both Yates and Nearburg seek an order pooling each other's interest and both seek to be named operator of their proposed respective well and unit.

(7) At the initiation of proceedings in this matter, both parties agreed that overhead rates of \$5400.00 and \$540.00 should be adopted as reasonable charges for supervision, and that a non-consent risk penalty of 200 percent should be established, and that both should be contained within any orders issued in these cases.

(8) At primary issue in these cases is the best method of developing the oil and gas reserves underlying Section 2, and more specifically whether or not a well drilled in Section 2 should be drilled to a depth sufficient to test the Morrow formation.

(9) Nearburg proposes to develop Section 2 as follows:

a) develop the E/2 of Section 2 within the Upper Pennsylvanian formation by drilling its proposed Big Walt "2" State Well No. 2 as described above; and,

b) develop the W/2 of Section 2 within the Upper Pennsylvanian formation by re-entering the plugged and abandoned Big Walt "2" State Well No. 1 located 660 feet from the North line and 2130 feet from the West line (Unit C).

(10) Nearburg does not intend to drill its proposed Big Walt "2" State Well No. 2 nor deepen the Big Walt "2" State Well No. 1 to a depth sufficient to test the Morrow formation.

(11) Yates proposes to develop the S/2 of Section 2 within the Upper Pennsylvanian and Morrow formations by drilling its proposed Androcles "AND" State Com Well No. 1 to a depth sufficient to test the Morrow formation.

(12) Both parties agree that all of Section 2 should be productive within the Indian Basin-Upper Pennsylvanian Associated Pool. In addition, both parties agree, by virtue of their proposed well locations, that the initial well drilled in Section 2 should be located in Unit J.

(13) Yates contends that the E/2 of Section 2 is potentially productive from the Morrow formation. Yates further contends that lay down spacing units within Section 2 will allow two wells to be drilled in the E/2 to develop the potential Morrow gas reserves.

(14) Nearburg's decision not to test the Morrow formation in the Big Walt "2" State Well Nos. 1 and 2 is based upon its contention that the Morrow formation has little chance of being economically productive within Section 2.

(15) The Division should not deny either Yates or Nearburg the opportunity to drill its own well to test the Morrow and Upper Pennsylvanian formations.

(16) In order to effectively approve both applications, the pooled interval within the Yates Androcles "AND" State Com Well No. 1 should be limited to the Morrow formation, and, the pooled interval within the Nearburg Big Walt "2" State Well No. 2 should be limited to the Cisco-Canyon (Upper Pennsylvanian) formation.

(17) 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 Nearburg Producing Company in Case No. 10788 should be approved by pooling all mineral interests, whatever they may

be, within the Cisco-Canyon (Upper Pennsylvanian) formation underlying the E/2 of Section 2, Township 22 South, Range 24 East, NMPM, Eddy County, New Mexico. This unit should be dedicated to the proposed Big Walt "2" State Well No. 2 to be drilled at a standard location within Unit J of Section 2.

(18) Nearburg Producing Company should be designated the operator of the subject well and unit.

(19) 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.

(20) 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 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(21) Any non-consenting working 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.

(22) 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.

(23) \$5400.00 per month while drilling and \$540.00 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.

(24) 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.

(25) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before January 1, 1994, the order pooling said unit should become null and void and of no effect whatsoever.

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

(27) 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) All mineral interests, whatever they may be, within the Cisco-Canyon (Upper Pennsylvanian) formation only underlying the E/2 of Section 2, Township 22 South, Range 24 East, NMPM, Eddy County, New Mexico, are hereby pooled forming a non-standard 344.66-acre spacing and proration unit for any Upper Pennsylvanian pools which presently includes the Undesignated McKittrick Hills- Upper Pennsylvanian Gas Pool and Undesignated Indian Basin-Upper Pennsylvanian Associated Pool. Said unit shall be dedicated to the applicant's Big Walt "2" State Well No. 2 to be drilled at a standard location for the Indian Basin-Upper Pennsylvanian Associated Pool 1650 feet from the South line and 1980 feet from the East line (Unit J) of Section 2.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 1st day of January, 1994, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Upper Pennsylvanian formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of January, 1994, Ordering 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 Director 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 Ordering 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 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 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.

(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.

(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) \$5400.00 per month while drilling and \$540.00 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.

(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 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.

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

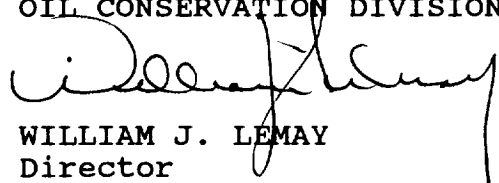
(14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

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(15) Jurisdiction of this cause is hereby 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

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