

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. 10997*  
*ORDER NO. R-10150*

**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 9, 1994 at Santa Fe, New Mexico, before Examiner Jim Morrow.

NOW, on this 14th day of July, 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 surface to the base of the Morrow Formation underlying the N/2 of Section 26, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, forming a standard 320-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 limited to the Undesignated North Cemetery-Atoka Gas Pool and the Undesignated Cemetery-Morrow Gas Pool.

(3) The applicant proposes to dedicate said gas spacing unit to its Morris 26G Well No. 1 to be drilled at an unorthodox gas well location 1450 feet from the North line and 1450 feet from the East line (Unit G) of said Section 26. Applicant seeks approval for the unorthodox location as well as consideration of drilling and completion costs, operating costs, charges for supervision, risk penalties, and designation of the applicant as operator of the well.

(4) Acreage and well location requirements for both pools referred to in finding paragraph (2) above, are those set out in Division General Rule 104.C.(2)(6) which provides for 320-acre spacing with wells not closer than 660 feet to the nearest side boundary, nor closer than 1980 feet to the nearest end boundary, nor closer than 330 feet to any quarter-quarter section line. The proposed location is unorthodox because it is too close to both the end boundary and to quarter-quarter section lines.

(5) The proposed location was selected for geologic reasons. Applicant's witnesses submitted a Lower Morrow Sand Structure map, a Middle Morrow Sand isopach map, and a Middle Morrow Sand cross section in support of the selected location. The isopach map shows the location to be within a regional Middle Morrow Channel. Also, according to applicant's witnesses, it is within a seismic "amplitude anomaly" indicating maximum Middle Morrow thickness. It was mapped based on east-west and north-south seismic lines which intersect near the selected location. The Middle Morrow Sand is the primary objective.

(6) Based on the applicant's geologic testimony, the location is reasonable and should be approved.

(7) The applicant's land witness presented data to show that below a depth of 2933 feet Nearburg Exploration Company has 93.678% working interest: Anadarko Petroleum Corporation has the remaining 6.322% working interest and is still considering voluntary participation. Above 2933 feet Nearburg has 100% working interest. There are also non-participating royalty interests totaling approximately 0.37% who need to be pooled but who have not been located after a diligent search.

(8) An AFE was submitted showing total estimated drilling and completion costs of \$683,345.

(9) The applicant proposed a risk penalty of 200 percent. Monthly fixed charges for supervision of \$6,000 per month while drilling and \$600 per month while producing were proposed. These are higher than the 1993 rates in the Ernest and Young Survey but according to the applicant's witness the rates are agreeable to Anadarko and are similar to those charged in the area by Nearburg and others. Approval to adjust these rates annually, using COPAS accounting procedures, was also requested.

(10) Nearburg Exploration Corporation, the applicant, requested that Nearburg Producing Company be designated as operator of the subject well and unit.

(11) No interest owner or offset operator appeared at the hearing in opposition to the applicant's proposals.

(12) 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 production in any pool resulting from this order, the application should be approved by pooling all mineral interests, whatever they may be, within said 320-acre unit.

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

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) \$6000 per month while drilling and \$600 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. Such charges should be adjusted annually using approved COPAS accounting procedures.

(19) 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.

(20) 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 November 1, 1994, the order pooling said unit should become null and void and of no further effect whatsoever.

(21) 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.

(22) 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 surface to the base of the Morrow formation, underlying the N/2 of Section 26, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing which presently includes but is not limited to the Undesignated North Cemetery-Atoka Gas Pool and the Undesignated Cemetery-Morrow Gas Pool.

(2) All non-participating royalty interests in the N/2 of Section 26, Township 19 South, Range 25 East, NMPM, are hereby pooled for any production from the surface to the base of the Morrow formation to be proportionately reduced for any sized spacing unit dedicated to production from the subject well.

(3) Said unit is to be dedicated to the Morris 26G Well No.1 to be drilled at an unorthodox gas well location 1450 feet from the North line and 1450 feet from the East line (Unit G) of said Section 26. Said unorthodox location is hereby approved.

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

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of November, 1994, Decretory Paragraphs Nos. (1) and (2) 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 Paragraphs Nos. (1) and (2) of this order should not be rescinded.

(4) Nearburg Producing Company is hereby designated the operator of the subject well and unit.

(5) 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.

(6) 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.

(7) 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.

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

(11) \$6000.00 per month while drilling and \$ 600.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); provided that this rate shall be adjusted on the first day of April of each year following the effective date of this order; that the adjustment shall be computed by multiplying the rate currently in use by the percentage increase or decrease in average weekly earnings of crude petroleum and gas production workers for the last calendar year compared to the preceding 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 rates shall be the rates 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.

(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.

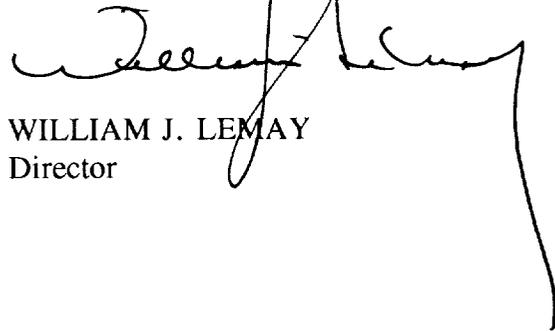
(15) Should all the parties to this force-pooling reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the subject well and unit 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 typed 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