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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. 11186  
APPLICATION OF NEARBURG EXPLORATION COMPANY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING  
**ORIGINAL**

BEFORE: David Catanach, Hearing Examiner

January 5, 1995

Santa Fe, New Mexico

JAN 9

This matter came on for hearing before the Oil  
Conservation Division on January 5, 1995, at 2040 South  
Pacheco, Santa Fe, New Mexico, before Diana S. Abeyta, RPR,  
Certified Court Reporter No. 168, for the State of New  
Mexico.

I N D E X

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January 5, 1995  
Examiner Hearing  
CASE NO. 11186

PAGE

APPEARANCES

3

NEARBURG EXPLORATION COMPANY'S WITNESSES:

BOB SHELTON

Examination by Mr. Carr  
Examination by Examiner Catanach

4  
14

JERRY ELGER

Examination by Mr. Carr  
Examination by Examiner Catanach

16  
19

REPORTER'S CERTIFICATE

21

E X H I B I T S

ID	ADMTD
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Exhibit 1  
Exhibit 2  
Exhibit 3  
Exhibit 4  
Exhibit 5  
Exhibit 6  
Exhibit 7  
Exhibit 8

## A P P E A R A N C E S

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FOR THE DIVISION:

RAND CARROLL, ESQ.  
Legal Counsel  
Oil Conservation Division  
2040 S. Pacheco  
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

CAMPBELL, CARR, BERGE & SHERIDAN, P.A.  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
BY: WILLIAM F. CARR, ESQ.

1 EXAMINER CATANACH: At this time we'll call Case  
2 11186.

3 MR. CARROLL: Application of Nearburg Exploration  
4 Company for compulsory pooling, Lea County, New Mexico.

5 EXAMINER CATANACH: Are there appearances in this  
6 case?

7 MR. CARR: May it please the Examiner, my name is  
8 William F. Carr with the Santa Fe law firm of Campbell,  
9 Carr, Berge & Sheridan. We represent Nearburg Exploration  
10 Company in this case, and I have two witnesses.

11 EXAMINER CATANACH: Any additional appearances?

12 MR. CARR: Mr. Examiner, I would also like to  
13 enter an appearance for David Petroleum Corporation. They  
14 are one of the interest owners in the acreage that is the  
15 subject of the application.

16 EXAMINER CATANACH: Okay. Please swear the  
17 witnesses in.

18 MR. CARROLL: Please stand and be sworn.

19 (Witnesses sworn.)

20 EXAMINER CATANACH: Go ahead.

21 EXAMINATION

22 BY MR. CARR:

23 Q. Would you state your name and place of residence.

24 A. Bob Shelton. Midland, Texas.

25 Q. By whom are you employed and in what capacity?

1           A.       I'm a consulting landman for Nearburg Exploration  
2 Company.

3           Q.       Mr. Shelton, have you previously testified before  
4 this division?

5           A.       Yes, I have.

6           Q.       At the time of that testimony, were your  
7 credentials as a petroleum landman accepted and made a  
8 matter of record?

9           A.       Yes, they were.

10          Q.       Are you familiar with the application filed in  
11 this case on behalf of Nearburg Exploration Company?

12          A.       Yes, sir, I am.

13          Q.       Are you familiar with the status of the lands in  
14 the subject area?

15          A.       Yes, sir, I am.

16                 MR. CARR: Are the witness's qualifications  
17 acceptable?

18                 EXAMINER CATANACH: Yes, they are.

19          Q.       (BY MR. CARR) Mr. Shelton, would you briefly  
20 state what Nearburg seeks with this application?

21          A.       Nearburg seeks a pooling order to be issued by  
22 the commission for the proration unit established for a  
23 Strawn well to be drilled in the E 1/2 NW 1/4 of Section 13,  
24 Township 17 South, Range 37 East, Lea County, New Mexico.

25          Q.       And this is a standard spacing unit?

1 A. Yes, it is.

2 Q. Initially, the application provided for a well to  
3 be drilled 2,086 feet from the North and West lines in Unit  
4 F; is that correct?

5 A. That is correct.

6 Q. And that was a standard location?

7 A. That is correct.

8 Q. You have experienced some problems with that  
9 location due to recent construction on that track by a dairy  
10 in the area?

11 A. That's right. West Star Dairy, in the last few  
12 years, has constructed a large dairy facility on that exact  
13 tract and in that quarter section.

14 Q. So you're going to have to move the location, are  
15 you not, in all probability?

16 A. Yes, we probably will decide to move the  
17 location.

18 Q. And you will be proposing to drill the well still  
19 at the standard location?

20 A. So far as we know, that's correct.

21 Q. Does Nearburg have any objection to continuing  
22 the case and readvertising the matter for a standard  
23 location and deleting this specific well location as part of  
24 the application?

25 A. If that's necessary, we will be glad to do that.

1 Q. And you will present exhibits later in your  
2 presentation that detail the problems you have encountered  
3 with this surface location?

4 A. That's correct.

5 Q. Have you prepared exhibits for presentation here  
6 today?

7 A. Yes, sir.

8 Q. Would you refer to what has been marked as  
9 Nearburg Exhibit No. 1, identify that for the Examiner, and  
10 review it, please.

11 A. This is a land map which is indicated to only  
12 show the location of the lands, the proration unit, which is  
13 in Township 17 South, Range 37 East. It identifies in  
14 yellow the East 1/2, NW 1/4 of Section 13.

15 Q. What is the primary objective in this well?

16 A. The primary objective is the Strawn formation.

17 Q. All right. Let's now go to Exhibit No. 2. Could  
18 you identify and review this for Mr. Catanach.

19 A. This is an ownership plat which shows the NW 1/4  
20 of Section 13; again, the E1/2 NW 1/4 is designated in  
21 yellow. Below that, is a list of individual companies that  
22 own a leasehold interest. You can see the interest of  
23 Nearburg Exploration Company at 43.75 percent, and then the  
24 various other owners. This information was taken from a  
25 title opinion which recently was rendered by a Midland law

1 firm.

2 Q. What percent of the interest in the spacing unit  
3 is at this time fully committed to the drilling of a well on  
4 this acreage?

5 A. Our interest, 43.75 percent.

6 Q. And you have been actively negotiating with the  
7 other interest owners?

8 A. Yes. We have sent out well proposals, and  
9 operating agreements, and other information to the other  
10 interest owners, and also an AFE on the well.

11 Q. And, generally, without at this point going  
12 through each one, how much of the interest do you anticipate  
13 having voluntarily committed to the well?

14 A. Voluntarily committed to this date, we have  
15 verbal approvals from Bonneville Fuels Corporation and  
16 American West Oil and Gas Corporation, which represents some  
17 26 percent.

18 Q. And you are continuing negotiations with each of  
19 the other interest owners?

20 A. That is correct.

21 Q. Let's take a look at what has been marked as  
22 Nearburg Exhibit No. 3. Would you identify and review the  
23 totals on this exhibit?

24 A. Exhibit 3 is an AFE prepared by Nearburg  
25 Producing Company. On November 29th, 1994, it shows an

1 estimated proposed total depth of the 11,950 feet.  
2 Estimates the cost of the well to casing point at \$534,154,  
3 and a completed well at \$892,404.

4 Q. Are these costs consistent with what is being  
5 charged by other operators for similar wells in the area?

6 A. Yes, sir, it is.

7 Q. Mr. Shelton, you've talked about Nearburg  
8 Exploration Company and also about Nearburg Producing  
9 Company. What, generally, is the relationship between those  
10 two companies?

11 A. Nearburg Exploration Company is a sole  
12 proprietorship owned by Charles Nearburg. Nearburg  
13 Producing Company is a Texas corporation owned also by  
14 Charles Nearburg.

15 Q. The AFE was submitted under the name Nearburg  
16 Producing Company. Who will actually be the designated  
17 operator of this well?

18 A. The designated operator of the well will be  
19 Nearburg Producing Company.

20 Q. Could you summarize the efforts you have made to  
21 obtain the voluntary joinder of all working interest owners  
22 in the proposed spacing unit.

23 A. You will find in Exhibit 4, letters addressed to  
24 each of the working interest owners which proposes that they  
25 choose to participate in the drilling of the well, elect to

1 farm out their interest, or Nearburg would accept an  
2 assignment of their interest by way of purchase. We  
3 furnished them an AFE, along with this letter (indicated),  
4 and you'll see attached the return receipt, an executed  
5 green card. We also furnished an operating agreement, model  
6 Form 1982, designating the E 1/2 NW 1/4 as the spacing unit  
7 for the well. And we've had follow-up conversations with  
8 all of these companies to secure either their participation  
9 or some other negotiated acceptable trade.

10 Q. In your opinion, have you made a good-faith  
11 effort to locate and obtain the voluntary participation of  
12 all interest owners in the spacing unit?

13 A. Yes, sir, we have.

14 Q. Has Nearburg drilled other Strawn wells in the  
15 immediate area?

16 A. Yes, sir, we have wells within a one-mile or  
17 two-mile radius of this area that we currently operate.

18 Q. Let's go to what has been marked Nearburg Exhibit  
19 No. 5. Could you explain what the first page in this  
20 exhibit shows?

21 A. The first page on this exhibit shows a  
22 hand-drawing of the dairy that's been built out here. You  
23 can see various locations that have been staked from time to  
24 time, or considered by Nearburg and other owners in the  
25 area. This, and among other considerations that we and the

1 other operators are contemplating, will determine the actual  
2 location of the well. You can see the main dairy, several  
3 cattle pens, a waste water tank. And we feel like it's  
4 important to secure the agreement of West Star Dairy, and we  
5 had been talking to Rick Wielinga, who is the dairy manager,  
6 and we have not yet gotten their consent to a location on  
7 this track.

8 Q. So this is the reason you're going to have to  
9 amend your application, simply to seek authority for a well  
10 at a standard location on the acreage?

11 A. That's correct.

12 Q. What is the second page of this exhibit?

13 A. The second page of the exhibit is Nearburg  
14 Producing Company's permit to drill for this well.

15 Q. And this is at the original location?

16 A. Yes, it is, 2,086.

17 Q. Then what is the last document in this exhibit,  
18 the letter dated November 22nd?

19 A. It is a document to West Star Ranch, West Star  
20 Dairy, indicating that we have found that the Environmental  
21 Department of the State of New Mexico requires that it be  
22 notified of any wells being drilled in the area of a dairy,  
23 and in this letter we're advising Rick Wielinga of his  
24 responsibility as manager of the dairy to do so and  
25 notification.

1 Q. And so the location is going to have to be also  
2 worked out in association with the Environmental Department?

3 A. That is correct.

4 Q. Is Exhibit No. 6 a copy of an affidavit  
5 confirming that notice of today's hearing has been provided  
6 to all affected interest owners by certified mail, as  
7 required by OCD rules?

8 A. Yes, sir, it is.

9 Q. Do you have an estimate of the overhead and  
10 administrative costs to be incurred while drilling the well  
11 and also while producing it if it is successful?

12 A. The overhead rates which were proposed under the  
13 operating agreement as the well was proposed -- the working  
14 interest owners was set at \$6,000 for a drilling well rate,  
15 and \$600 for a producing well rate. Since that time we have  
16 verbally agreed with American Oil and Gas Corporation and  
17 with Bonneville Fuels that we would reduce those rates by  
18 amendment, with their voluntary cooperation and agreement,  
19 to \$5,664 for a drilling well rate, and \$560 for a producing  
20 well rate.

21 EXAMINER CATANACH: Excuse me, Mr. Shelton.  
22 Could you give me the first one again, the drilling rate.

23 THE WITNESS: The current one that's agreed on is  
24 \$5,664.

25 Q. (BY MR. CARR) And \$560 a month while producing?

1 A. That's correct.

2 Q. Now, Mr. Shelton, these figures actually exceed  
3 the numbers set forth in the Ernst & Young survey; is that  
4 not correct?

5 A. Yes, sir, they do.

6 Q. How did you actually determine these figures?

7 A. These figures have been determined and used by  
8 Nearburg and other wells drilled in the area with other  
9 operators. This figure is also used between Nearburg and  
10 Yates Petroleum Corporation and other wells in Lea and both  
11 Eddy County for wells of this depth. And we accept these  
12 rates when other operators operate wells and we participate,  
13 and we also charge these rates when we participate with  
14 other operators.

15 Q. Is it your opinion that these, in fact,  
16 accurately reflect the overhead administrative costs that  
17 will be incurred while drilling and operating the well?

18 A. Yes, sir.

19 Q. And that the Ernst & Young figures are inaccurate  
20 for wells in this area to this depth?

21 A. Yes, sir.

22 Q. Do you recommend that these figures be  
23 incorporated into any order which results from this hearing?

24 A. Yes, sir, we do.

25 Q. And does Nearburg Production Company seek to be

1 designated operator of the well?

2 A. Nearburg Producing Company.

3 Q. You will be calling a technical witness to review  
4 the risk associated with this venture?

5 A. That's right, we have a geologist here, Elger,  
6 who will --

7 Q. Were Exhibits 1 through 6 either prepared by you  
8 or compiled under your direction?

9 A. Yes, sir, they were.

10 MR. CARR: At this time, Mr. Catanach, we move  
11 the admission of Nearburg Exhibits 1 through 6.

12 EXAMINER CATANACH: Exhibits 1 through 6 will be  
13 admitted as evidence.

14 MR. CARR: That concludes my direct examination  
15 of Mr. Shelton.

16 EXAMINATION

17 BY EXAMINER CATANACH:

18 Q. Mr. Shelton, are you conducting the negotiations  
19 for this project?

20 A. Yes, sir, I am.

21 Q. Was November 30th the date of your first contact  
22 with these parties?

23 A. Yes, sir, it was the first date of well proposal  
24 for this well; that's correct.

25 Q. Mr. Shelton, have you received any complaints

1 from any of these interest owners about not having enough  
2 time to evaluate this proposal?

3 A. No, sir, we have not.

4 Q. I notice that you first proposed the well on  
5 November 30th; you filed a compulsory pooling application  
6 that we received on December 13th, which gave these interest  
7 owners approximately two weeks to evaluate this proposal?

8 A. I did call them and notify them that we were  
9 filing the pooling at that time, that we would be --  
10 following the well proposal, we would be filing a pooling  
11 shortly thereafter, so they were all aware that we were  
12 filing a pooling within that time period.

13 Q. Do you anticipate reaching agreement with all  
14 these parties?

15 A. Yes, sir, I do.

16 Q. As of this point, you don't know what the new  
17 well location is going to be?

18 A. No, sir, we do not.

19 Q. Are all of your interest owners aware that you're  
20 going to have to move the well?

21 A. They all are aware of the dairy problems, that  
22 the well may be moved. Yes, sir, they are, they are aware  
23 of the problems out in the area.

24 EXAMINER CATANACH: That's all I have of the  
25 witness, Mr. Carr.

1                   MR. CARR: That's all we have of Mr. Shelton. At  
2 this time we call Jerry Elger.

3                                   JERRY ELGER,  
4 the witness herein, after having been first duly sworn  
5 upon his oath, was examined and testified as follows:

6   EXAMINATION

7 BY MR. CARR:

8           Q.     Will you state your name for the record, please.

9           A.     Jerry Elger.

10          Q.     Where you do you reside?

11          A.     In Midland, Texas.

12          Q.     Mr. Elger, by whom are you employed and in what  
13 capacity?

14          A.     I'm employed by Midland Producing Company as  
15 exploration geologist.

16          Q.     Have you previously testified before this  
17 division?

18          A.     Yes, I have.

19          Q.     At the time of that testimony, were your  
20 credentials as a petroleum geologist accepted and made a  
21 matter of record?

22          A.     Yes, they were.

23          Q.     Are you familiar with the application filed in  
24 this case on behalf of Nearburg?

25          A.     Yes, I am.

1 Q. Have you made a geological study involved in this  
2 application?

3 A. Yes, I have.

4 MR. CARR: Are the witness's qualifications  
5 acceptable?

6 EXAMINER CATANACH: They are.

7 Q. (BY MR. CARR) Mr. Elger, let's go to what has  
8 been marked Nearburg Exhibit No. 7, your isopach map. Would  
9 you review the information on this exhibit for Mr. Catanach?

10 A. This is an isopach map of the lower Strawn  
11 interval showing -- it's an isopach map of the porosity  
12 within the lower Strawn interval.

13 Wells that are producing out of this porosity  
14 have been colored green on this display. Wells that are dry  
15 holes in the Strawn are marked by dry hole symbols and also  
16 by little zeros indicating no porosity. Wells that are  
17 colored purple on this display are producing from other  
18 horizons, other than the Strawn.

19 What this display shows is that the proposed  
20 location will fall within the confines of a porosity  
21 interval greater than 50 feet within the Strawn.

22 If I could refer to the next geological exhibit,  
23 which is Stratigraphic Cross-section A-A'. This  
24 cross-section shows a well in the SW SW of Section 12, which  
25 has no Strawn porosity. It proceeds to the south, to the

1 west offset to the proposed drill site, which has 48 feet of  
2 porosity within the Strawn. And that's been colored orange  
3 on this display, on the cross-section display. And it runs  
4 to the east to a well that was drilled in the NE 1/4 of  
5 Section 13, again, which was drilled by Nearburg and has no  
6 Strawn porosity. The geological interpretation of this area  
7 is that there will be Strawn porosity present at the current  
8 proposed drill site on the 80-acre unit at a legal location.

9 Q. Mr. Elger, are you prepared to make a  
10 recommendation to the Examiner concerning the risk penalty  
11 that should be assessed against any nonconsenting or  
12 nonparticipating interest owner?

13 A. Yes, I am.

14 Q. What is that recommendation?

15 A. I would recommend payout plus 200 percent.

16 Q. In your opinion, is there a chance that you could  
17 drill a well at the standard location on this spacing unit,  
18 in fact not have a commercial well?

19 A. There are multiple risks involved in drilling  
20 this well. Risk of not having any porosity develop within  
21 the Strawn, the risk of being drained or partially drained  
22 by the two west offsets, which are producing from the same  
23 porosity unit which we are trying to drill as our objective,  
24 and also the possibility of having water-bearing porosity in  
25 the Strawn.



1 targeting, have you just used well control or do you have  
2 seismic?

3 A. We do have some seismic in the area. And the  
4 determination limits of the porosity was dictated primarily  
5 by that seismic. The actual thickness of the porosity was  
6 utilized primarily from the well control itself.

7 EXAMINER CATANACH: Okay. That's all I have,  
8 Mr. Carr.

9 MR. CARR: That concludes our presentation in  
10 this case, Mr. Catanach.

11 EXAMINER CATANACH: Mr. Carr, I think we should  
12 correct that well location.

13 MR. CARR: We will file an amended application  
14 and request that it be included on the February 2nd docket,  
15 indicating that a well will be drilled at a standard  
16 location on this spacing unit.

17 EXAMINER CATANACH: Okay. That will be  
18 sufficient, and there being nothing further, we'll continue  
19 this Case 11186 to the February 2nd hearing.

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