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April 20, 1995

Case File 11233

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. William J. LeMay, Director
New Mexico Oil Conservation Division
2040 S. Pacheco
P. O. Box 6429
Santa Fe, New Mexico 87505-5472

Re: Nearburg Exploration Company Correspondence Dated April 18, 1995 re: NMOCD Cause No. 11,232; Application of Nearburg Exploration Company for Compulsory Pooling; NE/4 of Section 24, T-19-S, R-25-E, Eddy County, New Mexico

Dear Mr. LeMay:

On April 18, 1995, you were sent correspondence on Nearburg Exploration Company's letterhead and signed by Bob Shelton concerning the referenced OCD application. On its surface, the letter purports to be merely a dismissal of Nearburg Exploration Company's Application in Cause No. 11, 232. In fact, that letter is a thinly disguised attempt to make ex parte communications to the OCD concerning not only the referenced application but also a contested hearing that is presently being considered by Examiner David Catanach. Such an attempt is not only improper procedurally, but the communications contained in that letter are false not only with respect to the matters heard and the evidence rendered in Case No. 11,233 but also as to the facts and circumstances concerning the events that led to Nearburg's dismissal of its Case No. 11,232.

Yates Petroleum Corporation specifically takes issue with Nearburg's statement at page 2 of its letter that,

> However, in an attempt to cooperate to see that the well is drilled as quickly as possible and to ease the burden of contested compulsory poolings before the NMOCD, Nearburg requests that our Case No. 11, 232 for compulsory pooling of the NE/4 of Section 24, T-19-S, R-25-E, Eddy County, New Mexico be dismissed.

The reason for Nearburg Producing Company's decision to drop that OCD application is the fact that there were a number of interest owners other than Yates and Nearburg involved in Case #11232. Prior to the

date of April 18, 1995, Nearburg learned that 100% of the other interest owners had elected to sign or join in some fashion Yates Petroleum Corporation in the drilling of the well. Nearburg Producing Company was also aware of the fact that all of those parties did not want Nearburg Producing Company to be the operator of said well for various reasons, all of which were presented in the hearing to Mr. Catanach on Nearburg's application 11,233. Specifically, those points are as follows:

1) Nearburg Producing Company, on the average, expends more money in drilling wells in the Dagger Draw area than Yates. Specifically see the exhibit prepared by Bob Fant wherein he detailed the difference. Notwithstanding the fact that Nearburg may AFE its operations for less than Yates Petroleum in wells in which both Yates and Nearburg own an interest when Nearburg is the operator, costs come in significantly higher than when Yates is the operator.

2) The other non-operators in the proposed Fairchild No. 2 Well have been partners with Nearburg in other wells. In the drilling of those wells and, in particular, the Fairchild 22 No. 1 Well, Nearburg has withheld information, and it is the belief of all those non-operators that the purpose for Nearburg's withholding of completion information has been to allow it to go out and lease up unleased acreage in the vicinity of the well. As you are aware, the area in which these proposed operations are occurring are on the edges of the known Dagger Draw development area, and such withheld information would have been valuable to all parties who might be competing for unleased acreage. Nearburg Producing Company chose to withhold that information unfairly in total disregard of the rights of those parties who were likewise paying for it.

3) Finally, Nearburg Producing Company's methods of operation and completion procedures are very much in disfavor with those parties who have participated in wells which Nearburg has operated. Specific evidence was developed in case No. 11,233 wherein it was shown that the practices employed by Nearburg are detrimental to completing a good producer in the Dagger Draw area because of Nearburg's disregard of commonly-known characteristics of the reservoir.

The above-listed three problems weighed heavily in the minds of the other interest owners and were communicated to Yates Petroleum Corporation by all of the parties who had to make a decision with respect to choosing an operator for the Section 24 Well. It is Yates'

position that, had Nearburg proceeded with its application Nearburg would have been embarrassed by the statements that would have been made concerning its operations, and furthermore, the facade of their "good partner" story that is repeatedly dwelt upon in the April 18, 1995, letter would be belied.

Furthermore, the statements that were made in the April 18, 1995, letter concerning Case No. 11233 should not be considered because the evidence was presented to Mr. Catanach and the case is now under advisement. However, since Mr. Shelton has chose to delineate five different points promoting the granting of their application, it is only fair that Yates take the same opportunity to support its case by stating the following which shows that those statements are unfounded and at best a twisted interpretation of the evidence that was presented.

1) Mr. Shelton indicates that there is a substantial dispute over the well location; that fact is agreed to. However, Mr. Shelton assumes that their seismic data should be the major consideration in choosing their location over Yates'. Such an assumption belies the evidence wherein it was learned that the seismic tops that were used by Nearburg were not the producing dolomite formation but in fact were the Canyon limestone which in this area is of a sufficient thickness to completely obliterate any structural advantage of the Nearburg location that was indicated by the seismic data. Furthermore, it ignores the testimony that seismic data has not been relied upon by the industry for picking Canyon wells because of that very problem.

2) Mr. Shelton indicates that both parties proposed wells within the same ten-day time period. What Mr. Shelton does not tell you is that Nearburg filed a compulsory pooling application in lieu of any proposal to the partners in that proration unit. Mr. Shelton brags upon Nearburg's efforts to deal in an above-board manner. Nearburg's actions, however, totally contradict that assertion.

3) Mr. Shelton states that Yates Petroleum does not operate wells within the immediate vicinity. Mr. Shelton does not define immediate vicinity. We are talking about a pool; Yates Petroleum Corporation operates 110-plus Canyon wells in the North Dagger Draw-Upper Penn pool in the immediate vicinity of the proposed well. Nearburg Producing Company operates only 12-plus wells in the immediate vicinity. Yates Petroleum Corporation by far has the most experience

in operations in this area. Additionally, Nearburg indicates that there are no salt-water disposal facilities in the immediate area open to Yates Petroleum Corporation. That again is a false indication; testimony was developed that Yates Petroleum has a salt-water disposal well, which Nearburg's engineers had "forgotten about" until reminded upon cross-examination, in the area which could be utilized.

4) Nearburg operates one well in the immediate vicinity of the proposed well. It has other dry holes and other wells scattered about in the area which have no relationship to a Canyon producer. Yates Petroleum has many Canyon wells in the area and has several salt-water disposal wells and other facilities available in the area.

5) Nearburg has a 50% interest; there is a 16% contested interest. Mr. Shelton neglects to advise that that disputed interest is the subject of a quiet title lawsuit filed by Yates Petroleum Corporation prior to the hearing before Examiner Catanach.

The last issue that I would like to address is that the Nearburg letter had attached to it a March 29, 1995, letter from Bob Shelton to Douglas Hurlbut of Yates Petroleum Corporation. That letter was introduced as an exhibit in the hearing before Examiner Catanach in Case No. 11,233. Mr. Shelton was asked about the blind copy notation wherein it was indicated that a copy of the subject letter was sent to you. The copy actually received by Yates, in accordance with the blind copy notation, did not indicate that it had been sent to you. Frankly, this March 29, 1995, letter, which was proudly touted as a conciliatory attempt to solve the dispute, was in fact a thinly disguised effort to unduly prejudice Yates in the eyes of the Commission. Mr. Shelton knew at the time he wrote the March 29, 1995, letter that there was nothing to trade, because not only the Yates entities in Section 24 but also all of the other interest owners did not want Nearburg Producing Company to operate that well. The reasons have been substantiated in many hearings; Mr. Shelton knows what those reasons are, and he knew at the time he wrote that letter that they were not offering a solution but merely trying to create a diversion in your eyes.

In closing, I think it is sage advice to question anyone who tries to seek vindication of its causes, as Nearburg has in the letter to you, in a forum wherein the other side does not have adequate opportunity to cross-examine and present its own evidence. The fact

that Nearburg is trying to make its case in letters to you is a clear indication that it knows that with a fair hearing, it cannot win.

Very truly yours,

LOSEE, CARSON, HAAS & CARROLL, P.A.

Ernest L. Carroll

ELC:kth

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