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RECOGNIZED SPECIALIST IN THE AREA OF  
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

July 12, 1996

**HAND DELIVERED**

Mr. Michael E. Stogner  
Chief Hearing Examiner  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87504

Re: *NMOCD Case 11521*  
*Application of Nearburg Exploration*  
*Company for Compulsory Pooling*

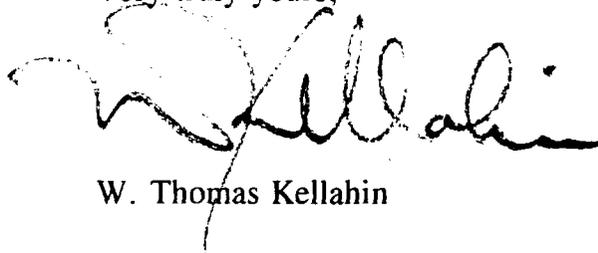
Re: *NMOCD Case 11533*  
*Application of Mewbourne Oil Corporation*  
*for Compulsory Pooling & NSL*

Dear Mr. Stogner:

In accordance with your direction at the June 13, 1996 hearing, on June 19, 1996, Nearburg submitted to Mewbourne a proposed order to which Mewbourne would then add its suggested alternative language as to those specific paragraphs for which it disagreed with the Nearburg draft.

As of today, Mewbourne has failed to provide us with their alternative language. You will remember that the only item of dispute between Nearburg and Mewbourne was that Mewbourne refused to agree to commence the well by October 1, 1996. Because time is of the essence in this matter, please find enclosed Nearburg's proposed order for your consideration.

Very truly yours,



W. Thomas Kellahin

cc: William F. Carr, Esq.  
cc: Nearburg Producing Company  
Attn: Bob Shelton

**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. 11521**

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

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**CASE NO. 11533**

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

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**ORDER NO. R-\_\_\_\_\_**

**NEARBURG PRODUCING COMPANY, L.L.C.'S  
PROPOSED**

**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 \_\_\_\_\_ day of July, 1996, The Division Director, having considered the testimony, the recorded 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) The applicant in Case 11521, Nearburg Exploration Company, L.L.C. ("Nearburg"), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the N/2 of Section 4, Township 18 South, Range 28 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 but is not necessarily limited to the Undesignated Illinois Camp-Morrow Gas Pool or, in the alternative forming a standard 160-acre spacing and proration unit for any and all formations and /or pools developed on 160-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Empire-Abo Pool or the Empire-Wolfcamp Pool. Said unit is to be dedicated to its proposed Hummer State "4" Com Well No. 21 to be drilled at a standard gas well location within the NW/4NE/4 (Unit B) of Section 4.

(4) The applicant in Case No. 11521, Mewbourne Oil Company ("Mewbourne"), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the N/2 of Section 4, Township 19 South, Range 25 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 but is not necessarily limited to the Undesignated Illinois Camp-Morrow Pool, said unit to be dedicated to its proposed \_\_\_\_\_ "4" Com Well No. 1 to be drilled at a unorthodox gas well location 1650 feet FNL and 990 feet FWL (Unit E) of Section 4.

(5) Both Mewbourne and Nearburg have the right to drill a well in N/2 of Section 4, but each seeks a different location.

(6) Mewbourne and Nearburg have been unable to reach a voluntary agreement as to which location should drilled within the N/2 of Section 4.

(7) Both parties agreed at the hearing that overhead rates of \$6000.00 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.

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

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

(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 commercial productive in the Morrow formation, that Nearburg then be given the opportunity to commence the well at Nearburg's preferred location.

(10) Mewbourne is in agreement with Nearburg's proposal with the exception that Mewbourne want the ability to extend its commencement date for spudding its well beyond the normal 90-day commencement period provided in standard compulsory pooling order 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) Although Mewbourne's preferred location is an unorthodox well location encroaching towards a spacing unit operated by Enron Oil Gas Company and Phillips Petroleum Company, Mewbourne has represented to the Division that Enron will waive any objection to this location provided a production penalty is adopted whereby the Mewbourne well shall not be allowed to produce in excess of 3,000 MCFPD at any time during the producing life of the well.

(14) Such a penalty is highly unusual and is substantially different from the penalty formula typically applied in such cases by the Division. However, based upon the representations of Mewbourne that such a penalty will not allow its well to drain any of the offsetting spacing units and because there is a consent by Enron, the Division agrees to apply this proposed penalty only in this case.

(15) Time is of the essence in this matter and Mewbourne should be required to commence its well within 90-days following the issuance of an order in this case but in not event later than October 1, 1996.

(16) The finds that both application 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 production 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.

(17) To avoid the drilling if unnecessary wells, 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 with out unnecessary expense his just and fair share of the production in any pool completion 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, 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 the 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 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.

(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) \$6000.00 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 operation the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(23) 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.

(24) Upon the failure of Mewbourne to commence the drilling of its \_\_\_\_\_ 4" Well No. 1 at the subject unorthodox well location on or before the expiration of the 90-day period following issuance of this order or October 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 1, 1997, and if neither party timely commences their respective well then this order pooling said unit should become null and void and of no effect whatsoever.

(25) 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.

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

**IT IS THEREFORE ORDERED THAT:**

(1) The application of Mewbourne Exploration Company in Case No. 11533 for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the N/2 of Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre spacing and proration unit for any and all formation and/or pools developed on 320-acre spacing within said vertical extent which presently include but is not necessarily limited to the Undesignated Illinois Camp-Morrow Gas Pool is hereby approved **provided that** Mewbourne commences actually drilling ("spuds the well") on or before the 90-days following issuance of this order or on October 1, 1996, whichever is sooner, and is so commenced, diligently drilled and completed as a commercial gas/oil producing from the Morrow formation. Said unit shall be dedicated to the \_\_\_\_\_ "4" Com Well No. 1 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 Section 4. **PROVIDED, that said well if productive from the Morrow formation shall not be produced in excess of 3,000 mcfpd at any time during the producing life of the well.**

(2) In the event, Mewbourne either fails to commence drilling its well as provided for above, or if so commenced fails to complete said well as a commercial Morrow gas/oil well, then the application of Nearburg Exploration Company, L.L.C. in Case No. 11521 for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the N/2 of Section 4, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre spacing and proration unit for any and all formation and/or pools developed on 320-acre spacing within said vertical extent which presently include but is not necessarily limited to the Undesignated Illinois Camp-Morrow Gas Pool or, in the alternative, forming a standard 160-acre spacing and proration unit for any and all formations and /or pools developed on 160-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Empire-Abo Pool or the Empire-Wolfcamp Pool, is hereby approved. Said unit is to be dedicated to its proposed Hummer State "4" Com Well No. 21 to be drilled at a standard oil well location 1310 feet from the North line and 1650 feet from the South line of Section 4.

**PROVIDED HOWEVER THAT**, Mewbourne as the operator of said unit shall commence the drilling of said well on or before the 1st day of October, 1996, 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 Mewbourne as the said operator does not commence the drilling of said well at the approved unorthodox well location on or before 90 days following issuance of this order or the 1st day of October, 1995, 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) Mewbourne Oil Company and then Nearburg Producing Company is hereby designated the operator of the subject well(s) and unit.

(4) After the effective date of this order and within 30 days prior to commencing said well, Mewbourne shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(5) 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 the 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 operation costs but shall not be liable for risk charges.

(6) In the event that Mewbourne fails to spud its well on or before 90 days from the date of this order or October 1, 1996, whichever is sooner, or if so commenced fails to diligently drill and timely complete a producing Morrow gas/oil well, then its right to operate shall immediately terminate and Nearburg is hereby designated the operator of the 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 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 wells costs or in the absence of said election shall be a non-consenting party and pay their share of well costs out of production.

(7) 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 operation costs but shall not be liable for risk charges.

(8) 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.

(9) 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.

(10) 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 thirty (30) days from the date the schedule of estimated well costs is furnished.

(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 is furnished to him.

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

(12) \$6000.00 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 operation such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(13) 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.

(14) 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.

(15) 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.

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

(17) 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.

(18) Jurisdiction 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

CAMPBELL, CARR, BERGE  
& SHERIDAN, P.A.  
LAWYERS

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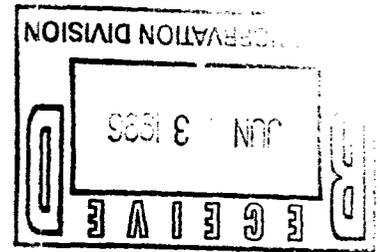
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June 13, 1996

**HAND DELIVERED**

Michael E. Stogner  
Hearing Examiner  
Oil Conservation Division  
New Mexico Department of Energy, Minerals  
and Natural Resources  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505



Re: Case 11521: Application of Nearburg Exploration Company for compulsory pooling, Eddy County, New Mexico.

Case 11533: Application of Mewbourne Oil Company for compulsory pooling and an unorthodox gas well location, Eddy County, New Mexico.

Dear Mr. Stogner:

Pursuant to your request at the hearing on this date on the above referenced cases for a list of the pools in the subject area which are developed on 80-acre spacing, 160-acre spacing and 320-acre spacing, we have reviewed Division Records and can advise there are no pools within one mile of the proposed well which are developed under 80-acre spacing rules.

The following pools are developed on either 160-acre spacing or 320-acre spacing as indicated:

Artesia Queen-Grayburg-San Andres Pool: 160-acre spacing  
Empire-Abo: 160-acre spacing  
Empire-Wolfcamp: 160-acre spacing  
(Created by Order No. R-561 dated December 16, 1956)  
Empire-Pennsylvanian Gas Pool: 320-acre spacing  
North Illinois Camp-Morrow Gas Pool: 320-acre spacing  
South Empire-Morrow: 320-acre spacing

Michael E. Stogner  
Hearing Examiner  
Oil Conservation Division  
New Mexico Department of Energy, Minerals  
and Natural Resources  
June 13, 1996  
Page 2

If you have additional questions concerning these applications, please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Carr". The signature is stylized and includes a long horizontal flourish extending to the right.

William F. Carr  
Attorney for Mewbourne Oil Company

cc: W. Thomas Kellahin, Esq.  
Steve Cobb