

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT 2: 06
OIL CONSERVATION DIVISION

**APPLICATION OF NEARBURG EXPLORATION
COMPANY, L.L.C. FOR COMPULSORY POOLING,
AN UNORTHODOX SURFACE AND SUBSURFACE
DRILLING WINDOW, EDDY COUNTY, NEW MEXICO. CASE NO. 12073**

**MOTION TO STAY DIVISION ORDER NO. R-11089
AND TO CONTINUE COMMISSION HEARING**

COME NOW Abo Petroleum Corporation, MYCO Industries Inc., John A. Yates, John A. Yates, Personal Representative of the Estate of Peggy A. Yates, S. P. Yates, Yates Drilling Company, and Yates Petroleum Corporation, hereinafter collectively referred to as "Yates"¹ and moves the Oil Conservation Commission for an order staying Division Order No. R-11089 and continuing the Oil Conservation Commission hearing in this case scheduled for December 18, 1998. In support of this motion, Yates states:

1. For more than two years, Nearburg Exploration Company, L.L.C. ("Nearburg") has been working on the consolidation of the interests in the E/2 of Section 11, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico for the drilling of a well to test

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Yates Petroleum corporation represents all other non-participating interest owners in the E/2 of Section 11. This representation was acknowledged at the November 5, 1998 Examiner hearing in this case as follows:

- Q. (By Mr Kellahin) And with the balance of the interest owners you have not reached an agreement.
- A. (By Mr Roush, Nearburg landman) Not at this time, no.
- Q. Are all those interest owners collectively represented or at least negotiated by the land department of Yates Petroleum Corporation?
- A. Yes.

the Morrow formation.

2. On September 1, 1998, Nearburg first contacted Yates about the voluntary development of this acreage and proposed the drilling of the Eagle Creek "11" Well No. 1 in the E/2 of Section 11. Thereafter, the parties entered into negotiations for the voluntary development of this acreage.

3. Although Nearburg was engaged in negotiations for the voluntary development of this acreage and although the only interests which have not been voluntarily committed to this well are the interests of Yates, Nearburg proceeded with a compulsory pooling hearing against Yates.

4. On November 5, 1998, the application of Nearburg Exploration Company, L.L.C. ("Nearburg") for the compulsory pooling of the E/2 of Section 11, Township 17 South, Range 25 East, NMPM, Eddy County, New Mexico, came on for hearing before an Examiner of the Oil Conservation Division.

5. The parties have jointly developed the Morrow formation under an adjoining tract. When it appeared at the Division hearing in this matter, Yates did not present evidence because it thought voluntary agreement would be reached for the development of this acreage, consistent with the parties' agreement for the adjoining tract.

6. Since the compulsory pooling hearing, Nearburg has not negotiated in good faith with Yates but, instead, has been manipulating Commission rules and the truth.

7. After the November 5, 1998 hearing, Yates attempted to contact Nearburg in an effort to conclude negotiations for the voluntary development of this acreage. However, Nearburg has been unwilling to engage in meaningful negotiations with Yates.

8. The Division entered Order No. R-11089 on November 23, 1998, granting the application of Nearburg. Yates filed for a hearing de novo on that date.

9. Subsequent to the entry of Division Order No. R-11089, Nearburg has misrepresented recent negotiations with Yates in letters to the Commission and has wrongfully asserted that Yates is refusing to allow Nearburg to use the original surface location for the proposed well.

10. Although Nearburg prevailed on each and every issue in Case 12073 and although the Division granted each and every Nearburg request, on December 4, 1998, Nearburg has filed a Request for a de novo hearing asserting that it is "adversely affected by Division Order No. R-11089...." Nearburg is not adversely affected by Order No. R-11089. The only basis for this application is its contention that Yates will not allow it to use the surface location it originally proposed. This accusation is false.

11. With its request for a *de novo* hearing, Nearburg seeks to amend its application in Case 12073 to change the surface location for the Eagle Creek "11" Well No. 1, and is proposing to drill this well pursuant to a new AFE setting forth higher costs that were the basis for its original proposal or the application considered by the Division.

12. The case which Nearburg now proposes to present to the Commission is different than the case presented on November 5, 1998.

13. Instead of filing an amended application for compulsory pooling under the rules of the Division, Nearburg is attempting to change its original proposal with an application for hearing de novo. The Commission's rules do not authorize this novel, yet misguided approach. Even if Nearburg could amend its application in this fashion, the amended application, at a minimum, would have to be properly advertised and included on a Commission hearing docket. This has not occurred. The Nearburg application for hearing de novo was not filed until December 4, 1998, after the docket for the December 18, 1998 Commission hearing had already been published. Even if Nearburg could amend its application in this fashion, the new location will not be properly before the Commission on December 18, and the Case will have to be continued.

14. Before Nearburg can obtain a compulsory pooling order which forces Yates' interests into the Morrow well which Nearburg now proposes to drill in the E/2 of Section 11, it must propose this new well to Yates and provide Yates with a reasonable opportunity to participate therein. No such proposal has been submitted.

15. During the past two weeks, the parties have been negotiating the terms of a possible farmout agreement covering the E/2 of Section 11.

16. By letter dated December 10, 1998, Nearburg terminated these negotiations.

Without the prospect of a voluntary agreement, it is now necessary for Yates to discover the facts and documents essential to its presentation to the Commission on the new Nearburg proposal.

17. On this date, Yates has obtained a Subpoena Duces Tecum from the Commission, directed at Nearburg, seeking the information it needs to evaluate this new well proposal.

18. The data Yates seeks is necessary to evaluate the new Nearburg proposal, to determine if Yates should participate in this well, and if Yates decides not to participate, to prepare for the hearing on the new Nearburg proposal. This data is needed to (1) verify Nearburg's claims that the F.A.A. has restricted the surface locations available for the exploitation of this prospect; (2) to determine what other surface locations might be available for the Eagle Creek "11" Well No. 1; and (3) to determine why Nearburg is incorrectly asserting that Yates has denied it the use of the surface location originally proposed for this well. Only after this information is produced and reviewed will Yates be able to evaluate the reasonableness of the additional costs which Nearburg is seeking to charge Yates for this well and to prepare for a Commission hearing on the new well proposal. The hearing must be continued to permit Yates an opportunity to review the data covered by the Division's December 11, 1998 subpoena and prepare for a Commission hearing on the new well proposal.

19. With Order No. R-11089 the Division is exercising the police power of the state to take the interests of Yates in the E/2 of Section 11 and commit these interests to a well which Nearburg no longer is proposing to drill. This order pools Yates' interests for a well to be directionally drilled from a surface location in Section 14 to an unorthodox bottom hole location in Section 11. It also requires Yates to pay its proportionate share of the costs of drilling this well or have its share of these costs withheld out of production plus 200% of those costs as a penalty for the risk associated with the drilling of the well.

20. Although the Order provides for a well to be directionally drilled from a surface location in Section 14, the AFE that Nearburg sent Yates pursuant to that Order proposes a well to be directionally drilled from a surface location in Section 11. The new AFE costs are higher than the costs presented to the Division and previously provided to Yates. Pursuant to Nearburg's December 1, 1998 letter transmitting this AFE, Yates has 30 days within which to pay its share of the new AFE costs or be pooled. Absent Commission approval of this new location, that deadline is false.

21. Once the proposed well is drilled, it cannot be undrilled. Yates will suffer irreparable harm if the Division (1) permits Nearburg to drill this well from the new surface location before the Commission even hears the testimony concerning the need for the new location and (2) forces Yates to make an election on whether or not to participate in a well under a compulsory pooling order which approves a different surface location and a different

directional drilling plan than the location and drilling plan which Nearburg now proposes. Furthermore, such an action by the Division violates the Oil and Gas Act and the rules of the Division and Commission.

22. If the risk of making a successful Morrow well in Section 11 is increased by the new Nearburg proposal, Yates has a right to pursue this issue after a review of the relevant data on this pool and a hearing before the Division or Commission. If the hearing in this case is not continued and Order No. R-11089 either stayed or rescinded, the Commission will be entering an order without knowing the impact of its decision on the correlative rights of the parties or the waste of oil and gas which may occur.

WHEREFORE, Yates Petroleum Corporation requests the Commission enter an order continuing the *de novo* hearing in Case 12073 because (1) the issues which Nearburg proposes to raise in the hearing are not properly before the Commission, and (2) Yates is entitled to obtain and review information related to this new well location and prepare for the hearing on this new proposal.


Yates Petroleum Corporation also seek an order Staying or Rescinding Order No. R-11089, as to all owners not voluntarily participating in the well because: (1) because this Order does not approve the well which Nearburg is now proposing to drill; and (2) because requiring Yates to make an election under a compulsory pooling order on whether or not to participate in a well prior to the Oil Conservation Division or Commission approving that

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well is not authorized by either the Oil and Gas Act or the rules of the Division.

Respectfully Submitted,

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

By: 
WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

ATTORNEYS FOR YATES
PETROLEUM CORPORATION

AFFIDAVIT


STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

I, Randy G. Patterson, the Secretary of Yates Petroleum Corporation, being first duly sworn and under oath, states that I am personally aware of the facts set forth in this motion and each factual statements is true and correct to the best of my knowledge and belief.



Randy G. Patterson

SUBSCRIBED AND SWORN to before me this 14th day of December, 1998 by Randy G. Patterson.



Notary Public

My Commission Expires:


3-1-02

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Stay Division order No. R-11089 and to Continue Commission Hearing was hand-delivered this 14th day of December, 1998 to the following counsel of record:

Marilyn Hebert, Esq.
Oil Conservation Division
New Mexico Energy, Minerals
& Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501



William F. Carr