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May 2, 1991

HAND-DELIVERED

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
State Land Office Building
Santa Fe, New Mexico 87503

RECEIVED

OIL CONSERVATION DIVISION

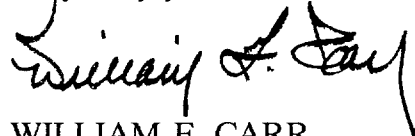
10315

Re: In the Matter of the Application of Harvey E. Yates Company for
Compulsory Pooling, Lea County, New Mexico

Dear Mr. LeMay:

Enclosed in triplicate is the Application of Harvey E. Yates Company in the above-referenced case. Harvey E. Yates Company respectfully requests that this matter be placed on the docket for the May 30, 1991 Examiner hearings.

Very truly yours,



WILLIAM F. CARR

WFC:mlh

Enclosures

cc w/enclosure: Mr. Bob Bell

CAMPBELL & BLACK, P.A.

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May 3, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edgar J. Braun
907 Keeler Avenue
Berkeley, California 94708

Re: Application of Harvey E. Yates Company for Compulsory Pooling, Lea
County, New Mexico

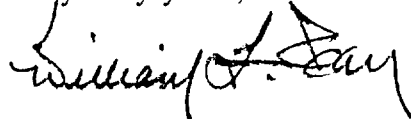
Dear Mr. Braun:

This letter is to advise you that Harvey E. Yates Company has filed the enclosed application with the New Mexico Oil Conservation Division seeking the force pooling of all mineral interests in the SW/4 NW/4 of Section 32, Township 18 South, Range 33 East, N.M.P.M., Lea County, New Mexico. Harvey E. Yates Company proposes to dedicate the referenced pooled acreage to its Atlantic 32 State Well No. 2 to be located at an orthodox location in said Section 32 in the Queen formation.

This application has been set for hearing before a Division Examiner on May 30, 1991. You are not required to attend this hearing, but as an owner of an interest that may be subject to pooling, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases have been requested by the Division (Memorandum 2-90) to file a Prehearing Statement substantially in the form prescribed by the Division. Prehearing statements should be filed by 4:00 o'clock p.m. on the Friday before a scheduled hearing.

Very truly yours,



WILLIAM F. CARR
ATTORNEY FOR HARVEY E. YATES COMPANY
WFC:mlh
Enc.

tract; (2) total amount of recoverable gas in the pool; (3) proportion that (1) bears to (2); and (4) what portion of (1) arrived at proportion can be recovered without waste. That extent of correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Relationship between prevention of waste and protection of correlative rights. — Prevention of waste is of paramount interest to legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes term "without waste." However, protection of correlative rights is necessary adjunct to prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Production must be limited to the allowable even if market demand exceeds that amount, since the setting of allowables was made necessary in order to prevent waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

When Subsection C of this section and 70-2-192 NMSA 1978 are read together, one fact is evident: even after a pool is prorate, market demand must be determined, since, if allowable production from the pool exceeds market demand, waste would result if allowable is produced. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Commission to prevent drainage between producing tracts. — In addition to making findings to protect correlative rights, commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of Subsection C of this section.

Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962).

Property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Keeping of false records as actionable offense. — The Connally Hot Oil Act (15 U.S.C. § 715 et seq.) applies only to states which have in effect proration statutes for the purpose of preventing waste of oil and gas resources, encouraging conservation of oil and gas deposits, etc., and New Mexico is among those states which has enacted a valid comprehensive oil conservation law; since Connally Act applies to this state, keeping of false records, though not in violation of any New Mexico proration order, constitutes an actionable offense under Connally Act. *Humble Oil & Ref. Co. v. United States*, 195 F.2d 753 (10th Cir.), cert. denied, 344 U.S. 909, 73 S. Ct. 328, 97 L. Ed. 701 (1952).

Law reviews. — For comment on *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

For article, "State Conservation Regulation and the Proposed R-199," see 6 Nat. Resources J. 223 (1966).

Am. Jur. 2d and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 161, 164.

58 C.J.S. Mines and Minerals § 240.

70-2-17. Equitable allocation of allowable production; pooling; spacing.

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without

unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders.

History: Laws 1935, ch. 72, § 12; 1941 Comp., § 64-2134; Laws 1949, ch. 168, § 13; 1953, ch. 76, § 1; 1953 Comp., § 65-3-14; Laws 1961, ch. 65, § 1; 1973, ch. 250, § 1; 1977, ch. 255, § 51.

The 1977 amendment substituted "division" for "commission" throughout the section.

Effective date. — Laws 1935, ch. 72, contains no effective date provision, but was enacted at a session.

which adjourned on February 25, 1935. See N.M. Const., art. IV, § 23.

Emergency clause. — Laws 1973, ch. 250, § 2, declares an emergency and provides that the act should take effect upon its passage and approval. Approved March 30, 1973.

Meaning of "this act". — See same catchline in notes to 70-2-3 NMSA 1976.

The terms "spacing unit" and "proration unit" are not synonymous and the commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Proration formula required to be based on recoverable gas. — Lacking a finding that new gas proration formula is based on amounts of recoverable gas in pool and under tracts, insofar as these amounts can be practically determined and obtained without waste, a supposedly valid order in current use cannot be replaced. Such findings are necessary requisites to validity of the order, for it is upon them that the very power of the commission to act depends. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Findings required before correlative rights ascertained. — In order to protect correlative rights, it is incumbent upon commission to determine, "so far as it is practical to do so," certain foundational matters, without which the correlative rights of various owners cannot be ascertained. Therefore, the commission, by "basic conclusions of fact" (or what might be termed "findings"), must determine, insofar as practicable: (1) amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in pool; (3) proportion that (1) bears to (2); and (4) what portion of arrived at proportion can be recovered without waste. That the extent of the correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

In addition to making such findings the commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of 70-2-16 NMSA 1976. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Four basic findings required to adopt a production formula under this section can be made in language equivalent to that required in previous decision construing this section. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 265, 414 P.2d 496 (1966) (explaining *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962)).

Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of

correlative rights must depend upon commission's findings as to extent and limitations of the right. This the commission is required to do under the legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Commission's findings upheld. — Commission's findings that it would be unreasonable and contrary to the spirit of conservation statutes to drill unnecessary and economically wasteful well were held to be sufficient to justify creation of two nonstandard gas proration units, and the force pooling thereof, and were supported by substantial evidence. Likewise, participation formula adopted by commission, which gave each owner a share in production in same ratio as his acreage bore to acreage of the whole, was upheld despite limited proof as to extent and character of pool. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Relation between prevention of waste and protection of correlative rights. — Prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Commission's authority to pool separately owned tracts. — Since commission has power to pool separately owned tracts within a spacing or proration unit, as well as concomitant authority to establish oversize nonstandard spacing units, commission also has authority to pool separately owned tracts within an oversize nonstandard spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Elements of property right of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Resources J. 316 (1963).

For comment on *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 263, 414 P.2d 496 (1966), see 7 Nat. Resources J. 425 (1967).

Am. Jur. 2d and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 159, 161, 164.

28 C.J.S. Mines and Minerals §§ 229, 230.

70-2-18. Spacing or proration unit with divided mineral ownership.

A Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production. Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or proration units that are

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

RECEIVED

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

OIL CONSERVATION DIVISION

CASE NO. 10315

APPLICATION OF HARVEY E. YATES
COMPANY FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

PRE-HEARING STATEMENT

This Prehearing Statement is submitted by William F. Carr, as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

Harvey E. Yates Company _____
c/o Bob Bell _____
Post Office Box 1933 _____
Roswell, New Mexico 88202 _____
(505) 623-6601 _____
name, address, phone and
contact person

ATTORNEY

William F. Carr _____
Campbell & Black, P.A. _____
Post Office Box 2208 _____
Santa Fe, New Mexico 87504 _____
(505) 988-4421 _____

OPPOSITION OR OTHER PARTY

name, address, phone and
contact person

ATTORNEY

STATEMENT OF CASE

APPLICANT

Harvey E. Yates Company, Applicant in the above-captioned case, seeks an order pooling all mineral interests from the surface to the base of the Queen formation underlying the SW/4 NW/4 (Unit E) of Section 32, Township 18 South, Range 33 East, forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools within said vertical extent developed on 40-acre spacing which presently includes but is not necessarily limited to the Undesignated Buffalo-Yates Pool and Buffalo-Queen Pool, said unit to be dedicated to a well to be drilled at a standard oil well location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and a charge for risk involved in drilling said well.

OPPOSITION OR OTHER PARTY

(Please make a concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

PROPOSED EVIDENCE

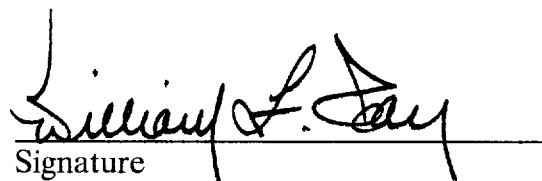
APPLICANT

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
Bob Bell (Landman)	10 Min.	Approximately 5
Dave Percy (Geologist)	10 Min.	Approximately 2

OPPOSITION

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
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PROCEDURAL MATTERS


Signature

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING
GOVERNOR

POST OFFICE BOX 2088
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SANTA FE, NEW MEXICO 87504
(505) 827-5800

June 12, 1991

CAMBELL & BLACK
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87504

RE: CASE NO. 10315
ORDER NO. R-9524

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Florene Davidson

Florene Davidson
OC Staff Specialist

FD/sl

cc: BLM Carlsbad Office