

**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. 12319
CASE NO. 12342
ORDER NO. R-11343**

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

**APPLICATION OF DEVON ENERGY CORPORATION (NEVADA) FOR
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing at 8:15 a.m. on February 3 and 17, 2000, at Santa Fe, New Mexico, before Examiners David R. Catanach and Mark Ashley.

NOW, on this 14th day of March, 2000, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and the Division has jurisdiction of these cases and its subject matter.

(2) Cases No. 12319 and 12342 were consolidated at the February 3rd and February 17th hearings for the purpose of testimony, and since approval of one application would necessarily require denial of the other, one order should be entered for both cases.

(3) The applicant in Case No. 12319, Nearburg Exploration Company, L.L.C. (Nearburg), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying the following described acreage in Irregular Section 30, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, in the following manner:

- (a) Lots 1 and 2, the E/2 NW/4 and the NE/4 (N/2 equivalent) to form a standard 319.57-acre gas spacing and proration unit for any formation or pool developed on 320-acre spacing within this vertical extent, including the Undesignated Logan Draw-Morrow Gas Pool;
- (b) the NE/4 to form a standard 160-acre spacing and proration unit for any formation or pool developed on 160-acre spacing within this vertical extent;
- (c) the S/2 NE/4 to form a standard 80-acre spacing and proration unit for any formation or pool developed on 80-acre spacing within this vertical extent; and
- (d) the SE/4 NE/4 to form a standard 40-acre spacing and proration unit for any formation or pool developed on 40-acre spacing within this vertical extent.

All of the pooled units are to be dedicated to the applicant's proposed Logan Draw "30" Federal Com Well No. 1 to be drilled at a standard location 1650 feet from the North line and 660 feet from the East line (Unit H) of Section 30.

(4) The applicant in Case No. 12342, Devon Energy Corporation (Nevada) (Devon), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying Lots 1 and 2, the E/2 NW/4 and the NE/4 (N/2 equivalent) of Irregular Section 30, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, to form a standard 319.57-acre gas spacing and proration unit for any formation or pool developed on 320-acre spacing within this vertical extent, including the Undesignated Logan Draw-Morrow Gas Pool. This unit is to be dedicated to the applicant's proposed Logan Draw "30G" Federal Com Well No. 1 to be drilled at a standard location 1980 feet from the North line and 1650 feet from the East line (Unit G) of Section 30.

(5) At the time of the hearing, Nearburg testified that it owns no interest in the NE/4 of Section 30, and therefore requested that the portion of its application seeking to pool

the NE/4, the S/2 NE/4 and the SE/4 NE/4 of Section 30, thereby forming standard 160-acre, 80-acre and 40-acre units, be dismissed.

(6) The proposed wells and spacing units are located within one mile of the outer boundary of the Logan Draw-Morrow Gas Pool. This pool is currently governed by Division Rule 104.C., which requires standard 320-acre spacing and proration units with wells to be located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to any quarter-quarter section line or subdivision inner boundary.

(7) Both Nearburg and Devon have the right to drill a well in the N/2 of Section 30, both seek to be named operator of the proposed proration unit, and both seek the adoption of drilling and production overhead rates and risk penalties.

(8) Nearburg and Devon have been unable to reach a voluntary agreement regarding the development of the N/2 of Section 30.

(9) Testimony by both parties with regards to interest ownership within the N/2 of Section 30 demonstrates that:

- (a) Nearburg, by virtue of ownership or farmout agreement, controls 100% of the interest within the NW/4 of Section 30. This quarter section encompasses approximately 159.57-acres due to a variation in the legal subdivision of the United States Public Lands Survey. This acreage represents approximately 49.93% of the proposed spacing unit.
- (b) Devon owns 100% of the interest within the NE/4 of Section 30. This quarter section encompasses approximately 160-acres, which represents approximately 50.07% of the proposed spacing unit.

(10) Nearburg requested the adoption of overhead rates of \$4,168.00 per month while drilling and \$424.00 per month while producing.

(11) Devon requested the adoption of overhead rates of \$6,000.00 per month while drilling and \$300.00 per month while producing. Devon further testified, however, that it would accept a drilling well rate of \$4,168.00 per month if the Division determines that this rate is more reasonable.

(12) The 1998-99 Ernst & Young LLP's Fixed Rate Overhead Survey shows an average monthly drilling well fixed overhead rate of \$4,168.00 and an average monthly producing well fixed overhead rate of \$421.00.

(13) The overhead rates proposed by Nearburg are more reasonable and should therefore be adopted in the order issued in these cases.

(14) Both parties proposed that a risk penalty of 200 percent be assessed.

(15) The estimated drilling costs presented by Nearburg and Devon for the proposed Logan Draw "30" Federal Com Well No. 1 and the Logan Draw "30G" Federal Com Well No. 1 are not substantially different.

(16) Evidence presented by both parties demonstrates that there is no substantial difference between Nearburg and Devon with regards to the interest ownership in the proposed spacing unit, proposed overhead charges for supervision, proposed risk penalties and estimated drilling costs; therefore, these factors should be insignificant in deciding these cases.

(17) Nearburg and Devon also disagree as to the optimum location in which to drill the initial Morrow test on this spacing unit.

(18) Nearburg presented geologic evidence and testimony that:

- (a) the primary target within the Logan Draw "30" Federal Com Well No. 1 is the Upper "C" Sand member of the Lower Morrow interval;
- (b) Nearburg owns an interest in the Murchison Oil and Gas Inc. Potter Federal Well No. 2, located 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 29, Township 17 South, Range 27 East, NMPM. This well, which is the direct east offset to its proposed Logan Draw "30" Federal Com No. 1, was drilled in November, 1999 to, test the Upper "C" Sand member of the Morrow formation. The well encountered only four feet of net sand (porosity > 8%) in the Upper "C" Sand interval and

subsequently tested non-commercial;

- (c) at the request and expense of Nearburg, a Schlumberger FMI (Formation Micro-Imaging Tool) log was run on the Potter Federal Well No. 2. This high resolution resistivity log indicated a thickening of the Upper "C" Sand interval to the west of the well's location;
 - (d) utilizing FMI log data and well control, Nearburg has projected this Upper "C" Sand to be a channel sand that traverses the E/2 of Section 30 in a north-south direction;
 - (e) a well drilled at Nearburg's proposed location should penetrate the Upper "C" Sand in close proximity to the channel sand axis and in an area of maximum sand thickness (30 feet of net sand > 8% porosity) and porosity development; and
 - (f) a well drilled at Devon's proposed location should encounter approximately 15-20 feet of net sand in the Upper "C" Sand interval and will likely be too far west to be within the axis of the channel sand.
- (19) Devon presented geologic evidence and testimony that:
- (a) utilizing only well control, Devon has projected the target Morrow sand to be a channel sand which traverses Section 30 in a northwest-southeast direction;
 - (b) a well drilled at Devon's proposed location should encounter approximately 20 + feet of net sand (> 10% porosity) in the target Morrow interval;
 - (c) a well drilled at Nearburg's proposed location should encounter approximately 15 feet of net sand (>10% porosity) in the target Morrow interval; and

- (d) based upon its analysis of wells in this area, at least 20 feet of net sand (>10% porosity) in the target Morrow interval is necessary in order to make a commercial well.

(20) Subsequent to the February 3rd hearing and at the direction of the Division, Nearburg provided Devon the FMI log data from the Potter Federal Well No. 2. Devon appeared at the hearing on February 17th and testified that after evaluating the FMI log data, it has concluded that its proposed location will adequately test the Morrow formation and that the FMI log data supports Devon's location for a west offset to the Potter Federal Well No. 2.

(21) The geologic evidence presented by both parties in these cases demonstrates that:

- (a) there is no well control within Section 19 to support Devon's geologic interpretation that this Morrow sand channel extends towards the northwest from the proposed well locations;
- (b) Nearburg's geologic interpretation of a north-south trending Morrow sand channel traversing the E/2 of Section 30 appears to more accurately honor the subsurface well data in this area; and
- (c) the well location proposed by Nearburg represents the best location in which to develop the Morrow gas reserves underlying the N/2 of Section 30.

(22) In the absence of other compelling factors, geologic interpretation and proposed well location should be used as major factors in deciding the outcome of these cases.

(23) The application of Nearburg in Case No. 12319 should be approved.

(24) The application of Devon in Case No. 12342 should be denied.

(25) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the subject proration unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, the application of Nearburg Exploration Company, L.L.C. in Case No. 12319 should be approved by pooling all uncommitted mineral interests, whatever they may be, within the subject proration unit.

(26) At the request of the applicant, Nearburg Producing Company L.L.C. should be designated the operator of the subject well and unit.

(27) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(28) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in drilling the well.

(29) 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.

(30) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its 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.

(31) Reasonable charges for supervision (combined fixed rates) should be fixed at \$4,168.00 per month while drilling and \$424.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(32) All proceeds from production from the well that 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.

(33) If Nearburg fails to commence drilling operations on or before June 15, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should be of no effect.

(34) Nearburg should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The application of Devon Energy Corporation (Nevada) in Case No. 12342 for an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying Lots 1 and 2, the E/2 NW/4 and the NE/4 (N/2 equivalent) of Irregular Section 30, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, to form a standard 319.57-acre gas spacing and proration unit for any formation or pool developed on 320-acre spacing within this vertical extent, including the Undesignated Logan Draw-Morrow Gas Pool, said unit to be dedicated to the proposed Logan Draw "30G" Federal Com Well No. 1 to be drilled at a standard location 1980 feet from the North line and 1650 feet from the East line (Unit G) of Section 30, is hereby denied.

(2) The application of Nearburg Exploration Company, L.L.C. in Case No. 12319 for an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying Lots 1 and 2, the E/2 NW/4 and the NE/4 (N/2 equivalent) of Irregular Section 30, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, to form a standard 319.57-acre gas spacing and proration unit for any formation or pool developed on 320-acre spacing within this vertical extent, including the Undesignated Logan Draw-Morrow Gas Pool, is hereby approved. This unit shall be dedicated to the applicant's Logan Draw "30" Federal Com Well No. 1 to be drilled at a standard location 1650 feet from the North line and 660 feet from the East line (Unit H) of Section 30.

(3) The operator of the unit shall commence drilling the Logan Draw "30" Federal Com Well No. 1 on or before June 15, 2000, and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(4) In the event the operator does not commence drilling operations on or before June 15, 2000, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(5) Should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show

cause why Ordering Paragraph (1) should not be rescinded.

(6) Nearburg Producing Company, L.L.C. is hereby designated the operator of the subject well and unit.

(7) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." After the effective date of this order and within 90 days prior to commencing drilling operations, the operator shall furnish the Division and each known non-consenting working interest owner in the unit an itemized schedule of estimated well costs.

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(9) The operator shall furnish the Division and each known non-consenting 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 the schedule, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance, as provided above, shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and

(b) as a charge for the risk involved in drilling the well,
200 percent of the above costs.

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

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$4,168.00 per month while drilling and \$424.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(14) 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 this order.

(15) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) All proceeds from production from the well that are not disbursed for any reason shall 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 the escrow agent within 30 days from the date of first deposit with the escrow agent.

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

(18) The operator of the well and unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(19) The portion of Nearburg Exploration Company, L.L.C.'s application in Case No. 12319 for an order pooling the NE/4, the S/2 NE/4 and the SE/4 NE/4 of Section 30, Township 17 South, Range 27 East, NMPM, thereby forming standard 160-acre, 80-acre and 40-acre units, is hereby dismissed.

(20) Jurisdiction of this case is 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

LORI WROTENBERY
Director

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