

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. 10305
Order No. R-9521

APPLICATION OF LBO NEW MEXICO INC.
FOR COMPULSORY POOLING AND AN
UNORTHODOX GAS WELL LOCATION, LEA
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on May 16, 1991, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 5th day of June, 1991, the Division Director, having considered the testimony, the record, 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) The applicant, LBO New Mexico Inc., seeks an order pooling all mineral interests from the surface to the base of the Mississippian formation or to a depth of 11,200 feet, whichever is deeper, underlying the following described acreage in Section 9, Township 11 South, Range 33 East, NMPM, Lea County, New Mexico, and in the following manner:

the S/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent;

the SW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent;

the N/2 SW/4 forming a standard 80-acre oil spacing and proration unit in the North Bagley-Permo Pennsylvanian Pool;

the NW/4 SW/4 forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre oil spacing within said vertical extent.

(3) The applicant proposes to dedicate said unit(s) to a single well to be drilled 1980 feet from the South line and 660 feet from the West line (Unit L) of said Section 9 being a standard well location for 40, 80, and 160-acre spacing, but an unorthodox gas well location for 320-acre gas spacing.

(4) According to applicant's evidence, the primary target in the subject well is the North Bagley-Permo Pennsylvanian Pool. If commercial production is established in said pool the applicant proposes to simultaneously dedicate the N/2 SW/4 of said Section 9 to the proposed well and to its existing O. G. State Well No. 1 located in Unit K, which is currently producing from said North Bagley-Permo Pennsylvanian Pool.

(5) The applicant has the right to drill and proposes to drill its O.G. State Well No. 2 at the location described in Finding No. (3) above.

(6) There are interest owners in the proposed proration unit(s) who have not agreed to pool their interests.

(7) R. J. Starrak, one of several small interest owners in the proposed proration unit who has not agreed to pool his interest, appeared at the hearing and expressed his desire to participate in the drilling of the subject well to a depth sufficient to test the Wolfcamp formation only.

(8) According to evidence presented, the applicant is the owner of the S/2 SW/4 and N/2 SE/4 of Section 9, and is the majority interest owner in the commonly owned N/2 SW/4 and S/2 SE/4 of Section 9.

(9) Further evidence indicates that there is an operating agreement currently in effect covering the N/2 SW/4 and the S/2 SE/4 of said Section 9. Said operating agreement was executed by LBO New Mexico Inc. as operator and Donald A. Turner as working interest owner.

(10) Applicant testified that Donald A. Turner purported that he signed the operating agreement on behalf of various working interest owners, including R. J. Starrak, but that many of those working interest owners have stated that Donald A. Turner did not represent them. R. J. Starrak testified that he considered himself to be a party to the operating agreement

(11) To the extent that any party's participation in the drilling of the subject well is governed by an operating agreement, that agreement is controlling and this force-pooling order should not apply to that interest. The Division does not have the jurisdictional authority to determine in a case such as this whether or not any person is a party to an operating agreement.

(12) According to applicant's evidence and testimony, in order to properly test all of the potentially productive zones within the North Bagley-Permo Pennsylvanian Pool, the subject well needs to be drilled to a depth of approximately 10,600 feet.

(13) Further evidence indicates that there is a slight potential for gas production from the Atoka and/or Morrow formations and that it is prudent to drill the subject well to a depth of 11,200 feet to adequately test said formations.

(14) A well at the proposed location will enable the applicant the opportunity to recover the remaining reserves within the North Bagley-Permo Pennsylvanian Pool underlying the N/2 SW/4 of Section 9.

(15) There is currently no offset Atoka or Morrow production, and no offset operator and/or interest owner appeared at the hearing in opposition to the applicant's unorthodox location request.

(16) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit(s) the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit(s).

(17) The applicant should be designated the operator of the subject well and unit(s).

(18) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator 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.

(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) \$5000.00 per month while drilling and \$500.00 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 operating 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 the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before September 1, 1991, the order pooling said unit(s) 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 of the well and unit(s) 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

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, from the surface to the base of the Mississippian formation or to a depth of 11,200 feet, whichever is deeper, underlying the following described acreage in Section 9, Township 11 South, Range 33 East, NMPM, Lea County, New Mexico, are hereby pooled in the following manner, provided however, to the extent that any party's participation in the drilling of the subject well is governed by an operating agreement, that agreement is controlling and this force-pooling order shall not apply to that interest:

the S/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent;

the SW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent;

the N/2 SW/4 forming a standard 80-acre oil spacing and proration unit in the North Bagley-Permo Pennsylvanian Pool;

the NW/4 SW/4 forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools developed on 40-acre oil spacing within said vertical extent.

(2) Said unit(s) shall be dedicated to a single well to be drilled 1980 feet from the South line and 660 feet from the West line (Unit L) of said Section 9 being a standard well location for 40, 80, and 160-acre spacing, but an unorthodox gas well location for 320-acre gas spacing.

PROVIDED HOWEVER THAT, the operator of said unit(s) shall commence the drilling of said well on or before the 1st day of September, 1991, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Mississippian formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of September, 1991, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(3) LBO New Mexico Inc. is hereby designated the operator of the subject well and unit(s).

(4) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit(s) an itemized schedule of estimated well costs.

(5) Within 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 operator 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 operating costs but shall not be liable for risk charges.

(6) 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.

(7) 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.

(8) 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 30 days from the date the schedule of estimated well costs is furnished to him.

(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 within 30 days from the date the schedule of estimated well costs is furnished to him.

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

(10) \$5000.00 per month while drilling and \$500.00 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 operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(11) 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.

(12) 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.

(13) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Lea 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.

(14) 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.

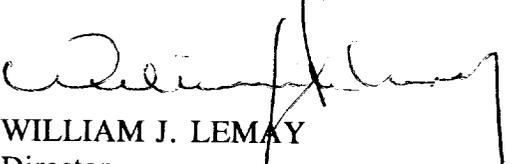
(15) The operator of the well and unit(s) shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(16) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

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DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY
Director

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