

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

IN THE MATTER OF THE APPLICATION
OF YATES PETROLEUM CORPORATION FOR
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO

CASE NO. 11310

IN THE MATTER OF THE APPLICATION
OF NEARBURG EXPLORATION COMPANY FOR
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO

CASE NO. 11310

ORDER NO. R-_____

**YATES PETROLEUM CORPORATION'S PROPOSED
ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on August 10, 1995, at Santa Fe, New Mexico, before Oil Conservation Division of New Mexico, herein referred to as the "Division." After the conclusion of the evidence, these consolidated cases were reopened and came on for hearing at 8:15 a.m. on October 5, 1995, at Santa Fe, New Mexico before Examiner Michael Stogner.

NOW, on this ____ day of October, 1995, the Division Director, having considered the testimony, the recorded transcript the exhibits received at said hearings 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, the parties hereto, and the subject matter hereof.

(2) Division Case Nos. 11310 and 11311 were consolidated at the time of the original hearing for the purpose of testimony, and, inasmuch as approval of one application would necessarily require the denial of the other, one order should be entered for both cases.

(3) The applicant in Case No. 11310, Yates Petroleum Corporation ("Yates"), seeks an order pooling all mineral interests from the surface down through and including the Cisco Canyon formation underlying the SE/4 of Section 16, Township 19 South,

Range 25 East, N.M.P.M., Eddy County, New Mexico, forming a standard 160-acre oil proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent. Said unit is to be dedicated to the Yates Boyd "X" State Com No. 10 Well, to be drilled to the depth of 8,400' to test the Cisco Canyon formation at an orthodox location 660' from the South line and 1980' from the East line of said section.

(4) The applicant in Case No. 11310, Nearburg Exploration Company ("Nearburg"), seeks an order pooling all mineral interests from the surface down through and including the Cisco Canyon formation underlying the SE/4 of Section 16, Township 19 South, Range 25 East, N.M.P.M., Eddy County, New Mexico, forming a standard 160-acre oil proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent. Said unit is to be dedicated to the Nearburg Arroyo 16 Well No. 1, to be drilled to the depth of 8,400' to test the Cisco Canyon formation at a standard location in Unit M of said section.

(5) Both Yates and Nearburg have the right to drill a well in the SE/4 of Section 16, both seek to be designated the operator of the proposed proration unit, and both seek the adoption of drilling and production overhead charges and risk penalties. According to the evidence presented, the majority of the working interest ownership within the SE/4 of Section 16 is owned as follows:

Yates Petroleum Corporation	37.5%
Nearburg Exploration Company	37.5%
Unit Petroleum Co.	24.443924%

with sixteen various other interest owners owning the remainder.

(6) According to further evidence, Yates is supported in its application by a number of the working interest owners, making up a total of 62.158646% of those owning an interest.

(7) Dolomite is present at the proposed location in sufficient thickness and possessing the reservoir qualities to produce economic quantities of hydrocarbons.

(8) The Yates location is slightly higher in structure than the Nearburg location.

(9) The Yates location is a diagonal offset to establish Dagger Draw production whereas the Nearburg location is a step-out from production, thus risk is increased with the Nearburg location.

(10) The Nearburg location is closer to two saltwater disposal wells and it is unknown how these disposal wells have affected the reservoir.

(11) The AFE presented by Yates accurately reflects the cost of drilling and completing a Canyon producer in the Dagger Draw North (Upper Penn) Pool.

(12) Historical evidence indicates that Nearburg Producing spends approximately \$80,000.00 more than Yates (on average) to drill and complete a Canyon producer when there are owners in addition to Nearburg.

(13) Both Yates and Nearburg agree that the penalty assessed for non-consent should be 200%.

(14) Both Yates and Nearburg have agreed that the overhead rates should be as follows:

Drilling Well Rate	\$4,500.00
Producing Well Rate	450.00

(15) Yates Petroleum Corporation should be designated the operator of the subject well and unit with its application being granted.

(16) The application of Nearburg Exploration Company should be denied.

(17) 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 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 application of Yates should be approved by pooling all mineral interests, whatever they may be, within said unit.

(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, but that payment of this money is required thirty days prior to the estimated spud date and not thirty days from the receipt of estimated well costs.

(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% thereof as a reasonable charge for risk.

(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 a 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) Both Yates and Nearburg agree that \$4,500 per month while drilling and \$450.00 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, 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 on demand and proof of ownership.

(24) Upon the failure of the operator of said pool unit to commence the drilling of the well to which said unit is dedicated on or before May 1, 1996, the order pooling said unit should become null and void and of no effect whatsoever.

(25) 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.

(26) 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.

IT IS THEREFORE ORDERED THAT:

(1) The application of Nearburg Exploration Company in Case No. 11311 for an order pooling all mineral interests from the surface down through and including the Cisco Canyon formation underlying the SE/4 of Section 16, Township 19 South, Range 25 East, N.M.P.M., Eddy County, New Mexico, forming a standard 160-

acre oil proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, said unit to be dedicated to the Nearburg Arroyo 16 Well No. 1, to be drilled to the depth of 8,400' to test the Cisco Canyon formation at a standard location in Unit M of said section, is hereby **DENIED**.

(2) The application of Yates Petroleum Corporation in Case No. 11310 for an order pooling all mineral interests from the surface down through and including the Cisco Canyon formation underlying the SE/4 of Section 16, Township 19 South, Range 25 East, N.M.P.M., Eddy County, New Mexico, forming a standard 160-acre oil proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, said unit to be dedicated to the Yates Boyd "X" State Com No. 10 Well, to be drilled to the depth of 8,400' to test the Cisco Canyon formation at an orthodox location 660' from the South line and 1980' from the East line of said section, is hereby **GRANTED**.

PROVIDED, HOWEVER, THAT the operator of said unit shall commence the drilling of said well on or before the 1st day of May, 1996, and shall thereafter continue the drilling said well with due diligence to a depth sufficient to test the Cisco Canyon formation of the subject pool.

PROVIDED FURTHER THAT in the event said operator does not commence the drilling of said well on or before the 1st day of May, 1996, Ordering Paragraph No. (2) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion or abandonment within 180 days after commencement thereof, said operator shall appear before the Division Director and show cause by Ordering Paragraph No. (2) of this order should not be rescinded.

(3) Yates Petroleum Corporation is hereby designated the operator of the subject well and unit.

(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 an itemized schedule of estimated well costs.

(5) Between the time that a schedule of estimated well costs is furnished and 30 days prior to the estimated spud date of the

well 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 forty-five 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 prorata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his prorata share of the amount estimated well costs exceed reasonable well costs.

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

(a) the prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within the period of time between receiving a schedule of estimated well costs and thirty days prior to the estimated spud date;

(b) as a charge for the risk involved in the drilling of the well, 200% of the prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within the time frame listed in (a) above.

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

(10) \$4,500 per month while drilling and \$450.00 per month while producing or hereby fixed as reasonable charges for supervision (combined fixed rates).

(11) 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.

(12) Any unleased mineral interest shall be considered a seven-eighth (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.

(13) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest share of production, and no costs or charges shall be withheld from production attributable to royalty interest.

(14) 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.

(15) The operator shall notify the Division of the name and address of said escrow agent within thirty 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) Nearburg's application for forced pooling shall be dismissed.

(19) 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.