

**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. 11747
Order No. R-10785**

**APPLICATION OF NEARBURG
EXPLORATION COMPANY, L.L.C. 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 March 20, 1997, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 2nd day of April, 1997, 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, Nearburg Exploration Company, L.L.C., seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the W/2 of Section 14, Township 21 South, Range 32 East, NMPM, Lea County, New Mexico, and in the following manner:

the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent which presently includes but is not necessarily limited to the Undesignated Hat Mesa-Morrow Gas Pool; and,

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools spaced on 160 acres within said vertical extent.

Said units are to be dedicated to the applicant's proposed Aztec "14" Federal Com Well No. 1 to be drilled at an unorthodox gas well location 1980 feet from the North line and 2180 feet from the West line (Unit F) of Section 14.

(3) The applicant has the right to drill and proposes to drill its Aztec "14" Federal Com Well No. 1 at the unorthodox gas well location described above.

(4) The Hat Mesa-Morrow Gas Pool is currently governed by Rule No. 104.C.(2) of the Division General Rules and Regulations which require wells to be located no closer than 1650 feet from the nearest end boundary nor closer than 660 feet from the nearest side boundary of the proration unit nor closer than 330 feet from any quarter-quarter section line or subdivision inner boundary.

(5) According to applicant's evidence and testimony, the proposed unorthodox location is necessitated by a combination of geologic and topographic considerations.

(6) Applicant's evidence shows that a well drilled within the NW/4 of Section 14 should encounter a greater amount of net sand within the Upper and Middle Morrow intervals than a well drilled within the SW/4 of Section 14. In addition, the subject well was originally staked at a standard location within the NW/4 of Section 14, however, due to the presence of archaeologic sites, the United States Bureau of Land Management (BLM) requested that the applicant move the well to the currently proposed location.

(7) The applicant has obtained a waiver of objection to the proposed unorthodox location from the only affected offset operator, New Tex Oil Company.

(8) Approval of the proposed unorthodox location will afford the applicant the opportunity to produce its just and equitable share of the gas in the affected pool, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells and will otherwise prevent waste and protect correlative rights.

(9) There are interest owners in the proposed proration units who have not agreed to pool their interests.

(10) 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 units 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 units.

(11) The applicant should be designated the operator of the subject well and units.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) \$6000.00 per month while drilling and \$600.00 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.

(17) 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.

(18) Upon the failure of the operator of said pooled units to commence the drilling of the well to which said units are dedicated on or before July 1, 1997, the order pooling said units should become null and void and of no effect whatsoever.

(19) 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.

(20) The operator of the well and units 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 Morrow formation underlying the W/2 of Section 14, Township 21 South, Range 32 East, NMPM, Lea County, New Mexico, are hereby pooled in the following manner:

the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within said vertical extent which presently includes but is not necessarily limited to the Undesignated Hat Mesa-Morrow Gas Pool; and,

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools spaced on 160 acres within said vertical extent.

Said units shall be dedicated to the Aztec "14" Federal Com Well No. 1 to be drilled at an unorthodox gas well location, hereby approved, 1980 feet from the North line and 2180 feet from the West line (Unit F) of Section 14.

PROVIDED HOWEVER THAT, the operator of said units shall commence the drilling of said well on or before the 1st day of July, 1997, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Morrow formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of July, 1997, 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.

(2) At the request of the applicant, Nearburg Producing Company is hereby designated the operator of the subject well and units.

(3) 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 units an itemized schedule of estimated well costs.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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

(9) \$6000.00 per month while drilling and \$600.00 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.

(10) 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.

(11) 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.

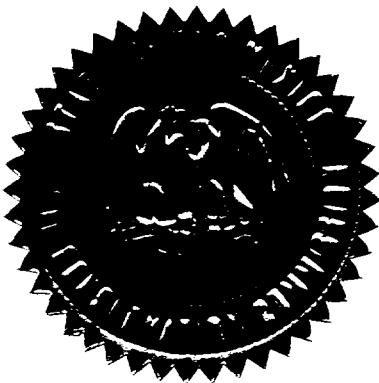
(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(13) 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.

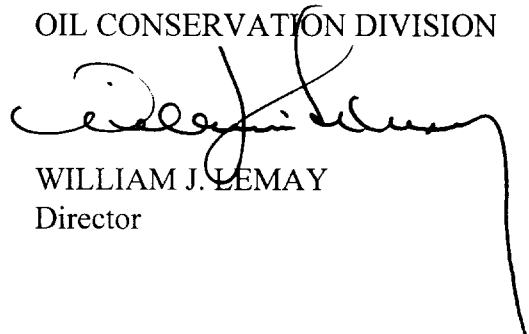
(14) The operator of the well and units shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) 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.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


WILLIAM J. LEMAY
Director



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
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April 2, 1997

Kellahin and Kellahin
117 N. Guadalupe
P. O. Box 2265
Santa Fe, New Mexico 87504

RE: CASE NO. 11747
ORDER NO. R-10785

Dear Sir:

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

Sincerely,

Sally E. Martinez
Sally E. Martinez
Administrative Secretary

cc: BLM - Carlsbad
J. Bruce