

**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. 12087
ORDER NO. R-11109**

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

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 19, 1998, at Santa Fe, New Mexico, before Examiner Mark W. Ashley.

NOW, on this 11th day of December, 1998, 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 this case and its subject matter.

(2) The applicant, Nearburg Exploration Company, L.L.C. ("Nearburg"), seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying Section 3, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, in the following manner:

(a) Lots 1 through 4, and the S/2 N/2 (N/2 equivalent) to form a standard 319.96-acre gas spacing and proration unit for any formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include the Undesignated East Gem-Morrow Gas Pool, Undesignated West Teas-Morrow Gas Pool, and Undesignated Teas-Pennsylvanian Gas Pool;

(b) Lots 1 and 2, and the S/2 NE/4 (NE/4 equivalent) to form a standard 159.81-acre gas spacing and proration unit for any formations and/or pools developed on 160-acre spacing within that vertical extent; and

(c) the SW/4 NE/4 to form a standard 40-acre oil spacing and proration unit for any formations and/or pools developed on 40- acre spacing within that vertical extent, which presently include the Undesignated Gem-Bone Spring Pool and the Undesignated Teas-Bone Spring Pool.

(3) The units are to be dedicated to the applicant's proposed Viper "3" Federal Well No. 1 to be drilled and completed in accordance with Division Rule 111 (directional wellbore) from a surface location 2200 feet from the South line and 1600 feet from the East line to a standard subsurface location 1650 feet from the North line and 1650 feet from the East line.

(4) All of Section 3 consists of a single federal oil and gas lease with the N/2 of this section being within a "measured potash" area where the Bureau of Land Management will not allow a well to be drilled vertically but will allow the well to be located and drilled directionally as proposed by Nearburg.

(5) The applicant has the right to drill its Viper "3" Federal Well No. 1 in the proposed spacing and proration units.

(6) The interest owners in the proposed spacing and proration units who have not agreed to pool their interests did not appear at the hearing.

(7) Nearburg testified that Merit Energy Company ("Merit") had an internal "net profits interest" the details of which had not been disclosed to Nearburg which might be an unnecessary burden on Merit's working interest.

(8) Nearburg requested that Merit's working interest, including its "net profits interest," be subject to the risk factor penalty.

(9) Merit's working interest, including any "net profits interest," carved out of its working interest, should be liable for its share of drilling and completion costs and be subject to the risk factor penalty.

(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 the units the opportunity to recover or receive without unnecessary expense its just and fair share of the production in any pool completion resulting from this order, this application should be approved by pooling all mineral interests, whatever they may be, within the units.

(11) Nearburg should be designated the operator of the well and units.

(12) 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.

(13) 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 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 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.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000.00 per month while drilling and \$600.00 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.

(17) 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.

(18) If the operator of the pooled units fails to commence drilling the well to which the units are dedicated on or before March 15, 1999, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

(19) The operator of the well and units 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) All mineral interests, whatever they may be, from the surface to the base of the Morrow formation underlying Section 3, Township 20 South, Range 33 East, NMPM, Lea County, New Mexico, are hereby pooled in the following manner:

- (a) Lots 1 through 4, and the S/2 N/2 (N/2 equivalent) to form a standard 319.96-acre gas spacing and proration unit for any formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include the Undesignated East Gem-Morrow Gas Pool, Undesignated West Teas-Morrow Gas

Pool, and Undesignated Teas-Pennsylvanian Gas Pool;

- (b) Lots 1 and 2, and the S/2 NE/4 (NE/4 equivalent) to form a standard 159.81-acre gas spacing and proration unit for any formations and/or pools developed on 160-acre spacing within that vertical extent; and
- (c) the SW/4 NE/4 to form a standard 40-acre oil spacing and proration unit for any formations and/or pools developed on 40- acre spacing within that vertical extent, which presently include the Undesignated Gem-Bone Spring Pool and the Undesignated Teas-Bone Spring Pool.

(2) The units are to be dedicated to the Nearburg's proposed Viper "3" Federal Well No. 1 to be drilled and completed in accordance with Division Rule 111 (directional wellbore) from a surface location 2200 feet from the South line and 1600 feet from the East line to a standard subsurface location 1650 feet from the North line and 1650 feet from the East line.

PROVIDED HOWEVER THAT, the operator of the units shall commence drilling the well on or before March 15, 1999, and shall thereafter continue drilling the well with due diligence to a depth sufficient to test the Morrow formation.

PROVIDED FURTHER THAT, in the event the operator does not commence drilling the well on or before March 15, 1999, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, 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.

(3) Nearburg is hereby designated the operator of the well and units.

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

(5) 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.

(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 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.

(7) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated well 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.

(8) 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, including any "net profits interests" carved out of that working interest, 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.

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

(10) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,000.00 per month while drilling and \$600.00 per month while producing. The operator is hereby 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.

(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 this order.

(12) Any well costs or charges that 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 well that 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 the escrow agent within 30 days from the date of first deposit with the escrow agent.

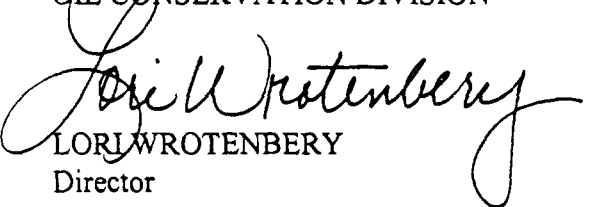
(14) Should all the parties to this forced pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(15) The operator of the well and units shall notify 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.

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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