

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 12698  
ORDER NO. R-11636-A**

**THE APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO.**

**ORDER OF THE OIL CONSERVATION COMMISSION**

**BY THE COMMISSION:**

This case came on for an evidentiary hearing before the Oil Conservation Commission (hereinafter referred to as "the Commission") on October 12, 2001, at Santa Fe, New Mexico, and the Commission, having carefully considered the evidence presented, the pleadings and other materials submitted by the parties hereto, now, on this 6th day of November, 2001,

**FINDS,**

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. The Applicant Mewbourne Oil Company (hereinafter referred to as "the Applicant") seeks an order pooling all uncommitted mineral interests from the base of the Yates formation to the base of the Morrow formation underlying the E/2 of Section 15, Township 21 South, Range 27 East, N.M.P.M, Eddy County, New Mexico, in the following manner:

The E/2 to form standard 320-acre gas spacing and proration units for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to the Undesignated East Carlsbad-Wolfcamp Gas Pool, Undesignated Cedar Hills-Upper Pennsylvanian Gas Pool, Burton Flat-Strawn Gas Pool, and the Burton Flat-Morrow Gas Pool.

The SE/4 to form standard 160-acre gas spacing and proration units for all formations or pools spaced on 160 acres within this vertical extent, which presently include,

but are not necessarily limited to, the Undesignated East Avalon-Bone Spring Gas Pool.

The NW/4 SE/4 to form standard 40-acre oil spacing and proration units for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated La Huerta-Delaware Pool, the Undesignated East Avalon-Bone Spring Pool, and the Undesignated East Carlsbad-Bone Spring Pool.

3. The Applicant seeks to dedicate these units to its proposed Esperanza "15" State Com. Well No. 1 (the "proposed well") to be drilled 2232 feet from the south line and 1980 feet from the east line, within the NW/4 SE/4 (Unit J) of Section 15.

4. The Application is opposed in-part by Harvey E. Yates Company and Jalapeno Corporation (hereinafter referred to as "Yates and Jalapeno") who filed an application for *de novo* review by this body.

5. Yates and Jalapeno do not oppose pooling from the base of the Wolfcamp formation to the base of the Morrow formation. However, Yates and Jalapeno oppose pooling formations above the base of the Wolfcamp on the grounds that pooling would prevent them from developing those formations and thereby impair correlative rights. Yates and Jalapeno argue that Mewbourne has no intention of actually producing from formations above the base of the Wolfcamp, or, in the alternative, that Mewbourne's basis for development is to improve the economics of the proposed well, which Yates and Jalapeno contend is an improper basis for compulsory pooling under the Oil and Gas Act. Yates and Jalapeno contend that pooling above the base of the Wolfcamp formation in this case would affect their correlative rights and effect a regulatory taking of their interests.

6. Mewbourne claims it is entitled to compulsory pooling of formations above the base of the Wolfcamp because it intends to develop the formations pooled if capable of production, inclusion of formations above the base of the Wolfcamp formation is essential for an economic well and thus failure to compulsory pool will result in the drilling of unnecessary wells, and the piecemeal pooling proposed by Yates and Jalapeno would be wasteful of the Division's, the Commission's and the parties' resources.

7. The evidence presented to this body establishes that the application for compulsory pooling from the base of the Yates formation to the base of the Morrow formation should be granted.

8. It is proper to order compulsory pooling of multiple formations so long as the evidence presented to the Commission justifies it. *Viking Petroleum v. Oil Conservation Commission*, 100 N.M. 451, 672 P.2d 280 (1983). The Viking case shows that the

Commission may base, in part, a decision to pool multiple formations upon evidence that a well would not be economic if produced from a single formation. Thus, evidence presented by Mewbourne that its proposed well would not be economic if compulsory pooling were extended only to a single formation, may be considered.

9. Mewbourne presented evidence that demonstrates that although the Morrow formation is its primary objective, it intends to produce from the Wolfcamp formation and possibly the Strawn formation, if either or both are capable of producing oil or natural gas. Mewbourne testified that it could multiple complete or downhole commingle the various formations if appropriate and feasible, and that it is interested in producing from any formation that will produce oil and natural gas.

10. Mewbourne presented evidence that established that reserves of crude oil and natural gas exist in the Morrow and the Wolfcamp formations and that data from nearby wells show the proposed well to be a good prospect. Mewbourne presented evidence that drilling to the Morrow only, as Yates and Jalapeno request, would, under some assumptions, result in a well that produces less oil and natural gas than the cost to drill. Mewbourne further presented evidence that including production from the Wolfcamp formation makes an economic well.

11. A well drilled to the Morrow formation must of necessity pass through the producing formations that are at issue in this case, and production from these formations through a single wellbore avoids the possibility that an additional well or wells will be drilled. *See* NMSA 1978, § 70-2-17(C).

12. The evidence presented demonstrates that two or more separately owned tracts are located within the units proposed for pooling, there are owners of royalty interests and/or undivided interests in oil and gas minerals in one or more tracts within the units which are separately owned.

13. The evidence presented demonstrates that the Applicant is an owner of an oil and gas working interest within the units. The Applicant has the right to drill and proposes to drill the proposed well to a common source of supply at the unorthodox location described above.

14. The evidence presented demonstrates that a considerable risk is entailed in drilling the well as many of the formations are partially depleted or previous attempts to develop certain formations have been unsuccessful.

15. The evidence presented demonstrates that there are interest owners in the proposed unit that have not agreed to pool their interests.

16. The evidence demonstrates that granting the application will avoid drilling of unnecessary wells, protect correlative rights, prevent waste and afford the owner of each interest in the units the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons.

17. The Applicant should be designated the operator of the proposed well and of the units described.

18. After pooling, each uncommitted working interest owner should be referred to as a "non-consenting working interest owner." An uncommitted working interest owner is an owner of a working interest in the units, including every unleased mineral interest that is not a party to an operating agreement governing the units. Each 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.

19. Each 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% thereof as a reasonable charge for the risk involved in drilling the well.

20. Each 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 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.

22. The evidence shows that reasonable charges for supervision (combined fixed rates) should be fixed at \$5,400 per month while drilling and \$540 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." 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.

23. Except as noted in Findings 19 and 22 above, 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.

24. If the operator fails to commence drilling the well to which the units are dedicated on or before January 1, 2002, this order should become of no effect.

25. The operator should notify the Oil Conservation Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

26. The location of the proposed well is unorthodox in the pools spaced on 160 or 320 acres. The location of the proposed well is standard for pools spaced on 40 acres.

27. Approval of the unorthodox well location in the Burton Flat-Morrow Gas Pool was obtained in Division Order NSL-4606, but approval of the unorthodox well location other pools spaced on 160 or 320 acres had not been sought as of the date of the hearing in this matter.

28. Because the Applicant proposes to drill at an unorthodox location and because the Applicant has only obtained approval of the location in the Burton Flat-Morrow Gas Pool, this Order should have immediate effect only in the Burton-Flat Morrow Gas Pool and the 40 acre pools, and shall be conditioned upon subsequent approval of the unorthodox location in the remaining pools spaced on 320 acres and upon approval of the unorthodox locations in the 160 acre pools, pursuant to the Division's Rules and Regulations.

29. No basis exists for the claims of Yates and Jalapeno that compulsory pooling under the circumstances described herein constitutes a regulatory taking.

**IT IS THEREFORE ORDERED, AS FOLLOWS:**

1. All uncommitted mineral interests from the base of the Yates formation to the base of the Morrow formation underlying the E/2 of Section 15, Township 21 South, Range 27 East, N.M.P.M., Eddy County, New Mexico, are hereby pooled, as follows:

The E/2 to form standard 320-acre gas spacing and proration units for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to the Undesignated East Carlsbad-Wolfcamp Gas Pool, Undesignated Cedar Hills-Upper Pennsylvanian Gas Pool, Burton Flat-Strawn Gas Pool, and the Burton Flat-Morrow Gas Pool.

The SE/4 to form standard 160-acre gas spacing and proration units for all formations or pools spaced on 160 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated East Avalon-Bone Spring Gas Pool.

The NW/4 SE/4 to form standard 40-acre oil spacing and proration units for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated La Huerta-Delaware Pool, the Undesignated East Avalon-Bone Spring Pool, and the Undesignated East Carlsbad-Bone Spring Pool.

2. The units referred to in the previous paragraph shall be dedicated to Applicant's Esperanza "15" State Com. Well No. 1 to be drilled at a location 2232 feet from the south line and 1980 feet from the east line, within the NW/4 SE/4 (Unit J) of Section 15.

3. The Applicant shall be designated the operator of the well referred to in the previous paragraph and the units created in decretal paragraph 1.

4. The Applicant (hereinafter referred to as "the Operator") shall commence drilling the proposed well on or before January 1, 2002, and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

5. In the event the Operator does not commence drilling the proposed well on or before January 1, 2002, decretal paragraphs 1, 2 and 3 shall be of no effect unless the operator obtains an extension from the Director of the Oil Conservation Division for good cause shown.

6. Should the proposed well not be drilled to completion or be abandoned within 120 days after commencement thereof, the Operator shall appear before the Director of the Oil Conservation Division and show cause why decretal Paragraphs 1, 2 and 3 should not be rescinded.

7. Uncommitted working interest owners shall be referred to henceforth as "non-consenting working interest owners." Upon the effective date of this order, the Operator shall furnish the Oil Conservation Division and each known non-consenting working interest owner in the units an itemized schedule of estimated well costs.

8. Within thirty (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 as hereinafter provided, 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 also furnish the Oil Conservation Division and each known non-consenting working interest owner an itemized schedule of actual well costs within

ninety (90) days following completion of the well. If no objection to the actual well costs is received by the Oil Conservation Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Oil Conservation 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 that 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 that 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% of the above costs.

12. The Operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

13. Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,400 per month while drilling and \$540 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The Operator is 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. Except as provided in decretal paragraphs 11 and 13 above, 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 Oil Conservation Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

15. 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. 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. Should all the parties to this Order reach voluntary agreement subsequent to its entry, this Order shall thereafter be of no further effect. The Operator shall notify the Commission in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.

17. This Order shall have immediate effect only in the Burton-Flat Morrow Gas Pool and the 40 acre pools, and shall be conditioned upon subsequent approval of the unorthodox location in the remaining pools spaced on 320 acres and upon approval of the unorthodox locations in the 160 acre pools, pursuant to the Division's Rules and Regulations.

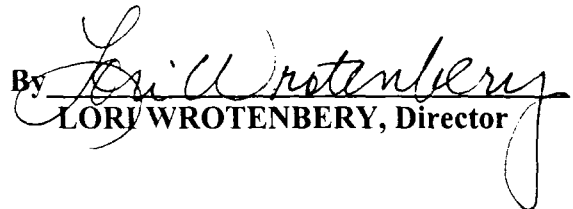
18. Jurisdiction is retained for the entry of such further orders as the Commission deems necessary.

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



**SEAL**

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**

By   
**LORI WROTENBERY, Director**