

**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. 12791
ORDER NO. R-11724**

**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 January 10, 2002, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 7th day of February, 2002, 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 of the subject matter.

(2) Nearburg Exploration Company, L.L.C., ("Applicant"), seeks an order pooling all uncommitted mineral interests as to all depths underlying the E/2 of Section 31, Township 18 South, Range 34 East, NMPM, Lea County, New Mexico, in the following manner:

The E/2, forming a standard 320-acre gas spacing and proration unit (the "320-acre Unit") for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated North Quail Ridge-Morrow Gas Pool and the Undesignated West La Rica-Morrow Gas Pool.

The SE/4, forming a standard 160-acre gas spacing and proration unit (the "160-acre Unit") for all formations or pools spaced on 160 acres within this vertical extent.

The N/2 SE/4, forming a standard 80-acre spacing and proration unit (the "80-acre Unit") for all formations or pools spaced on 80 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated EK-Bone Springs Pool.

The NE/4 SE/4, forming a standard 40-acre spacing and proration unit (the "40-acre Unit") for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated EK-Delaware Pool.

(3) The above-described units (the Units) are to be dedicated to Applicant's proposed Wapiti 31 Fed. Com. Well No. 1 to be drilled at a location within the NE/4 SE/4 of Section 31, which is a standard gas well location for the 320-acre Unit and for the 160-acre Unit, and is a standard oil well location for the 40-acre Unit. However, the proposed location is unorthodox for the 80-acre Unit in the EK-Bone Springs Pool.

(4) Two or more separately owned tracts are embraced within the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Units that are separately owned.

(5) Applicant is an owner of an oil and gas working interest within each of the Units. Applicant has the right to drill and proposes to drill its Wapiti 31 Fed. Com. Well No. 1 (the "proposed well") to a common source of supply at a standard well location within the NE/4 SE/4 (Unit I) of Section 31, 1650 from the South line and 660 feet from the East line of said Section.

(6) There are interest owners in each of the proposed units that have not agreed to pool their interests.

(7) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and 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 hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the Units.

(8) Pursuant to the request of Applicant, Nearburg Production Company, L.L.C. should be designated the operator of the proposed well and of the Units.

(9) 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% thereof as a reasonable charge for the risk involved in drilling the well.

(10) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000 per month while drilling and \$600 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.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Nearburg Exploration Company, L.L.C., all uncommitted mineral interests as to all depths underlying the E/2 of Section 31, Township 18 South, Range 34 East, N.M.P.M., Lea County, New Mexico, are hereby pooled, as follows:

- (a) The E/2, forming a standard 320-acre gas spacing and proration unit for all formations or pools spaced on 320 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated North Quail Ridge-Morrow Gas Pool and the Undesignated West La Rica-Morrow Gas Pool.
- (b) The SE/4, forming a standard 160-acre gas spacing and proration unit for all formations or pools spaced on 160 acres within this vertical extent.
- (c) The N/2 SE/4, forming a standard 80-acre spacing and proration unit (the 80-acre "Unit") for all formations or pools spaced on 80 acres within this vertical extent, which presently include, but are not necessarily limited to, the Undesignated EK-Bone Springs Pool.
- (d) The NE/4 SE/4, forming a standard 40-acre spacing and proration unit (the 40-acre "Unit") for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not

necessarily limited to, the Undesignated EK-Delaware Pool.

The Units shall be dedicated to Applicant's Wapiti 31 Fed. Com. Well No. 1 to be drilled at a standard gas well location within the NE/4 SE/4 of Section 31.

(2) The operator of the Units shall commence drilling the proposed well on or before March 31, 2002, and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(3) Prior to completion of the proposed well in the EK-Bone Springs Pool, the operator shall apply for, and obtain from the Division, approval of the unorthodox location of the well in that pool. In the event such permission is denied, the provisions of this Order dedicating the 80-acre Unit to the proposed well shall be rescinded.

(4) In the event the operator does not commence drilling the proposed well on or before April 30, 2002, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the proposed well not be drilled to completion, or be 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.

(6) Pursuant to the request of Applicant, Nearburg Production Company, L.L.C. is hereby designated the operator of the proposed well and of the Units.

(7) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests in the Units, including unleased mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the Units an itemized schedule of estimated well costs of the proposed well.

(8) 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 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 furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the proposed 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 deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who 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 paid, 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 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% 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 \$6,000 per month while drilling and \$600 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 Ordering 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 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.

(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 compulsory 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 Units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

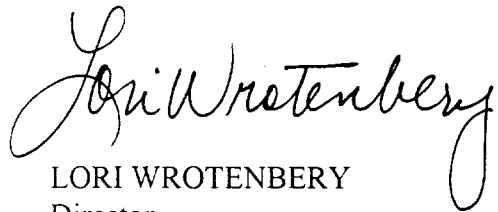
(18) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director