

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

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

**CASE NOS. 10467, 10473  
De Novo Order No. R-9678-A**

**APPLICATION OF YATES PETROLEUM  
CORPORATION FOR COMPULSORY POOLING  
AND AN UNORTHODOX GAS WELL LOCATION,  
EDDY COUNTY, NEW MEXICO.**

**APPLICATION OF NEARBURG EXPLORATION  
COMPANY FOR COMPULSORY POOLING AND  
AN UNORTHODOX GAS WELL LOCATION, EDDY  
COUNTY, NEW MEXICO.**

**ORDER OF THE COMMISSION**

**BY THE COMMISSION:**

This cause came on for hearing at 9:00 a.m. on August 13, 1992, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico herein referred to as the "Commission".

NOW, on this 17th day of September, 1992, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing and being fully advised in the premises,

**FINDS THAT:**

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) Commission Case Nos. 10467 and 10473 were consolidated at the time of the hearing for the purpose of testimony, and, inasmuch as approval of one application would necessarily require denial of the other, one order should be entered for both cases.

(3) The applicant in Case No. 10467, Yates Petroleum Corporation (Yates), seeks an order pooling all mineral interests from a depth of 5,000 feet below the surface to the base of the Morrow formation underlying the N/2 of Section 27, Township 18 South, Range 27 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Red Lake Atoka-Morrow Gas Pool. Said unit is to be dedicated to a well to be drilled at an unorthodox gas well location 660 feet from the North line and 1330 feet from the East line (Unit B) of said Section 27.

(4) The applicant in Case No. 10473, Nearburg Exploration Company (Nearburg), seeks an order pooling all mineral interests from the base of the Wolfcamp formation to the base of the Morrow formation underlying the N/2 of Section 27, Township 18 South, Range 27 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Red Lake Atoka-Morrow Gas Pool. Said unit is to be dedicated to a well to be drilled at an unorthodox gas well location 660 feet from the North line and 1330 feet from the East line (Unit B) of said Section 27.

(5) At the commencement of the hearing in the subject cases Nearburg moved to dismiss both cases because of pending proceedings before the District Court of Midland County, Texas pertaining to a 1967 operating agreement between Sinclair Oil Corporation, predecessor lease hold owner to Nearburg, and John H. and Pauline Trigg, predecessor lease hold owner to Yates and associated interest owners. Motion for dismissal was denied by the Commission and jurisdiction was reaffirmed.

(6) Both Yates and Nearburg have the right to drill a well in Section 27, 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.

(7) The proposed well is located within the Red Lake Atoka-Morrow Gas Pool which is currently governed by Division General Rule No. 104 (C)(2), which requires standard 320-acre spacing and proration units with wells to be located no closer than 660 feet from the nearest side boundary nor closer than 1980 feet from the nearest end boundary of the proration unit nor closer than 330 feet from any quarter-quarter section line or subdivision inner boundary.

(8) According to evidence presented, the working interest ownership within the N/2 of Section 27 is currently distributed as follows: Yates Petroleum Corporation - 10.5%; Various Yates entities - 15.75%; 6 various other interest owners - 23.75%; Nearburg Exploration Company - 50%.

(9) According to further evidence, Yates Petroleum Corporation is supported in its application by all of the various working interest owners with the exception of Nearburg. Yates and Nearburg therefore effectively each control 50% of the working interest in the subject acreage.

(10) The reason why Yates and Nearburg have been unable to reach an agreement on who will drill and operate the proposed well was because both parties disagreed on what penalty would be assessed against a nonoperator, if that nonoperator elected to go nonconsent.

(11) Nearburg agreed to allow Yates to be operator of the N/2 of Section 27, Township 18 South, Range 27 East, Eddy County, New Mexico if Yates would agree to a 100 percent non-consent risk penalty (cost plus 100% cost recovery before participation of non-consenting party).

(12) Yates agreed to be operator and to a non-consent risk provision stating that any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of reasonable well costs plus an additional 100 percent thereof as a charge for risk involved in the drilling of the well but objected to such a finding setting a precedent for future cases with similar circumstances. The Commission finds that the 100% non-consent risk penalty is a product of negotiation and compromise and does not reflect the true risk of drilling this prospect. As further consideration of the compromise Nearburg has agreed to dismiss all pending litigation pertaining to this case.

(13) Yates Petroleum Corporation should be designated the operator of the subject well and unit.

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

(15) 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 Petroleum Corporation should be approved by pooling all mineral interests, whatever they may be, within said unit.

(16) 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 30 days prior to estimated spud date and not 30 days from receipt of estimated well costs.

(17) 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 100 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(18) 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.

(19) 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.

(20) Both Nearburg and Yates agree that \$5000.00 per month while drilling and \$500.00 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.

(21) 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.

(22) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before January 1, 1993, the order pooling said unit should become null and void and of no effect whatsoever.

(23) 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.

(24) 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 for an order pooling all mineral interests from the base of the Wolfcamp formation to the base of the Morrow formation underlying the N/2 of Section 27, Township 18 South, Range 27 East, NMPM, Eddy County, New Mexico, forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, said unit to be dedicated to a well to be drilled at an unorthodox gas well location 660 feet from the North line and 1330 feet from the East line (Unit B) of said Section 27, is hereby denied.

(2) All mineral interests, whatever they may be, from a depth of 5,000 feet below the surface to the base of the Morrow formation underlying the N/2 of Section 27, Township 18 South, Range 27 East, NMPM, Eddy County, New Mexico, are hereby pooled forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes but is not necessarily limited to the Red Lake Atoka-Morrow Gas Pool. Said unit shall be dedicated to a well to be drilled at an unorthodox gas well location, also hereby approved, 660 feet from the North line and 1330 feet from the East line (Unit B) of said Section 27.

**PROVIDED HOWEVER THAT**, the operator of said unit shall commence the drilling of said well on or before the 1st day of January, 1993, 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 January 1993, 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 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. (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 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.

(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 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.

(8) 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 the period of time between receiving a schedule of estimated well costs and 30 days prior to the estimated spud date.
- (B) As a charge for the risk involved in the drilling of the well, 100 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 the timeframe 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) \$5000.00 per month while drilling and \$500.00 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.

(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 the terms of this order.

(12) 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.

(13) 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; 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.

(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 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

(16) Nearburg will dismiss all pending litigation pertaining to this case.

(17) 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.

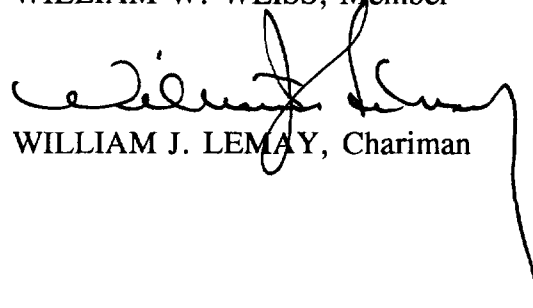
STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



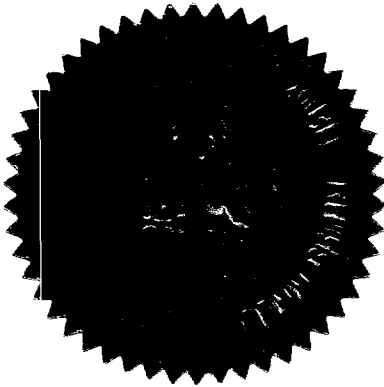
GARY CARLSON, Member



WILLIAM W. WEISS, Member



WILLIAM J. LEMAY, Chariman



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