

JENNINGS LAW FIRM

DE SOUTH KENTUCKY

P.O. BOX 1180

ROSWELL, NEW MEXICO 88202-1180

JAMES T. JENNINGS
A.D. LINDA JONES

TELEPHONE (505) 622-8432
FAX (505) 622-8433

FACSIMILE COVER SHEET

Page 1 of 3 (including this cover page)

DATE: JUNE 21, 1994

TIME: 2:30 p.m.

TO: RAND CARROLL
OIL CONSERVATION DIVISION

FAX NO: (505) 827-5741

FROM: JAMES T. JENNINGS
JENNINGS LAW FIRM

SENT BY: JUDY ANN WHITE

COMMENTS: SEE ATTACHED

.....

The information contained in this fax message is intended only for the personal use and confidential use of the designated recipients named above. This message may be an attorney-client communication and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.

.....

If you should have any problems with this communication, please call our office at (505) 622-8432.

JAMES T. JENNINGS
P. O. BOX 1160
ROSWELL, NEW MEXICO 88202-1160
(505) 622-8432

June 15, 1994
REGULAR MAIL

Via Fax: (915) 686 7806

Nearburg Exploration Company
3300 North "A" Street
Building 2, Suite 120
Midland, Texas 79705

Attention: Bob Shelton
Consulting Landman

Re: B&B #2 Well; 2173' FEL and 660'
FSL Sec. 22, T-19-S, R-25-E.
Eddy County, New Mexico

Dear Mr. Shelton:

Thank you for your letter of May 17, 1994, regarding the drilling of the above well, as well as the letter Amendment Agreement dated May 26. The amendments set forth in the letter are quite satisfactory to me.

As I advised you in our conversation, I am interested in participating in the well and I am ready to pay my share of the expenses. If I do, however, I have the following problems with the Operating Agreement:

1. Exhibit "F": I feel that the financing and security provisions of the basic Operating Agreement form are sufficient to the Operator and will not execute this exhibit. This same problem arose at the the re-entry of the B&B #1 well and apparently was acceptable to the Operator.

2. Exhibit "D": In connection with this exhibit, I have a problem with the low limits set out in paragraph (c) regarding automobile public liability. I assume that Paragraph (b) regarding Public Liability Insurance covers all automobile public liability in excess of that set forth in (c). Please advise if this is correct and furnish a certificate covering each policy of insurance pursuant to this section.

Nearburg Exploration Company

Page 2

June 15, 1994

3. Exhibit "C", pages 5 and 6, IV: If you contemplate furnishing this material, I think it should be priced at the "current new price in effect as of the date of the movement maximum car load or barge load weight basis equalized to the lowest published price f.o.b. railroad point nearest the joint property" rather than the Eastern mill published basis.

4. Exhibit "C", page 6, B: I think that the printed figure of 75% should remain rather than the delineated 80%.

5. Exhibit "A": The proposed Operator, Nearburg Producing Company, is not an owner as is contemplated by force pooling statute, and if non-operators are all required to advance the drilling cost, then I would like to be furnished with a financial statement of Nearburg Producing Company and advised of what other guarantee of performance is made to the non-operators by Nearburg Producing Company, a Texas corporation.

Yours truly,


James T. Jennings

JTJ:pv

JENNINGS LAW FIRM

100 SOUTH KENTUCKY

P.O. BOX 1000

ROSWELL, NEW MEXICO 80202-1000

JAMES T. JENNINGS
A. D. DUFF, JR.

TELEPHONE (505) 622-4432
FAX (505) 622-4433

FACSIMILE COVER SHEET

Page 1 of 3 (including this cover page)

DATE: June 22, 1994
TIME: 1:15 P.M., M.D.T.
TO: Mr. Rand Carroll
FAX NO: 505-827-5741
FROM: James T. Jennings

COMMENTS:

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If you should have any problems with this communication, please call our office at (505) 622-8432.

JAMES T. JENNINGS
P. O. BOX 1180
ROSWELL, NEW MEXICO 88202-1180
(505) 822-8432

June 22, 1994
Regular Mail

FAX 505-827-5741

Mr. Rand Carroll
General Counsel
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

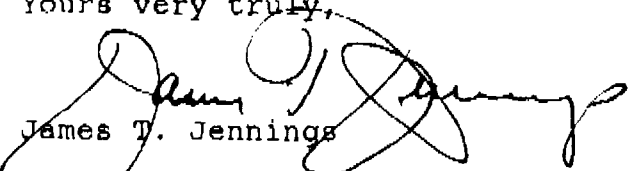
Re: Case #11010
Application of Nearburg Exploration Company
for Compulsory Pooling
S 1/2 Sec. 22, Twp. 19 S., Rge. 25 E.
Eddy County, New Mexico
B&B #2 Well

Dear Mr. Carroll:

Enclosed you will find a copy of Nearburg Exploration Company's letter dated June 21, 1994 replying to my June 15, 1994 letter requesting information and changes in the Operating Agreement. I still want to participate in the well and pay my share of the drilling expenses, but am still concerned about the operator being a non-owner foreign corporation.

Apparently, Nearburg Exploration Company is not willing to furnish the material requested in item No. 5 of my letter, but is insisting that all other non-operators advance payment of dry hole costs. If the non-operators are to be required to advance payment, then I would hope that the Commission will see fit to require that all of the non-operators, including Nearburg Exploration Company, place the advanced funds in an escrow satisfactory to the Commission.

Yours very truly,


James T. Jennings

JTJ:pv

Enclosure

Nearburg Exploration Company

Exploration and Production
3300 North "A" Street
~~505-6100~~ Building 2, Suite 120
Midland, Texas 79705
915/686-8235
Fax 915/686-7806

June 21, 1994

Mr. James I. Jennings
P. O. Box 1180
Roswell, New Mexico 88202-1180

Via FAX 505/622-6433

Re: Letter of June 15, 1994;
B&B #2 Well; Section 22,
T-19-S, R-25-E, Eddy
County, New Mexico
B&B Prospect

Dear Mr. Jennings:

Thank you for your letter of June 15, 1994 requesting changes to our proposed Operating Agreement concerning the drilling of the captioned well. As we discussed by telephone, Mr. Roy G. Barton and Panhandle Royalty Company have agreed to the terms of our Operating Agreement, as amended by previous Amendment Agreement furnished to you for your consideration. Both parties have agreed to be bound by the terms of the Operating Agreement which requires advance payment and in this case, we are requesting only advance payment of dry hole costs.

We do not believe it is beneficial to the entire working interest owner group to distinguish between various working interest owners with regard to the prepayment issue or other issues as stated in your June 15, 1994 letter.

I apologize for not being able to comply with all your requirements. We hope that you will still participate with us in the drilling of the B&B #2 well.

Thank you for your cooperation.

Yours very truly,



Bob Shelton
Consulting Landman

BS:ky

bs\jennings.jlr

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

June 28, 1994

HAND DELIVERED

Mr. Michael E. Stogner
Chief Hearing Examiner
Oil Conservation Division
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Re: Nearburg Exploration Company's Proposed Orders
NMOCD Case 11010 for the B&B Well No. 2
NMOCD Case 11012 for Fairchild "18" Well No. 1

Dear Mr. Stogner:

On behalf of Nearburg Exploration Company please find enclosed for your consideration two draft orders, one for each of the referenced cases. Also enclosed is a floppy disk (Wordperfect 5.1) on which these orders appear.

In addition, I have enclosed Revised Exhibit 2 for Case 11012 which correctly collates the offset operator notice list with the plat.

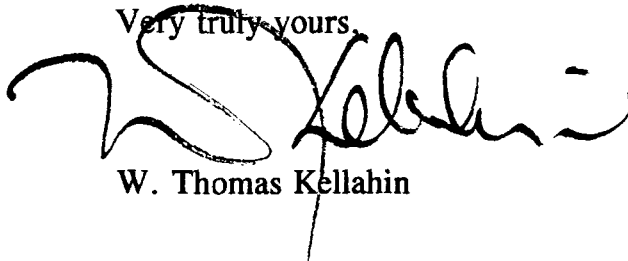
Finally, you will note that I have proposed a commencement date for these two wells of not later than December 1, 1994. Nearburg Producing Company proposed to use the same rig to drill these two wells and two other wells in this area with an estimated 30-45 days per well activity. Usually the pooling orders provide for a commencement date within 90 days of the date of an order.

Mr. Michael E. Stogner
June 28, 1994
Page 2.

However, in these two cases we are asking for an additional period ending December 1, 1994 in order to provide the operational flexibility to use a single rig for this project.

Please call me if you have any questions or need anything else

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over the typed name.

W. Thomas Kellahin

cc: Nearburg Producing Company
Attn: Bob Shelton

**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. 11010
Order No. R-

APPLICATION OF NEARBURG EXPLORATION
COMPANY FOR COMPULSORY POOLING
EDDY COUNTY, NEW MEXICO.

**NEARBURG EXPLORATION COMPANY'S
PROPOSED
ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on June 23, 1994 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this _____ day of June, 1994, the Division Director, having considered the testimony, the recorded 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, the parties herein and the subject matter thereof.

(2) The applicant, Nearburg Exploration Company, seeks an order pooling all mineral interests from the top of the Wolfcamp formation to the base of the Morrow formation underlying the S/2 of Section 22, T19S, R25E, 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 Undesignated Cemetery-Morrow Gas Pool and dedicating said unit to the Nearburg Producing Company's B&B Well No. 2 to be drilled and completed at a standard gas well location in Unit 0 of said Section 22.

(3) The applicant further seeks the designation of Nearburg Producing Company as the operator and for a compulsory pooling order which, among other things, provides for establishment of estimated reasonable well costs, overhead rates and the allocation of the costs thereof and a charge of 200 % for the risk involved in drilling and completing said well.

(4) The applicant is an interest owner in the S/2 of said Section 22 and has the right to develop the minerals underlying the proposed spacing unit.

(5) No party appeared in opposition to the applicant's request for compulsory pooling.

(6) The applicant submitted geologic evidence which demonstrates that:

(a) the closest existing Morrow production is more than a mile to the southeast;

(b) out of some 8 wells drilled in this area in an attempt to establish commercial Morrow gas production only one well was sufficiently productive of gas within this Morrow channel to be considered an economic success;

(d) The optimum location within the proposed spacing unit in which to locate a Morrow gas well is at a location based upon the inference of a seismically defined amplitude anomaly which constitutes a new application of seismic technology for Morrow exploration and has not yet been proven successful.

(7) There is significant geologic risk involved with an attempt to drill and complete an economic Morrow well in this spacing unit at the proposed location which justifies the maximum 200 % risk factor penalty being imposed in this case.

(8) The existing well control and log data does not sufficiently lessen the risk of the well and therefore the maximum 200 % risk factor penalty should apply in this case;

(9) The applicant presented expert testimony from its petroleum landman which demonstrates that:

(a) Applicant has consolidated on a voluntary basis approximately 88.1 % of the working interest;

(b) Applicant has made a good faith diligent effort to identify and locate the remaining interest owners for the subject spacing unit and drilling of the subject well but despite that effort has been unable to obtain the voluntary agreement of James T. Jennings, Tierra Oil Company, Kerr-McGee Corporation, Yates Petroleum Corporation, Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc.;

(c) That the original estimated total costs of \$705,345 have been reduced to a current estimated total costs of \$683,345 for the subject well is fair and reasonable;

(d) the proposed overhead rates of \$5,664 and \$560/per month are fair and reasonable;

(10) In accordance with Section 70-2-17(C) the applicant, as an owner of the right to drill can propose that Nearburg Producing Company, a non-owner, be designated by the Division as operator pursuant to this order.

(11) That Nearburg Producing Company operates some 150 wells in New Mexico and Texas and is recognized by the Division as a competent and prudent operator and has on file with the Division the required plugging bonds.

(12) That Nearburg Producing Company should be designated as operator.

(13) The Applicant has satisfied the requirement of the Division, has made a good faith effort to reach a voluntarily agreement with the appropriate parties and is entitled to a compulsory pooling order in this matter.

(14) Approval of this application as set forth in the above findings and in the following order will avoid the drilling unnecessary wells, protect correlative rights, prevent waste and afford 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 resulting from this order.

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, which have not voluntarily committed their respective interest in this matter, including but not limited to:

James T. Jennings, his heirs, successors, grantees or assignees; Tierra Oil Company; Kerr-McGee Corporation; Yates Petroleum Corporation; Yates Drilling Company; Abo Petroleum Corporation; and Myco Industries, Inc., including any grantees, successors or assignees of any said company,

from the top of the Wolfcamp to the base of the Morrow formation underlying the S/2 of Section 22, Township 19 South, Range 25 East, NMPM, Eddy County, New Mexico, are hereby pooled to form an 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent to be dedicated to the B&B Well No. 2 to be drilled at a standard gas well location in Unit 0 of said Section 22.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 1st day of October, 1994, 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 December, 1994, Decretory 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 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 Decretory Paragraph No. (1) of this order should not be rescinded.

(3) Nearburg Producing Company is hereby designated the operator of the subject well and unit.

(4) After the effective date of this order and 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) 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.

(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 cost 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 an 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 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 30 days from the date of schedule of estimated well costs is furnished to him; and
- 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 costs is furnished to him.

(9) \$5,664 per month while drilling and \$560 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. The operator is hereby authorized to make annual adjustments of said combined fixed rates as of the first day of April each year in accordance with the COPAS accounting schedule utilized by the industry.

(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 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.

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

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

(15) Jurisdiction of this cause 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.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY, Director

SEAL



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



BRUCE KING
GOVERNOR

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

ANITA LOCKWOOD
CABINET SECRETARY

September 23, 1994

KELLAHIN AND KELLAHIN
Attorneys at Law
P. O. Drawer 2265
Santa Fe, New Mexico 87504

RE: CASE NO. 11010
ORDER NO. R-10190

Dear Sir:

Enclosed herewith 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
Taxation & Revenue Dept.