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jamesbruc@aol.com

June 16, 2004

Hand Delivered

Florene Davidson Oil Conservation Division 1220 South St. Francis Drive Santa Fe, New Mexico 87505

Dear Florene:

Enclosed for filing are an original and one copy of a motion to dismiss in Case No. 13290.

Very truly yours,

Dames Bruce

Attorney for Unit Petroleum Company

cc: Counsel of record w/encl.

2004 JUN 16 PM 3 26

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STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATE ON No 1818 PM 3 26

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

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

Case No. 13290

ENTRY OF APPEARANCE AND MOTION TO DISMISS

I. <u>ENTRY OF APPEARANCE</u>.

James Bruce enters his appearance in the above case on behalf of Unit Petroleum Company ("Unit").

II. MOTION TO DISMISS.

1. In this case, Nearburg Exploration Company, L.L.C. ("Nearburg") seeks to pool the E½ of Section 34, Township 19 South, Range 25 East, N.M.P.M., as to formations developed on 320 acre spacing. Unit is an interest owner in, and the operator of, the N½ of said Section 34.

2. Section 34 is comprised of federal land. The S½ of Section 34 is covered three federal leases, while the N½ of Section 34 is covered by federal lease NM 0504364-B. <u>See Exhibit A</u>.

3. Federal regulations provide that when a federal lease cannot be independently developed in conformity with an established well spacing program, the BLM may communitize the lease. 43 CFR §3105.2-2 (Exhibit B). In other words, when a 320 acre well unit is covered by a single federal lease, the well unit must be comprised of that single federal lease.

4. In this case, the N½ of Section 34 is covered by a single federal lease (NM 0504364), and thus the NE¼ of Section 34, which Nearburg seeks to pool, is unavailable for pooling. Nearburg has not shown that it can obtain an approved communitization agreement from the Bureau of Land Management (the "BLM") for the E½ of Section 34, and its application must be dismissed.

5. In addition, Unit has filed with the BLM an Application for Permit to Drill its Pan Canadian "34" Fed. Well No. 34 at a location 800 feet from the north line and 1650 feet from the from the east line of Section 34, with a N½ well unit. **Exhibit C.** Therefore, the N½ of Section 34 is unavailable for pooling by Nearburg.

WHEREFORE, Unit requests that the application filed herein be dismissed.

Respectfully submitted,

James Bruce Post Office Box 1056 Santa Fe, New Mexico 87504 (505) 982-2043

Attorney for Unit Petroleum Company

CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this $\frac{1616}{16}$ day of June, 2004 by hand delivery:

> Gail MacQuesten Oil Conservation Division 1220 South St. Francis Drive Santa Fe, New Mexico 87505

> William F. Carr Holland & Hart LLP Post Office Box 2208 Santa Fe, New Mexico 87504

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by such bond(s) to cancellation under the provisions of §3108.3 of this title.

[48 FR 33662, July 22. 1983, as amended at 53 FR 17354, May 16, 1988]

\$3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

[48 FR 33662. July 22, 1983, as amended at 53 FR 17355. May 16, 1988; 53 FR 31867, Aug. 22, 1988]

Subpart 3105—Cooperative Conservation Provisions

\$3105.1 Cooperative or unit agreement.

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

§3105.2 Communitization or drilling agreements.

§ 3105.2-1 Where filed.

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

§3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

43 CFR Ch. II (10-1-99 Edition)

§3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under §3107.4 of this title.

[53 FR 17355, May 16, 1988]

EXHIBIT

Bureau of Land Management

\$3105.3 Operating, drilling of ment contracts.

§3105.3-1 Where filed.

A contract submitted for under this section shall be f the proper BLM office, toge: enough copies to permit reter copies by the Department proval.

§3105.3-2 Purpose.

Approval of operating, drilli velopment contracts ordinaril; granted only to permit oper pipeline companies to enter tracts with a number of less cient to justify operations or large enough to justify the d development, production or tation of oil or gas and to fir same.

§3105.3-3 Requirements.

The contract shall be accc by a statement showing all t ests held by the contractor in or field and the proposed or ag: for development and operatio field. All the contracts held same contractor in the area shall be submitted for approv: same time and full disclosur projects made.

§3105.4 Combination for join ations or for transportation

§3105.4-1 Where filed.

An application under this set gether with sufficient copies t_{i} retention of 5 copies by the ment after approval shall be fi the proper BLM office.

[48 FR 33662, July 22, 1983, as amer FR 2113, Jan. 18, 1984]

§3105.4-2 Purpose.

Upon obtaining approval of thorized officer, lessees may their interests in leases for the of constructing and carrying business of a refinery or of esta and constructing as a common a pipeline or lines or railroads t erated and used by them jointl transportation of oil or gas fro wells or from the wells of other

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| 23. | , | PROPOSED CASI | NG AND CEM | IENTING | PROGRAM | | | | | |
| SIZE OF HOLE | GRADE, SIZE OF CASING | WEIGHT PER F | 00T | SETTING D | EPTH | | QUANTITY OF CEMENT | | | |
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| . 17½" | 13 3/8" | 48# | | 400' | | 450 S: | x. Circulate cement to surf | | | |
| 12½" | 9 5/8" | 36# | | 1300' | | 650 S | X. 11 11 11 11 | | | |
| 815" | 51/1 | 17# | • | 9500' | | 400 ST | | | | |

1. Drill 25" hole to 40'. Set 40' of 20" conductor pipe and cement to surface with Redi-mix.

- 2. Drill 17½" hole to 400'. Run and set 400' of 13 3/8" 48# H-40 ST&C casing. Cement with 450 Sx. of Class "C" cement + 2% CaCl, + ½# Flocele/Sx. Circulate cement to surface.
- 3. Drill 12½" hole to 1300'. Run and set 1300' of 9 5/8" 36# J-55 ST&C casing. Cement with 450 Sx. of Class "C" POZ, tail in with 200 Sx. of Class "C" cement + 2% CaCl, + ½# Flocele/Sx. circulate cement to surface.
- 4. Drill 8½" hole to 9500'. Run and set 9500' of 5½" 17# N-80 LT&C casing. Cement with 400 Sx. of Class "H" Premium Plus cement + additives. Top of cement at least 500' above upper most pay interval.

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM: If proposal is to deepen, give data on present productive zone and proposed new productive zone. If proposal is to drill or deepen directionally, give persinent data on subsurface locations and measured and true vertical depths. Give blowout preventer program, if any.

| SIGNED | AgentAgent | DATE | 06/04/04 |
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| (This space for Federal or State office u PERSIT NO Application approval does not warrant or certify that CONDITIONS OF APPROVAL IF ANY: | se) APPROVAL DATE | EXHIBIT | iduct operations thereon. |
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*See Instructions On Reverse Side

This 18 IIS C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the

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| DISTRICT III 1000 Rio Brazos Rd., Aztec, N | 4 87410 | | Santa F | Fe, New | Mexic | o 87504–2088 | | | | |
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| ogrid No. 115970 | | | UNIT | - | ator Nam LEUM | COMPANY | | Elevation 3516' | | |
| | | | | Surfac | ce Loca | ation | | | | |
| UL or lot No. Section B 34 | Township 19-S | Range 25-E | Lot Idn | | Feet from the North/Sout 800' NORT | | Feet from the 1650' | East/West line EAST | County EDDY | |
| | | Bottom | Hole Lo | cation 1 | lf Diffe | erent From Sur | face | | | |
| UL or lot No. Section | Township | Range | Lot Idn | Feet fro | om the | North/South line | Feet from the | East/West line | County | |
| Dedicated Acres Joint of 320 | Infill Co | nsolidation C | Code Or | rder No. | | I | L | | | |
| | EODETIC C NAD 2 Y=5900 X=4582 LAT.=32*37 DNG.=104*2 | 35 00RDINA 7 NME 063.0 N 273.6 E 7'19.61" | 520.6' 600 519.6' TES | | 1650 [°] | OPERATO I hereby contained hereir best of my know Signature Joe T. J Printed Name Agent Title 06/04/ Date SURVEYO I hereby certify on this plat we actual surveys supervison, and correct to the MA Date Surveye Signature & Professional. Aure, A O Certificate No | PERATOR CERTIFICATION I hereby certify the the information ined herein is true and complete to the of my knowledge and betief. <u>Autor</u> <u>e T. Janica</u> Ated Name ent <u>b</u> <u>b</u> <u>b</u> <u>b</u> <u>b</u> <u>c</u> <u>c</u> <u>c</u> <u>c</u> <u>c</u> <u>c</u> <u>c</u> <u>c</u> | | | |