



**MONTGOMERY
& ANDREWS**
LAW FIRM

J. SCOTT HALL
Cell: (505) 670-7362
Email: shall@montand.com
www.montand.com

April 7, 2016

HAND-DELIVERY

Mr. William Jones
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

NMOCD Case No. 15481: Application of COG Operating LLC for a Non-Standard Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

NMOCD Case No. 15482: Application of COG Operating LLC for a Non-Standard Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

Gentlemen:

I find it necessary to renew the Motion To Compel filed on March 16, 2016 to have you address COG's failure to comply with the Subpoena Duces Tecum which was served on December 18, 2015. The Motion to Compel was originally made necessary following the denial of COG's Motion to Quash at the February 3, 2016 pre-hearing conference. The parties subsequently exchanged documents on March 22, 2016.

At issue now is COG's failure to provide documents responsive to subpoena item 1 which seeks all internal and external communication and documents relating to the wells that are the subject of this proceeding. This deficiency was raised with COG's counsel by letter of March 29, 2016 (enclosed).

REPLY TO:

325 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

Mr. William Jones
David Brooks, Esq.
April 7, 2016
Page 2

By email response dated March 30, 2019, COG's counsel implies that that production of COG's electronic well information files would suffice. But an email exchange on February 17, 2016 establishes that was not the case.

We respectfully ask for the opportunity to address this matter with you at a brief conference at the Division's offices this week. Copies of all relevant communications and the Motion To Compel are enclosed for your reference.

Thank you for your consideration of this request.

Very truly yours,



J. Scott Hall

JSH:dl

cc (w/encs., via email): Jordan Kessler, Esq., Holland & Hart
Nearburg Exploration Co.
Scotty Holloman, Esq., Maddox, Holloman & Moran PC
David Harper, Esq., Haynes & Boone

ioc: Sharon T. Shaheen

J. Scott Hall

From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Wednesday, March 30, 2016 10:50 AM
To: J. Scott Hall
Cc: Jordan L. Kessler
Subject: NEX/COG (OCD Case No. 15441): Discovery issues
Attachments: 20160329 Discovery Demand Letter to Michael Feldewert and Jordan Kessler....pdf; Case 15441; Nearburg v. Concho; RE: Case No. 15441: Discovery issues; NMOCD Case No. Case 15441 - Discovery issues

Scott: In reference to your attached letter from yesterday afternoon, please recall that at the February 3rd prehearing conference in this matter the Division did not rule on COG's Motion to Quash the NEX's subpoena. Instead, Examiner Brooks instructed the parties to undertake efforts to resolve the discovery issues before bringing COG's Motion to Quash back before the Division for a decision. Examiner Brook's request was reiterated in his March 4th email (second attachment). Pursuant to the Division's instruction, you and I discussed production of COG's well files, which is reflected in your February 17th email (third attachment). These well files were produced to you on March 22nd, as reflected in the fourth attachment.

I therefore find it surprising that you now reference a paragraph from NEX's subpoena to suggests COG's recent document production is "deficient." COG has produced its well files. The fact that these well files contains only a limited amount of emails is not surprising, nor is it an issue that you have previously raised as a concern. Since I am leaving today for my surgery in St. Louis, I will contact you upon my return to discuss this issue.

Michael H. Feldewert
Santa Fe Office
505-988-4421
505-983-6043 (fax)
mfeldewert@hollandhart.com

HOLLAND&HART 

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

From: Diana Luna [<mailto:dluna@montand.com>]
Sent: Tuesday, March 29, 2016 3:39 PM
To: Michael Feldewert; Jordan L. Kessler
Cc: 'ddavis@nearburg.com'; Charles Nearburg; 'david.harper@haynesboone.com'; J. Scott Hall; Sharon T. Shaheen
Subject: NEX/COG: OCD Case No. 15441

Attached is a letter from J. Scott Hall regarding the above matter.

Diana M. Luna
Assistant to J. Scott Hall, Louis W. Rose, Jeffrey J. Wechsler
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307
(505) 986-2685 (direct line)
(505) 982-4289 (fax)
dluna@montand.com



**MONTGOMERY
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March 29, 2016

Michael Feldewert, Esq.
Jordan Kessler, Esq.
Holland & Hart, LLP
Post Office Box 2208
Santa Fe, NM 87504-2208

VIA EMAIL

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

Dear Counsel:

I wish to address with you the sufficiency of COG's document production pursuant to NEX's December 16, 2015 subpoena. The first item in the subpoena provided as follows:

For the Subject Wells, produce the following documents and materials.

1. All internal and external communications and documents relating to the Subject Wells.

In response, COG only included one email chain:

1. **10/2/2014-From: Cathy Seely (COG) To: multiple recipients (not including NEX) Re: SRO State Com #44H Dist & Drlg Program**
2. **10/3/2014-forwarding same email: From: Debora Wilbourn To: Savannah Haller**

Otherwise, COG produced no internal and external email communications. It is not plausible that additional internal and external third-party email communications do not exist.

Please remember that I informed the Hearing Examiners that NEX's Motion to Compel was not being withdrawn, but is being held in abeyance pending our evaluation of the sufficiency

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Michael Feldewert, Esq.
Jordan Kessler, Esq.
March 29, 2016
Page 2

of COG's production of documents. It is now apparent that the production of emails is deficient.
I request that you advise COG to supplement its production as soon as possible.

Very truly yours,



J. Scott Hall

JSH:dl

cc: Nearburg Exploration Company
David Harper, Esq.
ioc: Sharon Shaheen, Esq.

J. Scott Hall

From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Friday, March 04, 2016 3:39 PM
To: Brooks, David K, EMNRD; J. Scott Hall
Cc: Jones, William V, EMNRD; Davidson, Florene, EMNRD; Dawson, Scott, EMNRD; Jordan L. Kessler; Ocean Munds-Dry
Subject: Case 15441; Nearburg v. Concho

David: At the docket call yesterday, this case was moved by agreement of the parties to the April 14th docket as a placeholder so that this case can be consolidated with two pooling cases recently filed by COG. We anticipate a special hearing date will be needed in mid to late April to address the issues. We also hope to have any subpoena issues resolved in advance of April 14th.

From: Brooks, David K, EMNRD [<mailto:DavidK.Brooks@state.nm.us>]
Sent: Friday, March 04, 2016 3:01 PM
To: J. Scott Hall; Michael Feldewert
Cc: Jones, William V, EMNRD; Davidson, Florene, EMNRD; Dawson, Scott, EMNRD
Subject: Case 15441; Nearburg v. Concho

Good Afternoon Gentlemen:

Reference is made to Scott's letter of February 19.

There was talk of an agreed date for a special setting. I remember the suggested date as April 11, though that is a Monday. Monday hearings are unusual, but there is no rule against it. Maybe it was the April 14. It is now parked on the March 17 docket. If there was an agreement for an April date, please advise so the case can be re-set to the agreed date.

If there are going to be discovery issues, please work them out if possible. If that is not possible, please advise me and Will ASAP, so the setting will not have to be deferred.

Thanks in advance for your consideration.

Sincerely

David



**MONTGOMERY
& ANDREWS**
LAW FIRM

J. SCOTT HALL
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Email: shall@montand.com
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February 19, 2016

HAND-DELIVERY

Mr. William Jones
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

Gentlemen:

I raise two matters regarding the referenced Application which is presently set for hearing on March 3, 2016:

Special Hearing Date: At the February 3, 2016 pre-hearing conference, it was discussed that a special hearing date be established. The Applicants propose that the matter be set for a full day hearing on one of the following days: March 22nd, 23rd or 24th.

Subpoenaed Documents and Materials: A Subpoena Duces Tecum issued by the Division was served on COG on December 18, 2015. COG subsequently filed its Motion to Quash Subpoena which was argued and then denied by the Examiners on February 3, 2016. Since that time, COG has been unresponsive to efforts to gain their compliance with its discovery obligations. Applicants accordingly request that the Division direct COG to deliver the Subpoenaed Documents and Materials on or before February 29, 2016.

REPLY TO:

325 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

Mr. William Jones
David Brooks, Esq.
February 19, 2016
Page 2

Thank you for your consideration of these requests.

Very truly yours,



J. Scott Hall

JSH:dI

cc (via email): Michael Feldewert, Esq., Holland & Hart
Nearburg Exploration Co.
Scotty Holloman, Esq., Maddox, Holloman & Moran PC
David Harper, Esq., Haynes & Boone

cc: Sharon T. Shaheen

J. Scott Hall

From: J. Scott Hall <SHall@montand.com>
Sent: Wednesday, February 17, 2016 5:01 PM
To: Michael Feldewert
Subject: RE: Case No. 15441: Discovery issues

It is possible, but we need to have a better understanding of what is contained in them. ✓

From: Michael Feldewert [<mailto:MFeldewert@hollandhart.com>]
Sent: Wednesday, February 17, 2016 4:50 PM
To: J. Scott Hall
Subject: Case No. 15441: Discovery issues

Is it your proposal that the electronic well information files will satisfy the subpoena requests? ✓

From: J. Scott Hall [<mailto:SHall@montand.com>]
Sent: Wednesday, February 17, 2016 4:19 PM
To: Michael Feldewert
Subject: FW: Case No. 15441

Mike,

Last week, we discussed the possibility of COG producing its electronic well information files. What have you found out about that?

Tomorrow, let's plan on discussing (1) COG's plans for producing the subpoenaed materials and (2) a special hearing date.

Thanks.

J. Scott Hall
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From: Jones, William V, EMNRD [<mailto:WilliamV.Jones@state.nm.us>]
Sent: Tuesday, February 09, 2016 9:28 AM
To: J. Scott Hall; 'mfeldewert@hollandhart.com'
Cc: Brooks, David K, EMNRD; Davidson, Florene, EMNRD
Subject: RE: Case No. 15441

Hello Scott and Mike,
Yes, just listed because we didn't want to overshoot the date you may be doing the special docket.
Let Florene and David Brooks know as soon as you and Mike have a date in mind.

David Brooks new email: DavidK.Brooks@State.nm.us

Regards,
Will Jones

From: J. Scott Hall [<mailto:SHall@montand.com>]
Sent: Tuesday, February 09, 2016 9:04 AM
To: Jones, William V, EMNRD; Brooks, David K., EMNRD (david.brooks@state.nm.us)
Cc: 'Mfeldewert@hollandhart.com'
Subject: Case No. 15441

This case is advertised for hearing on the February 18, 2016 docket. I assume it is being listed only provisionally until a special hearing date is set as we discussed at the February 3rd motions hearing. I would appreciate confirmation of that as Nearburg's witness is unavailable on February 13th.
Thanks.

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

RECEIVED OOD
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IN THE MATTER OF THE APPLICATION OF
NEARBURG EXPLORATION COMPANY, L.L.C., SRO2 LLC
AND SRO3 LLC FOR AN ACCOUNTING AND LIMITATION
ON RECOVERY OF WELL COSTS, AND FOR
CANCELLATION OF APPLICATION FOR PERMIT
TO DRILL, EDDY COUNTY, NEW MEXICO

CASE NO. 15441

MOTION TO COMPEL AND FOR SANCTIONS

Nearburg Exploration Company, L.L.C., SRO2 LLC and SRO3 LLC, (together, "Nearburg" or "NEX"), by its undersigned attorneys, Montgomery and Andrews, P.A. move pursuant to NMSA 1978, §70-2-13 (1995) and Rules 19.15.4.16A and 19.15.4.19 NMAC that the Division enter its order (1) compelling COG Operating LLC ("COG") to produce the documents and materials identified in that Subpoena Duces Tecum issued to it by the Division in December of 2015, and (2) imposing sanctions against COG for each day that it does not comply. As grounds for this motion, NEX states:

1. On November 24, 2015, NEX filed its Application in this matter after it was discovered that COG had drilled two two-mile long lateral wells from surface locations in Section 17 onto unconsolidated and unpooled lease acreage owned by NEX in the W/2 of Section 20, Township 26 South, Range 28 East, N.M.P.M., in Eddy County, New Mexico. The wells are the SRO State Com 043H (API 30-015-41141) located in the W/2 W/2 of Sections 17 and 20 ("043H") and the SRO State Com 044H (API 30-015-41142) located in the E/2 W/2 of Sections 17 and 20 ("044H"). Both wells were drilled to and completed in the 2nd Bone Spring Sand, Hay Hollow Bone Spring Pool (30215) in violation of several of the Division's rules.

Neither well was proposed to NEX and COG provided no notification before they were drilled. The 043H and 044H wells were completed on February 25, 2015 and March 4, 2105, respectively. Both wells have continuously produced since then, but COG has never accounted for production from them. The disposition of proceeds from the sale of production from the wells is unknown.

2. On December 16, 2015, the Division issued its Subpoena Duces Tecum which was served on COG's registered agent on December 18, 2015. *See* Subpoena, Exhibit 1. The Subpoena directed COG to produce the documents and materials on January 15, 2016. Instead of obeying the Division's Subpoena, on January 15, 2016 COG filed its Motion To Dismiss Application and Quash Subpoena, claiming lack of relevance. COG stated no other objection to the Subpoena and no privilege was asserted. NEX filed a specific Response to the Motion To Quash on January 19, 2016. The matter was argued at a pre-hearing conference on February 3, 2016 and COG's Motion To Quash was denied. But COG has produced no documents or materials to date.

3. Counsel for NEX has made good faith efforts to obtain COG's cooperation with its discovery obligations. It was learned independently that COG maintains electronic Well Information Files and that such files likely contain all the documents and materials identified in the Subpoena. These circumstances suggest that the identification, review and production of responsive documents could be accomplished on an expedited basis. By telephone conversation on February 12, 2016, counsel for COG was asked to investigate the possibility of producing the electronic files. The matter was subsequently discussed via email communications, but nothing further was learned. *See* Email of February 17, 2016, Exhibit 2.

4. By letter of February 19, 2016, the matter of COG's non-compliance with the Subpoena was raised with the Division. NEX sought to have the subpoenaed materials delivered by February 29, 2016. COG never responded. See February 19, 2016 Letter, Exhibit 3.

5. On February 26, 2016, COG filed two Applications for Compulsory Pooling seeking to force pool Nearburg's lease acreage in Section 20 which COG now admits had not been consolidated in the project areas for the 043H and 044H wells. COG requested that those cases be scheduled for Examiner hearing on April 14, 2016 (Case Nos. 15481 and 15482). COG also obtained its own subpoena from the Division, seeking the production of documents on March 11, 2016. By telephone call on March 1, 2016, COG's counsel was advised that the undersigned was authorized to accept service of the COG Applications and subpoena. The matter of the non-delivery of the COG documents was again raised and it was represented that the documents were still being reviewed.

6. By letter of March 9, 2016, COG's counsel was informed that NEX was prepared to produce documents responsive to COG's subpoena, but would not do so before COG honored the Subpoena served on it. See March 9, 2016 Letter, Exhibit 4. Again, COG made no reply.

Since COG's discovery obligation first accrued and became violated on January 15, 2016, it has become clear that COG intends to defend its conduct described in NEX's Application by willful obstruction and delay. The Division has a vital interest in maintaining the integrity of its rules and processes and must take vigorous action to ensure that its subpoenas are obeyed.

The Division's subpoena powers are set forth at NMSA 1978 §70-2-8 (1995). Those subpoena powers are supported by various components of The Oil and Gas Act and give the Division considerable authority and discretion to act. See NMSA 1978 §70-2-6 (establishing that the Division has broad power to "enforce effectively" the provisions of the act); and

NMSA 1978 §70-2-11 (providing that the Division may do "whatever may be reasonably necessary" to carry out the purposes of the act, whether or not specified by another section of the act). The Division's hearing examiners are similarly empowered. See Rule 19.15.4.9 NMAC (providing that examiners have the power "to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct"). The importance of the Division's discovery supervisory responsibilities is underscored by NMSA 1978 §70-2-9 (authorizing the Director or his authorized representative to secure the production of documents from a disobedient party through an attachment proceeding in district court, including punishment for contempt). Additionally, the extensive, non-exclusive sanctions that may be imposed on operators where the Division is a party to a compliance proceeding are enumerated in Rule 19.15.5.10B(1)-(7) NMAC.

As noted above, COG has been aware of the Subpoena since December 18, 2015 and in disobedience of it since January 15, 2016. Only thirty days remain before a consolidated hearing on the merits on NEX's Application and COG's two compulsory pooling applications. Each day that COG has withheld its documents has resulted in prejudice to NEX and to its ability to prepare for hearing. Each day that COG prolongs this dispute results in a further violation of NEX's correlative rights, warranting sanctions against COG for each day that it does not comply.

WHEREFORE, NEX requests that the Division enter its order (1) compelling COG to immediately produce the documents and materials described in the Subpoena, and (2) directing the Division to withhold action on any Application or other request for regulatory approval, either discretionary or ministerial, that may be submitted by COG until COG complies with the Division's order.

Respectfully submitted,

T. Scott Hall

J. Scott Hall
Sharon T. Shaheen
shall@montand.com
sshhaheen@montand.com
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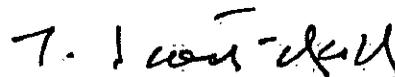
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Pro Hac
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Telephone: (214) 651-5000
Facsimile: (214) 651-5940

**ATTORNEYS FOR NEARBURG
EXPLORATION COMPANY, L.L.C.,
SRO2 LLC and SRO3 LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on March 16, 2016:

Michael H. Feldewert
Jordan L. Kessler
Holland & Hart, LLP
Post Office Box 2208
Santa Fe, NM 87504-2208
mfeldewert@hollandhart.com
jlkessler@hollandhart.com



J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF
NEARBURG EXPLORATION COMPANY, SRO2
LLC AND SRO3 LLC FOR AN ACCOUNTING AND
LIMITATION ON RECOVERY OF WELL COSTS,
AND FOR CANCELLATION OF APPLICATION
FOR PERMIT TO DRILL, EDDY COUNTY,
NEW MEXICO

CASE NO. (Pending)

SUBPOENA DUCES TECUM

TO: COG Operating LLC
c/o CT Corporation
1012 Marquez Place, Ste. 106 B
Santa Fe, NM 87504

Pursuant to Section 70-2-8, NMSA (1978), and 19.15.4.16 NMAC of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., January 15, 2016 at the offices of the Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 and to produce and make available to Nearburg Exploration Company, L.L.C. and their attorneys, J. Scott Hall, Esq. and Sharon T. Shaheen, Esq. for copying, the documents and items specified in Exhibit "A", attached.

This subpoena is issued on application of Nearburg Exploration Company L.L.C. through its attorneys Montgomery and Andrews, P.A., P.O. Box 2307 Santa Fe, New Mexico 87504.

Dated this 16th day of December, 2015.

NEW MEXICO OIL CONSERVATION DIVISION

By:



David Catanach, Director

EXHIBIT 1

EXHIBIT 'A'

**TO SUBPOENA DUCES TECUM
TO COG OPERATING LLC**

"Document" refers to any form of data compilation whether produced, reproduced or stored on paper, cards, tapes, disks, belts, charts, films, computer storage devices or any other medium, and shall include, but not be limited to, any letter, note, email, memorandum, article, book, published material, report, study, statement, speech, notebook, application, calendar, working paper, manual, brochure, analysis, telegram, transcript, summary, diary, agreement, contract, log, appointment book, graph, drawing, chart, financial statement, bank statement, bank check, deposit slip, receipt, invoice, bookkeeping entry, photograph, photostat, microfilm, x-ray film, sound recording, motion picture, videotape or any other type of mechanical, electronic or magnetic impulse recording, and shall also include but not be limited to any draft or copy (with or without notes of changes thereon) of a writing or document.

The "Subject Wells" means the SRO State Com 043H (API 30-015-41141) located in the W/2 W/2 of Sections 17 and 20 ("043H") and the SRO State Com 044H (API 30-015-41142) located in the E/2 W/2 of Sections 17 and 20 ("044H"), Township 26 South, Range 28 East, N.M.P.M. in Eddy County, New Mexico.

For the Subject Wells, produce the following documents and materials.

1. All internal and external communications and documents relating to the Subject Wells.
2. All well proposals, AFE's, Lease Operating Statements and Joint Interest Billings.
3. All title reports, title opinions and related materials for the Subject Wells.
4. All Division Orders, revenue decks, and other documents relating to the disposition of production proceeds from the Subject Wells.
5. The well file and all geologic, production, pressure and engineering data for the Subject Wells and the SRO State Well No. 16H located in the W/2 W/2 of Section 20, Township 26 South, Range 28 East, N.M.P.M. in Eddy County (API No. 30-015-38071).
6. All documents reviewed in connection with the completion and filing of the Forms C-101 Applications for Permits to Drill, Forms C-102 Well Location and Acreage Dedication Plats and Forms C-104 Request for Allowable and Authorization to Transport for the Subject Wells and the SRO State Com Well No. 69H (API 30-015-43093) permitted for the W/2 W/2 of Section 17 and 20, T-26-S, R-28-E.

These subpoena items are ongoing and you have the obligation to supplement the production of documents and materials responsive hereto as new documents and materials become available.