

MILLER, STRATVERT & TORGERSON, P.A.

LAW OFFICES

FILED FOR REGISTRATION IN NM
CO JUL -6 PM 1:44
ALBUQUERQUE, NM

RANNE B. MILLER
ALAN C. TORGERSON
ALICE T. LORENZ
GREGORY W. CHASE
LYMAN G. SANDY
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
ROBERT C. GUTIERREZ
SETH V. BINGHAM
JAMES B. COLLINS
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
J. SCOTT HALL
THOMAS R. MACK
TERRI L. SAUER
JOEL T. NEWTON

THOMAS M. DOMME
RUTH O. PREGENZER
JEFFREY E. JONES
MANUEL I. ARRIETA
ROBIN A. GOBLE
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH FUESS
KYLE M. FINCH
H. BROOK LASKEY
KATHERINE W. HALL
FRED SCHILLER
PAULA G. MAYNES
MICHAEL C. ROSS
CARLA PRANDO
KATHERINE N. BLACKETT
JENNIFER L. STONE
ANDREW M. SANCHEZ
M. DYLAN O'REILLY
AMINA QUARGNALI-LINSLEY
BEATE BOUDRO

COUNSEL

PAUL W. ROBINSON
ROSS B. PERKAL
JAMES J. WIDLAND
BRADLEY D. TEPPER
GARY RISLEY

OF COUNSEL

WILLIAM K. STRATVERT
RALPH WM. RICHARDS

500 MARQUETTE N.W., SUITE 1100
POST OFFICE BOX 25687
ALBUQUERQUE, NM 87125-0687
TELEPHONE: (505) 842-1950
(800) 424-7585
FACSIMILE: (505) 243-4408

FARMINGTON, NM

300 WEST ARRINGTON, SUITE 300
POST OFFICE BOX 869
FARMINGTON, NM 87499-0869
TELEPHONE: (505) 326-4521
FACSIMILE: (505) 325-5474

SANTA FE, NM

150 WASHINGTON AVE., SUITE 300
POST OFFICE BOX 1986
SANTA FE, NM 87504-1986
TELEPHONE: (505) 989-9614
FACSIMILE: (505) 989-9857

LAS CRUCES, NM

500 S. MAIN ST., SUITE 800
POST OFFICE BOX 1209
LAS CRUCES, NM 88004-1209
TELEPHONE: (505) 523-2481
FACSIMILE: (505) 526-2215

PLEASE REPLY TO SANTA FE

July 6, 2000

Mark Ashley
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Paul Owen
Campbell, Carr, Berge & Sheridan, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

W. Thomas Kellahin
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501


Lyn Hebert
New Mexico Oil Conservation Commission
2040 S. Pacheco
Santa Fe, New Mexico 87501

Re: Application of Nearburg Exploration Company, L.L.C. for Compulsory
Pooling, Eddy County, New Mexico, Case No. 12,427

Dear Counsel:

Enclosed is Nearburg's Response to Motion to Dismiss.

Sincerely,


Amanda Olsen, CLA
Paralegal

:ao

Enclosures: as stated

cc: William Carr (with enclosure)

2742/24940/letters/counsel ltr.doc

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

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

CASE No. 12427

NEARBURG'S RESPONSE TO MOTION TO DISMISS

Nearburg Exploration Company, LLC, ("Nearburg"), through its counsel, Miller, Stratvert & Torgerson, P.A. (J. Scott Hall), hereby responds to the Motion To Dismiss filed on behalf of Phillips Petroleum Company.

Phillips's motion should be denied for two separate, but equally compelling reasons: (1) the factual premises of the motion are incorrect; and (2) the motion is in direct contravention of the express language of the compulsory pooling statutes.

Point I

The Phillips motion gets off to an auspicious start when it correctly points out that it has been the Division's longstanding interpretation of NMSA 1978 Section 70-2-17(C) of the New Mexico Oil and Gas Act that an applicant is first required to make a good faith effort to obtain the voluntary commitment of interests in a spacing unit before seeking their compulsory pooling. From there, the motion goes off the track when it represents, in effect, that Nearburg made no effort to obtain the commitment of Phillips's interests prior to June 7, 2000 when the location for the Pathfinder 18 well was revised. In this regard, the Phillips recountal is both incorrect and incomplete.

OIL CONSERVATION DIV.
00 JUL -6 PM 1:41

Nearburg has had plans to drill its Pathfinder 18 State Com. No. 1 well in the E/2 of Section 18, T-18-S, R-28-E for months. Conversely, Phillips offers zero evidence of any efforts it has made to explore the same acreage.

For Phillips, the time from which good faith efforts to obtain a consolidation of interests is marked from the date when the location for the Pathfinder 18 was revised. In fact, Nearburg began its efforts to consolidate the interest in the E/2 of Section 18 as far back as February 15, 2000, nearly five (5) months ago. (Affidavit of Mark Wheeler, Exhibit "A", attached.) Nearburg followed-up that initial effort with additional requests for Phillips's participation on April 12th and again on June 7th. (*Id.*, at para. 5 and 6). To date, Phillips has yet to commit its interests in the subject proration unit.

While it is true that the location for the Pathfinder 18 was revised, Phillips is wrong when it purports to say that there was no timely, good faith effort to obtain the voluntary commitment of interests for the subject acreage. In this regard, as is discuss further in Point II, below, Phillips has misapplied the law to the facts.

Point II

In its motion, Phillips argues that the clock is to be re-set back to zero every time a new well location is contemplated. In essence, Phillips says we are to ignore all the previous efforts to obtain the voluntary commitment of interests where there is a location change. It is a hyper-technical and unworkable interpretation that is directly at odds with the express language of the compulsory pooling statutes.

In making its argument, Phillips indulges in unbridled statutory revisionism. Phillips says:

“NMSA 1978 Section 70-2-17.C is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agree to voluntarily pool their interests in a spacing unit **for a specifically proposed well on that unit.**” (Motion to Dismiss, Pg. 2, 3.)

Phillips is reading language into the statute **that does not exist**. As a consequence, Phillips completely distorts the operation of the pooling statutes that was intended by the Legislature and has been customarily applied by the Division.

The express language of both NMSA 1978 Sections 70-2-17(C) and 70-2-18 is quite clear: The obligation to make a good faith effort to obtain the “voluntary agreement” pooling separately owned interests derives from Section 70-2-18(A). Thereafter, the statute, at subsection (B) contemplates that the Division issues an order “pooling the lands **dedicated to the spacing or proration unit...**”. This agency’s authority to do so is then found under Section 70-2-17(C) where “...[the Division] shall pool all or any part of such lands or interests or both in the spacing or proration unit **as a unit.**” (*Id.*, emphasis added.)

Nowhere does the language of the two pooling statutes limit their application to a “specifically proposed well” at a restricted location within the spacing unit. Rather, pooling proceedings effect the consolidation of interests unit-wide. It is a common-sense reading of the statute that an operator would be required to obtain the voluntary commitment of interests in any event, regardless of where the well may be located within the unit. Such a reading and application is consistent with the idea that the Division would consider an applicant’s “good

faith” efforts to obtain the commitment interests unit-wide, and not on just a location-by-location basis. To construe the pooling statutes as Phillips does would place an impractical and unworkable burden on operators seeking the consolidation of interests and would undoubtedly frustrate the Legislature’s intent. Each time a well is moved, the process would begin anew: it is a needless requirement. Such a construction necessarily invites delay and, in some cases, would prevent the timely drilling of wells altogether.


The Division should not be required to disregard previous good-faith efforts to obtain the voluntary commitment of interests because of a change in location. When properly applied to the undisputed facts, the compulsory pooling statutes require that Phillips’s motion be dismissed.

Phillips should not be rewarded for its inaction and obstructionism. Instead, the Division should take into consideration that but for the willingness and initiative of Nearburg, this Morrow acreage would likely remain unexplored and undeveloped.

WHEREFORE, Nearburg Exploration Company, LLC requests that Phillips Petroleum Company’s Motion To Dismiss be denied.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By 
J. Scott Hall
Post Office Box 1986
Santa Fe, New Mexico 87504
(505) 989-9614

ATTORNEYS FOR NEARBURG EXPLORATION


Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was forwarded to counsel of record on the 6 day of July, 2000, as follows:

W. Thomas Kellahin
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501

Lyn Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Paul Owen
Campbell, Carr, Berge & Sheridan, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208



J. Scott Hall

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

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

CASE No. 12427

AFFIDAVIT OF MARK WHEELER

MARK WHEELER, being duly sworn, states:

1. I am the age of majority and am otherwise competent to testify to the matters set forth herein.
2. I am the Senior Landman for Nearburg Exploration Company, L.L.C., ("Nearburg"), and am familiar with the lands that are the subject of the application for compulsory pooling brought by Nearburg. By virtue of my education background and work experience, I am also familiar with the New Mexico compulsory pooling procedures.
3. Nearburg owns certain working interests in the E/2 of Section 18, T-18-S, R-28-E, NMPM, Eddy County, New Mexico. Nearburg plans to drill the Pathfinder 18 State Com. No. 1 well in the E/2 of said Section 18.
4. On February 15, 2000, Nearburg offered to purchase a term assignment from Phillips Petroleum Company ("Phillips") on Phillips' leasehold interests in Section 18, T-18-S, R-28-E, NMPM, Eddy County, New Mexico.
5. On April 12, 2000, Nearburg proposed its well to Phillips, among others, and sought their voluntary participation in the well and again reiterated its interest in acquiring a term assignment from Phillips, if Phillips did not desire to participate in the well. Nearburg was unable to obtain the voluntary participation of one-hundred percent of the working interest owners and subsequently filed its Application for Compulsory Pooling with the Division on May 19, 2000. (Application of Nearburg Exploration, Company, LLC For Compulsory Pooling, Eddy County, New Mexico; NMOCD Case No. 12427.)
6. On June 7, 2000, Nearburg forwarded a new AFE to Phillips, among others and sought their voluntary participation at the revised location for said well.



AFFIDAVIT OF MARK WHEELER

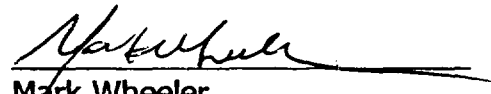
Page -2-

Again, Nearburg offered to acquire a term assignment or farmout on reasonable terms if Phillips, et al did not desire to participate in the new location.

7. On June 20, 2000, Nearburg filed an Amended Application for Compulsory Pooling with the Division, for its revised location.

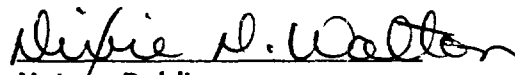
8. On June 27, 2000, Nearburg received by fax a copy of the Motion to Dismiss filed by Phillips Petroleum Company, claiming that Nearburg had not made a good faith effort to reach voluntary agreement.

Further more affiant sayeth not.


Mark Wheeler

STATE OF TEXAS)
)SS.
COUNTY OF MIDLAND)

Subscribed, sworn to and acknowledged before me on this 28th day of June, 2000, by Mark Wheeler.


Notary Public

My commission expires:

5-25-2004

