

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

**APPLICATION OF ALPHA ENERGY
PARTNERS, LLC FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO**

Case No. 22172

**ALPHA ENERGY PARTNERS, LLC'S RESPONSE
TO REALEZA DEL SPEAR'S BRIEF**

In accordance with the New Mexico Oil Conservation Division's ("Division") October 25, 2021 Scheduling Order, Alpha Energy Partners, LLC ("Alpha") states the following in response to Realeza Del Spear, LP's ("Realeza") brief.

INTRODUCTION

Alpha's application seeks to pool uncommitted mineral interests in the S/2 of Sections 19 and 20, Township 22 South, Range 27 East. Realeza holds a 3.125% unleased mineral interest in Alpha's proposed spacing unit and asks the Division to deny Alpha's application based on the parties' negotiations. According to Realeza's brief, Alpha began negotiating with Realeza over six months ago and the parties have exchanged multiple offers. Despite these facts, Realeza argues that Alpha's application should be denied due to a lack of good faith negotiation. Realeza also argues that granting Alpha's application would result in an unconstitutional taking of private property for public use without just compensation. Realeza's arguments have no merit and should be rejected. Moreover, Realeza's allegations establish that Alpha has, in fact, negotiated in good faith and that its application should be granted.

ARGUMENT

I. There is no support for Realeza's argument that Alpha's application, if granted, would constitute an unconstitutional taking.

In opposition to Alpha's application, Realeza offers the unsupported argument that compulsory pooling in this case would constitute an unconstitutional taking of private property for public use without just compensation. Realeza's argument is inconsistent with the facts and the law.

The takings clauses of the United States and New Mexico Constitutions only preclude the government from taking private property for a public use without just compensation. *See* U.S. CONST. Amend. V; *See also* N.M. Const. art. II, § 20. Neither provision applies to transactions between private parties for private purposes. And of course, no governmental agency proposes to "take" Realeza's property for any purpose, much less a public purpose. Realeza fails to cite a single case that supports its position that compulsory pooling constitutes a "taking." There is simply no support for Realeza's argument.

Further, the New Mexico Oil and Gas Act specifically authorizes compulsory pooling to prevent waste and protect correlative rights. *See* NMSA 1978 Section 70-2-11(A). Thus, Alpha's application seeks a result that has been expressly permitted by New Mexico law since 1935. Realeza's apparent attempt to challenge the framework established by the Oil and Gas Act is unfounded and should be rejected.

Finally, Realeza's reliance on eminent domain case law is misplaced. Eminent domain proceedings are governed by statutes that apply to governmental action and have no bearing here. *See* NMSA 1978 Section 42-2-1 to 42-2-16. And again, Realeza fails to cite a single case to support its argument that eminent domain standards apply to compulsory pooling cases. Realeza's

argument that Alpha's application seeks an unconstitutional taking has no factual or legal support and should be rejected.

II. Alpha has satisfied its obligation to negotiate in good faith prior to pooling, and its application should be granted.

Realeza generally argues that Alpha has not satisfied its obligations to negotiate in good faith under NMSA 1978 Section 70-2-17(C) because Alpha did not continuously attempt to reach voluntary agreement with Realeza before filing its compulsory pooling application. Realeza also claims that Alpha made below market lease offers. These arguments lack merit and should be rejected.

In fact, Realeza's allegations establish that Alpha satisfied its obligation to negotiate with Realeza in good faith under Section 70-2-17(C) of the Oil and Gas Act. Alpha's compulsory pooling application filed with the Division on August 8, 2021 states: (1) Alpha is a working interest owner within the unit; (2) it has the right to drill wells thereon; and (3) it has undertaken diligent, good-faith efforts to obtain voluntary agreements from all mineral interest owners to participate in the drilling of its proposed wells but has been unable to obtain voluntary agreements from all of the mineral interest owners.

Realeza's Brief demonstrates that: (1) Alpha began good faith negotiations with Realeza over six months ago when it submitted well proposals in April 2021; and (2) Alpha has continued to negotiate with Realeza in an attempt to reach a voluntary agreement. Although Realeza claims that Alpha has not negotiated in good faith because Alpha's proposed lease terms were not in-line with Realeza's expectations, Realeza's allegations demonstrate that Alpha has negotiated in good faith and that Realeza's expectations have been unreasonable. For example, Realeza claims that Alpha should have offered a 25% royalty, when New Mexico law would only afford Realeza a 1/8 royalty. *See* NMSA 1978, § 70-2-17(C). Contrary to Realeza's request, Realeza's unrealistic

expectations pertaining to the terms and conditions of a voluntary agreement should not preclude Alpha from developing its acreage. Realeza's position would result in waste and violate Alpha's correlative rights in violation of the Oil and Gas Act. *See* NMSA 1978 Section 70-2-11(A).

Additionally, Realeza invites the Division to review specific, private negotiations between the parties to determine what terms and conditions are reasonable. The Division should decline Realeza's invitation, as Realeza's request would embroil the division in numerous private disputes over the reasonableness of specific offers and responses.

Furthermore, the Division considers whether an applicant has complied with its obligation to conduct good faith negotiations at a compulsory pooling hearing upon a full evidentiary record rather than upon a preliminary pleading.¹ Although Realeza's allegations establish that Alpha negotiated in good faith prior to pooling, to the extent the Division considers Realeza's allegations, they should be addressed at hearing.

CONCLUSION

For the foregoing reasons, Realeza's arguments should be rejected and Alpha's application in Case No. 22172 should proceed by affidavit since Realeza cannot prevail on the merits. In the alternative, this matter should be set for an evidentiary hearing.

¹ *See* Order No. R-13165: "The issue of compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2021, I caused a true and correct copy of the foregoing pleading to be electronically served on the following:

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