

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

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)

December 15, 1998

HAND DELIVERED

Ms. Lori Wrotenbery, Chair
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

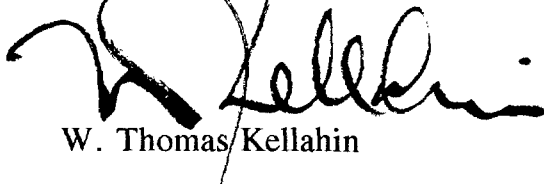
90 DEC 16 PM 12:40
OIL CONSERVATION DIV.

Re: **Motion to Quash Subpoena**
NMOCD Case 12073 (DeNovo)
Application of Nearburg Exploration Company, L.L.C.
for compulsory pooling, and an unorthodox surface and
subsurface drilling/producing window. Eddy County, New Mexico

Dear Ms. Wrotenbery:

On behalf of Nearburg Exploration Company L.L.C. ("Nearburg"), yesterday I received Yates Petroleum Corporation's ("Yates") subpoena requiring Nearburg to produce data at 9:00 Am on Thursday, December 17, 1998. I have enclosed Nearburg's objection to Yates' subpoena for your consideration.

Very truly yours,



W. Thomas Kellahin

cc: Lyn Hebert, Esq.
Oil Conservation Commission
William F. Carr, Esq.
Attorney for Yates Petroleum Corporation
David R. Catanach,
Division Hearing Examiner
Nearburg Exploration Company, L.L.C.
Attn: Bob Shelton

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

IN THE MATTER OF THE APPLICATION OF
NEARBURG EXPLORATION COMPANY, L.L.C.
FOR COMPULSORY POOLING, AN UNORTHODOX
SURFACE LOCATION AND SUBSURFACE DRILLING
WINDOW, EDDY COUNTY, NEW MEXICO.

CASE NO. 12073 (DeNovo)

**NEARBURG EXPLORATION COMPANY, L.L.C.'S
MOTION TO QUASH
YATES PETROLEUM CORPORATION'S
SUBPOENA**

99 DEC 16 PM 12:40
OIL CONSERVATION DIV

Comes now Nearburg Exploration Company, L.L.C. ("Nearburg"), by its attorneys, Kellahin & Kellahin, hereby moves the Division to Quash a Subpoena and a Subpoena Duces Tecum issued by the Division on December 14, 1998 at the request of William F. Carr, attorney for Yates Petroleum Corporation ("Yates") in Case 12073 (DeNovo) which Subpoena commands Nearburg to appear at 9:00 AM, Thursday, December 17, 1998 before the Division and to produce documents set forth in the Subpoena Duces Tecum. As grounds for its Motion to Quash this subpoena, Nearburg states the following:

BACKGROUND

Nearburg applied to the Division and obtained a compulsory pooling order pooling the interests of the following non-participating parties:

(a) Yates:	7.03125 %
(b) ABO:	4.68750 %
(c) MYCO:	4.68750 %
(d) SP Yates:	7.03125 %
(e) John Yates	1.17188 %
(f) Peggy A. Yates estate	1.17187 %
(g) Sharbro Oil Ltd	2.34375 %

On September 1, 1998, Nearburg proposed to Yates and the other working interest owners its Eagle Creek "11' Well No. as a Morrow well to be dedicated to be directionally drilled to an unorthodox subsurface drilling/producing window located within the SE/4 of a proposed spacing unit to consists of the E/2 of Section 11, T17S, R25E, Eddy County, New Mexico. After waiting for 6 weeks for these parties to respond, Nearburg filed its compulsory pooling application on October 13, 1998 for a hearing to be held on November 5, 1998.

On Tuesday, November 3, 1998, Yates advised that it did not want to participate in this risky well, but only wanted to farmout the pooled interests by delivering a 75% net revenue interest and retaining an overriding royalty being the difference between existing burdens and 25% of which 5% would be convertible to a one-third back in after payout. On November 3, 1998, Yates waived any objection to Nearburg's unorthodox well location.

On November 5, 1998 the case was heard by Examiner Catanach. At the hearing, only Yates entered an appearance but did not present any evidence or objection to the entry of the compulsory pooling order. At that hearing, Yates failed to ask any questions

and failed to ask for any more data. At that hearing Yates received a copy of Nearburg's geologic presentation and heard Nearburg's geologic witness.

Subsequent to the hearing, Nearburg replied to Yates' demand and offered to acquire a 78% net revenue interest with Yates retaining a non-convertible overriding royalty equal to the difference between existing burdens and 22% with Yates having the option at payout to acquire a one-third working interest. Yates has refused to accept this offer and all good faith efforts by Nearburg to reach a voluntarily agreement with Yates have failed.

On November 19, 1998, Yates wrote the Division asking that the Division delay the entry of a compulsory pooling order for a 30-day period. On November 20, 1998, Nearburg informed the Division that it had exhausted all reasonable efforts to reach a voluntary agreement with Yates and advised that Nearburg was opposed to any delay in issuance of the order.

On November 23, 1998, the Division entered Order R-11089 approving Nearburg's application. On November 23, 1998, Yates filed for a DeNovo hearing which was set for hearing before the Commission on December 18, 1998. On November 29, 1998, Yates refused to allow Nearburg to use the surface location originally approved by the Division unless Nearburg acquiesced to Yates' demand that Nearburg accept Yates' farmout terms. On November 30, 1998, Nearburg advised the working interest owners that it was moving the surface location because Yates' has refused to allow Nearburg to use the surface location originally approved by the Division.

On Friday, December 11, 1998, Nearburg filed its prehearing statement in accordance with Division procedures. Yates failed to timely file a prehearing statement and had not done so by 11:30 AM on Monday, December 14, 1998.

On December 14, 1998, just three and one half days before the Commission hearing, Yates filed its request for a continuance of this case arguing that it now needs data from Nearburg's data and time to evaluate that data prior to a hearing. Nearburg's leases in this proposed spacing unit begin to expire in May, 1999.

ARGUMENT

In support of this subpoena, Yates, among other things, contended that Nearburg must surrender certain of its data to Yates before Yates can be ready for hearing. Yates wants data on four topics: (a) technical data from Nearburg's Eagle Creek "14" Well located to the south of the proposed spacing unit for the Eagle Creek "11" Well which is the subject of this case; (b) data concerning surface use in the SE/4 of Section 11, including the limitations on use imposed by the F.A.A., Nearburg's selection of a surface location and costs associated with acquisition; (c) documents concerning Nearburg's efforts to obtain a voluntary agreement with Yates and others in this spacing unit; and (d) exhibits that Nearburg will introduce at hearing.

ISSUES RELEVANT TO THIS COMPULSORY POOLING CASE

The only relevant issues before the Commission in this compulsory pooling case are: (i) have the parties failed to reach a voluntary agreement after a reasonable period of time and reasonable effort; (ii) what is the appropriate risk factor penalty and (iii) that Yates' actions required Nearburg to change the approved surface location for this well.

All other issues which are sometimes relevant in other pooling cases are not applicable here. For example: (1) interest ownership in spacing unit; (2) geologic data if Yates had proposed a well at a different location; (3) information concerning the date of well proposals if Yates had a competing pooling case; (4) overhead rates for supervision; and (5) significant differences in AFE if Yates had a competing pooling case;

**EVIDENCE RELEVANT TO THE THREE REMAINING ISSUES
HAS ALREADY BEEN PROVIDED BY NEARBURG TO YATES**

The evidence relevant to the three remaining issues in this case has already been provided to Yates: (i) Yates has in its own possession and control, communications with Nearburg which demonstrate Nearburg's willingness to negotiate a voluntary agreement with Yates and the failure of that effort; (ii) Yates received at the Examiner's hearing Nearburg's geologic data which demonstrates that this well is very risky and deserves the maximum penalty and (iii) Yates also received at that same hearing Nearburg's exhibits and its explanation of the surface limitations imposed by the FAA for drilling in close proximity to the Artesia airport runway.

Amazingly, Yates is seeking production from Nearburg of documents relating to the Eagle Creek "14" Well No. 1 which are the same documents Nearburg has already provided to Yates in accordance with a farmout agreement dated May 27, 1998. See **Exhibit 1**. The request for this data is burdensome and oppressive. Nearburg should not be required to again provide Yates with data on this well. Yates can go search their own records.

Yates also asks for documentation of Nearburg's efforts to obtain a voluntary agreement, its efforts to obtain a surface location and for Nearburg's hearing exhibits. Yates needs to be reminded that it received this information at the November 5, 1998 Examiner's Hearing. One can only assume Yates' subpoena of data it already has is nothing more than harassment or an effort to obtain a continuance of this case.

**YATES SEEKS DOCUMENTS
AVAILABLE IN PUBLIC RECORDS**

Yates wants data which is currently available to it in the public record. Yates is asking Nearburg to prepare Yates' case and to do Yates' research. All relevant data has already been provided to Yates or is available either in public records or in the Yates' possession. If Yates wants to explore the F.A.A. records concerning the use of the surface in the SE/4 of this section then they should go do that but they should not expect Nearburg to do it for them.

AUTHORITY FOR EXPENDITURE
"AFEs"

The Division's compulsory pooling orders provide a procedure for determination of the reasonableness of the actual costs of the well.

If Yates is concerned that its actions in denying Nearburg use of the surface in Section 14 which have increased the costs of this well, then it has prematurely raised this issue. The Division's pooling orders provide an opportunity "after the well is drilled and completed" for any pooled party to request a reasonable well cost determination hearing. That determination is not made from searching Nearburg's files but rather by Yates going out into the industry, obtaining its own estimates, quotes and preparing its own estimates of reasonable well costs.

YATES IS SEEKING DATA WHICH IS NOT RELEVANT

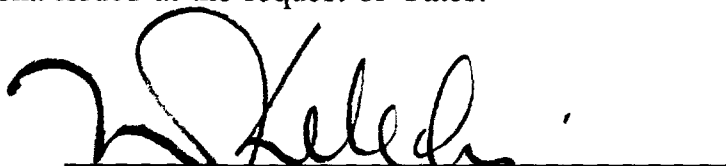
Yates is seeking the production of Nearburg's data concerning the use of the surface in SE/4 of Section 11. If Yates' doubts Nearburg's sworn testimony before the Division Examiner that a directional wellbore is required because the surface location for a vertical well will be too close to a runway for the Artesia airport, then Yates should have made its own well proposal. If has not done so and by that failure has waived the right to contest a directional wellbore. Any evidence on what Nearburg had to do is irrelevant. The only relevant issue is the fact that Yates' refusal to allow Nearburg to use the surface location in Section 14 caused Nearburg to spend additional money for another

surface location. The money has been spent and it is not now reasonable to expect Nearburg to return to the original surface location even if Yates' decides to change its mind. It is much too late for that.

CONCLUSION

This is a plain vanilla compulsory pooling case in which Yates is seeking to unnecessarily obtain data so that either (i) they can give themselves a competitive advantage in other tracts in which they own interest by delaying this hearing so that Nearburg will be exposed to loosing expiring leases; or (ii) just to be obstreperous because Nearburg would not concede to the terms of Yates demanded for a farmout of its interest.

WHEREFORE Nearburg Exploration Company, L.L.C. requests that the Commission quash the subpoena issued at the request of Yates.

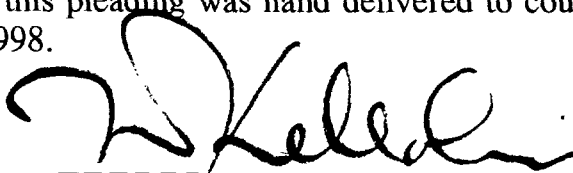


W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87505

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was hand delivered to counsel for applicant this 17th day of December, 1998.

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W. Thomas Kellahin