

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

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

**CASE NO. 22172**

**PRE-HEARING STATEMENT  
OF REALEZA DEL SPEAR, LP**

Respondent Realeza Del Spear, LP (“Realeza”), by and through its undersigned attorneys, submits this pre-hearing statement as required by the rules of the Oil Conservation Division.

**STATEMENT OF THE CASE**

Alpha Energy Partners, LLC (“Alpha”) has brought this action to compulsory pool all uncommitted interests in the Wolfcamp formation underlying a standard 640-acre, more less, horizontal spacing unit comprised of the S/2 of Sections 19 and 20, Township 22 South, Range 27 East, NMPM, Lea County, New Mexico (the “HSU”). Respondent, Realeza Del Spear, LP is an affected interest owner of unleased mineral interests in the Wolfcamp formation in the HSU. In this instance, Alpha’s Application for compulsory pooling should be denied, as it has not made a good faith effort to secure the voluntary unitization of Realeza’s interest in the HSU as required by New Mexico law.

As the Applicant in this case, Alpha has the burden of proving that it has fulfilled each of the statutory and regulatory requirements necessary to allow compulsory pooling. These requirements stem from the foundational principles of correlative rights and constitutionally protected private property rights. Section 70-2-17 NMSA states that:

All orders effecting [compulsory] pooling... shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just fair share of the oil or gas, or both.

When seeking to pool two or more separately owned tracts, Operators have the “obligation” to attempt to obtain voluntary agreements pooling the lands. *See* NMSA 1978 Section 70-2-18. Additionally, prior to the issuance of a unitization order, applicants must show that the “operator has made a good a good faith effort to secure voluntary unitization within the pool.” In this matter, Alpha has the burden of proof of showing that their offers to lease Realeza’s mineral interest were made in good faith. In its filings with the OCD in this case, Alpha has proffered no evidence whatsoever that its offer to Realeza was made in good faith.

In this case, Applicant, Alpha, has not made a good faith effort to lease Realeza’s unleased mineral interest in the HSU. It is self-evident that the requirement of a “good faith effort to lease” encompasses, at a minimum, making an offer that is roughly in line with fair market value in the area at the time of the offer and not less than what would compensate an owner if it were to “recover or receive without unnecessary expense” an owner’s fair share of oil or gas, or both. The U.S. Constitution guarantees that “private property [shall not] be taken for public use without *just compensation*.” U.S. CONST. amend. V. In cases regarding the state’s eminent domain power, which is analogous in many respects to the compulsory pooling mechanism, the U.S. Supreme Court has held that the U.S. Constitution requires that a condemned owner be compensated for the fair market value of what is taken. *See, e.g., United States v. Miller*, 317 U.S. 369, 374 (1943).

The New Mexico compulsory statutes must also protect an unleased mineral owner’s right to fair market value; and, in fact, this protection is referenced in the statute, which requires that all compulsory pooling orders must afford to all owners their “just [and] fair share of the oil or gas” in the pool. Section 70-2-17 NMSA. In this case, Alpha’s offers to lease Realeza’s interest have been below fair market value. It is clear that offers to lease which are below fair market value

cannot satisfy the New Mexico statutory requirements of a “good faith effort” or the constitutional protections allotted private property.

Alpha cannot show that it has met the statutory prerequisites to compulsory pooling and its Application should be denied.

**APPLICANT**

ALPHA ENERGY PRODUCTION  
COMPANY, L.P.

ATTORNEY:  
Dana S. Hardy  
Michael Rodriguez  
**HINKLE SHANOR LLP**  
P.O. Box 2068  
Santa Fe, NM 87504-2068  
Tel: 505-982-8623  
[dhardy@hinklelawfirm.com](mailto:dhardy@hinklelawfirm.com)  
[mrodriguez@hinklelawfirm.com](mailto:mrodriguez@hinklelawfirm.com)

**OTHER INTERESTED PARTIES**

MRC PERMIAN COMPANY

ATTORNEY:  
Julia Broggi  
Michael H. Feldewert  
Adam Rankin  
Kaitlin Luck  
**HOLLAND & HART**  
PO Box 2208  
Santa Fe, New Mexico 87504  
[mfeldewert@hollandandhart.com](mailto:mfeldewert@hollandandhart.com)  
[agrarkin@hollandhart.com](mailto:agrarkin@hollandhart.com)  
[kaluck@hollandhart.com](mailto:kaluck@hollandhart.com)

CITY OF CARLSBAD

Deana M. Bennett  
**MODRALL SPERLING**  
P.O. Box 2168  
500 Fourth Street NW, Suite 1000  
Albuquerque, New Mexico 87103-2168  
Telephone: 505.848.1800  
[dmb@modrall.com](mailto:dmb@modrall.com)

**RESPONDENT**

REALEZA DEL SPEAR, LP  
P.O. Box 1684  
Midland, TX 79702

**RESPONDENT’S ATTORNEY**

Scott S. Morgan  
Brandon D. Hajny  
Cavin & Ingram, P.A.  
P. O. Box 1216  
Albuquerque, New Mexico 87103-1216  
Telephone: (505) 243-5400  
Facsimile: (505) 243-1700  
[smorgan@cilawnm.com](mailto:smorgan@cilawnm.com)  
[bhajny@cilawnm.com](mailto:bhajny@cilawnm.com)

**RESPONDENT’S PROPOSED EVIDENCE**

<b>WITNESSES</b>	<b>ESTIMATED TIME</b>	<b>EXHIBITS</b>
Shane Spear, Manager, Spear Brothers Group	15 minutes	Approx. 5-10
Nelson Spear, Manager, Spear Brothers Group	15 minutes	Approx. 5-10

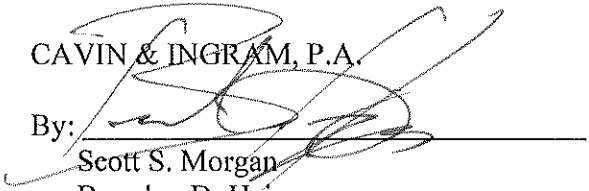
**RESPONDENT’S POSITION ON RELIEF SOUGHT**

Respondent Realeza Del Spear, LP opposes the issuance of the compulsory pooling relief sought by Alpha as Alpha has not complied with the statutory requirements for compulsory pooling. Realeza Del Spear, LP files this Pre-Hearing Statement for the purposes of reserving its right to present arguments at the hearing set in this matter. However, Realeza Del Spear specifically reserves its rights to file a Motion for Continuance, requesting that the hearing set in this matter be continued to a later date, as it has only recently been able to retain counsel in this matter.

RESPECTFULLY SUBMITTED,

CAVIN & INGRAM, P.A.

By:

  
Scott S. Morgan

Brandon D. Hajny

P. O. Box 1216

Albuquerque, NM 87103

(505) 243-5400

[smorgan@cilawnm.com](mailto:smorgan@cilawnm.com)

[bhajny@cilawnm.com](mailto:bhajny@cilawnm.com)

ATTORNEYS FOR RESPONDENT

REALEZA DEL SPEAR, LP

I hereby certify that a true and correct copy of the foregoing was served via e-mail on September 30, 2021 to the following:

Julia Broggi  
Michael H. Feldewert  
Adam Rankin  
Kaitlin Luck  
Holland & Hart  
PO Box 2208  
Santa Fe, New Mexico 87504  
[mfeldewert@hollandandhart.com](mailto:mfeldewert@hollandandhart.com)  
[agrarkin@hollandandhart.com](mailto:agrarkin@hollandandhart.com)  
[kaluck@hollandandhart.com](mailto:kaluck@hollandandhart.com)

*Attorneys for MRC Permian Company*

Dana S. Hardy  
Michael Rodriguez  
PO Box 2068  
Santa Fe, New Mexico 87504  
[dhardy@hinklelawfirm.com](mailto:dhardy@hinklelawfirm.com)  
[mrodriguez@hinklelawfirm.com](mailto:mrodriguez@hinklelawfirm.com)

*Attorneys for Alpha Energy Partners, LLC*

Deana M. Bennett  
P.O. Box 2168  
500 Fourth Street NW, Suite 1000  
Albuquerque, New Mexico 87103-2168  
[dmb@modrall.com](mailto:dmb@modrall.com)

*Attorneys for City of Carlsbad*

CAVIN & INGRAM, P.A.

By: 

Brandon D. Hajny