

**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

BRIEF

Respondent Realeza Del Spear, LP (“Realeza”), by and through its undersigned attorneys, submits this Brief as requested by the Hearing Examiner at the Status Conference held in this matter on Thursday, October 7, 2021.

INTRODUCTION

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 or 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 Alpha 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.

ARGUMENT

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. In this instance, Alpha has yet to make any offer to lease Realeza’s interest that is in line with fair market value and not less than what would compensate

Realeza del Spear if it were to “recover or receive without unnecessary expense” its fair share of oil and/or gas.

I. Obligations to Obtain Voluntary Agreements.

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.

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 (emphasis added). 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; 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 (emphasis added). In this case, Alpha's offers to lease Realeza's interest have been below fair market value. 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.

II. Alpha's Negotiations and Offers in this Matter.

In this case, Applicant, Alpha, has not made a good faith effort to lease Realeza's unleased mineral interest in the HSU. Alpha lowballed Realeza and then abandoned the negotiations for nearly four months and now claims that expediency is required in order to save its other leases from expiring. Alpha's first contact with Realeza was in the form of its form Well Participation Proposal letter (the "Proposal Letter"), which was received by Realeza on April 13, 2021. While this letter did have a form lease "offer" attached to it, the terms of the attached were substantially below market value, offering \$750/acre lease signing bonus at a 3/16ths royalty for 3 years. Nearly all modern leases in Lea and Eddy Counties are at 25% royalty. No negotiations which begin and end with an offer to lease at a 3/16ths royalty can be considered to have been conducted in "good faith" as the statute requires.

After the receipt of the Proposal Letter, Realeza was forced to initiate contact with Alpha in order to begin negotiations to lease Realeza's interest in the HSU. Alpha responded on April 22 offering \$1500/acre lease signing bonus at 20% royalty for 4 years for the entire Bone Spring and Wolfcamp formations. While, at first glance, this offer represents a substantial increase over the terms contained in the Proposal Letter, Alpha shouldn't get credit for increases made from an offer

so low as to be disingenuous. Additionally, as noted above, nearly all new leases in Lea and Eddy Counties are at 25% royalty. This would be Alpha's last offer for more than 5 months.

Realeza countered Alpha's April 22 offer, insisting on a 25% royalty and increased acreage bonus. This counter, apparently, did not warrant a counteroffer from Alpha. Instead, Alpha responded on May 10 saying that "if" they were to offer a lease at a 1/4 royalty, the bonus acreage would be somewhere around "\$1000-\$1200". Realeza responded on May 11 but did not receive any further communication of any sort from Alpha until August 4; and Realeza did not receive another offer from Alpha until September 27, 2021. Alpha filed its Application in this matter on August 31, 2021. Alpha's September 27 offer, which came nearly 30 days after it filed its Application for compulsory pooling, offered a \$1,850/acre lease signing bonus, 25% royalty, and 18 month term for both the 3rd Bone Spring and Wolfcamp A formations.

Alpha completely abandoned negotiating with Realeza for nearly five months and did not make its first offer at a fair market royalty rate until nearly a month *after* it filed the Application for Compulsory Pooling. Perhaps Alpha hoped that filing the Application would convince Realeza to take its below-market offers. The acreage bonus amount in Alpha's September offer remains below market value. Realeza's initial counteroffer to Alpha, sent in April, contained a \$2500 acreage bonus for a six-month term.

Between April 2021 and now, the price of oil has increased by over 30% and nearly all prognosticators predict prices will continue to rise. With oil now hovering around \$80/barrel instead of \$60/barrel in April, well economics have substantially changed; well profitability is more easily obtainable by operators and, as a result, they can bear higher lease costs and still be profitable. Had prices fallen, Realeza likely would have been forced to accept a lower offer now than was offered in April. Instead, Alpha must bear the consequences of its failure to offer market

rate in April. Alpha gambled and lost and now seeks to use the compulsory pooling statutes to avoid its responsibility of making a fair market offer to lease Realeza's interest in the HSU.

In short, Alpha made a total of three (3) offers to Realeza, including two offers that were so below market value as to barely warrant consideration or mention. Between the time that negotiations began and now, oil and gas prices have steadily risen, as has the fair market value for oil and gas leases. New Mexico law requires that operators show they have made a good faith effort to lease; Alpha has failed to do so and their Application should be denied.

CONCLUSION

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. Alpha Energy has failed to offer Realeza a fair market value to lease Realeza's mineral interest and, as a result, they have not satisfied the statutory requirement of negotiating in good faith. As a result, Alpha's Application should be denied.

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

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 October 21, 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
agrankin@hollandhart.com
kaluck@hollandhart.com

Attorneys for MRC Permian Company

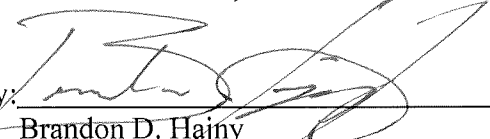
Dana S. Hardy
Michael Rodriquez
PO Box 2068
Santa Fe, New Mexico 87504
dhardy@hinklelawfirm.com
mrodriquez@hinklelawfirm.com

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

Attorneys for City of Carlsbad

CAVIN & INGRAM, P.A.

By: 
Brandon D. Hajny