



**MONTGOMERY
& ANDREWS**
LAW FIRM

J. SCOTT HALL
Cell: (505) 670-7362
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March 16, 2016

David Catanach, Director
NM Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87501

HAND-DELIVERED

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

Dear Mr. Catanach:

Enclosed is a Motion to Compel and for Sanctions for filing in the above matter.

Thank you.

Very truly yours,

J. Scott Hall

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JSH:dl
Enclosure
2016 MAR 16 P 11:26

cc (via email, w/enc.): Florene Davidson, NMOCD
Will Jones, NMOCD
David Brooks, Esq., NMOCD
Michael Feldewert, Esq., Holland & Hart
Nearburg Exploration Co.

ioc: Sharon T. Shaheen, Esq.

REPLY TO:

325 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

**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., SRO2 LLC
AND SRO3 LLC FOR AN ACCOUNTING AND LIMITATION
ON RECOVERY OF WELL COSTS, AND FOR
CANCELLATION OF APPLICATION FOR PERMIT
TO DRILL, EDDY COUNTY, NEW MEXICO**

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CASE NO. 15441

MOTION TO COMPEL AND FOR SANCTIONS

Nearburg Exploration Company, L.L.C., SRO2 LLC and SRO3 LLC, (together, “Nearburg” or “NEX”), by its undersigned attorneys, Montgomery and Andrews, P.A. move pursuant to NMSA 1978, §70-2-13 (1995) and Rules 19.15.4.16A and 19.15.4.19 NMAC that the Division enter its order (1) compelling COG Operating LLC (“COG”) to produce the documents and materials identified in that Subpoena Duces Tecum issued to it by the Division in December of 2015, and (2) imposing sanctions against COG for each day that it does not comply. As grounds for this motion, NEX states:

1. On November 24, 2015, NEX filed its Application in this matter after it was discovered that COG had drilled two two-mile long lateral wells from surface locations in Section 17 onto unconsolidated and unpooled lease acreage owned by NEX in the W/2 of Section 20, Township 26 South, Range 28 East, N.M.P.M., in Eddy County, New Mexico. The wells are the SRO State Com 043H (API 30-015-41141) located in the W/2 W/2 of Sections 17 and 20 (“043H”) and the SRO State Com 044H (API 30-015-41142) located in the E/2 W/2 of Sections 17 and 20 (“044H”). Both wells were drilled to and completed in the 2nd Bone Spring Sand, Hay Hollow Bone Spring Pool (30215) in violation of several of the Division’s rules.

Neither well was proposed to NEX and COG provided no notification before they were drilled. The 043H and 044H wells were completed on February 25, 2015 and March 4, 2105, respectively. Both wells have continuously produced since then, but COG has never accounted for production from them. The disposition of proceeds from the sale of production from the wells is unknown.

2. On December 16, 2015, the Division issued its Subpoena Duces Tecum which was served on COG's registered agent on December 18, 2015. *See* Subpoena, Exhibit 1. The Subpoena directed COG to produce the documents and materials on January 15, 2016. Instead of obeying the Division's Subpoena, on January 15, 2016 COG filed its Motion To Dismiss Application and Quash Subpoena, claiming lack of relevance. COG stated no other objection to the Subpoena and no privilege was asserted. NEX filed a specific Response to the Motion To Quash on January 19, 2016. The matter was argued at a pre-hearing conference on February 3, 2016 and COG's Motion To Quash was denied. But COG has produced no documents or materials to date.

3. Counsel for NEX has made good faith efforts to obtain COG's cooperation with its discovery obligations. It was learned independently that COG maintains electronic Well Information Files and that such files likely contain all the documents and materials identified in the Subpoena. These circumstances suggest that the identification, review and production of responsive documents could be accomplished on an expedited basis. By telephone conversation on February 12, 2016, counsel for COG was asked to investigate the possibility of producing the electronic files. The matter was subsequently discussed via email communications, but nothing further was learned. *See* Email of February 17, 2016, Exhibit 2.

4. By letter of February 19, 2016, the matter of COG's non-compliance with the Subpoena was raised with the Division. NEX sought to have the subpoenaed materials delivered by February 29, 2016. COG never responded. *See* February 19, 2016 Letter, Exhibit 3.

5. On February 26, 2016, COG filed two Applications for Compulsory Pooling seeking to force pool Nearburg's lease acreage in Section 20 which COG now admits had not been consolidated in the project areas for the 043H and 044H wells. COG requested that those cases be scheduled for Examiner hearing on April 14, 2016 (Case Nos. 15481 and 15482). COG also obtained its own subpoena from the Division, seeking the production of documents on March 11, 2016. By telephone call on March 1, 2016, COG's counsel was advised that the undersigned was authorized to accept service of the COG Applications and subpoena. The matter of the non-delivery of the COG documents was again raised and it was represented that the documents were still being reviewed.

6. By letter of March 9, 2016, COG's counsel was informed that NEX was prepared to produce documents responsive to COG's subpoena, but would not do so before COG honored the Subpoena served on it. *See* March 9, 2016 Letter, Exhibit 4. Again, COG made no reply.

Since COG's discovery obligation first accrued and became violated on January 15, 2016, it has become clear that COG intends to defend its conduct described in NEX's Application by willful obstruction and delay. The Division has a vital interest in maintaining the integrity of its rules and processes and must take vigorous action to ensure that its subpoenas are obeyed.


The Division's subpoena powers are set forth at NMSA 1978 §70-2-8 (1995). Those subpoena powers are supported by various components of The Oil and Gas Act and give the Division considerable authority and discretion to act. *See* NMSA 1978 §70-2-6 (establishing that the Division has broad power to "enforce effectively" the provisions of the act); and

NMSA 1978 §70-2-11 (providing that the Division may do “whatever may be reasonably necessary” to carry out the purposes of the act, whether or not specified by another section of the act). The Division’s hearing examiners are similarly empowered. *See* Rule 19.15.4.9 NMAC (providing that examiners have the power “to perform all acts and take all measures necessary and proper for the hearing’s efficient and orderly conduct”). The importance of the Division’s discovery supervisory responsibilities is underscored by NMSA 1978 §70-2-9 (authorizing the Director or his authorized representative to secure the production of documents from a disobedient party through an attachment proceeding in district court, including punishment for contempt). Additionally, the extensive, non-exclusive sanctions that may be imposed on operators where the Division is a party to a compliance proceeding are enumerated in Rule 19.15.5.10B(1)-(7) NMAC.

As noted above, COG has been aware of the Subpoena since December 18, 2015 and in disobedience of it since January 15, 2016. Only thirty days remain before a consolidated hearing on the merits on NEX’s Application and COG’s two compulsory pooling applications. Each day that COG has withheld its documents has resulted in prejudice to NEX and to its ability to prepare for hearing. Each day that COG prolongs this dispute results in a further violation of NEX’s correlative rights, warranting sanctions against COG for each day that it does not comply.

WHEREFORE, NEX requests that the Division enter its order (1) compelling COG to immediately produce the documents and materials described in the Subpoena, and (2) directing the Division to withhold action on any Application or other request for regulatory approval, either discretionary or ministerial, that may be submitted by COG until COG complies with the Division’s order.

Respectfully submitted,



J. Scott Hall
Sharon T. Shaheen
shall@montand.com
sshahen@montand.com
MONTGOMERY & ANDREWS, P.A.
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Scotty Holloman
sholloman@hobbsnmlaw.com
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Hobbs, New Mexico 88241
Telephone: (575) 393-0505

David H. Harper
Aimee M. Furness
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aimee.furness@haynesboone.com
sally.dahlstrom@haynesboone.com
HAYNES AND BOONE, LLP
Pro Hac
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

**ATTORNEYS FOR NEARBURG
EXPLORATION COMPANY, L.L.C.,
SRO2 LLC and SRO3 LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on March 16, 2016:

Michael H. Feldewert
Jordan L. Kessler
Holland & Hart, LLP
Post Office Box 2208
Santa Fe, NM 87504-2208
mfeldewert@hollandhart.com
jlkessler@hollandhart.com



J. Scott Hall

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

IN THE MATTER OF THE APPLICATION OF
NEARBURG EXPLORATION COMPANY, SRO2
LLC AND SRO3 LLC FOR AN ACCOUNTING AND
LIMITATION ON RECOVERY OF WELL COSTS,
AND FOR CANCELLATION OF APPLICATION
FOR PERMIT TO DRILL, EDDY COUNTY,
NEW MEXICO

CASE NO. (Pending)

SUBPOENA DUCES TECUM

TO: COG Operating LLC
c/o CT Corporation
1012 Marquez Place, Ste. 106 B
Santa Fe, NM 87504

Pursuant to Section 70-2-8, NMSA (1978), and 19.15.4.16 NMAC of the New Mexico Oil Conservation Division's Rules of Procedure, you are hereby ORDERED to appear at 9:00 a.m., January 15, 2016 at the offices of the Oil Conservation Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 and to produce and make available to Nearburg Exploration Company, L.L.C. and their attorneys, J. Scott Hall, Esq. and Sharon T. Shaheen, Esq. for copying, the documents and items specified in Exhibit "A", attached.

This subpoena is issued on application of Nearburg Exploration Company L.L.C. through its attorneys Montgomery and Andrews, P.A., P.O. Box 2307 Santa Fe, New Mexico 87504.

Dated this 16th day of December, 2015.

NEW MEXICO OIL CONSERVATION DIVISION

By: _____



David Catanach, Director

EXHIBIT 'A'

**TO SUBPOENA DUCES TECUM
TO COG OPERATING LLC**

"Document" refers to any form of data compilation whether produced, reproduced or stored on paper, cards, tapes, disks, belts, charts, films, computer storage devices or any other medium, and shall include, but not be limited to, any letter, note, email, memorandum, article, book, published material, report, study, statement, speech, notebook, application, calendar, working paper, manual, brochure, analysis, telegram, transcript, summary, diary, agreement, contract, log, appointment book, graph, drawing, chart, financial statement, bank statement, bank check, deposit slip, receipt, invoice, bookkeeping entry, photograph, photostat, microfilm, x-ray film, sound recording, motion picture, videotape or any other type of mechanical, electronic or magnetic impulse recording, and shall also include, but not be limited to any draft or copy (with or without notes of changes thereon) of a writing or document.

The "Subject Wells" means the SRO State Com 043H (API 30-015-41141) located in the W/2 W/2 of Sections 17 and 20 ("043H") and the SRO State Com 044H (API 30-015-41142) located in the E/2 W/2 of Sections 17 and 20 ("044H"), Township 26 South, Range 28 East, N.M.P.M. in Eddy County, New Mexico.

For the Subject Wells, produce the following documents and materials.

1. All internal and external communications and documents relating to the Subject Wells.
2. All well proposals, AFE's, Lease Operating Statements and Joint Interest Billings.
3. All title reports, title opinions and related materials for the Subject Wells.
4. All Division Orders, revenue decks, and other documents relating to the disposition of production proceeds from the Subject Wells.
5. The well file and all geologic, production, pressure and engineering data for the Subject Wells and the SRO State Well No. 16H located in the W/2 W/2 of Section 20, Township 26 South, Range 28 East, N.M.P.M. in Eddy County (API No. 30-015-38071).
6. All documents reviewed in connection with the completion and filing of the Forms C-101 Applications for Permits to Drill, Forms C-102 Well Location and Acreage Dedication Plats and Forms C-104 Request for Allowable and Authorization to Transport for the Subject Wells and the SRO State Com Well No. 69H (API 30-015-43093) permitted for the W/2 W/2 of Section 17 and 20, T-26-S, R-28-E.

These subpoena items are ongoing and you have the obligation to supplement the production of documents and materials responsive hereto as new documents and materials become available.

J. Scott Hall

From: J. Scott Hall
Sent: Wednesday, February 17, 2016 5:01 PM
To: 'Michael Feldewert'
Subject: RE: Case No. 15441: Discovery issues

It is possible, but we need to have a better understanding of what is contained in them.

From: Michael Feldewert [<mailto:MFeldewert@hollandhart.com>]
Sent: Wednesday, February 17, 2016 4:50 PM
To: J. Scott Hall
Subject: Case No. 15441: Discovery issues

Is it your proposal that the electronic well information files will satisfy the subpoena requests?

From: J. Scott Hall [<mailto:SHall@montand.com>]
Sent: Wednesday, February 17, 2016 4:19 PM
To: Michael Feldewert
Subject: FW: Case No. 15441

Mike,
Last week, we discussed the possibility of COG producing its electronic well information files. What have you found out about that?
Tomorrow, let's plan on discussing (1) COG's plans for producing the subpoenaed materials and (2) a special hearing date.
Thanks.

J. Scott Hall
Montgomery & Andrews, P.A.
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shall@montand.com
(505) 986-2646



THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO shall@montand.com AND DELETE THE MESSAGE. THANK YOU.

From: Jones, William V, EMNRD [<mailto:WilliamV.Jones@state.nm.us>]
Sent: Tuesday, February 09, 2016 9:28 AM
To: J. Scott Hall; 'mfeldewert@hollandhart.com'
Cc: Brooks, David K, EMNRD; Davidson, Florene, EMNRD
Subject: RE: Case No. 15441

Hello Scott and Mike,

Yes, just listed because we didn't want to overshoot the date you may be doing the special docket. Let Florene and David Brooks know as soon as you and Mike have a date in mind.

David Brooks new email: DavidK.Brooks@State.nm.us

Regards,
Will Jones

From: J. Scott Hall [<mailto:SHall@montand.com>]
Sent: Tuesday, February 09, 2016 9:04 AM
To: Jones, William V, EMNRD; Brooks, David K., EMNRD (david.brooks@state.nm.us)
Cc: 'Mfeldewert@hollandhart.com'
Subject: Case No. 15441

This case is advertised for hearing on the February 18, 2016 docket. I assume it is being listed only provisionally until a special hearing date is set as we discussed at the February 3rd motions hearing. I would appreciate confirmation of that as Nearburg's witness is unavailable on February 13th.

Thanks.

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**MONTGOMERY
& ANDREWS**
LAW FIRM

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February 19, 2016

HAND-DELIVERY

Mr. William Jones
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

Gentlemen:

I raise two matters regarding the referenced Application which is presently set for hearing on March 3, 2016:

Special Hearing Date: At the February 3, 2016 pre-hearing conference, it was discussed that a special hearing date be established. The Applicants propose that the matter be set for a full day hearing on one of the following days: March 22nd, 23rd or 24th.

Subpoenaed Documents and Materials: A Subpoena Duces Tecum issued by the Division was served on COG on December 18, 2015. COG subsequently filed its Motion to Quash Subpoena which was argued and then denied by the Examiners on February 3, 2016. Since that time, COG has been unresponsive to efforts to gain their compliance with its discovery obligations. Applicants accordingly request that the Division direct COG to deliver the Subpoenaed Documents and Materials on or before February 29, 2016.

REPLY TO:

325 Paseo de Peralla
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

EXHIBIT 3

Mr. William Jones
David Brooks, Esq.
February 19, 2016
Page 2

Thank you for your consideration of these requests.

Very truly yours;

A handwritten signature in black ink, appearing to read "J. Scott Hall". The signature is written in a cursive style with a prominent horizontal line across the top.

J. Scott Hall

JSH:dl

cc (via email): Michael Feldewert, Esq., Holland & Hart
Nearburg Exploration Co.
Scotty Holloman, Esq., Maddox, Holloman & Moran PC
David Harper, Esq., Haynes & Boone

ioc: Sharon T. Shaheen



**MONTGOMERY
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March 9, 2016

Michael Feldewert
Jordan L. Kessler
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Post Office Box 2208
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mfeldewert@hollandhart.com
jlkessler@hollandhart.com

VIA EMAIL

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

Dear Counsel:

Nearburg Exploration Company, L.L.C., SRO2 LLC and SRO3 LLC stand ready to produce documents on March 11, 2016, the date specified in your February 26, 2016 Subpoena Duces Tecum. However, we will not do so without your assurance that COG will simultaneously produce the documents due pursuant to the Subpoena Duces Tecum served on it on December 18, 2015. I look forward to receiving your assurance soon.

Very truly yours,

J. Scott Hall

cc: David Brooks, Esq., NMOCD
Nearburg Exploration Company, L.L.C.
David Harper, Esq.
Aimee Furness, Esq.
Sally Dahlstrom, Esq.
Scotty Holloman, Esq.
ioc: Sharon Shaheen, Esq.

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EXHIBIT 4