

LAW OFFICES

HEIDEL, SAMBERSON, NEWELL, COX & McMAHON

C. GENE SAMBERSON
MICHAEL T. NEWELL
LEWIS C. COX, III
PATRICK B. McMAHON
MATTHEW T. TUCKER

311 NORTH FIRST STREET
POST OFFICE DRAWER 1599
LOVINGTON, NM 88260
TELEPHONE (505) 396-5303
FAX (505) 396-5305

F.L. HEIDEL
(1913-1985)

February 28, 2007

NMOCD
Department of Energy, Minerals and Natural Resources
ATTN: DIVISION CLERK
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD - DEMNR
Application of Quest Cherokee, LLC for Approval
of an Application for Permit to Drill, Lea County, New Mexico
Case No. 13,870

2007 FEB 28 PM 12:51

To Whom It May Concern:

Enclosed please find for filing with the New Mexico Oil Conservation Division of the Department of Energy, Minerals and Natural Resources an original and three copies of Intervenors' Post Hearing Memorandum.

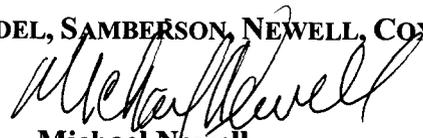
Upon filing of same please return a conformed copy to this office in the self-addressed stamped envelope.

Your attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to call.

Sincerely,

HEIDEL, SAMBERSON, NEWELL, COX & McMAHON

By:


Michael Newell

MTN:cd

Enclosures: Intervenors
James Bruce, Esq.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

**IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION
DIVISION FOR
THE PURPOSE OF CONSIDERING:**

**APPLICATION OF QUEST CHEROKEE, LLC
FOR APPROVAL OF AN APPLICATION FOR
PERMIT TO DRILL, LEA COUNTY, NEW MEXICO**

Case No. **13,870**

INTERVENORS' POST HEARING MEMORANDUM

Comes now Intervenors, Lee Roberson, Tammy Roberson, Barbara Cox and Tom Duncan, by and through their attorneys Heidel, Samberson, Newell, Cox & McMahon, and for their post hearing memorandum of points and authorities, state:

I. CASE HISTORY

This intervention arises out of an Application to Drill filed by Quest Cherokee, LLC (hereinafter referred to as "Quest Cherokee") on January 3, 2007. Quest Cherokee requests permission to drill an oil and gas well in the NW/4 of Section 9, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico. The Application was served on Intervenors on January 25, 2007. The Intervenors timely filed their objection to the Application and moved for an adjudicatory hearing. A hearing on the Application was originally scheduled for February 1, 2007 in Santa Fe, New Mexico, but was moved to February 15, 2007, in Santa Fe.

Two landmen, David Bolton and Vernon Dryer and one geologist, Steven Hockstein, testified on behalf of the Applicant. Bruce Baizel, Lee Roberson and Barbara Cox testified on behalf of the Intervenors. Additionally, Cliff Birch, Superintendent of the Hobbs School District, wrote a letter to this Division expressing concern over the location of the proposed well, and its proximity to College Land Elementary School.

II. INTERVENORS POSTITION

Intervenors submit the Application should be denied for reasons more fully set forth hereinbelow. In the alternative, should this Division grant the Application, such grant should be subject to certain items and conditions as same is set out hereinafter.

III. DISCUSSION

A. The Application Should Be Denied

The Application of Quest Cherokee, LLC should be denied. Various factors support the denial. These factors include failure to follow Division rules; the need to protect health and the environment; and the need to protect correlative rights.

1. Applicant failed to comply with Division rules.

Rule 19.15.3.100 provides that prior to commencing operations, every operator shall register with the Division. The evidence established that the Applicant was a new operator in New Mexico. It presently operates no other wells in the State, therefore it was required to register. Applicant failed to meet its registration requirement as it (1) did not provide an oil and gas registration identification (OGRID) number; and (2) did not provide a current emergency contact name and the telephone number for each district in which it operates a well, including the district in Lea County, where the proposed well is located. Additionally, Applicant failed to provide the Division with the names of the officers, directors, partners or persons with interest in excess of twenty-five percent so that the Division could determine if within the previous five years such person was involved in another entity not in compliance with Subsection A of Rule 19.15.1.40 relating to compliance matters.

Rule 19.15.3.102 B, which regulates permits to drill, requires applicants to file a C-101 and C-102 form prior to commencing drilling. As of the time of hearing the file did not

contain either a form C-101 or C-102. The *pro forma* C-102 was incomplete. It did not include an OGRID number. It also did not reflect an API number, a pool code or a pool name. The operator certification was not even executed. See Intervenors' Exhibit No.1.

The notice of hearing in this matter was deficient. The notice of hearing (See Intervenors' Exhibit No.2) stated the proposed well was located five miles north-northwest of Hobbs, New Mexico. Applicant knew the representation about the location of the well was false as its own evidence reflects the well location was only several hundred feet to the south of the nearest checkerboard city limit boundary (See Applicant's Exhibit No.2).

The Application and the Applicant have not complied with Division rules. These deficiencies support denial of the Application based on the clear non-compliance.

2. Applicant failed to offer evidence of how it would protect health, environment or correlative rights.

The Applicant seeks to drill a well on the urban interface in north Hobbs, New Mexico. It knew the unique characteristics of the proposed location as reflected by its project analysis surface issues summary. (See Applicant's Exhibit No. 8). The Applicant's project analysis notes it may actually be in a subdivision. The proposed well location is so close to an elementary school that the superintendent of the Hobbs Schools has written the Division expressing his concern over the proposed well location. Numerous residences and even an assisted living facility are also in close proximity to the well location. According to the records of the State Engineer's Office there are eighty-two (82) water wells located in Section 9, Township 18 South, Ranch 38 East. New homes are being constructed only hundreds of feet from the well location. Property values are between \$15,000.00 and \$20,000.00 per acre.

Intervenors presented evidence with illustrated dangers associated with the drilling and operation of oil and gas facilities. The more extreme end of possible dangers are blow outs and hydrogen sulfide releases. Applicant discounted the blowout risk by presenting evidence the well is proposed to be drilled into the relatively low pressure San Andres formation, a fact which it failed to reflect on its C-102 as noted above. While it may be accurate that a San Andres formation may be less of a blowout risk, Applicant was forced to acknowledge the San Andres is known to produce hydrogen sulfide gas. Intervenors also offered evidence which identified numerous hazardous chemicals used during the drilling or production process (See Intervenor's Exhibit No. 8). Intervenors also presented a study which should land values near oil and gas facilities were twenty-two percent lower than comparable land not near oil and gas operations. (See Intervenor's Exhibit No. 4).

Applicant failed to present any testimony about how it intended to address any of these issues. It also presented no testimony concerning measures to reduce any of the hazards associated with these operations. Applicant does not even have a means of transporting the minerals it seeks to produce as Applicant noted that gas may have to be flared because of a lack of oil or gas pipeline facilities. Applicant offered no testimony as to what it would do if the Division ordered a no flare ban, such as existed in 2006 when the Targa Resources flare fire burned thousands of acres, as well as several homes (See March 31, 2006 Settlement Agreement between Targa Midstream Services, L.P. and EMNRD's Forestry and Oil Conservation Divisions). Applicant also stated it would flare the hydrogen sulfide gas. Applicant presented absolutely no evidence of even the most basic structures or practices to address the problem of hydrogen sulfide or any of the hazards. Applicant proposed an open drilling pit system exposing the neighborhood to the drilling chemicals used, even though

“closed loop” technology is regularly utilized in instead of drilling site drilling in Lea County. Applicant simply seeks to treat this well like it is located miles away from an urban area, when in fact it is not.

The presence of an elementary school presents its own array of problems associated with this location. The Applicant has noted the increase of road traffic associated with the well, however, it has submitted no plan how to protect children going to and from school from that traffic. Fumes from diesel engines, unprotected facilities, and the inevitable release of hydrocarbons all pose risks to the school age children. These issues have not been addressed by Applicant. Applicant does not even have an emergency contingency plan in the event something went wrong.

This lack of planning along with the failure to address the basic measures necessary to protect the health and environment necessitates rejection of the Application. The impact on the correlative rights of the surface owners whose homes are near the proposed well location further illustrates why the Division should deny the Application.

**B. If Application Is Approved The Division Should
Make Such Approval Subject To Terms And Conditions**

The Division has the right to impose terms and conditions on any permission given the Applicant to drill the proposed well. Rule 19.15.3.102 D grants the Division the authority to impose such conditions. At the very least a conditional approval which imposes measures designed to address the dangers associated with the proposed well location should be ordered.

Applicant presented evidence that the project would include other drilling if the proposed well was an economic success. The project area includes the Northeast Quarter of

Section Eight in addition to the Northwest Quarter of Section Nine where the proposed well is located. (See Applicant's Exhibit No.11). While this proposed location is immediately off Jarob Road and close to the intersection of College Lane and Jarob Road, a better location would be in the south half of the Northeast Quarter of Section Eight. Applicant presented evidence that directional drilling is possible, although it noted some additional cost. (See Applicant's Exhibit No.14). The Applicant should be required to directionally drill the well and move the location to Section Eight.

This location should be large enough to accommodate all the wells which are drilled on the project as well as the battery facility. The area should be fenced with a barrier fence that keeps trespassers, particularly children, out, and maintains the astatic of the neighborhood. The facilities should have pipelines that transport out any production or waste water so that truck traffic is kept to a minimum. There should be no flaring and there should be a vapor recovery system used. Also, the location should be constructed with a lighting suppression gride system. Drilling should employ closed loop technology.

These conditions are all well established measures designed to address specific concerns relating to this well at this location. At the very least such conditions offer greater protections for the health, environment and correlative rights impacted by the proposed well.

IV. CONCLUSION

The Application should be denied. It is a very poor location for a well whose prospects are marginal by Applicants own evidence. The proximate to houses, a school, the traffic created, the pollutants and potential hazards have not been addressed. The deficiencies in the Application are serious and significant. These alone merit denial At the very least if the Application is granted conditions should be placed on that grant to protect health, the environment and correlative rights.

Respectfully Submitted,

HEIDEL, SAMBERSON, NEWELL, COX & MCMAHON
Post Office Drawer 1599
Lovington, New Mexico 88260
(505) 396-5303

By: Pat B M' Mch for MTN

Michael Newell
Attorneys for Intervenors

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed to James Bruce, Esq.,
Attorney for Quest Cherokee, LLC, Post Office Box 1056, Santa Fe, New Mexico 87504, on this
28th day of February, 2007.

Pat B M' Mch for MTN

Michael Newell