

**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. FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

CASE NO. 12820

OIL CONSERVATION DIVISION
MARCH 21 11 21 AM '07

**RESPONSE OF NEARBURG EXPLORATION COMPANY
TO THE MOTION TO DISMISS OF OXY USA, INC.**

Nearburg Exploration Company, L.L.C. (“NEC”) for its response to the Motion To Dismiss of OXY USA, Inc. (“OXY”) states:

FACTS

1. Nearburg owns working interest in the NW/4 of Section 5, Township 19 South, Range 33 East, NMPM and has the right to drill thereon.
2. On January 29, 2002, Nearburg filed an application seeking an order from the Oil Conservation Division pooling the W/2 of Section 5, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico for its Gem North “5” Federal Com Well No. 1 to be located at a standard location in the NW/4 of the section.
3. On February 20, 2002, OXY, a working interest owner in the S/2 of Section 5 filed a Sundry Notice with the BLM seeking approval to “reactivate” the Nellis Federal Well No. 1 (“the Nellis Well”) located 660 feet from the South line and 1980 feet from the East line of Section 5, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico. The Sundry Notice was approved by the BLM on February 28, 2002. *See*, Exhibit B to OXY’s Motion to Dismiss.
4. The Nellis Well has not produced hydrocarbons in commercial quantities since 1995.

5. OXY received a permit to temporarily abandon the Nellis Well but this permit expired on July 24, 2000.

6. OXY seeks an order from the Division dismissing the Nearburg pooling application based on the assertion that the S/2 of this section is unavailable since it is dedicated to the Nellis Well.

ARGUMENT

Nearburg has not attempted to frustrate the efforts of OXY.

OXY contends that Nearburg seeks to frustrate the efforts of OXY to develop the S/2 of section 5. The facts show this argument to be false. OXY first showed an interest in the further development of the S/2 of this section when it filed its Sundry Notice on February 20, 2002. This was more than three weeks after Nearburg filed its pooling application and more than two months after Nearburg first proposed its well to OXY. Contrary to OXY's assertions, the facts suggest that perhaps OXY is attempting to frustrate the efforts of Nearburg.

The Nellis Well cannot hold acreage or otherwise prevent

the further development of the W/2 of Section 5.

An old wellbore which has not produced for years and which is not temporarily abandoned pursuant to Rule 203 should not be allowed to hold acreage and keep old spacing units intact. If such a well holds acreage and spacing units, even though the operator has failed to plug it or return it to beneficial use, the operator's failure to develop its lands would work to its advantage for its inaction would exclude others from the lands and would prevent additional development of the underlying minerals.

OXY's approved Sundry Notice should not be interpreted to be more than it is. An approved Sundry Notice is nothing more than agency authorization to proceed with proposed

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activity on certain acreage. The agency approval, without action having been taken pursuant to that approval, should not be allowed to preclude another owner from the development of the acreage and the minerals located under the lands.

The effect of an agency approval where no action has been taken pursuant to that approval was before the Division in Case No. 12407. That case involved an application of Southwestern Energy Production Company to compulsory pooling the E/2 of Section 18, Township 23 South, Range 34 East, NMPM. BTA Oil Producers owned 100% of the working interest in the S/2 of Section 5, planned to drill a well on this acreage and had an approved permit to drill a well in the S/2 of the section. However, the BTA approved application to drill was not deemed sufficient to prevent Southwest from pooling the E/2 of the section. It was only after BTA acted on its approved APD and commenced drilling that the S/2 of the section was deemed no longer available for an E/2 pooling application.

In this case, an old non-producing wellbore which is not temporarily abandoned pursuant Division rules should not be allowed to prevent other owners from developing their oil and gas rights with a standard spacing unit which includes acreage previously dedicated to the old wellbore.

Nearburg's Prior Conduct:

In its Motion to Dismiss, OXY cites the Division to Case 12622 and states that in the past "...Nearburg has drilled a well on acreage already dedicated to an existing well." This statement is incorrect. Case 12622 involves a situation where Nearburg drilled a Morrow well on a 320-acre spacing unit pursuant to an APD approved by the Division. The spacing unit was owned 100% by Nearburg and its partners. Months after the well was completed as a successful Morrow producing well, it was discovered that the spacing unit crossed a pool boundary. To

address this situation and to bring the well into compliance with Division rules, Nearburg filed an application for the formation of a non-standard 160-acre spacing unit for the well. Any allegation that Nearburg drilled this well on acreage dedicated to another well is absolutely false.

Case 12622 is pending before the Director for decision and Nearburg expects their application for a non-standard spacing unit for this well to be approved. As the Division is aware, The Oil and Gas Act (Section 70-2-13, NMSA 1973) provides in part:

“The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding....” (Emphasis Added)

In this case, Nearburg presented substantial geologic evidence which showed that all Morrow reserves being produced by this well came from their acreage in the NE/4 of Section 9. Nearburg’s evidence showed that the SE/4 of the section could not contribute reserves to this well and testified that to require them to share the production from their lands with the owners of non-productive acreage in the SE/4 of this section would impair Nearburg’s correlative rights. There is no conflicting evidence in the transcript because no other party presented testimony or evidence. The Division should not have to be reminded of the painful lesson of Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). In Fasken, the Commission ignored the record when it decided the case and entered its order. On appeal, the Supreme Court instructed the Commission that its decisions must be based on substantial evidence -- the testimony and record made before the Division.

In Case 12622, the Division must rule for Nearburg. The statements by OXY about Nearburg’s conduct in Case 12622 or any reliance by OXY on the examiner hearing or the ultimate outcome of that case are factually and legally wrong.

CONCLUSION

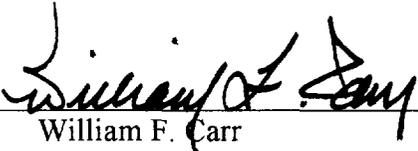
Nearburg has proposed a well on acreage which it owns to be dedicated to a standard 320-acre spacing unit. The well location and dedicated acreage will be geologically justified at the examiner hearing on this application.

OXY's motion to dismiss this application is based on the existence of an old wellbore from which OXY has not produced oil or gas for many years and which is not temporarily abandoned pursuant to Division rules. The existence of a wellbore which is not in compliance with Division rules should not prevent other owners in a spacing unit from developing their minerals.

Nearburg requests that OXY's Motion to Dismiss be denied so it can proceed with its plans to develop its oil and gas interests in Section 5. In the alternative, Nearburg requests that its compulsory pooling application be continued for 30 days and, if OXY has not re-activated the Nellis well within that time, that its Motion to Dismiss be denied at that time.

Respectfully submitted,

HOLLAND & HART, LLP

By: 
William F. Carr

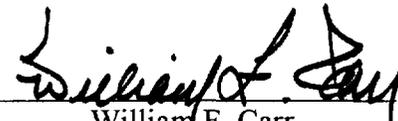
ATTORNEYS FOR NEARBURG
EXPLORATION COMPANY, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Motion to Dismiss was hand delivered on this 21st day of March 2002 to the following counsel of record.

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