

**Nearburg Exploration Company, L.L.C.**

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MAR 18 2002

March 15, 2002

Mrs. Lori Wrotenbery, Director  
Oil Conservation Division  
1220 S. Saint Francis Drive  
Santa Fe, NM 87505

FAX (505) 476-3462

RE: NMOCD Case #12820 - Compulsory Pooling  
Gem North "5" Federal Com. #1 Well  
W/2 of Section 5, T-19-S, R-33-E, Lea County, New Mexico  
Gem Prospect

Dear Mrs. Wrotenbery:

Nearburg Exploration Company, L.L.C. ("NEC") is in receipt of the Motion to Dismiss the captioned case filed by Mr. W. Thomas Kellahin and realizes that you must respond to said dismissal. NEC would like to add the following information, which was not revealed in Mr. Kellahin's request for dismissal. At the time NEC filed its application to pool the W/2 of Section 5, T-19-S, R-33-E, NEC researched and discovered that the Nellis Federal #1 well had not produced hydrocarbons in commercial quantities since 1995 and that OXY USA WTP LP (OXY) had received a temporary permit to abandon the Nellis Federal #1 well which expired July 24, 2000. After conversations with the Oil & Gas Conservation Division (OCD) on February 21, 2002, NEC was informed that the OCD could not find any application from OXY to extend the temporary abandonment status of the well. It appears ironic that after six plus years of non-productive status and the fact that we have proposed the drilling of the Gem North "5" Fed. Com. #1 well that OXY has filed a permit to re-enter the Nellis Federal Well No. 1 to restore production in the Morrow formation. In as much as the well has not produced in six years and the well has no approved temporary abandonment status, we request a spacing unit status determination by the OCD to advise us if the S/2 of Section 5 is still dedicated to this well or if this acreage is available for subsequent development by NEC on a W/2 unit basis.

Because of the lack of production in paying quantities and OXY's failure to extend the temporary abandonment status, the S/2 of Section 5 should no longer be dedicated to the Nellis Federal #1 well. Further, when NEC filed the compulsory pooling, NEC believed that the OCD would require the well to be plugged and abandoned.

In regards to Mr. Kellahin's reference to Case #12622, said case has been argued and the order is pending. No conclusion has been determined from facts presented at the hearing regarding NEC's alleged attempt to drill a well on acreage already dedicated to an existing well. NEC obviously did not knowingly attempt to drill a well on acreage already dedicated to an existing well and in fact, drilled the well under an approved OCD permit designating a 320 acre spacing unit owned entirely by NEC and its partners. Mr. Kellahin has access to the testimony presented.

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In conclusion, NEC has proposed a well consisting of the W/2 of Section 5, which location will be geologically justified at the hearing. OXY has temporarily abandoned the Nellis Federal well since 1995 and unless OXY can provide evidence otherwise, said abandonment has been unauthorized since July 24, 2000. NEC sees no reason to dismiss said case and wishes to proceed with said hearing. Following the OCD's determination of the status of the S/2 spacing unit dedication to the Nellis Federal #1 well, NEC will either proceed with the hearing or withdraw the AFE and eliminate the well from our drilling plans. OXY's filing of re-entry is an obvious attempt to deter from its obligation to respond to the well proposal by NEC and to restrict NEC's correlative rights to develop its oil and gas leasehold. Should the OCD agree to dismiss this case, NEC requests that OXY be required to re-establish commercial production within 90 days or be subject to force pooling on a W/2 Section 5 basis.

Also please note NEC's proposed location for its well. The location is 2,130' FNL and 660' FWL of Section 5, an unorthodox location for a N/2 spacing unit. This location is required by the BLM for archeological and topographic reasons. If a W/2 unit is allowed, the location will not require the issuance of a non-standard location order by the OCD.

Very truly yours,



Duke Roush  
Senior Landman

DR/dw

cc: Mr. David R. Catanach  
Mr. David Brooks, Esq. Division Attorney  
OXY USA WTP LP, Attn: Richard Foppiano  
Mr. W. Thomas Kellahin