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**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**

**CASE NO. 15441**

**NEX'S RESPONSE TO MOTION TO QUASH SUBPOENA**

Nearburg Exploration Company, L.L.C., SRO2 LLC and SRO3 LLC, (together, "Nearburg" or "NEX") hereby respond to the Motion to Quash Subpoena filed on behalf of COG Operating LLC ("COG") as follows:

**The Subpoena Seeks Pertinent Information.**

At the request of NEX, the Division issued its Subpoena Duces Tecum to COG Operating LLC, which was served on COG's resident agent on December 18, 2015. The subpoena obliged COG to respond and produce the documents and materials specified to NEX and its attorneys at the Division's offices at 9:00 a.m. on January 15, 2016. Instead of honoring the Division's subpoena, COG later that evening sought to delay compliance by its Motion to Dismiss Application and Quash Subpoena. In its motion, COG asserts that NEX must first demonstrate "relevancy" to an issue pending before the Division. No other objection was stated or privilege asserted. *See* Motion at 7. But relevance is an admissibility objection, not a discovery objection. NEX is not obliged to demonstrate the relevance of the materials it seeks in the manner

contemplated by NMRA 11-401 or 11-402 of the Rules of Evidence. NEX need only show that they are “pertinent” under NMSA 1978 §70-2-8.

The Subpoena Duces Tecum specified production of the following items:

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.

The Requests for Relief set forth in NEX’s Application and the individual subpoena items to which they pertain are as follow:

- (A) Determining that COG did not have the right to drill 043H and 044H on the unconsolidated, uncommunitized, and unpooled lease acreage owned by NEX.
- [Items 1, 2, 3.]

- (B) Determining that COG violated Section 70-2-17.C and 70-2-18.A of the New Mexico Oil and Gas Act, as well as Rules 19.15.14.8.B, 19.15.16.15.A, and 19.15.16.15.F of the Division's rules. [Items 1, 2, 3, 6.]
- (C) Requiring COG to account and pay to Applicants the amount they are entitled in the absence of pooling without recovery of well costs or expenses. [Item 4.]
- (D) Cancelling the drilling permit for 069H. [Item 6.]
- (E) Making such other and further provisions as may be proper in the premises, which may include removing COG as Operator of 016H. [Item 5.]

For all of these matters, the "pertinence" standard for subpoenas under NMSA 1978 §70-2-8 is clearly met and the very broad discovery standard of Rule 1-026(B)(1) is also satisfied.

For these reasons, Nearburg Exploration Company, L.L.C., SRO2 LLC and SRO3 LLC request that COG's Motion to Quash be denied and that COG be directed to immediately produce the documents and materials sought.

Respectfully submitted,

/s/ J. Scott Hall

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**ATTORNEYS FOR NEARBURG  
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**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 January 29, 2016:

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