

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

**APPLICATION OF POGO PRODUCING COMPANY
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

CASE NO. 12568 (*de novo*)

OIL CONSERVATION DIV.
01 FEB 12 PM 4:42

**EOG RESOURCES, INC.'S
MOTION TO DISMISS APPLICATION FOR HEARING *DE NOVO*
AND MOTION TO DISMISS "AMENDED APPLICATION"**

EOG Resources, Inc. ("EOG") hereby moves the Commission for an order dismissing (a) the Application For Hearing *De Novo* and (b) the "Amended Application" filed by Pogo Producing Company ("Pogo") on January 23, 2001. Pogo seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 23, Township 22 South, Range 32 East, N.M.P.M., Lea County, New Mexico for a well it proposes to drill on EOG acreage in the SE/4 NE/4 (Unit H) of this section, or in the alternative in the SW/4 NE/4 (Unit G) of this section. For the reasons set forth below, Pogo's applications must be dismissed.

BACKGROUND INFORMATION

1. Section 23 consists entirely of federal acreage. EOG is the leaseholder of record of 100% of the working interest in the N/2, SW/4 and W/2 SE/4 of Section 23, and is an owner of interest in the mineral estate Pogo seeks to pool. Pogo's interest in Section 23 is limited to the E/2 SE/4.

2. By letter dated September 29, 2000, EOG proposed to Pogo the drilling of a well to test the Morrow formation on a spacing unit comprised of the S/2 of Section 23 and the

creation of a working interest unit covering all of Section 23. In the alternative, EOG sought a farmin agreement or term assignment covering Pogo's interest in this federal section. EOG requested from Pogo the earliest possible response to this proposal due to time needed to obtain APD approval from the BLM and to schedule a rig. Pogo declined to participate in a well drilled on a S/2 spacing unit and declined to join in a one section working interest unit.

3. On October 24, 2000, EOG sent Pogo a revised Joint Operating Agreement for a S/2 unit. Pogo responded on November 2, 2000, by proposing a well on an E/2 spacing unit with the well to be drilled on EOG acreage in the SE/4 NE/4 of this section.

4. Being unable to reach voluntary agreement for the development of the Morrow reserves underlying Section 23, EOG filed an application with the Oil Conservation Division on November 7, 2000, seeking an order compulsory pooling the S/2 of Section 23 for a Morrow well to be drilled in the NW/4 SE/4 of the section.

5. On November 16, 2000, EOG wrote Pogo and advised Pogo that it had filed with the Bureau of Land Management an Application for Permit to Drill a well on a N/2 spacing unit in Section 23, advised Pogo that it believed that "lay down" proration units in Section 23 were the optimum method of developing this acreage, and again solicited Pogo's participation in the development of a S/2 spacing unit. *See Attachment A.*

6. While EOG was attempting to solicit Pogo's participation in the development of the S/2 of Section 23, EOG proceeded with its plans to develop its Morrow reserves underlying the N/2 of Section 23. On November 17, 2000, the BLM approved EOG's Application for Permit to Drill its Red Tank "23-N" Federal Well No. 1 on a standard 320-acre spacing unit in of the N/2 of Section 23. *See Attachment B.* This spacing unit is comprised of 100% federal lands

and is covered by one federal lease for which EOG is the leaseholder and 100% working interest owner.

7. On December 19, 2000, Pogo filed an application seeking a Division order pooling the E/2 of Section 23. This application was set for hearing on January 11, 2001.

8. On December 28, 2000, EOG again advised Pogo that it was proceeding with its plans to develop the N/2 of Section 23, that it had an approved APD from the BLM and that it intended to drill a well pursuant to the approved APD. *See Attachment C.*

9. At 7:00 A.M. on January 9, 2001, EOG commenced drilling its Red Tank "23-N" Federal Well No. 1 under the APD approved by the BLM for a N/2 spacing unit.

10. On January 9th, EOG requested that the Division continue its compulsory pooling application for a S/2 spacing unit until March 8, 2001. EOG also filed with the Division a Motion to Dismiss Pogo's application for an E/2 spacing unit in Section 23 on the grounds that the NE/4 was dedicated to EOG's Red Tank "23-N" Federal Well No. 1 under the N/2 spacing unit approved by the BLM. On that same day, Pogo filed a response objecting to EOG's motion.

11. On January 10th, EOG's motion was heard by a Division Examiner who indicated he intended to grant EOG's motion to dismiss. However, an order has not been entered by the Division.

I. Pogo's Applications Are Not Property Before the Commission.

De Novo appeals to the Commission are governed by Division Rule 1220, which states:

When an order has been entered by the Division pursuant to a hearing held by a Division Examiner, a party of record adversely affected by the order has the right to have the matter heard *de novo* before the Commission, provided that within 30 days from the date the order is issued the party files with the Division a written application for such hearing.

Case No. 12568 involves Pogo's Application filed before the Oil Conservation Division for a compulsory pooling order for a proposed well on EOG acreage in the SE/4 NE/4 (Unit H) of Section 23. On January 23, 2001, Pogo filed an "Amended Application" in Case No. 12568 with the Commission that seeks "in the alternative" a compulsory pooling order for a proposed well at a different location on EOG's acreage - the SW/4 NE/4 (Unit G) of Section 23.

The Division has yet to enter an order in Case No. 12568 addressing either Pogo's Application or its Amended Application. Pogo's application for *de novo* review by the Commission is therefore premature. *See* Division Rule 1220.

II. EOG's acreage in the NE/4 of Section 23 Is Not Available For Pogo's Proposed E/2 Spacing Unit.

Pogo has filed with the Commission a "Statement Of Reasons For Appeal" which essentially asks the Commission to revoke the N/2 spacing unit approved by the BLM and alter entirely the economics of EOG's well drilled on that federal acreage. Pogo contends such a drastic ruling is necessary to protect Pogo's correlative rights.

A. The N/2 Spacing Unit Approved By the BLM Does Not Impair Pogo's Correlative Rights.

"Correlative rights" is defined by the Oil and Gas Act as the right of a property owner to produce without waste "his just and equitable share" of the reserves under his property. *See* NMSA 1978, Sec. 70-2-33; Division Rule 7.C. Pogo has no right to produce or share in the recoverable reserves under EOG's property.

Pogo has no interest in the N/2 of Section 23. Pogo's interests are limited to the E/2 SE/4. The S/2 of Section 23, where Pogo's interest is located, remains available to form a 320 acre spacing unit and is the subject of of a compulsory pooling application filed by EOG now

pending before the Division as Case 12552. Thus, the N/2 spacing unit approved by the BLM does not prevent Pogo from producing its fair share of the reserves underlying Pogo's property.

B. The BLM Avoids Communitization of Federal Leases Where A Single Federal Lease Can Be Developed In Conformity With Established Well Spacing.

Pogo's request that the Commission revoke EOG's approved BLM drilling permit and create an E/2 spacing unit is also contrary to precedent and policy. Where federal acreage is involved, the Division has properly and routinely recognized the BLM's desire to avoid communization of multiple federal leases where a single federal lease can be developed in conformity with established well spacing. See Attachment D (Order No. R-11413) at p. 4 and p. 6.

Case No. 12423 involved an effort by Southwestern Energy Production Company to obtain a compulsory pooling order forming a W/2 spacing unit. The Division dismissed that application after it was informed that the BLM had already approved Santa Fe Snyder's drilling permit forming a N/2 spacing unit. *Id.* The Division noted that the BLM opposes Acommunization of multiple leases when a single federal lease can be developed in conformity with established well spacing." *Id.* at p. 4. The Division also referenced a letter from the BLM which applies equally here:

As a result of the BLM's action (approving a permit to drill for a N/2 spacing unit), Southwestern's compulsory pooling application is moot and we consider it appropriate for you to dismiss their application in Division Case 12423.

Attachment E at p. 2.

BLM's expressed policy and Division precedent requires that Pogo's applications in this case likewise be dismissed.

C. Pogo's Efforts To Discredit EOG Also Fail.

Since September of last year, EOG has undertaken efforts to jointly develop with Pogo the oil and gas reserves under Section 23. In September, 2000, EOG proposed a working interest unit comprised of Section 23 and a S/2 spacing unit for a well to be drilled to the Morrow formation. Pogo has refused those efforts, desiring instead to share in the recoverable reserves under EOG's property by requiring an E/2 spacing unit. As early as November 16th, EOG advised Pogo that EOG had filed with the BLM an Application for Permit to Drill a well on a N/2 spacing unit in Section 23, advised Pogo that it believed "lay down" proration units in Section 23 were the optimum method of developing the acreage, and solicited Pogo's participation in the development of a S/2 spacing unit. *See Attachment A.* Pogo filed no competing APD with the BLM.

Pogo did not file an application for an E/2 spacing unit with the Division until December 19th, more than a month after the BLM issued EOG an APD approving a N/2 spacing unit and more than a month after EOG advised Pogo of its plans to develop its acreage in the N/2 of the Section with a lay down unit.

Pogo's claim that it would have "gone to hearing on December 21st" if it had known EOG was drilling a well in the N/2 of Section 23 is puzzling. Pogo knew in November of EOG's plans to drill a well in the N/2 of Section 23. However, because Pogo had not filed a pooling application, it had no competing application which was even ready to be heard.

This is not a case of competing pooling applications, this is a case in which Pogo attempted to use the pooling statutes to strip EOG of an approved APD and impair EOG's right to develop EOG's federal acreage in the N/2 of Section 23. Pogo's complaint to this


Commission about the lack of development in the S/2 of Section 23 is the direct result of its refusal to participate in EOG's efforts to develop the S/2 of Section 23 and its insistence for an E/2 spacing unit.

Conclusion

For the above reasons, EOG respectfully requests that the Commission dismiss Pogo's Application for Hearing *De Novo* and dismiss Pogo's "Amended Application" for an order pooling the E/2 of Section 23, Township 22 South, Range 32 East, NMPM, Lea County, New Mexico.

Respectfully submitted,

HOLLAND & HART LLP
AND
CAMPBELL & CARR

By: 
William F. Carr
Michael H. Feldewert
Post Office Box 2088
Santa Fe, New Mexico 87501
(505) 988-4412

ATTORNEYS FOR EOG RESOURCES,
INC.

CERTIFICATE OF SERVICE

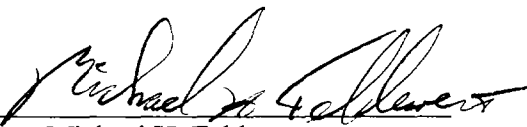
THIS WILL CERTIFY that a true and correct copy of the foregoing Motion to Dismiss was delivered by facsimile this 12th day of February, 2001 to the following:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
Attorney for Pogo Producing Company

Respectfully submitted,

HOLLAND & HART LLP
AND
CAMPBELL & CARR

By:



Michael H. Feldewert
Post Office Box 2088
Santa Fe, New Mexico 87501
(505) 988-4412