

HOLLAND & HART^{LLP}
ATTORNEYS AT LAW

DENVER • ASPEN
BOULDER • COLORADO SPRINGS
DENVER TECH CENTER
BILLINGS • BOISE
CHEYENNE • JACKSON HOLE
SALT LAKE CITY • SANTA FE
WASHINGTON, D. C.

P. O. BOX 2208
SANTA FE, NEW MEXICO 87504-2208
110 NORTH GUADALUPE, SUITE 1
SANTA FE, NEW MEXICO 87501-6525

TELEPHONE (505) 988-4421
FACSIMILE (505) 983-6043

William F. Carr

wcarr@hollandhart.com

October 30, 2002

VIA HAND DELIVERY
OR FACSIMILE

Lori Wrotenbery, Chairman
Oil Conservation Commission
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 78505

Re: **Case 12622 (De Novo):** Application of Nearburg Exploration Company, L.L.C.
for two non-standard gas spacing and proration units, Lea County, New Mexico.

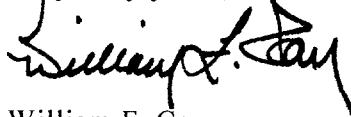
Case 12908-A (Severed and Reopened): In the Matter of the hearing called by
the Oil Conservation Division for an order creating, re-designating and
extending the vertical and horizontal limits of certain pools in Lea County, New
Mexico.

Dear Ms. Wrotenbery:

Enclosed is the Response of Nearburg Exploration Company, L.L.C., CL&F Resources, L.P.,
and Great Western Drilling Company to the Statement of Raptor Natural Pipeline, L.L.C.
delivered at the October 21, 2002 Commission hearing in the above-referenced cases.

I am providing copies of this Response to Commissioners Jami Bailey and Robert Lee and to
Stephen C. Ross Esq., J. Scott Hall, Esq. and W. Thomas Kellahin, Esq.

Very truly yours,



William F. Carr

Enclosures:

Commissioner Lori Wrotenbery
Commissioner Jami Bailey
Commissioner Robert Lee
Stephen C. Ross, Esq.
J. Scott Hall, Esq.
W. Thomas Kellahin, Esq.

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NEW MEXICO
DEPARTMENT OF ENERGY,
MINERALS & NATURAL RESOURCES

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

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

**APPLICATION OF NEARBURG EXPLORATION
COMPANY, L.L.C. FOR TWO NON-STANDARD
GAS SPACING AND PRORATION UNITS,
LEA COUNTY, NEW MEXICO.**

CASE NO. 12622 (De Novo)

**IN THE MATTER OF THE APPLICATION OF
THE OIL CONSERVATION DIVISION FOR
AN ORDER CREATING, CONTRACTION,
RE-DESIGNATING, AND EXTENDING THE
VERTICAL AND HORIZONTAL LIMITS OF
CERTAIN POOLS IN LEA COUNTY,
NEW MEXICO.**

CASE 12908-A (Severed and Reopened)

**RESPONSE TO STATEMENT OF RAPTOR NATURAL PIPELINE, L.L.C.
OF NEARBURG EXPLORATION COMPANY, L.L.C., CL&F RESOURCES, LP
AND GREAT WESTERN DRILLING COMPANY**

**I.
INTRODUCTION**

Nearburg Exploration Company, L.L.C., CL&F Resources, Inc. and Great Western Drilling Company (hereinafter collectively referred to as "Nearburg") are the lessees and working interest owners under a valid State of New Mexico Oil and Gas lease covering the N/2 of Section 34, Township 21 South, Range 34 East, NMPM. In these cases, Nearburg supports an order extending the boundaries of the Grama Ridge-Morrow Gas Pool to include all of Section 34. This extension of the pool boundaries will enable Nearburg to dedicate the N/2 of Section 34 to its Grama Ridge East "34" State Well No. 1 ("the Nearburg Well") located in the NE/4 of the section. Alternatively, if a standard N/2 spacing unit cannot be dedicated to the well, Nearburg seeks the creation of a 160-acre non-standard gas spacing unit comprised of the NE/4 of the section. Section 34 is in the Grama Ridge Morrow Gas Storage Unit ("the Unit") that is operated by Raptor Natural Pipeline, L.L.C. ("Raptor"). Raptor owns an easement for the injection, storage and withdrawal of extraneous gas in certain intervals in the Morrow formation under this section.

At the October 21 and 22, 2002 Oil Conservation Commission hearing in these cases, Raptor presented a statement that raised certain legal issues which it

characterized as “administrative obstacles” to the relief sought by Nearburg. Nearburg hereby responds to the legal arguments of Raptor.

STATEMENT OF RAPTOR NATURAL PIPELINE, L.L.C.:

Raptor reviewed the history of the Unit and offered into evidence the Unit Agreement, two amendments thereto, and certain orders of the Division that govern unit operations. Included in these documents is the Second Amendment to the Unit Agreement that Raptor recently negotiated with the New Mexico State Land Office.¹ With this amendment, Raptor and the State recognize that the Unit has aspects of a production unit for which production payments must be made “according to the oil and gas lease ownership interest,” and a gas storage facility. (Statement of Raptor, Tr at 7-8; Raptor Exhibit No. 3-C, AMENDMENT paragraph 2). The agreement characterizes Raptor’s rights as being in the nature of an easement for the injection, withdrawal and storage of extraneous gas that exist independently of the oil and gas leases that were initially unitized under the Unit Agreement (Statement of Raptor; Tr. at 9-11, Raptor Exhibit 3-C, PREMISES paragraph 9). In this Second Amendment to the Unit Agreement, Raptor admits that the lease covering the N/2 of Section 34 is no longer committed to the Unit and that a new state lease covering this acreage has been acquired by Nearburg. (Raptor Exhibit 3-C, paragraphs 6-8)²

Raptor also referred to an Acreage Dedication Plat (Division Form C-102) filed in May 1979 for the Grama Ridge-Morrow Well Number 2 (“the Grama Ridge Well”) located in the SW/4 of Section 34. This form indicates that the interests in the W/2 of the Section 34 were consolidated by the “Unit Agreement” for the Grama Ridge Well. Raptor argued that this form “establishes a west-half proration unit for that well” and that it “presents an administrative obstacle to the establishment of a north-half unit for Nearburg’s well....” (Statement of Raptor, Tr. at 16-17)

II.

**THE OIL AND GAS INTERESTS IN THE WEST HALF OF SECTION 34
ARE NOT CONSOLIDATED FOR, NOR COMMITTED TO,
THE GRAMA RIDGE WELL LOCATED IN THE SW/4 OF THE SECTION.**

Raptor’s contention that Division Form C-102 establishes a W/2 spacing unit for both injection and withdrawal of extraneous gas is based on a misunderstanding of both the purpose and effect of the filing of an Acreage Dedication Plat.

-
- 1 Nearburg did not receive notice of, was not aware of, nor did it participate in the discussions with the State Land Office; Nearburg did not participate in the preparation of the Second Amendment to the Unit Agreement.
 - 2 State of New Mexico Oil and Gas Lease K-3592-1 covered the N/2 of Section 34. PREMISES paragraph 6 of the Second Amendment to the Unit Agreement provides: “The Commissioner cancelled two oil and gas leases formerly committed to the Unit Agreement for non-payment of rentals. The Commissioner cancelled state lease no. K-3592-1, effective on January 13, 1999:....” PREMISES paragraphs 7 and 8 of this Amendment recognize that this acreage is now covered by a new oil and gas lease.

ACREAGE DEDICATION PLAT (FORM C-102):

The purpose of the Acreage Dedication Plat (Division Form C-102) is to identify the acreage that an operator has, or will, consolidate for a well³. It furthers administrative efficiency by requiring that the operator verify that the requirements of the applicable rules and statutes have been met. It does not and cannot consolidate oil and gas interests. (Oil Conservation Division Order No. R-11700-B, Finding 34.)

The consolidation of oil and gas interests is the obligation of the operator of the well⁴ and no allowable will be assigned to a well until all interests in a spacing unit have been consolidated or a non-standard unit has been approved for the well. (NMSA 1978, § 70-2-18 (1978); Division Rule 104 D (2); Division Form C-102).

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3. OCD Rule 1102 entitled "WELL LOCATION AND ACREAGE DEDICATION PLAT(Form C-102)," provides:

Rule 1102.A: "Form C-102 is a dual purpose form used to show the exact location of the wells and the acreage dedicated thereto. The form is also used to show the ownership and status of each lease contained within the dedicated acreage. When there is more than one working interest or royalty interest owner on a given lease, designation of the majority owner et al. will be sufficient." [1-1-65 ...2-1-96]

Rule 1102.B: "All information required on Form C-102 shall be filled out and certified by the operator of the well except the well location on the plat.

Rule 1102.D: "Amended Form C-102 ...shall be filed in the event there is a change in any of the information previously submitted....

- ⁴ The statutory duties of an operator to consolidate interests in a spacing unit are set out in NMSA 1978, § 70-2-18 (1978) which provides:

A. Whenever the operator of any oil and gas well shall dedicate lands comprising a standard spacing or proration unit to an oil and gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production....

B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest would be entitled in the absence of pooling, whichever is greater.

THE UNIT:

The Grama Ridge Morrow Unit is a voluntary unit. As with all voluntary units, only those interests committed to the unit by the owners thereof are subject to the terms of Unit Agreement. In 1979, when the Acreage Dedication Plat was filed, the information submitted thereon was correct because the two state leases in this section were committed to the "Unit Agreement." (Nearburg Exhibit 2, Tab 9). However, that information is not correct today.

LOSS OF TITLE:

State of New Mexico Oil and Gas Lease No. K-3592-1, covering the N/2 of Section 34, terminated effective January 13, 1999. (Nearburg Exhibit 2, Tab 1)⁵ In the May 23, 2001 Second Amendment to the Unit Agreement, Raptor agreed that this lease terminated and that a new oil and gas lease had been issued covering these lands. (Raptor Exhibit 3-C, PREMISES paragraphs 6-8). The termination of this lease constitutes a loss of title. "Loss of Title" is addressed in Section 21 of the Unit Agreement for the Grama Ridge Morrow Unit. This section provides that "...In the event there is a title failure to any tract of unitized land...and the true owner cannot be induced to join the unit agreement so that such tract is committed to this agreement...such tract may be eliminated from the unitized area..." (Raptor Exhibit 3, Article 21)

Raptor has taken no action to get the true owners of the N/2 of Section 34 (Nearburg et al.) to commit these lands to the Unit. Therefore, the N/2 of the section is not subject to the Unit Agreement and the NW/4 of the section is not committed to a W/2 spacing unit for the Grama Ridge Well located in the SW/4 of the section.

Raptor has failed to consolidate the interests in the W/2 of Section 34 for its Grama Ridge Well in violation of its duties as operator as defined by the Oil and Gas Act and the Rules of the Division.

DIVISION ACREAGE DEDICATION AND SPACING REQUIREMENTS:

Raptor argues that the Grama Ridge Well is both an injection well and a production well. (Statement of Raptor at Tr. at 7-8) As a producing well, each time gas is withdrawn the withdrawal can bring with it indigenous gas or BTU enriched gas. (See, Second Amendment to Unit Agreement, Raptor Exhibit 3-C, AMENDMENT

5 The Oil Conservation Commission has no jurisdiction to determine the validity of any title (See Order No. R-11700-B, Conclusion of Law). However, in this case, the Commission is not asked to determine the validity of the title to the N/2 of Section 34. Raptor admits that the prior state oil and gas lease covering the N/2 of Section 34 was terminated and the acreage covered thereby is no longer subject to the Unit Agreement. (Raptor Exhibit No. 3-C, PREMISES paragraphs 6-8).

paragraph 2). As a production well, Raptor must dedicate to it a standard 320-acre unit or obtain Division approval of a non-standard unit for the well.⁶

Oil Conservation Rule 104D.(2) provides that “Any well which does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit is for the well has been formed and dedicated or until a non-standard spacing unit has been approved.” In unambiguous terms, Division Rules direct that Raptor cannot produce the well in the SW/4 of Section 34 until it either combines its unitized acreage in the SW/4 of Section 34 with either the NW/4 or the SE/4 of the Section to form a standard unit or until it seeks the creation of a non-standard spacing unit in the SW/4 of this section. Until it does one of these things, production from this well violates Division Rule 104.D(2)⁷

Raptor must also establish a spacing unit for the Grama Ridge Well as an injection well. (Division Rule 701.H(2)(b)(ii)) Raptor faces the same problem with the injection aspects of this well as with a producing well. It owns the SW/4 of the section and needs to dedicate a 320-acre unit but the remainder of the section is owned by another party.⁸

6 Pursuant to the May 23, 2001 Second Amendment to the Unit Agreement, Raptor has agreed that as to any lease in the unit area which was not committed to the Unit Agreement or under a new oil and gas lease, the Land Office was entitled to 100% of the value of the production attributable to that acreage from any well producing indigenous gases or enhanced BTU gas. (Raptor Exhibit 3-C, AMENDMENT paragraph 2) As the lessees under the oil and gas lease covering the N/2 of Section 34, unless a non-standard 160-acre unit is formed for the Grama Ridge Well in the SW/4 of this section, Nearburg’s acreage is a non-committed window in the Unit and Nearburg is entitled to the full working interest share of any production attributes to its oil and gas leases. If Raptor forms either a W/2 of a S/2 unit for its injection well, Nearburg will own 50% of the working interest in the dedicated acreage. It stands in the same position as the State Land Office under the Second Amendment to the Unit Agreement and must be paid its share of production revenue in accordance with the provisions of its lease.

7 This is not just Nearburg’s interpretation but the Division’s own interpretation of its rule: the current Division Form C-102 provides “NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION.”

8 Curiously, when Nearburg was notified by the Division that approval of its C-102 Acreage Dedication Plat was withdrawn, Nearburg found itself in the same circumstance that confronts Raptor today. If an E/2 spacing unit was required, Nearburg did not own the lease covering the SE/4 of the Section and was therefore required to shut-in its well until a standard unit was formed or a non-standard unit approved by the Division.

III.
RAPTOR HAS FAILED TO FILE A REVISED
ACREAGE DEDICATION PLAT COVERING THE WEST HALF
OF SECTION 34 AS REQUIRED BY DIVISION RULES.

Raptor has not amended the Acreage Dedication Plat filed in 1979 and has thereby failed to comply with the requirements of Division rules which require operators to file amended acreage dedication plats when there is a change in any information previously submitted. (Footnote 4, Oil Conservation Division Rule 1102.D) When title to the N/2 of Section 34 was lost resulting in the elimination of this acreage from the unit area, Raptor was under an obligation to file an amended acreage dedication plat. It cannot do so because it has not consolidated the interests in a standard spacing unit as required by the Division. Having failed to consolidate the interests to form a standard spacing unit and having not filed amended forms as required by Division Rule, Raptor cannot now use an inaccurate form that does not comply with Division Rules to create an “administrative obstacle” to the possible creation of a standard N/2 spacing unit for the Nearburg Well.

IV.
CONCLUSION

Raptor Natural Pipeline, L.L.C. appeared at the October 21 Commission hearing and presented legal arguments designed to create “administrative obstacles” to the relief Nearburg seeks in these cases. While holding itself out as knowledgeable about the Unit and the rules and regulations of the Division, Raptor’s evidence shows that it has failed to comply with the Oil Conservation Division’s spacing and acreage dedication requirements which govern the very document- the Acreage Dedication Plat -- upon which Raptor’s arguments rest.

Raptor contends that there is an existing spacing unit comprised of the W/2 of Section 34. However, the evidence, and governing statutes and rules show otherwise. They establish that:

- (1) an Acreage Dedication Plat does not combine oil and gas interests,
- (2) the State Oil and Gas Lease covering the N/2 of Section 34 has terminated,
- (3) this termination constitutes a “Loss of Title” pursuant to Article 21 of the Unit Agreement,
- (4) the N/2 of Section 34 is no longer committed to the Unit Agreement and therefore the NW/4 of Section 34 is not committed to a spacing unit comprised of the W/2 half of Section 34,
- (5) it is the duty of the operator to file a amended Acreage Dedication Plat when any information thereon changes, and

- (6) Raptor has not filed an amended Acreage Dedication Plat showing the W/2 of Section 34 is no longer consolidated by the "Unit Agreement."

Raptor cannot revise the Acreage Dedication Plat covering the W/2 of Section 34 as required by Division Rule because the remainder of the interests in that section are not committed to the Grama Ridge Morrow Gas Unit Agreement and no effort has been undertaken to reach a voluntary agreement with the true owners for a spacing unit for the Well in the SW/4 of the Section. Accordingly, there is no spacing unit in the W/2 of this section that would preclude the dedication of a N/2 unit to the Nearburg Well if the Commission extends the Grama Ridge Morrow Gas Pool to include the all of Section 34.

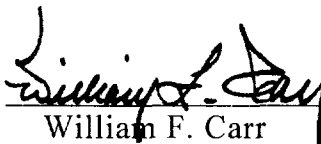
Simply stated, Raptor's argument fails because the formation of a spacing unit in the N/2 Section 34 cannot be prevented by an Acreage Dedication Plat that is inaccurate and does not conform to applicable Division Rules.

The only "administrative obstacle" which Raptor brings to the Commission with its October 21, 2002 statement is whether under statute and Division rule, Raptor can continue to produce the Grama Ridge Well in the SW/4 of Section 34 until it consolidates and dedicates the interests in a standard spacing unit to the well or obtains approval of a non-standard unit.

This "administrative obstacle" can be avoided in two ways. Either the Division Can grant Nearburg's request for a non-standard spacing unit comprised of the NE/4 of Section 34 thereby allowing Nearburg to voluntarily commit its lease in the NW/4 to a W/2 spacing unit, or it can move the Grama Ridge Morrow Pool boundary to include all of Section 34 thereby allowing a S/2 unit for the Grama Ridge Well in the SW/4 of Section 34. In either Case, Nearburg is willing to negotiate and compromise with Raptor to form a spacing unit for their well.

Respectfully submitted,

HOLLAND & HART, LLP

By: 
William F. Carr

ATTORNEYS FOR NEARBURG
EXPLORATION, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been transmitted by facsimile or hand delivery this 30th day of October 2002 to the following:

Commissioner Lori Wrotenbery
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

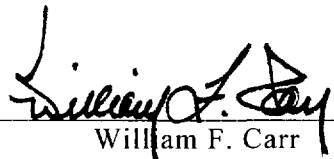
Commissioner Jami Bailey
Director
Oil Gas & Minerals Division
310 Old Santa Fe Trail
Post Office Box 1148
Santa Fe, NM 87504-1148

Commissioner Robert Lee
Director
New Mexico Petroleum Recovery
Research Center
801 Leroy Place
Socorro, NM 87801

Stephen C. Ross, Esq.
Assistant General Counsel
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
FAX NO. (505) 982-2047

J. Scott Hall, Esq.
Miller, Stratvert & Torgerson, P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
FAX No. (505) 989-9857


William F. Carr