

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

March 13, 2002

HAND DELIVERED

Mrs. Lori Wortenberg, Director
Oil Conservation Division
1220 South Saint Frances Drive
Santa Fe, New Mexico 87505

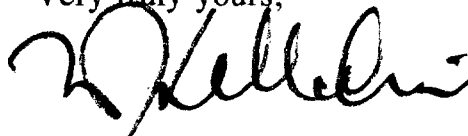
Re: **MOTION TO DISMISS**
NMOCD Case 12820
Application of Nearburg Exploration Company L.L.C.
for compulsory pooling, Lea County, New Mexico
W/2 Sec 5, T19S, R33E (Gem North "5" Federal Com Well No. 1)

CLERK
MAR 13 PM 2:57

Dear Mrs. Wortenberg:

On behalf of OXY USA WTP LP, an adversely affected interest owner, please find enclosed our MOTION TO DISMISS the referenced case filed by Nearburg Exploration Company. L.L.C.. This case is currently set on the Examiner's Docket scheduled for April 4, 2002

Very truly yours,



W. Thomas Kellahin

cc: Mr. David R. Catanach, Hearing Examiner
Mr. David Brooks, Esq. Division Attorney
William F. Carr, Esq.
Attorney for Nearburg Exploration Company, Inc.
OXY USA WTP Lp.
Attn: Richard Foppiano

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

MOTION TO DISMISS

Comes now OXY USA WTP LP ("OXY"), by its attorneys, Kellahin and Kellahin, enters its appearance in this case as an interested party in opposition to the applicant and moves the Division to dismiss this case because the applicant, Nearburg Exploration Company L.L.C. ("Nearburg")) seeks to pool acreage a portion of which is already dedicated to and approved by the Division as a spacing unit for OXY's Nellie Federal Well No. 1 located in S/2, Section 5, T19S, R33E, NMPM, Lea County, New Mexico; and in support states:

RELEVANT FACTS

- (1) OXY controls 50 % and Penroc Oil Corp. controls 50 % of the working interest in the S/2 of Section 5, T19S, R33E, NMPM, Lea County, New Mexico.
- (2) Nearburg's working interest is confined to the NW/2 of this section.
- (3) On January 29, 2002, Nearburg filed an application with the Division seeking a compulsory pooling order to drill its Gem North "5" Federal Com Well No. 1 and to dedicate the well to the W/2 of Section 5.

(4) The S/2 of Section 5 is currently dedicated to OXY's Nellie Federal Well No. 1 a Morrow gas well at a standard well location in Unit O of this section and dedicated to a standard 320-acre gas spacing and proration unit consisting of the S/2 of Section 5. **See Exhibit "A"**

(5) OXY and Penroc plans to re-enter the Nellie Federal Well No. 1 in an attempt to restore Morrow production. **See Exhibit "B"**

(6) Nearburg's application seeks a pooling order for the following spacing units:

- (a) a 320-acre gas spacing and proration unit consisting of the W/2 of this section.
- (b) a 160-acre spacing and proration unit consisting of the NW/4 of this section.
- (C) an 40-acre spacing and proration unit consisting of the SW/4NW/4 of this section.

(7) This is not the first time Nearburg has attempted to drill a well or acreage already dedicate to an exiting well. See Case 12622 (Nearburg by Redrock Operating Co.) E/2 Section 34, T21S, R34E, East Grama Ridge-Morrow Gas pool.

(8) In additional, Nearburg well location is unorthodox become to is too closer to the south side of the NW/4 of Section 5 an location which is object to you OXY.

ARGUMENT

The Division cannot issue a compulsory pooling order for a spacing unit all readily dedicated to an existing well. The W/2 of this section is not available to Nearburg as a 320-acre spacing unit because the S/2 of this section has already been approved by the Division as a spacing unit for OXY's Nellie Federal Well No. 1

The N/2 of this section is the only remaining 320-acre spacing unit now available in this section. Fortunately for Nearburg, its working interest is located in the NW/4 of this section and it can pursue efforts to located its well on its own acreage and form a voluntary agreement with the owners in the N/2 of this section.


This is not a circumstance of competing well proposals or competing compulsory pooling applications. This is simply a case where OXY and Penroc have dedications the S/2 of Section 5 to a well. Nearburg now seeks to frustrate that effort and interfere with the OXY's well.

The compulsory pooling statute is available only in the absence of a voluntary agreement. In this case, the Division is precluded from granting Nearburg's application until OXY's well has been plugged and abandoning and the S/2 of Section 5 is released for this spacing unit. Section 70-2-17(C) NMSA 1978 is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. This acreage is already dedicated to a well.

Failure to dismiss Nearburg application would establish a bad precedent for the Division and for the industry--a precedent which would unfairly allow compulsory pooling to void a existing spacing unit and to frustrate a company's efforts to rework its well.

Compulsory pooling was intended only as a remedy of last resort and not as a means for one company to attempt to capture acreage a portion of which is already dedicate to a existing well.

WHEREFORE OXY USA WTP L. P. requests that the Division Hearing Examiner grant this motion and dismiss Oil Conservation Division Case 12820.



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was hand delivered to counsel for applicant this 13th day of March, 2002



W. Thomas Kellahin

NEW MEXICO OIL CONSERVATION COMMISSION
WELL LOCATION AND ACREAGE DEDICATION PLAT

Revised 1-1-72
Supers. No. C-128
Effective 1-1-75

All distances must be from the outer boundary of the Section.

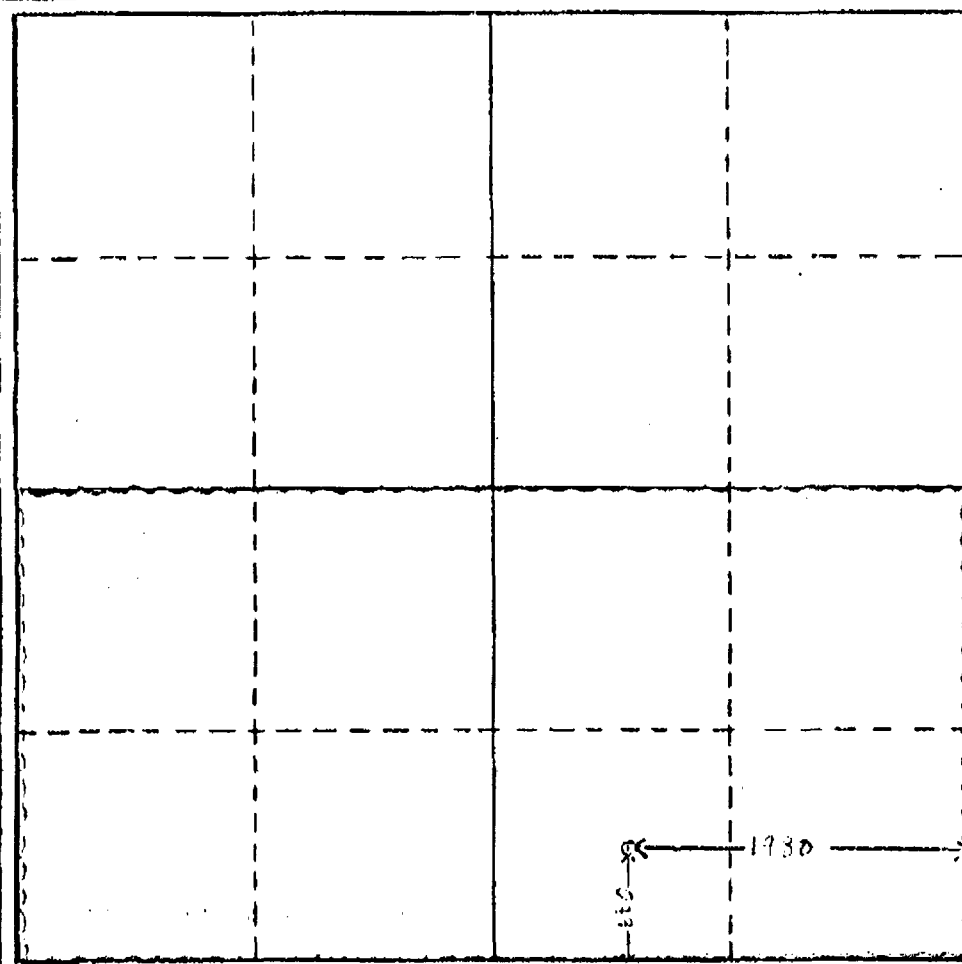
Operator Amoco Production Company			Lease Nellis Federal		Well No. 1
Unit Letter 0	Section 5	Township 19-S	Range 33-E	County Lea	
Actual Footage Location of Well 660 feet from the South line and 1980 feet from the East line					
Ground Level Elev. 3716 RDB	Producing Formation Penn		Pool Buffalo Penn. Gas	Dedicated Acreage: 320 Acres	

1. Outline the acreage dedicated to the subject well by colored pencil or hatchure marks on the plat below.
2. If more than one lease is dedicated to the well, outline each and identify the ownership thereof (both as to working interest and royalty).
3. If more than one lease of different ownership is dedicated to the well, have the interests of all owners been consolidated by communitization, unitization, force-pooling, etc?

☐ Yes ☐ No If answer is "yes," type of consolidation _____

If answer is "no," list the owners and tract descriptions which have actually been consolidated. (Use reverse side of this form if necessary.) _____

No allowable will be assigned to the well until all interests have been consolidated (by communitization, unitization, forced-pooling, or otherwise) or until a non-standard unit, eliminating such interests, has been approved by the Commission.



CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

Name
Dennis Evans
Position
Assist Admin Analyst
Company
Amoco Production Company
Date
12-27-78

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

Date Surveyed _____

Registered Professional Engineer and/or Land Surveyor

Certificate No. _____

EXHIBIT

A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

OPERATOR'S COPY

FORM APPROVED
Budget Bureau No. 1004-0135
Expires July 31, 1996

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to re-enter an abandoned well. Use Form 3160-3 (APD) for such proposals.

SUBMIT IN TRIPLICATE - Other instructions on reverse side

1. Type of Well

☐ Oil Well ☒ Gas Well ☐ Other

2. Name of Operator

Occidental Petroleum Ltd.

3a. Address

P.O. Box 50250, Midland, TX 79710-0250

3b. Phone No. (include area code)

915-685-5717

4. Location of Well (Footage, Sec., T., R., M., or Survey Description)

660 FSL 1980 FSL SWSH(O) Sec 5 T19S R33E

5. Lease Serial No.

NND77002

6. If Indian, Allottee or Tribe Name

7. If Unit or C/A Agreement, Name and/or No.

8. Well Name and No.

Mallin Federal

1

9. API Well No.

30-025-01663

10. Field and Pool, or Exploratory Area

Buffalo Pool

11. County or Parish, State

Lea

NM

12. CHECK APPROPRIATE BOX(ES) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION

- ☒ Notice of Interest
☐ Subsequent Report
☐ Final Abandonment Notice

TYPE OF ACTION

- ☒ Acidize ☐ Deepen ☐ Production (Start/Resume) ☐ Water Shut-Off
☐ Alter Casing ☒ Fracture Treat ☐ Reclamation ☐ Well Integrity
☐ Casing Repair ☐ New Construction ☐ Recomplete ☒ Other Reactivate
☐ Change Plans ☐ Plug and Abandon ☐ Temporary Abandon
☐ Convert to Injection ☐ Plug Back ☐ Water Disposal

13. Describe Proposed or Completed Operation (clearly state all pertinent details, including estimated starting date of any proposed work and approximate duration thereof. If the proposal is to deepen directionally or recompletes horizontally, give subsurface locations and measured and true vertical depths of all pertinent markers and zones. Attach the Bond under which the work will be performed or provide the Bond No. on file with BLM/BIA. Required subsequent reports shall be filed within 30 days following completion of the involved operations. If the operation results in a multiple completion or recompletion in a new interval, a Form 3160-4 shall be filed once testing has been completed. Final Abandonment Notices shall be filed only after all requirements, including reclamation, have been completed, and the operator has determined that the final site is ready for final inspection.)

TD-13723' PSID-13604' Perfs-13120-13575'

1. MIXU PU, Install BOP
2. POOR W/ pkr & tbg
3. RTH w/ bit & clean out below 13575' w/ foam unit.
4. Acidize w/ foam & ball sealers
5. Test well, if necessary, frac.

14. I hereby certify that the foregoing is true and correct
Name (Printed/Typed)

David Stewart

Title

Sr. Regulatory Analyst

Date

2/20/02

THIS SPACE FOR FEDERAL OR STATE OFFICE USE

Approved by

A handwritten signature of David R. Stewart over a rectangular stamp that says "APPROVED".

Title

Office

Date

Conditions of this notice does not warrant or certify that the applicant has legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations or to any matter within its jurisdiction.

(Instructions on reverse)
DAVID R. STEWART
PETROLEUM ENGINEER