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FROM: J. Scott Hall

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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.
FOR TWO NON-STANDARD GAS SPACING
AND PRORATION UNITS,
LEA COUNTY, NEW MEXICO.**

CASE NO. 12,622 (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 NO. 12,908-A (Severed and Reopened)

**RAPTOR NATURAL PIPELINE LLC'S
REPLY TO NEARBURG EXPLORATION COMPANY'S
POST-HEARING RESPONSE**

Raptor Natural Pipeline LLC, ("Raptor"), the Unit Operator of the Grama Ridge-Morrow Unit, hereby replies to the post-hearing response submitted on behalf of Nearburg Exploration Company, L.L.C., ("Nearburg").

Set forth below is the procedural history of Case Nos. 12622 and 12908-A following the drilling and completion of the Nearburg Grama Ridge East "34" State Well No. 1 within the horizontal and vertical limits of the Grama Ridge-Morrow Gas Storage Unit:

Case No. 12622

These administrative proceedings began on January 8, 2001 with the filing of the following matter: *Application of Nearburg Exploration Company, L.L.C. for Administrative Approval of Two Non-Standard 160 Acre Gas Well Spacing Units in the E/2 of Section 34, Township 21 South, Range 34 East, NMPM, Lea County, New Mexico.* (See Nearburg Exhibit 9). In its letter-Application, Nearburg sought to obtain administrative approval, without hearing, of the creation of two non-standard units comprised of the NE/4 and the SE/4 of Section 34. Nearburg also sought approval for the dedication of the NE/4 of the section to its Grama Ridge East "34" State Well No. 1 drilled at a standard 320 acre gas well location in the NE/4 of Section 34, Township 21 South, Range 34 East, NMPM, in Lea County. The NW/4 of Section 34 was expressly excluded from the scope of Nearburg's Application. (*id.*, page 1.) Nearburg also asserted that it was prevented from dedicating the SE/4 of Section 34 due to the location of the

At the hearing, both the Nearburg and the Division Applications were opposed by Redrock Operating LTD, Co., the owner of an overriding royalty interest in the SE/4 of Section 34.

Raptor appeared at the hearing neither in support of nor in opposition to the positions of Nearburg or Redrock. Instead, the purpose for Raptor's participation in the consolidated proceeding has been to ensure that the integrity of the Unit is protected and that unit operations and the correlative rights of the unit participants and the units storage customers are not adversely affected. All the parties are in agreement that the Nearburg well produced from the "GRE" Morrow sand, while the Upper and Lower Morrow "B" sands are the primary gas storage intervals.² Raptor's position has been premised on Order No. R-11611³, in which the Division made the following finding:

- (9) *Raptor presented testimony and evidence establishing that based on currently available data, it appears that the [Nearburg] Grama Ridge East "34" State Well No. 1 has not adversely affected Unit Operations, although the possibility of actual communication with the Unitized Formation cannot be precluded with absolute certainty.*⁴

It was in this context that Raptor appeared and provided the Commission with an overview of the Unit and the history of Unit Operations, including the sequence of events that led to the drilling of the Nearburg well to the Unitized Formation on the State of New Mexico oil and gas lease covering the N/2 of Section 34, despite the obvious existence of the Unit as a matter of public record. It was further explained how Raptor and the State Land Office successfully reconciled the obvious conflicts that arose from the cancellation of a previous lease and the drilling of the Nearburg well. Unit Operations were able to continue without disruption and the rescission of Nearburg's State oil and gas lease was avoided.⁵ These unusual events were of obvious interest to the Commission and required explanation.

Raptor also indicated that it had one interest potentially affected by the possible dedication of a standard 320-acre spacing and proration unit consisting of the N/2 of Section 34 to the Nearburg "34" State Well No. 1. Raptor explained what had been discovered by Nearburg in early 2001: The W/2 of Section 34 was already dedicated to the Grama Ridge Morrow Unit Well No. 2 located in the SW/4 of that section. Accordingly, Raptor pointed-out that the pre-existing dedication of the W/2 to the GRMU Well No. 2 presented an "administrative" obstacle that the Commission would somehow have to reconcile.⁶

² All these intervals are contained within the vertical limits of the Unitized Formation of the gas storage unit.

³ NMOCD Case Nos. 12588 and 12411: *Application of Raptor Natural Pipeline, LLC, f/k/a LG&E Natural Pipeline LLC For Special Rules For The Grama Ridge Morrow Gas Storage Unit, Lea County, New Mexico*

⁴ Order No. R-11611 established special operating rules for the Grama Ridge Morrow Gas Storage Unit Area, including Section 34. Nearburg corroborated in the crafting of those rules and the form of order adopting them. See Order No. R-11611, finding paragraph 17.

⁵ Similarly, the BLM inadvertently canceled two Federal oil and gas leases in Section 4 and issued new leases covering the same acreage. The BLM rescinded the new leases and simultaneously reinstated the original leases.

⁶ The W/2 of Section 34 was dedicated to the GRMU Well No. 2 in compliance with the Divisions directive in Order No. R-5995 issued in 1979.

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Although Nearburg expressly excluded the creation of a N/2 spacing unit in Section 34 from the scope of relief requested in its Application, Nearburg now claims, in essence, that it is surprised by the problem posed by the pre-existing W/2 spacing unit.

Following the hearing, in a fit of overreaction, Nearburg provided the Commission with its "Response" that made the following assertions: (1) The C-102 Acreage Dedication Plat showing the dedication of the W/2 of Section 34 to the GRMU Well No. 2 is inaccurate and ineffective; (2) the well does not qualify for an allowable and cannot be produced; and, finally, (3) Nearburg's lease in the N/2 of the section "*is not subject to the Unit Agreement*".

On all three points, Nearburg has it wrong.

Nearburg Has Previously Acknowledged the Dedication of the W/2 Spacing Unit

As Operator of the GRMU Well No. 2, Raptor would have been remiss had it not pointed-out the potential conflict between the pre-existing W/2 spacing unit and any effort to dedicate an overlapping N/2 unit to the Nearburg well. The question is: Why didn't Nearburg bring this matter to the Commission's attention?

From its own Application in Case No. 12622, it is apparent that Nearburg has long recognized the dedication of the W/2 proration unit to the GRMU Well No. 2 and had abandoned the idea of dedicating the N/2 of Section 34 to its well. Nearburg's Application, on the first page, states:

"Attachment C is a 1979 amended Well Location and Acreage Dedication Plat showing that the W/2 of Section 34 is devoted to the Grama Ridge Morrow Unit Well No. 2 and therefore not affected by this Application."

(See Nearburg Exhibit 9, page 1, and Attachment "C" thereto; See, also, Transcript, pg. 116.)

Nearburg's newly contrived assertion is also contradicted by another representation it has made during the course of these proceedings:

By correspondence to the Division Director dated June 25, 2001, Nearburg's counsel sought a continuance of the June 28, 2001 Examiner hearing setting on its Application in Case No. 12622. The letter set out the background of the case, and noted:

"After the ["34" State] well was drilled and producing, Nearburg was advised by the OCD that the Application for Permit to Drill and Acreage Dedication Plat had been approved in error, that the W/2 of this section was within a gas storage project and that Nearburg had to either dedicate a standard 320-acre unit to the well or form a non-standard unit for this well comprised of the NE/4 of this section."

"Since that time, Nearburg has settled the outstanding issues concerning the underlying lease with the State Land Office and with LG&E (now Raptor Pipeline), the operator of the gas storage unit. The parties have been able to establish that the well is not in communication with the storage project and an order is pending establishing rules for this gas storage project. (emphasis added).

(See Correspondence dated June 25, 2001, Exhibit B, attached.)

Given the admissions set forth in its own pleadings and correspondence, Nearburg is now estopped from making the wholly inconsistent claim that the W/2 dedication is ineffective.

The Acreage Dedication Plat for GRMU Well No. 2 is Fully Effective

Nearburg's contention that Division Form C-102 does not establish a W/2 spacing unit for the GRMU Well No. 2 is based on a misunderstanding of both the purpose and effect of the filing of an Acreage Dedication Plat.

In a lengthy discourse, Nearburg lectures the Commission on the technical nuances of the Division's C-102 Acreage Dedication Plats and acreage dedication requirements. While holding itself out as knowledgeable about the rules and regulations of the Division, Nearburg unfortunately cites to the wrong rules.

Nearburg relies on the Well Spacing and Location rules (e.g., Rule 104D.2) under Part 3 of the Division's rules and regulations that govern "Drilling" as authority for its position that Raptor cannot operate the GRMU Well No. 2. Nearburg's reliance on the Division's "Drilling" rules, particularly Rule 104D.2, is misplaced. Neither do the series of rules setting forth the procedures for the assignment of allowables under Part H: "Gas Proration and Allocation" (e.g., Rules 601 through 605) apply. Nearburg would have been somewhat closer to the mark had it referred to Part 6 of the Division's rules governing "Natural Gas Production Operating Practice". Yet, Rule 405 under Part 6 makes clear that these rules would be inapplicable to the operation of the GRMU Well No. 2, except to the extent they require Raptor to meter and report monthly gas injection and withdrawal volumes.⁷

is this
really
B.L's
position?

Instead, the Division has established a specifically applicable set of rules that were completely overlooked by Nearburg.

Under Part 9 of the its rules ("Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage"), the Division has established a fairly comprehensive scheme for the regulation of the injection of "fluids" (including gas) into

⁷ 19.15.6.405 STORAGE GAS

- With the exception of the requirement to meter and report monthly the amount of gas injected and the amount of gas withdrawn from storage, in the absence of waste these rules and regulations shall not apply to gas being injected into or removed from storage. (See Rule 1131.)

[1-1-50...2-1-96; 19.15.6.405 NMAC - Rn, 19 NMAC 15.F.405, 12-14-01]

underground reservoirs for any purpose, and expressly including storage. (See Rule 701A).⁸ This rule group sets forth the procedures and requirements for obtaining injection authorization (Rule 701), operation and maintenance (Rule 703), testing and monitoring (Rule 704) and reporting (Rule 706).

It is Rule 701 that is the determinative rule in this case, not Rule 104 as Nearburg asserts. The requirement for the filing of the Acreage Dedication Plat for the GRMU Well No. 2 arises under Rule 701H(2)(b). That rule provides, in relevant part, as follows:

- (2) [T]he applicant for approval of a storage well under this rule shall file the following:
- (b) With the appropriate district office of the Division in TRIPLICATE:
- (ii) Form C-102, Well Location and Acreage Dedication Plat;

It is also Rule 706 (Records and Reports) that gave rise to the requirement for Raptor and its predecessors to make monthly reports of injection volumes for each well in the storage unit, in conformance with the acreage dedication plats filed for those wells. As evidenced by the Plan of Operations filed with the State Land Office, (Raptor Exhibit 12) Raptor and its predecessors have been in full compliance with the Division's requirements under Rule 701H(2)(b)(ii) since 1973, and since 1979, as well, when its amended Acreage Dedication Plat was filed to conform to the change to the pool rules establishing 320 acre spacing. (Nearburg Exhibit 9, Attachment C thereto.) Thus, it is quite evident that the acreage dedication and reporting requirements for gas storage injection and withdrawal wells fulfill entirely separate purposes than those arising under Rule 104 of the Division's Part 3 Drilling Regulations.

The GRMU Well No. 2 has been used continuously for gas injection, storage and withdrawal purposes since 1973. (See Raptor Exhibit 12, page 2; Raptor Exhibit 3-C, page 1, paragraph 3⁹). Nearburg is clearly wrong when it argues that the applicability of Rule 104

⁸ 19.15.9.701 INJECTION OF FLUIDS INTO RESERVOIRS

- A. Permit for Injection Required - The injection of gas, liquefied petroleum gas, air, water, or any other medium into any reservoir for the purpose of maintaining reservoir pressure or for the purpose of secondary or other enhanced recovery or for storage or the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the Division after notice and hearing, unless otherwise provided herein.
- H. Storage Wells
- (2) In addition to the filing requirements of Subsection B of 19.15.9.701 NMAC, the applicant for approval of a storage well under this rule shall file the following:
- (a) With the Division Director, a plugging bond in accordance with the provisions of Rule 101;
- (b) With the appropriate district office of the Division in TRIPLICATE:
- (i) Form C-101, Application for Permit to Drill, Deepen, or Plug Back;
- (ii) Form C-102, Well Location and Acreage Dedication Plat; and
- (iii) Form C-105, Well Completion or Recompletion Report and Log.

[1-1-50...2-1-96; 19.15.9.701 NMAC - Rn, 19 NMAC 15.1.701, 11-30-00]

⁹ The Second Amendment to the Unit Agreement recites: "The Unit Area has continuously been used, since its creation to the time of this Second Amendment, for injection, storage and withdrawal of extraneous gas."

resulted in the termination of the W/2 spacing unit dedicated to the GRMU Well No. 2. Under Rule 701, Raptor's Acreage Dedication Plat has been, and continues to be, fully effective.

Nearburg's State Oil and Gas Lease is Subject To the Unit Agreement

Nearburg now argues that the N/2 of Section 34 is not committed to the Unit due to a "loss of title" and that the NW/4 of the section is not dedicated to the GRMU Well No. 2 as a result. Thus, Nearburg sees fit to attack the Grama Ridge-Morrow Unit and the compromise established by Raptor and the State Land Office, a compromise that allowed Nearburg to avoid the rescission of its State oil and gas lease. For reasons that are not clear, Nearburg's new strategy seeks to convert Raptor from a neutral party into an adversary by attacking the actions Raptor and the State Land Office took to resolve a problem that was not of their making. It is equally unclear why Nearburg would seek to create a new dispute where one does not exist, and then embroil the Commission in it. An attack on the Unit is far beyond the scope of these proceedings and, in many respects, the Commission's jurisdiction.

Nearburg has said "[T]he N/2 of the section is not subject to the Unit Agreement". (Nearburg Response, page 4.) Nearburg's assertion that its State oil and gas lease is unaffected by the Unit is based on a premise it knows to be false.

The problems precipitated by the drilling of the Nearburg "34" State Well No. 1 in the NE/4 of Section 34 were specifically addressed in the course of negotiations leading up to the State Land Commissioner's approval of the Second Amendment to the Unit Agreement for the Grama Ridge-Morrow Unit. A new Section 25 was added to the Unit Agreement which provided:

- A. *As to the lands within the Commissioner's jurisdiction, and notwithstanding any other provision of this Unit Agreement, the rights of the unit operator to inject, withdraw and store extraneous gas under this Unit Agreement shall survive the cancellation, forfeiture or any other termination of any or all of the state oil and gas leases that are now or may become unitized hereunder. The existence, duration and nature of such injection, withdrawal and storage rights shall be determined strictly in accordance with the Unit Agreement, as amended hereby, and shall not depend on or arise under any state oil and gas lease.*
- B. *If a state oil and gas lease encumbering state lands within the unit area terminates for any reason, nothing in this Unit Agreement shall preclude the Commissioner from issuing a new oil and gas lease to cover the same lands. However, so long as the Unit Agreement remains in effect, such new oil and gas leases shall be subject to the Unit Operator's valid, pre-existing rights to inject, withdraw and store extraneous gas¹⁰ pursuant to the Unit Agreement, as amended hereby. (See Second Amendment To Unit Agreement, pg.s 4 and 5, Raptor Exhibit 3-C.)*

¹⁰ The indigenous gas underlying Section 34 was bought-out by the Unit Operator when the unit was converted to storage operations in 1973 and the State was paid royalties on the gas at that time. See Unit Plan of Operations, pg. 4 (Raptor Exhibit No. 12).

The "Premises" recitals to the Second Amendment reiterated this point:

"10. In a letter dated July 21, 2000 addressed to Mr. William Carr, counsel for Nearburg Exploration Company and Yates Petroleum Corporation, the Commissioner's counsel stated that [their oil and gas leases] were subject to LG&E's [now Raptor's] valid and existing right to inject, withdraw and store gas pursuant to the Unit Agreement."

(*id.*, at pg. 2; emphasis added; The letter referred to in the Second Amendment is in the Nearburg exhibit notebook as Exhibit No. 8.)

The recitals in the premises preamble to the Second Amendment, the language in Section 25 of the Unit Agreement adopted by the Second Amendment, and the State Land Office's July 21, 2000 advisory to Nearburg's counsel are all entirely consistent with the State Land Commissioner's Approval of the Second Amendment (Raptor Exhibit 11) and Exhibit "B" to the Unit Agreement (attached to Raptor Exhibit 3-C) clearly showing that the Nearburg lease continues to be subject to the Unit Agreement.

Nearburg has acquiesced in, and has not otherwise challenged any of these determinations by the State Land Office. Consequently, Nearburg is bound by them.

Nearburg's assertions that the W/2 acreage dedication for the GRMU Well No. 2 is ineffective because of a "loss of title" under the Unit is an argument woven out of whole-cloth that it knows is without any basis.

Conclusion

Nearburg Exploration Company, through a wholesale failure of due diligence, staked a well within the boundaries of a pre-existing gas storage unit and then proceeded to drill and complete its Grama Ridge East "34" State Well No. 1 within the Unitized Formation underlying the Unit Area. No act or omission on the part of Raptor or its predecessors led to this circumstance. Nearburg's neglect of its due diligence did not stop there, however. Following the completion of its well, it is apparent that Nearburg made no effort to determine the boundaries of the Morrow-formation pools in the area or the orientation of the pre-existing spacing units for two other wells in Section 34. When alerted to these oversights by the Division's Hobbs district office, Nearburg attempted to correct its omissions through two administrative applications to the Division that were made without providing notice to Raptor, despite the indisputable fact that its interests as Unit Operator were affected.

Raptor appeared at the hearing as a neutral party, making clear that it neither supported nor opposed the relief sought by Nearburg. Although Raptor and its predecessor were rightfully concerned when a foreign well was drilled within the Unit, that concern has been resolved for the time being and Raptor does not wish to see the Nearburg well shut-in. Yet, the proceedings before the Commission had the potential to affect the Unit and Unit Operations and Nearburg

could not expect the Unit Operator to remain silent in view of the administrative problems precipitated by Nearburg's applications, problems of which Nearburg was previously aware.

Nearburg's response to Raptor's limited participation in these proceedings has been to come forward with an overreaction that is not commensurate with the problems that Nearburg has created for itself. The proposition that the pre-existing dedication of the W/2 of Section 34 to the GRMU Well No. 2 is no longer effective due to a failure of title under the Unit is an elaborate but incorrect construction that Nearburg knows has no basis in fact or law. By its own conduct and admissions, Nearburg is estopped from making these assertions which are far beyond the scope of these proceedings in any event.

Respectfully submitted;

MILLER, STRATVERT & TORGERSON, P.A.

By: 

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was transmitted by facsimile or hand delivered this 14th day of November 2002, as follows:

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NEW MEXICO ENERGY, MINERALS and
NATURAL RESOURCES DEPARTMENT

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February 5, 2001

Lori Wrotenbery
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Oil Conservation Division

Nearburg Exploration Company, L.L.C.
c/o Holland & Hart LLP and Campbell & Carr
P. O. Box 2208
Santa Fe, New Mexico 87504-2208

Case 12622

Attention: Michael H. Feldewert

Re: *Administrative application for an exception to the spacing provisions of Division Rule 104C (2), revised by Division Order No. R-11231, issued by the New Mexico Oil Conservation Commission in Case No. 12119 on August 12, 1999, to create two non-standard 160-acre gas spacing and proration units within the East Grama Ridge-morrow Gas Pool comprising: (i) the NE/4 of Section 34, Township 21 South, Range 34 East, NMPM, Eddy County, New Mexico, to be dedicated to a well to be operated by Nearburg Producing Company; and (ii) the SE/4 of Section 34 to be dedicated to a well to be operated by EOG Resources, Inc.*

Dear Mr. Feldewert:

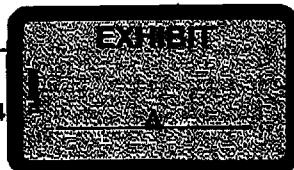
Reference is made to the subject application submitted on January 8, 2001 and our meeting on Wednesday, January 24, 2001 in the Division's new offices in Santa Fe. To date I have not received any information concerning the identity of the working and overriding royalty interests within both 160-acre units. To complete this application identify by name, address, and percentage of ownership, all: (i) working interest; and (ii) over-riding royalty interest, within both 160-acre tracts and, pursuant to Division Rule 1207.A (3), please provide the necessary documentation that adequate notice was proved these parties.

Also, I need to reference within any order issued by the Division the wells in which both units are to be dedicated. Please provide copies of the complete well file on each well. Thank you for your cooperation in this matter.

Sincerely,

Michael E. Stogner
Chief Hearing Officer/Engineer

cc: New Mexico Oil Conservation Division - Hobbs
New Mexico State Land Office - Santa Fe



Oil Conservation Division
Phone: (505) 476-344

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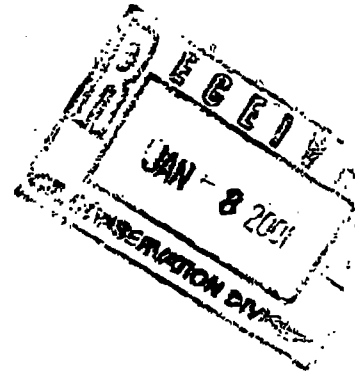
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January 8, 2001

HAND-DELIVERED

Lori Wrotenbery, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505



Re: *Application of Nearburg Exploration Company, L. L. C. for Administrative Approval of Two Non-Standard 160 Acre Gas Well Spacing Units in the E/2 of Section 34, Township 21 South, Range 34 East, N.M.P.M., Lea County, New Mexico*

Dear Ms. Wrotenbery:

Nearburg Exploration Company, L. L. C. hereby seeks administrative approval pursuant to the provisions of Division Rule 104.D(2)(b) to form:

Two non-standard 160 acre gas spacing and proration units in the East Grama Ridge-Morrow Gas Pool comprised of the NE/4 and the SE/4 of Section 34, Township 21 South, Range 34 East, N.M.P.M., Lea County, New Mexico.

The following attachments are provided with this application:

Attachment A is a plat showing the Morrow ownership in said Section 34 and demonstrating that the proposed NE/4 and SE/4 gas spacing and proration units are comprised of contiguous quarter sections that lie wholly within a single governmental half section.

Attachment B is a waiver letter from EOG Resources, Inc., the only party affected by this application.

Attachment C is a 1979 amended Well Location and Acreage Dedication Plat showing that the W/2 of said Section 34 is devoted to the Grama Ridge Morrow Unit Well No. 2 and therefore not affected by this application.

*

Lori Wrotenbery
January 8, 2001
Page 2

Since state leases are involved, attachment D is a certified letter to the New Mexico State Land Office advising them of this application.

Two Morrow gas pools are located in said Section 34: The W/2 of Section 34 is part of the Grama Ridge-Morrow Gas Pool and the E/2 of Section 34 is part of the East Grama Ridge-Morrow Gas Pool. The existence of two pools in said Section 34 is the result of the Division's finding that the Grama Ridge-Morrow Gas Pool is located "within an upthrust fault block bounded to the west by a northeast - southwest trending fault and on the east by a north-south trending fault." See Division Order No. R-5995 (entered May 2, 1979) (said order is also referenced at the bottom of Attachment C).

In January of 1999, the New Mexico State Land Office cancelled Lease No. K-3592 for the N/2 of said Section 34 for non-payment of rental. The State subsequently leased the N/2 of Section 34 to Nearburg under Lease No. V-5683. On February 28, 2000, the Division approved a drilling permit which dedicated the N/2 of Section 34 to Nearburg's East Grama Ridge Morrow State 34 No. 1 Well located in the NE/4 of Section 34. See Attachment E.

After Nearburg drilled and completed this well, the Division's Hobbs office informed Nearburg that a change in the acreage dedicated to Nearburg's well is necessary because (a) there are separate Morrow pools in the W/2 and E/2 of Section 34, (b) the W/2 of Section 34 is already devoted to the Grama Ridge Morrow Unit Well No. 2, and (c) the E/2 of Section 34 is presently devoted to the Llano 34 State Com #1 Well, located in the SE/4 of Section 34 (Unit I). The Llano 34 State Com #1 Well was drilled in 1979 under a communitization agreement with the state and is presently shut-in. EOG Resources, Inc. is the successor operator to this well.

As a result of these events, the respective acreage positions of Nearburg and EOG Resources, and their right to produce gas from the E/2 of Section 34, is in question. The operators in the E/2 of Section 34 desire to resolve these issues and protect their correlative rights. The creation of two non-standard gas spacing and proration units in Section 34 will clarify their respective acreage positions and right to produce gas from the East Grama Ridge-Morrow Gas Pool underlying the E/2 of Section 34 from their respective wells.


The granting of this application under this unique set of circumstances will protect the correlative rights of all interest owners in Section 34, will not cause waste, will avoid litigation and administrative hearings over the rights of the interest owners to develop the reserves under the E/2 of Section 34, accommodate the Divisions' desire to re-dedicate acreage to Nearburg's well in the NE/4 of Section 34, and provide EOG the opportunity to produce their well in the SE/4 of said Section 34 in the Morrow formation.

Lori Wrotenbery
January 8, 2001
Page 3

Since all of the interest owners in the E/2 of Section 34 support this application, there are no affected parties to whom notice of this application needs to be provided.

A proposed form of order is also enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Feldewert", written in a cursive style.

Michael H. Feldewert

MHF/ras
Enclosure

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AND
CAMPBELL & CARR
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June 25, 2001

HAND DELIVERED

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

Oil Conservation Div.
61 JUN 25 PM 4:32

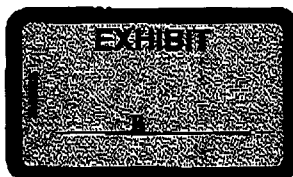
Re: Case 12622: Application of Nearburg Exploration Company, L.L.C. for Two
Non-standard gas spacing and proration units, Lea County, New Mexico.

Dear Ms Wrotenbery:

The above-referenced case is set for hearing on June 28, 2001. The purpose of this letter is to provide you with a status report on this matter; and to provide a final opportunity for settlement, we request that the case be continued.

As you are aware this is an unusual case which involves a well which was originally drilled on a spacing unit comprised of the North half of Section 34, Township 21 South, Range 34 East, NMPM, Lea County, New Mexico. After the well was drilled and producing, Near burg was advised by the OCD that the Application for Permit to Drill and Acreage Dedication Plat had been approved in error, that the W/2 of this section was within a gas storage project and that Nearburg had to either dedicated a standard 320-acre unit to the well or form a non-standard unit for this well comprised of the NE/4 of this section.

Since that time Nearburg has settled the outstanding issues concerning the underlying lease with the State Land Office and with LG&E (now Raptor Pipeline), the operator of the gas storage unit. The parties have been able to establish that the well is not in communication with the storage project and an order is pending establishing rules for this gas storage project. Nearburg has reached an agreement with EOG Resources for the development of the E/2 of this section with two non-standard 160-acre units.



Letter to Lori Wrotenbery
June 25, 2001
Page 2

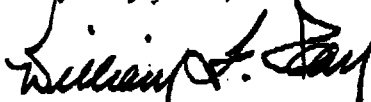
The only interest owners who have not reached an agreement for the development of this acreage are Nearburg and Redrock Operating Ltd, the owner of a 10% overriding royalty interest in the SE/4 of Section 34. Nearburg had produced data to Redrock pursuant to a Division subpoena and the parties were scheduled to meet in Santa Fe on Thursday June 21st to attempt to settle this matter. Due to a death last week, the parties agreed to reschedule this meeting and to request and request that the case again be continued.

To date substantial progress has been made toward settling this matter. We are hopeful that with an additional continuance, all parties will be in agreement and we will be able to come before the Division with a proposal which not only is agreeable to the parties but also will prevent waste and protect the correlative rights of all those involved.

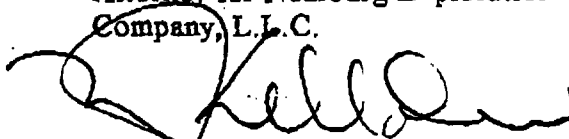
We, therefore, request that this matter be continued to the first examiner hearing docket in August 2001.

Your attention to this request is appreciated.

Very truly yours,



William F. Carr
Attorney for Nearburg Exploration
Company, L.L.C.



W. Thomas Kellahin
Attorney for Redrock Operating Ltd.

MILLER, STRATVERT & TORGERSON, P. A.

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FACSIMILE TRANSMISSION COVER SHEET

DATE: November 18, 2002

MESSAGE: Attached is page 2 of Raptor's Reply, which was inadvertently omitted from your fax, dated November 14, 2002.

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FROM: J. Scott Hall

NUMBER OF PAGES INCLUDING COVER SHEET: 2

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Llano 34 State Com No. 1 well on that acreage. Additionally, Nearburg's Application represented: *"Since all of the interest owners in the E/2 of Section 34 support this application, there are no affected parties to whom notice of this application needs to be provided."*

By letter dated February 5, 2001, Examiner Michael Stogner noted Nearburg's failure to identify the interest owners in the two 160 acre units or to provide evidence that they had been notified of the Application. (Exhibit A, attached.) Subsequently, on February 15, 2001, following notice, the Division received an objection from Redrock Operating LTD., Co., ("Redrock"), and accordingly, the Division's Examiner denied Nearburg's request for administrative approval, and instead set the matter for hearing as Case No. 12622. (See Nearburg Exhibit 15). Raptor was not provided notice of Nearburg's Application.

An Examiner hearing was held on June 28th and 29th, 2001. Redrock, the owner of an overriding royalty interest in the SE/4 of Section 34, opposed the Nearburg Application. Subsequently, on May 28, 2002 the Division entered Order No. R-11768 denying Nearburg's Application on the merits and on June 18, 2002, Nearburg filed its Application for Hearing *De Novo*.

In its *de novo* appeal, Nearburg again requests Commission approval for the dedication of an appropriately configured gas spacing and proration unit to its Grama Ridge East "34" State Well No. 1. Nearburg now owns the entirety of the E/2 of Section 34. However, Nearburg asserts, *inter alia*, that the SE/4 of Section 34 contributes no producible reserves to its well and consequently, Nearburg does not seek to create a spacing unit consisting of the E/2 of the section. Rather, Nearburg seeks only the dedication of the NE/4 to its well.

Case No. 12908-A (Severed and Reopened)

The Division, through its generic, non-adjudicatory pool nomenclature rulemaking process, made application for the extension of the boundaries of the Grama Ridge Morrow Gas Pool to include the E/2 of Section 34, with the concomitant contraction of the East Grama Ridge Morrow Gas Pool. The Division's Application was made at Nearburg's behest and neither Raptor nor Redrock were notified of the Application.¹ Although the issue was not included within the scope of the Division's Application in the matter, Nearburg has subsequently asserted that it has been prevented from dedicating the N/2 of Section 34 to its well for the reason that the NW/4 of the section is located within the horizontal boundaries of the Grama Ridge Morrow Gas Pool, while the NE/4 is located within the separate East Grama Ridge Morrow Gas Pool.

The De Novo Hearing

Pursuant to a joint motion of the parties, Case No. 12622 and Case No. 12908-A were consolidated for hearing before the Commission on October 21 and 22, 2002.

¹ Raptor raised the issue of notice in its August 21, 2002 *Reply Pursuant To Motion To Dismiss, In Part, Case 12908 Or In The Alternative To Re-Open The Case*.