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February 15, 2010

HAND DELIVERED

Mark E. Fesmire. P.E. Director
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Response to Motion to Dismiss
NMOCD Cases 14412
Application of Reliant Exploration and Production Company, LLC for Cancellation of Two permits to drill ("APDs") issued to OXY USA, Inc, and for compulsory pooling
Harding County, New Mexico

Dear Mr. Fesmire:

In behalf of Reliant Exploration and Production Company, Inc., please find enclosed our Response to OXY's Motion to Dismiss. This case is currently set for hearing on March 4, 2010.

Very truly yours,

W. Thomas Kellahin

cc by email:
Mr. Richard Ezeanyim,
Chief Engineer for the OCD
William F. Carr, Esq.
Attorney for OXY USA Inc.

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:

***CASE NO.* 14412**

APPLICATION OF RELIANT EXPLORATION AND PRODUCTION COMPANY, LLC, FOR CANCELLATION OF TWO PERMITS TO DRILL ("APD") ISSUED TO OXY USA, INC. AND FOR COMPULSORY POOLING, HARDING COUNTY, NEW MEXICO.

RESPONSE TO MOTION TO DISMISS

Reliant Exploration and Production LLC ("Reliant") submits the following Response to OXY USA Inc.'s ("OXY") Motion to Dismiss ("Motion"). As demonstrated below, Reliant's original Application and its Amended Application filed February 5, 2009 are fully authorized by the Oil & Gas Act and the Rules of the Oil Conservation Division. Accordingly, the Motion should be denied.

I. STATEMENT OF UNDISPUTED FACTS.

In order to correct OXY's mischaracterization of supposedly "undisputed facts," Reliant provides the following statement of the essential undisputed facts:

(a) On May 1, 2007, OXY filed applications to drill the Bravo Dome Unit Wells No. 021 and No. 11, each dedicated 160-acre spacing units instead of 640-acre units required by the Division's spacing rules.

(b) After the APD's were approved on May 4, 2007, the No 021 well was spudded on September 18, 2007 and completed on April 1, 2008 and the No

111 well was spudded on September 23, 2007 and completed on April 1, 2008.

(c) On May 22, 2008, Reliant informed OXY that OXY had obtained APDs with incorrect spacing and permitting.

(d) On May 23, 2008, OXY admitted that is has filed numerous approved APDs with 160-acre spacing instead of 640-acre spacing including its Unit 2031 Wells #021 and #111 that had already been drilled and completed.

(e) Reliant owns mineral interests in the sections in which each of the subject wells is located and which would necessarily comprise a portion of any 640-acre spacing units created for the wells.

(f) For some 15 months, Reliant has been involved in negotiations with OXY for a mutually acceptable joint operating agreement.

(g) No agreement has been reached for the pooling of interests comprising the spacing unit, the development of these 640-acre spacing units or the cost of drilling and operating the wells.

(h) On November 6, 2009, Reliant filed its application to cancel these APDs or compulsory pool these 640-acre spacing units.

(i) Following the filing of Reliant's Application, OXY filed applications seeking the Division's approval to temporarily abandon the subject wells.

II. RELIANT IS PROPERLY SEEKING COMPULSORY POOLING.

To advance its argument, OXY has misrepresented to the Division the compulsory pooling provisions of the Oil and Gas Act, NMSA 1978, §70-2-17.C (2004) by changing the word "or" to the word "and" thereby creating an additional requirement for pooling not

found in the statute, Division rules or precedent. Oxy's Motion states the requirements for compulsory pooling are:

> There must be an owner who: (1) has the right to drill, (2) proposes to drill, and (3) and has been unable to reach voluntary agreement with the other interest owners for the development of the proposed pooled unit. N.M.S.A. 1978, § 70-2-17.C (2004). ... The owner seeking to invoke the Division's pooling authority must show that each of these preconditions has been met. If it does not meet this burden, the Division cannot enter a pooling order.

See Motion, p. 3.

Nothing in the statute requires the party seeking compulsory pooling to have proposed the drilling of the well in the first instance or request that it be designated as operator of the well. Correctly stated, the cited paragraph only requires that: "such owners have not agreed to pool their interests;" and (2) "one such separate owner ... who has the right to drill has drilled or proposes to drill a well" seeking compulsory pooling. NMSA 1978, §70-2-17(C)(emphasis added).[1] Reliant is not required to actually propose the well nor is it required to seek its appointment as the operator. The statute only requires that the Division in its pooling order to "designate an operator for the unit." *Id.*

By drilling a well in violation of the Division's spacing rules, OXY has deprived Reliant of an opportunity to drill a well on its acreage or even propose the drilling of another well that is not allowed by the existing spacing rules. In numerous prior cases the Division has granted a compulsory pooling order for an applicant and named another company as the operator. *See* Order R-11993-A, dated October 8, 2003, Case 14165. Reliant's Application is fully supported by the language of the Oil and Gas Act, Division rules and precedent.

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[1] The actual language of the compulsory pooling statute reads as follows:

> Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or

III. CANCELLATION OF OXY'S APDS.

Although Reliant's Amended Application no longer seeks cancellation of the APDs, such relief is clearly authorized. OXY's Motion contends that it makes no sense to cancel its two APD and pretends that it does not understand how cancellation will prevent waste and protect correlative rights. By drilling two wells in violation of the Divisions spacing rules, OXY has prevented Reliant from drilling its own well and producing its share of the carbon dioxide resource. To ensure orderly development, the Division rules require that wells be drilled on a timely basis, completed and placed into production. OXY contends that by shutting in these two wellbores there is no waste or correlative rights violations. To the contrary, the Oil & Gas Act empowers the Division "---to enforce effectively the provisions of this act...." including the wellbore spacing units sizes for the Bravo Dome Carbon Dioxide Gas Pool that were adopted by Commission Order R-7556, June 26, 1984. The Commission stated in finding (20) that approval of these rules "will prevent waste, protect correlative rights..."

The only way to force OXY's compliance with the Division's spacing rules for this pool is to cancel their APDs and order that these two wellbores be plugged. The Division has an active program to ensure that wells are being produced in order to prevent waste, protect correlative rights and the environment. OXY should not be allowed to circumvent the rules and deprive Reliant of its opportunity to produce its just and equitable share of the gas in the pool.

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to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

IV. WASTE AND CORRELATIVE RIGHTS.

After the filing of Reliant's Application, OXY apparently filed applications to temporarily abandon the wells in order to try and avoid the cancellation of its APDs. However, OXY's contention that the wells should be shut-in and temporarily abandoned until the current spacing issues are resolved makes no sense. The case is not about resolving the size of spacing units. Since June 19, 1984, some 26 years ago, operators were required to dedicate 640-acres to wells drilled within this portion of this pool. Since May 1, 2007 almost three years ago, OXY has admittedly violated this spacing rule by drilling wells without Reliant's consent at locations which prevent Reliant from drilling wells and producing it share of the resource. Where the spacing unit for a well is comprised of divided mineral ownership, the Oil and Gas Act provides that "it ***shall be the obligation*** of the operator...to obtain voluntary agreements pooling said lands or interest or an order of the division pooling said lands." NMSA 1978, §70-2-18(A)(emphasis added). At no time prior to filing its motion to dismiss has OXY sought to change the spacing rule, produce the wells or secure voluntary agreements pooling the lands comprising the spacing unit. Reliant was left with no choice but to seek an order from the Division. The only thing unresolved is what the Division should do to OXY for its violation of Section 70-2-18 and refusing to form a 640-acre spacing unit on a voluntary basis.

CONCLUSION

OXY has attempted to confuse the Division and deflect attention away from its violation the Division's spacing rules units and refuses to correct its mistakes. How can the Division protect a working interest owner from the predatory tactics of an operator who drills a well on incorrect spacing unit and then refuses to arrive at a voluntary agreement for the proper sized

spacing unit, unless that owner agrees to pay exorbitant fees for drilling and producing the gas? The Division has the power and authority to issue a compulsory pooling order that compels OXY to comply with the Division's 640-acre spacing unit for each wellbore upon terms and conditions that are fair and reasonable. That is the relief sought by Reliant's original application as well as in its Amended Application. Accordingly, OXY's Motion to Dismiss is lacking in merit and should be denied.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February January 2010, I have caused to be delivered by Email a copy of the Motion to Dismiss in the above mentioned case to the following counsel of record:

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