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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION COMPLIANCE AND ENFORCEMENT FOR A COMPLIANCE ORDER AGAINST DC ENERGY, LLC, FOR WELLS OPERATED IN LEA COUNTY, NEW MEXICO.

CASE NO. 15432

APPLICANT'S RESPONSE TO DAN and COLLEEN JOHNSON'S MOTION FOR CONTINUANCE

Applicant, the Enforcement and Compliance Bureau ("Bureau") submits this response to Dan and Colleen Johnson's (the "Respondents" or the "Johnsons") Motion for Continuance. The Johnsons assert several reasons to support their argument for why a continuance should be granted, however, the Bureau disagrees with their assertions and opposes the granting of a continuance in the above-referenced case.

I. Notice was properly served pursuant to Oil Conservation Division Hearing Rules.

The Johnsons state in their Motion that they were not given due notice of this proceeding under 19.15.4.9.B.(2) NMAC. However 19.15.4.9.B.(2) NMAC states that "[t]he division shall publish notice of each adjudicatory hearing before the commission or a division examiner at least 20 days before the hearing by...delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings[.]" 19.15.4.9.B.(2) NMAC. However, the Johnsons have made no assertion that they have notified the division that they wished to be served notice of division hearings. Without having notified the division, in writing, of its desire to be

informed of division hearings, the division is under no obligation to notify the Johnsons of all commission and division hearings.

Rules governing the notice of compliance proceedings are governed by 19.15.5.10.D. NMAC, which directs the division to comply with the provisions of 19.15.4.9 NMAC ("Rule 4.9") and "provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC" ("Rule 4.12"). 19.15.5.10.D.(2) NMAC.

The Bureau served notice to DC Energy in compliance with 19.15.5.10.D, as DC Energy is the operator of record and, therefore, the responsible party. Notice was served pursuant to Rule 4.9 and 4.12 on December 23, 2015, to DC Energy's address of record as on file with the Secretary of State of New Mexico and the address it kept on file with the division as required by 19.15.9.8 NMAC. The Bureau also served two additional corporate addresses for DC Energy that have been used in its bankruptcy proceeding, the trustee representing DC Energy in its bankruptcy proceeding, and the surety holding DC Energy's financial assurance on file with the division. The Johnsons are not named in the application for hearing, nor is any compliance being sought directed at the Johnsons in their personal capacity (or any capacity). Therefore, the Bureau was not required to serve the Johnsons notice pursuant to 19.15.5.10 NMAC.

II. The Johnsons lack standing to participate in this hearing.

In the Johnson's pre-hearing statement, they state that they sold their interest in DC Energy in "early 2013." Respondents Dan and Colleen Johnson Pre-Hearing Statement at 2. They state that they only have interests in the Mexico U No. 2 and Mexico U No. 4 as productive wells and assert that they have provided production reports to the OCD. *Id.*

The OCD has several issues with these claims. First, the Mexico U wells are on State Trust Land and, therefore, owned by the State Land Office ("SLO"). SLO records still indicate that the lease to produce the state's minerals is in the name of DC Energy, LLC, not Dan and Colleen Johnson. From October 2009 to March 2015, production reports have been filed on the New Mexico Oil and Natural Gas Administration and Revenue Database ("ONGARD") under DC Energy's Oil and Gas Registration Identification ("OGRID") number, collectively with all other wells that DC Energy is the registered operator. All state filings and reports indicate that DC Energy, LLC, not the Johnsons, is the operator of record of the Mexico wells. Production ceased being reported around the time that DC Energy, LLC filed for chapter 7 bankruptcy. Production reports for April 2015 were due on May 15, and pursuant to 19.15.7.24 NMAC, subject to have their authority to transport from/inject to revoked on September 15, 2015. Production reports have not been timely filed and could expose the operator to additional compliance action.

Further, the Johnsons are not registered operators in the State of New Mexico. If the Johnsons wish to assert that they have been operating these wells, presumably since the sale to Tomahawk Resources, LLC in "early 2013, (Respondents Dan and Colleen Johnson Pre-Hearing Statement at 2.) they have been operating the wells in violation of OCD rules, the Oil and Gas Act, and said production would constitute illegal oil sales. NMSA 1978, Section 70-2-32 (1978) stipulates that "in addition to, any other remedy or procedure which may be available to the commission or the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal oil or illegal gas or illegal products thereof, all such oil or gas or products thereof shall, except

under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided."

Lastly, the Johnsons assert in their pre-hearing statement that the Gregory El Paso Federal No. 4 salt water disposal well has a potential buyer, that may be frightened off by a compliance proceeding. This is of little concern to the Bureau, nor the Johnsons who assert they have no ownership interest in the wells operated by DC Energy aside from the Mexico wells. Any purchaser would have to purchase the wells in their current state, and the existence of a compliance order will not change the fact that the wells must be operated pursuant to the statutes and rules of the State of New Mexico.

III. The State of New Mexico stands to suffer irreparable harm if this case is not heard in a timely manner.

Despite their assertions, continuing this case would cause irreparable harm to the OCD both financially and environmentally. The releases on the Mexico and El Paso batteries have been unreported for an unknown amount of time, and the impact that they have on the environment increases with time that they are unaddressed. In its application for hearing, the OCD cited violations of 19.15.16, 19.15.26, and 19.15.29 NMAC, all of which have a temporal nexus to provide remedial action. The longer these open and exposed hazards exist, the risk of harm to the State of New Mexico increases on both the environmental and financial scale.

Wherefore, for the above-stated reasons, the Bureau requests that the Johnsons Motion be denied.

Respectfully submitted
this 15th day of January, 2016 by

/s/ Keith Herrmann

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically mailed to the following party on January 15, 2015:

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