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May 5, 2016

HAND-DELIVERY

Mr. William Jones
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCD Case No. 15441: Application of Nearburg Exploration Company, L.L.C., SRO2 LLC, and SRO3 LLC for an Accounting and Limitation on Recovery of Well Costs, and for Cancellation of Permit to Drill, Eddy County, New Mexico

NMOCD Case No. 15481: Application of COG Operating LLC for a Non-Standard Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

NMOCD Case No. 15482: Application of COG Operating LLC for a Non-Standard Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

Gentlemen:

In closing comments made at the hearing yesterday in the above matters, we discussed the issue of when an operator's duty to consolidate interests in a spacing and proration unit accrues and I referred to the Division's decision in the *Reliant Exploration* matter.

NMSA 1978 §70-2-18 (A) provides that regardless of when an order pooling separately owned interests is obtained, even after drilling, it is to be "effective from the first production." Yet, the operator of a drilled and completed well obtaining the compulsory pooling order must not be dilatory in the consolidation of un-joined interests as §70-2-18 B is intended to operate as a disincentive to such conduct. Similarly, the Division's rules at §19.15.16 F and §19.15.16.20 A NMAC, specify that interests are to be consolidated before an allowable may be assigned to a well.

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Under §70-2-18 (A), an applicant proposing to dedicate separately-owned lands or undivided interests to a spacing and proration unit has an "obligation" to negotiate a voluntary agreement with the other interest owners to pool their lands. The Division and the Commission require operators to show that they have made a "diligent" and "good faith" effort to negotiate a voluntary agreement before a compulsory pooling application may be filed.[1] And while compulsory pooling may be sought after a well has been drilled, *Reliant Exploration* established that an operator has a duty to consolidate interests prior to producing the well. ("This Order shall not be construed to in any way relieve [the operator] or any successor in interest, of the duty to comply with the requirements of NMSA 1978 §70-2-18 regarding consolidation of ownership within the applicable spacing units by voluntary or compulsory pooling prior to producing the...wells.") Order No. R-13547, Case No. 14412, *Application of Reliant Exploration and Production Company, LLC to Terminate the Temporary Abandonment Status of Two CO2 wells Drilled by Oxy USA, Inc., and for Compulsory Pooling*, (May 10, 2012), Conclusion of Law ¶ 3.

A copy of Order No. R-13547 is enclosed, as requested.

Very truly yours,

J. Scott Hall

JSH:dml
Enclosure
cc (w/enc., via email): Michael H. Feldewert, Esq. and Jordan Kessler, Esq., Holland & Hart
David Harper, Esq., Haynes & Boone

ioc: Sharon T. Shaheen, Esq.

[1] The "good faith" requirement has been expressly codified in the compulsory unitization procedures of the Statutory Unitization Act at NMSA 1978, §70-7-6-A(5).

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
ORDER NO. R-13547

APPLICATION OF RELIANT EXPLORATION AND PRODUCTION COMPANY, LLC TO TERMINATE THE TEMPORARY ABANDONMENT STATUS OF TWO CO2 WELLBORES DRILLED BY OXY USA, INC, AND FOR COMPULSORY POOLING, HARDING COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 29, 2010, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 10th day of May, 2012, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) Reliant Exploration and Production Company, LLC ("Applicant") seeks the Division's intervention to terminate the approved temporary abandonment status of two carbon dioxide gas ("CO2") wells drilled by OXY USA, Inc. ("OXY"). Each of the subject wells is located within a CO2 spacing unit in which Applicant owns a working interest, but on a tract of land in which Applicant does not own an interest.

(3) Applicant further seeks compulsory pooling of the spacing units in which the subject wells are located and dedication of those units to the subject wells,

respectively, and asks to be appointed as operator of the subject wells, at least unless the Division orders OXY to put these wells on production.

Undisputed Facts:

(4) It is undisputed that (a) Applicant did not participate in the drilling of the subject wells, (b) Applicant and OXY have not agreed to consolidate their interests in either of the subject spacing units, and (c) OXY has not applied to the Division for compulsory pooling of the subject spacing units, and currently opposes compulsory pooling as requested by Applicant.

(5) The subject wells are the following:

Bravo Dome Carbon Dioxide Gas Unit Well No. 111 (API No. 30-021-20426), located 1700 feet from the North and East lines (Unit G) of Section 11, Township 18 North, Range 31 East, Harding County, and

Bravo Dome Carbon Dioxide Gas Unit Well No. 201 (API No. 30-021-20425), located 1700 feet from the North and East lines (Unit G) of Section 2, Township 18 North, Range 31 East, Harding County.

(6) These wells are located in the Bravo Dome Carbon Dioxide Gas 640 Acre Area (Pool Code 96010), for which applicable special pool rules provide for 640-acre spacing units each comprising a governmental section, and allow one well on each quarter section within such units.

(7) OXY drilled the subject wells without soliciting participation by Applicant, and has applied for and obtained approved temporary abandonment status for the subject wells, also without the consent of Applicant. Accordingly OXY is not producing the subject wells.

(8) It is undisputed that Applicant is an owner of a leasehold, or working, interest in the carbon dioxide reserves underlying portions of both Sections 11 and 2.

The Motion to Dismiss:

(9) Prior to the hearing, OXY filed a Motion to Dismiss, asserting the Applicant lacks standing to seek compulsory pooling of the subject spacing units pursuant to NMSA §§70-2-17 and 70-2-18 because Applicant has neither drilled nor proposed to drill a well on either of these units.

(10) OXY's Motion to Dismiss is premised on a flawed interpretation of the relevant statutory provisions. §70-2-17 says that the Division's power and duty to issue a compulsory pooling order arises only if an owner who has the right to drill a well to a common source of supply on the proposed unit either has drilled, or proposes to drill, such a well. In this case, that has clearly occurred. OXY, which has a right to drill, has

drilled a well on each of the subject units. §70-2-17 contains no language requiring that only the party who has drilled or proposes to drill a well may apply for compulsory pooling. §70-2-18 imposes a duty on the operator of a well to consolidate ownership in the unit it dedicates to the well by either securing voluntary agreement or applying to the Division for compulsory pooling. This provision imposing a duty on one party to apply for a pooling order is evidently intended to secure the issuance of such an order in appropriate cases, and should not be construed as precluding another interested party from applying for a pooling order.

(11) OXY's interpretation of §§70-2-17 and 70-2-18 would have the Division read into the statute language that is not there, which is not appropriate, since these provisions make sense as written. *Marbob Energy Corp. v. NMOCC*, 2009-NMSC-013, ¶20. Accordingly, OXY's Motion to Dismiss should be denied.

The Hearing:

(12) Applicant and OXY both appeared at the hearing through counsel. No other person or party appeared or communicated to the Division any interest in this case.

(13) Applicant presented evidence of the facts recited in the above findings (2) through (8). Applicant did not present any evidence concerning the actual or probable drainage radius of CO2 wells in the subject units or otherwise in this area, nor did Applicant present any evidence that CO2 reserves were being drained from Sections 11 or 2 by wells on other lands. Applicant's witness testified that he did not have enough information at this time to form an opinion as to whether the costs incurred by OXY in drilling and completing the subject wells were reasonable.

(14) OXY presented no evidence but argued that Applicant is not legally entitled to the relief sought.

The Division's Conclusions

(15) In this case the conditions precedent to compulsory pooling exist. OXY has drilled a well to a common source of supply on each of the proposed spacing units. In such circumstances, NMSA §70-2-17 directs the Division to issue a compulsory pooling order "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste."

(16) In this record, however, there is no evidence that would support a finding that a compulsory pooling order will prevent the drilling of unnecessary wells, protect correlative rights, or prevent waste.

(17) Although OXY's counsel extensively cross examined Applicant's witness concerning various types of "waste" recognized in statutes and rules, the witness never explained how the existence of OXY's temporarily abandoned wells will cause waste.

(18) A party's correlative right means "the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas[.]" NMSA 1978, §70-2-33.H. Under applicable special pool rules, Applicant has this opportunity since the rules allow it to drill wells on its own acreage (the N/2 NW/4 of Section 11 and the S/2 SE/4 and SE/4 SW/4 of Section 2), notwithstanding the existence of OXY's wells. Applicant did not explain how the existence of OXY's wells, so long as they are not producing, would or could impair Applicant's opportunity to produce its just and equitable share of the CO2 underlying these units through wells drilled on its own acreage.

(19) Applicant also did not offer any evidence to demonstrate that the drilling of additional wells on these units would be unnecessary. In the absence of evidence as to the area that wells on these units could or would drain, the Division has no basis to determine how many wells are necessary except its prior special pool orders. Since those orders allow up to four wells on each of these units, they provide no basis for an inference that a second well on each of these units would be unnecessary.

(20) Since there is no evidence that issuance of a compulsory pooling order in this case is necessary to prevent waste, protect correlative rights, or avoid the drilling of unnecessary wells, or that the maintenance of OXY's wells in approved temporary abandonment status is causing waste or impairing correlative rights, this Application should be denied.

IT IS THEREFORE ORDERED THAT:

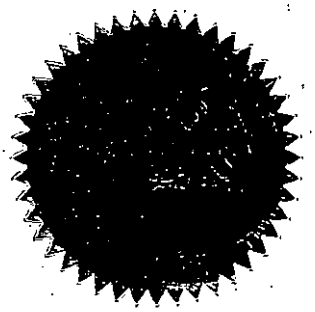
(1) The Application of Reliant Exploration and Production Company, LLC for compulsory pooling of Sections 2 and 11, Township 20 North, Range 31 East, NMPM, in Harding County, New Mexico, in the Bravo Dome Carbon Dioxide Gas 640 Area (Pool Code 96010), is denied.

(2) The Application of Reliant Exploration and Production Company, LLC to order OXY USA, Inc. to terminate the temporary abandonment status of its Bravo Dome Carbon Dioxide Gas Unit Well No. 111 (API No. 30-021-20426) and its Bravo Dome Carbon Dioxide Gas Unit Well No. 201 (API No. 30-021-20425) is also denied.

(3) This Order shall not be construed to in any way relieve OXY USA, Inc. or any successor in interest, of the duty to comply with the requirements of NMSA 1978 §70-2-18 regarding consolidation of ownership within the applicable spacing units by voluntary or compulsory pooling prior to producing the above-described wells.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

JAMI BAILEY
Director