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June 4, 1997
(Our File No. 97-1.75)

JUN - 4 1997

MICHAEL J. CONDON

HAND-DELIVERED

William J. LeMay, Director
Michael E. Stogner, Hearing Officer
Rand Carroll, Counsel
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Re: NMOCD Case No. 11792, Application of Doyle Hartman
to Give Full Force and Effect to Commission Order R-6447 and Other
Relief Regarding The Myers Langlie-Mattix Unit

Gentlemen:

We address Mr. Kellahin's letter of June 2, 1997. It should be abundantly clear that this is not the routine case that should be handled the way the typical OCD application is handled.

Hartman has a Motion for Discovery pending in this proceeding. Unless the Division is inclined to grant our motion for discovery on the papers already filed, a hearing on that question alone is obviously crucial and should be set immediately.

As you know, Oxy has filed a Motion to Dismiss this application. Its motion is meant to decide the entire matter without allowing Hartman an opportunity for discovery ("9. Should the Division grant Oxy's Motion to Dismiss, all discoveries will be moot." Oxy Motion to Stay Discovery, p. 3). Oxy requests in its letter that the Motion to Dismiss be heard on June 30-July 2, 1997, in lieu of the previously agreed hearing date for the issues raised by Hartman's Application. We object to this request, and ask that the hearing on Oxy's Motion be held concurrently with the presently scheduled hearing on Hartman's Application.

Hartman objects to the tactics of Oxy seeking to deprive Hartman of an opportunity to conduct discovery on matters related not only to the Application, but to Oxy's Motion to Dismiss. Hartman is entitled to full discovery on all issues concerning Oxy's operation of the MLMU, and all facts surrounding the entry of orders regarding the unit, including a review of William Carr's files on Case No. 6987, prior to the time that Oxy's Motion to Dismiss is heard. Any other procedure promotes trial by ambush and surprise. Proceeding without discovery would be a windfall to Oxy, since Oxy as the MLMU operator and Mr. Carr its attorney have the documents and files which are clearly relevant to both the Application and Oxy's own Motion. The Division should

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reject Oxy's attempt to hide evidence from the Commission and Hartman and to invoke dispositive decisions without either the decision maker or the adverse party ever being able to learn what it is that Oxy is so anxious to conceal. The failure of due process implications of such procedure should be obvious even to Oxy.

Mr. Kellahin's letter is noteworthy in its implicit recognition of Hartman's right to discovery in these proceedings. Oxy objects to Hartman's request to have this matter heard by the full Commission, on the grounds that Division level proceedings are "effectively substituted for the elaborate and expensive discovery process".

If Oxy were not required to produce the requested documents until the morning of an examiner hearing pursuant to the Division's subpoena power, Hartman would have to request a continuance of probably several days to copy, review and digest the evidence, depending on the quantity. That is an awkward process that is a waste of time, to say the least. It only makes sense to require Oxy to respond to the reasonable requests for discovery sufficiently prior to the date of any hearing on the Application and Oxy's Motion to Dismiss in order to make the proceedings in this case cost effective and to conserve resources.

Oxy objects to Hartman's request for a full Commission Hearing on the ground that the Division hearing is evidently a meaningless exercise which only substitutes for discovery. Perhaps that has been the custom in the typical application hearing before the Division. However, given the nature of this proceeding, there is no justification for the misuse of tax dollars for the examiner's time, the court reporter, etc., let alone the large expense to be imposed on the parties if two hearings are scheduled and held. There is no reason for the Division to waste its time and resources to provide the parties with discovery. Rather, Oxy should be ordered to respond to the requested discovery, and do so sufficiently prior to the scheduled hearing date to allow Hartman to review the documents and prepare for the hearing.

We are available at your call, or at the call of the full Commission, for a hearing on the matters raised by Mr. Kellahin's June 2, 1997 letter and this response.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

By


MICHAEL J. CONDON

MJC:sa

fxc: Thomas Kellahin
William F. Carr
Greg Curry
Doyle Hartman
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