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W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

August 25, 1997

HAND DELIVERED

Mr. Michael E. Stogner, Hearing Examiner
Rand L. Carroll, Esq., Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **RESPONSE TO MOTIONS TO DISMISS**
NMOCD Case 11838
Application of Premier Oil & Gas Inc.
to have the Division order Exxon Company USA
appear and show cause,
Eddy County, New Mexico

Gentlemen:

At the hearing of the referenced case held on August 21, 1997, Examiner Stogner granted my request to stay his letter decision dated August 20, 1997 and to continue the referenced case until the September 4, 1997 docket in order to provide Premier Oil & Gas Inc. with an opportunity to file its Response to the Exxon and Yates' motions to dismiss.

Accordingly, on behalf of Premier Oil & Gas Inc., please find enclosed our Response to Exxon Company's USA motion to dismiss filed on August 15, 1997 and the Yates Petroleum Corporation motion to dismiss filed on August 18, 1997.

Very truly yours,

W. Thomas Kellahin

cc: Premier Oil & Gas Inc.
Attn: Ken Jones
cc: James Bruce, Esq.,
Attorney for Exxon Company USA
cc: William F. Carr, Esq.
Attorney for Yates Petroleum Corporation

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. 11838

APPLICATION OF PREMIER OIL & GAS INC. TO HAVE THE DIVISION ORDER EXXON COMPANY USA TO APPEAR AND SHOW CAUSE PREMIER'S FV-1 WELL SHOULD NOT BE INCLUDED IN THE AVALON DELAWARE UNIT, EDDY COUNTY, NEW MEXICO

PREMIER OIL & GAS INC'S RESPONSE TO MOTION TO DISMISS

PREMIER OIL & GAS INC. ("Premier") by its attorneys, Kellahin & Kellahin, hereby responds to the Motion to Dismiss filed on August 15, 1997 by Exxon Company USA ("Exxon") and on August 18, 1997 by Yates Petroleum Corporation ("Yates") and asks the Division to deny the Motions to Dismiss and in support states:

BACKGROUND

(1) Exxon has refused to include Premier's FV-1 Well located in Tract 1309 (SE/4NE/4) of Section 25, Township 20 South, Range 27 East, as a wellbore committed to Exxon's Avalon (Delaware) Unit as of October 1, 1997, despite the fact that the Tract 1309 was involuntarily committed into Exxon's Unit by a statutory unitization order issued by the Commission in Case 11298.[1]

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[1] See Order R-10460-B.

(2) In Case 11298, the Commission did not adjudicate the issue of the exclusion of the FV-1 Wellbore from the Unit nor did Exxon provide any evidence in the record upon which to support excluding Premier's FV-1 Wellbore while including Premier's other wellbore, the FV-3 Well, among the wellbores to be contributed to the Unit.

(3) Order R-10460-B Paragraph 25 retained continuing jurisdiction for the entry of such further orders as may be deemed necessary.

(4) Premier contends that a supplemental order must be issued pursuant to the Division's "continuing jurisdiction" and in accordance with Section 70-7-7 and Section 70-7-6 NMSA (1979) to require Exxon to include Premier's FV-1 Wellbore in the Unit.

II.
ARGUMENT AND AUTHORITIES

A. EXXON SEEKS TO EXCLUDED PREMIER'S FV-1 WELL FROM THE AVALON UNIT WITHOUT ANY EVIDENCE PRESENTED TO SUPPORT ITS EXCLUSION

In their Motions to Dismiss, both Exxon and Yates very cleverly avoid discussing if the record before the Commission contains substantial evidence to support excluding Premier's FV-1 Well from the Unit. They do so, because, in fact, there is no evidence, substantial or otherwise, to support its exclusion.[2]

Exxon and Yates both failed to submit any evidence in Case 11298 to show that Premier's FV-1 Well should be excluded despite the fact that Exxon wanted to include in its waterflood unit the 40-acre tract (Tract 1309) upon which that well is located. Exxon failed to show how this was "to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners" as required by Section 70-7-6 NMSA 1979.

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[2] See transcript of Commission hearing held on December 14, 1995 consisting of some 524 pages.

B. THE INCLUSION OR EXCLUSION OF WELLBORES WAS NOT ADJUDICATED BY THE COMMISSION AND THEREFORE THE DOCTRINE OF RES JUDICATA DOES NOT APPLY

Yet, despite that lack of evidence, Yates and Exxon now argue that this issue was "adjudicated".

To the contrary, Finding Paragraph (27) of Commission Order R-10460-B is a very elaborate articulation of the Commission's review of seven specific items of the Operating Agreement **none of which dealt with the issue of wellbores to be committed to the unit.** (emphasis added).

This issue was simply overlooked by the Commission and ignored by Exxon.

Yates admits that "undetermined matters may be adjudicated at a later time" but then contends this issue was adjudicated because the Commission approved Exxon's Unit Operating Agreement (Exxon Exhibit 3) which among its more than 128 pages, had a single page list of wellbores to be included in the unit which did not contain the Premier's FV-1 Well.

Exxon's entire presentation concerning the Operating Agreement is found in the Commission transcript of the December 15, 1995 hearing at Volume I pages 29 commencing on line 21 and continuing through to page 30 line 17. At no point in its entire presentation, did Exxon alert either Premier or the Commission that it intended to exclude the Premier FV-1 as a unit wellbore.

As Yates concedes, "undetermined matters may be adjudicated at a later time". Such is the case with the exclusion of Premier's FV-1 Well.

C. THE COMMISSION HAS ADMITTED THAT IT HAS RETAINED JURISDICTION IN THIS CASE TO RESOLVE SUCH ISSUES AS THE FV-1 WELLBORE

In its Answer Brief filed on July 18, 1997, in **Premier Oil & Gas Inc v. Oil Conservation Commission, et al.**, (New Mexico Supreme Court Case 24,311), the Commission attempts to defend its premature approval of the carbon dioxide project for this Unit by stating that:

"The OCC order contains its standard statement at the end of the order: "Jurisdiction of this cause is retained for entry of such further orders as the Commission may deem necessary". In this manner any unanticipated development, new technological advance or scientific advancement can be taken into consideration by the OCC at a later date."

The exclusion of Premier's FV-1 wellbore is such an unanticipated development for no adjudication has been made and for which a hearing is required.

D. THE DIVISION HAS EXPRESS GRANT OF AUTHORITY PURSUANT TO ITS CONTINUING JURISDICTION TO ADDRESS THE ISSUE OF THE FV-1 WELLBORE

Premier agrees with Yates' citation of **Armijo v. Save "N Gain,** 108 N.M. 281, 771 P.2d 989 (Ct. App. 1989), for the proposition that in New Mexico, in the absence of an express grant of authority, the power of an administrative agency to reconsider its final decision exists only where the statutory provisions creating the agency indicate a legislative intent to permit the agency to carry into effect such power.

Then, however, Yates omits any reference to the express grants of authority to the Commission which include the following:

Section 70-7-3 NMSA 1979 states that "...the Division is vested with jurisdiction, power and authority and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of the Statutory Unitization Act.

Section 70-7-7 NMSA (1979) of the "Statutory Unitization Act" requires:

"the order providing for unitization and unit operations of a pool or portion of a pool shall be upon terms and conditions that are fair, reasonable and equitable and shall approve or prescribe a plan or unit agreement for unit operation which shall include:

J. such additional provision as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste." (emphasis added).

In violation of Section 70-7-6 NMSA (1979), Exxon failed to submit any evidence in Case 11298 to show that **including** Well Tract 1309 in the Unit while **excluding** that tract's wellbore (FV-1) from the Unit "to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners."

Exxon and Yates are desperate to avoid having the Division address this issue because their exclusion of Premier's FV-1 wellbore from this unit is arbitrary, capricious and without justification.

E. THERE IS EVIDENCE THAT PREMIER'S FV-1 WELL IS NECESSARY FOR UNIT OPERATIONS

In its motion to dismiss, Exxon challenges that there is "no evidence that the FV-1 wellbore is necessary for unit operations." If that is so, then:

(a) ask Exxon to explain why it chose to include all other wellbores in the "buffer" tracts which also are not going to be used in the waterflood project.[3]

(b) ask Exxon to explain why its carbon dioxide injection pattern plat shows the use of an injection well in Tract 1309 if Premier's FV-1 is not necessary for the carbon dioxide project.

(c) ask Exxon to explain why in 1993, Exxon's unit manger told Ken Jones of Premier that Exxon wanted **both** Premier's VF-3 wellbore and FV-1 wellbore for the unit even though the FV-1 well was located more than 660 feet from the east line of Section 25.

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[3] Exxon's base Map, Exhibit B-1 shows the following "buffer" tract wells all of which are included in the unit but not to be utilized in the waterflood project: Unit Wells 2309, 2509, 2709, 2711, 2720, 2321, 1909 and 1709.

(d) ask Exxon to explain why it thought Premier's SE/4NE/4 of Section 25, T20S, R27E, taken by Exxon as Unit Tract 1309 was necessary for unitization operations while that tract's wellbore (FV-1 Well) can be "excluded" as "not of use and value to the Unit and not necessary to Unit Operations".

Exxon cannot explain any of these contradictions between (a) its claim that the Premier FV-1 wellbore (Well Tract 1309) has no value because it is not going to be used in the waterflood with (b) its claim that other wellbores also not to be used in the waterflood are included in the unit.

In addition, the FV-1 wellbore was used by Exxon in characterizing the Delaware reservoir (See Exxon Exhibit 10, E-5, E-6 and all maps). Furthermore, in 1992 Premier advised Exxon that the FV-1 well would flow Delaware oil from the annulus.

Premier can only assume that the omission of its FV-1 wellbore was a mistake by Exxon personnel which they do not want to correct because they desire to punish Premier for its opposition to the unit.

F. EXXON HAS DENIED PREMIER'S REQUEST TO INCLUDE THE FV-1 WELLBORE IN THE UNIT

In its Motion to Dismiss, Exxon contends that Premier's application should be dismissed because Premier failed to request the inclusion of the FV-1 wellbore in the unit.

Contrary to Exxon's contentions, and prior to the Commission hearing, Exxon induced Premier into believing that the Premier's VF-1 wellbore would be included.

Prior to Commission Hearing

Prior to the Commission hearing held on December 14, 1995, the circumstances surrounding this issue were as follows:

(1) Premier assumed that both its FV-1 and FV-3 wellbores would be included within the unit due to a prior communications with Exxon employees.

(2) This assumption is verified by Terry Payne's report which credits Premier with 2 wellbores. See Premier Exhibit 9 in Case 11298 at page 41, 5th column.

(3) By letter dated November 16, 1995, Exxon advised Premier that "Exxon, as Unit Operator, will have the option to accept all such wells or equipment as being of use and value to the unit" See Exhibit "A" attached.

After the Commission hearing

After the Commission hearing, the following occurred:

(1) By letter dated March 12, 1997, Premier requested Exxon to include the FV-1 Well in the unit.

(2) In accordance with the Unit Operating Agreement, Exxon's 72% of the voting rights will determine if a wellbore is included or excluded.

(3) However, contrary to its representations prior to the hearing, on April 24, 1997, Exxon rejected Premier's request to include the FV-1 wellbore in the unit stating:

> "With regard to the inclusion of your FV-1 Well, the wells that are to be included i the Unit are listed in Exhibit "H" of the Operating Agreement; the acquisition of any additional wellbores would require the consent of the working interest owners. Since it does not appear that the FV-1 well would add any value to the Unit, I do not believe that working interest owners would approve its acquisition at this time." See Exhibit "B" attached.

Actions by Exxon constitute a change in circumstance, when coupled with the Division's continuing jurisdiction over this matter, which requires that Premier be given a hearing on this issue. **Wood Oil Company v. Oil Conservation Commission**, 205 Okla 534, 239 P.2d 1021 (195), **Railroad Commission of Texas v. Aluminum Co. of America**, 380 S.W.2d 599 (1964).

G. PREMIER IS NOT ATTEMPTING TO OBTAIN A DIVISION REVIEW OF A "FINAL ORDER" OF THE COMMISSION

In and effort to avoid having the Division decide this issue, Yates mischaracterized Premier's application as an attempt "to obtain a review by the Division of a final Order of the Commission." Yates then goes on to compare the Premier application with the Phillips v. Enserch (Division Case 10994. Yates is wrong on both counts.

Yates contends that this is a "new evidence" case. In doing so, Yates contends the Premier case is "like" the Phillips Case in which the Division denied an application by Phillips based upon "new evidence". Unfortunately, Yates described only the first portion of the Phillips case and left the mistaken impression that Phillips was denied any recourse, and then gratuitously concludes that "Premier seeks Division review of a Commission Order. It has the process reversed."

Contrary to Yates contention, the process is not reversed--that process does not even apply to the Premier case. Yates omitted from its argument the essential part of the review process contained in the Phillips v. Enserch dispute. What Yates omitted was that the Phillips' case was dismissed upon a procedural issue because Phillips' sought to reopen a case and present evidence developed since the Commission hearing and the Division had not established a procedure for reopening Commission cases based upon "new evidence". Once that procedure was established,[4] Phillips refiled its application and the matter was set for hearing before the Commission. Just prior to the hearing, Phillips decided to withdraw its application for reasons not relevant here and the case was dismissed at Phillips' request.

In the Premier case, Premier **is not asking that Commission Case 11298 be Reopened based upon "new evidence"**. (emphasis added). Premier is not asking the Commission to "rewrite the Unit Operating Agreement. To the contrary, Premier contends that a new case is necessary because the exclusion of its FV-1 wellbore was not adjudicated by the Commission in Case 11298.

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[4] See Division policy on "new evidence" cases established by letter dated October 6, 1995. Exhibit "C" attached which is not applicable to the Premier case.

A search of that record fails to so any justification for the exclusion of the FV-1 wellbore from the unit. There was absolutely no evidence presented to the Commission to support the exclusion of Premier's FV-1 Wellbore from the unit.[5]

Accordingly, Premier desires the same type of relief sought and obtained by Doyle Hartman in Case 11792 when a post order review of that record failed to disclose substantial evidence to support a portion of that order.

H. THE DISMISSAL OF PREMIER'S APPLICATION IN CASE 11838 IS CONTRARY TO ACTION TAKEN BY THE DIVISION IN HARTMAN CASE 11792

On June 30, 1997, Examiner Stogner conducted a hearing on Oxy USA Inc.'s Motion to Dismiss the Application of Doyle Hartman[6] who sought, among other things, to revoke or modify a Division order entered some three years previously which approved the use of certain injection wells with a surface pressure limitation of 1800 psi.[7] At the conclusion of the motion hearing, Examiner Stogner ruled that he would set aside the 1800 psi surface limitation previously approved for certain injection wells in Oxy's Myers Langlie Mattix statutory unit.

In Case 11168, Oxy had submitted a C-108 which included a request for a surface limitation pressure of 1800 psi which was heard by the Division at a hearing held on December 15, 1994 and which was approved by Division Order R-4680-A entered on March 31, 1995.

In July, 1997, some three years later, Hartman claimed there was insufficient evidence in the record of that case to support the approval of the 1800 psi limit and Examiner Stogner, relying upon the Division's continuing jurisdiction, revoked that approval.

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[5] See transcript of Commission hearing held on December 14, 1995 consisting of some 524 pages.

[6] See OCD Case 11792

[7] See Order R-4680-A entered in Oxy Case 11168

This revocation was granted over the objection of OXY who, like Yates and Exxon in this case, relied on the same legal authority to argue that the matter had been adjudicated, that the order was final, that Hartman had notice and failed to appear and therefore failed to exhaust his administrative remedies and that Hartman's application was simply a collateral attack on a valid order of the Division.

Examiner Stogner's decision in the Hartman Case was made based only upon the argument of counsel for Hartman and without any evidentiary hearing.

Contrary to the legal authority as cited by Yates in this case[8], Hartman was not required to show either "new evidence" or that an unadjudicated matter had been reserved for later decision. Instead, Hartman asked for and the Division engaged in a post order "substantial evidence review" of the record made in a final order entered some three years and after doing so and without an evidentiary hearing, Examiner Stogner ordered that the 1800 psi limit be vacated.

In order to be consistent with his decision in Hartman's case, Examiner Stogner should reconsider his letter decision entered on August 20, 1997 in this case, and grant Premier the hearing it has requested.

I. THE DIVISION HAS MISUNDERSTOOD PREMIER'S APPLICATION BECAUSE A SHOW CAUSE HEARING IS APPROPRIATE PURSUANT TO SECTION 70-2-29 NMSA 1979

Yates suggests that the only time a "show cause" proceeding can be initiate is if the Division itself stumbles upon a violation by an operator. Such a narrow approach would preclude the Division from investigating the claim of any interested party that a violation has taken place.

In his letter dated August 20, 1997, Examiner Stogner states that:

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[8] Yates cites only two cases, one of which is a case from Illinois which was decided more than sixty (60) years ago.

"In an instances when an operator violates or fails to comply with a Division order or rule, the Division may then call that operator before it with a show cause hearing to assure compliance with its order or rules. That is not the case here. Here, a party other than the Division has requested a show cause hearing."

In accordance with Section 70-2-29 NMSA 1979, Premier is requesting a hearing for the purpose of trying to persuade the Division that there is sufficient justification for the Division to require Exxon to include the FV-1 wellbore in the unit. This would not be a show cause order issued by Premier but one issued by the Division if it grants Premier's application in Case 11838.

While the Division is charged with the duty and obligation of enforcing all rules and statutes relating to the conservation of oil and gas,(**19 NMAC 15.A.12**), any operator or producer, or **any other person having a property interest** may institute proceedings for a hearing. **19 NMAC 15.N.1203.A**

Yates has forgotten that any interested party also is allowed to petition the Division for enforcement of Division orders and if the Division fails to act, then said private party can file suit for enforcement. **Section 70-2-29 NMSA 1979. Also see 19 NMAC 15.N.1203.A.**

If this is an issue of form over substance, then Premier welcomes the assistance of the Division to docket this matter in a form acceptable to the Division which allows Premier the opportunity to adjudicate this issue. Premier suggests that this matter can be adjudicated based upon a proposed **first amended application which is attached hereto as Exhibit "D".**

CONCLUSION

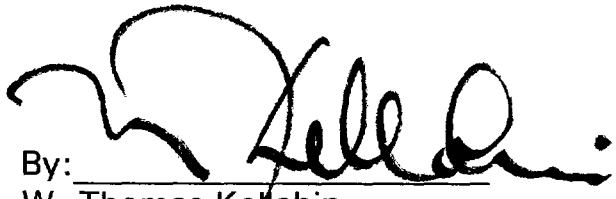
In accordance with Order R-10460-B and Section 70-7-7 NMSA (1979), it is necessary for the Division to address the arbitrary exclusion of the FV-1 Wellbore from this Unit which is an issue not addressed by the Commission in the prior case.

Premier Oil & Gas, Inc.'s FV-1 Well located 1980 feet from the North line and 990 feet from the East line (Unit H) Section 25, Township 20 South, Range 27 East, NMPM, Eddy County, New Mexico should be ordered by the Division to be included in the Avalon (Delaware) Unit as a qualified wellbore committed to this unit in compliance with the Statutory Unitization Act ("the Act"), Section 70-7-1 NMSA (1978),

In the alternative, Premier Oil & Gas, Inc. requests that its application be amended and docketed as follows:

> "Application of Premier Oil & Gas Inc. to include its FV-1 Well located 1980 feet from the North line and 990 feet from the East line (Unit H) Section 25, Township 20 South, Range 27 East, NMPM, Eddy County, as a unit wellbore in the Avalon (Delaware) Unit in compliance with the Statutory Unitization Act ("the Act"), Section 70-7-1 NMSA (1978), including but not limited to amending Exhibit H of the Unit Operating Agreement to include said wellbore and to qualify said wellbore a useable wellbore committed to its Avalon (Delaware) Unit prior to October 1, 1997."

Respectfully submitted,



By: _____
W. Thomas Kellahin
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

VERIFICATION

Comes now Ken Jones, Vice President of Premier Oil & Gas Inc., being first duly sworn and upon his oath states that the factual statements set forth in this pleading are true and accurate to the best of his knowledge, information and belief.

Ken Jones

STATE OF TEXAS)
)SS.
COUNTY OF DALLAS)

SUBSCRIBED SWORN TO AND ACKNOWLEDGED to before me this 25th day of August, 1997 by Ken Jones on behalf of Premier Oil & Gas Inc.

Notary Public

My Commission Expires:

Feb 8, 2001

EXXON COMPANY, U.S.A.
POST OFFICE BOX 1600 • MIDLAND, TEXAS 79702-1600

MIDLAND PRODUCTION ORGANIZATION

November 16, 1995

Working Interest Owners
Avalon (Delaware) Unit

Gentlemen:

Pursuant to Article 10.3 of the Avalon (Delaware) Unit Operating Agreement, Exxon is planning to conduct an inventory of the equipment which may be included in the unit on December 5, 1995. In accordance with the JOA this is your 10 day advance notification. Please notify Wayne Clayton at phone number below to let us know if you will have a representative at such inventories. We will meet in the lobby of the Carlsbad, New Mexico Holiday Inn at 8:00 a.m. MST. Following the inventory, Exxon will later determine which of the equipment will be required for Unit Operations and notify the working interest owners of its determination. Also pursuant to Article 10.3, Exxon hereby requests your nominations for the Inventory Committee. Space for your nominee to the committee is provided at the end of this letter.

Exxon has not received any notification, pursuant to Article 10.1.1 and 10.1.2 of the Unit Operating Agreement that there are any wells or equipment that you as the owner elect to retain. Thus, Exxon, as Unit Operator, will have the option to accept all such wells or equipment as being of use and value to the Unit.

Please return your Inventory Committee Nomination to:

Avalon (Delaware) Unit
Operations Accounting
Exxon Company, U.S.A.
P. O. Box 1600
Midland, Texas 79702-1600

If you have any questions, please contact me at (915) 688-6653 or Wayne Clayton at (915) 699-6652. We look forward to working with you.

Sincerely,

Cindy L. Gentry

Cindy L. Gentry

Inventory Committee Nominee:
Name: _____

Position: _____

Company: _____

Phone #: _____

EXHIBIT
A

EXXON COMPANY, U.S.A.
POST OFFICE BOX 1600 • MIDLAND, TEXAS 79702-1600

MIDLAND PRODUCTION ORGANIZATION

April 24, 1997

Avalon Unit
Eddy County, New Mexico

Mr. Kenneth C. Jones
Premier Oil & Gas Inc.
P.O. Box 1246
Artesia, New Mexico 88210

Dear Mr. Jones:

The purpose of this letter is to discuss a number of matters related to the captioned unit. Initially, with regard to our efforts to settle this matter without further litigation, based on our conversations, and your letter that I received on March 12, 1997, it does not appear that such resolution is possible, because the parties' positions are so far apart. We would certainly like to see this matter resolved without further expenditures of time and money on legal proceedings. However, we do not believe that it is worthwhile to commence negotiations when the distance between the parties positions is so great that there is no realistic possibility of reaching any compromise solution. We remain, of course, willing to listen to any proposal you wish to make.

Second, with regard to your suggestion that the FV-1 well be included in the Unit, and/or that additional acreage of yours included in the Unit, please be advised that Exxon cannot consider these requests at this time. Any expansion of the Unit would have to be accomplished under the terms of the Unit Agreement and would require that the additional acreage be proven productive and useful for Unit operations. At this point, I do not believe that your acreage meets this requirement and I do not believe that the Unit would approve its inclusion, as is required by the Unit Agreement. With regard to the inclusion of your FV-1 well, the wells that are to be included in the Unit are listed in Exhibit "H" of the Operating Agreement; the acquisition of any additional wellbores would require the consent of the working interest owners. Since it does not appear that the FV-1 well would add any value to the Unit, I do not believe that working interest owners would approve its acquisition at this time.

Third, you have inquired as to Exxon's willingness to dispose of water from your operations. Exxon will certainly be willing to consider any reasonable proposal for such disposal. While the specific terms for any disposal will have to be negotiated, please be advised that it is Exxon's basic position at this time that, where water that the Unit takes from you is used in enhanced recovery operations, neither party should pay the other any consideration for such taking, while, if the

EXHIBIT
B

RECYCLED

water is taken and simply disposed of in a disposal well, the Unit should receive some negotiated fee for the disposal.

Additionally, please be advised that Exxon will be willing to cooperate with you in regard to any operational matters that arise in the future pertaining to your operations in the Avalon Unit. These efforts may include a lease line injection type agreement, some agreement for the handling of CO_2, etc. In negotiating such any Agreement Exxon will, of course, have to ensure that the interests of the Unit owners are protected.

Finally, I believe that it is necessary that we address the assessment of the FV3 well. Under Section 11.3 of the Operating Agreement, each well included in the Unit must be assessed as usable within two years following the effective date of the Unit, i.e., by October 1, 1997. Most of the wells have now been tested and accepted by the Unit; we anticipate that the testing of all wells will be completed by the deadline. Under the terms of the Unit Agreement, the FV3 must be tested on or before October 1, 1997, or it will be deemed not usable, and you will not receive the credit for such well in the final inventory. Under Section 11.2.2 of the Operating Agreement, you had the right to request that Exxon perform the testing to determine if the wellbore was usable, within six months after the effective date of the Unit; this six month period has now expired.

We acknowledge that you have appealed the decision of the New Mexico Oil and Gas Commission approving the Unit. Unless and until a decision of the Commission is overturned, however, it now has full legal force and effect, and you are bound to the terms of the Unit and Unit Operating Agreements. In recognition of the fact that you have appealed the unitization, Exxon has not required you to make a consent/nonconsent election under the Unit Agreement. However, we will require that, if the well is to be included in the Unit, it must be determined to be usable on or before October 1, 1997, in accordance with the requirements of the Operating Agreement. Please note that, under Section 11.2.1 of the Operating Agreement, Exxon must approve the testing procedures in advance, to witness the tests, and to make a final determination as to whether the wellbore is usable. I would appreciate it if you would advise me of your plans for testing the wellbore as soon as possible.

Exxon remains willing to work with you with regard to matters relating to the Unit and operations in the Unit area. If you have any questions regarding the foregoing, please do not hesitate to contact me at (915) 688-6191.

Very truly yours,

R. W. Matt

RWM:jfs

Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

October 6, 1995

Kellahin & Kellahin
Attorneys At Law
El Patio Building
117 North Guadalupe
Santa Fe, New Mexico 87501

Re: Response to Inquiry Concerning Procedures for Applying to the Oil Conservation Commission to Reopen a Case

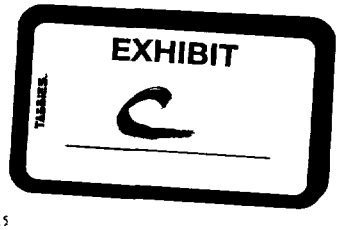
Dear Mr. Kellahin:

In regard to your captioned inquiry regarding what circumstances the Oil Conservation Commission (Commission) would consider sufficient cause to reopen a case based on new evidence. the following outlines our policy in this regard:

1. The availability of new evidence by itself is not sufficient grounds for the Oil Conservation Commission to reopen a case where it has issued a final order. There is always new information because wells produce oil, gas and water and reservoir pressures change and this new information populates an ever-expanding data base. This is the normal chain of events.

2. Where new data becomes available that is contrary to projected trends and is significantly different from data presented and projected at the Commission hearing, this new information may be grounds for an Oil Conservation Commission case to be reopened.

3. In order for the Commission to reconsider a case in which it has issued an order, there must be a recommendation from staff that new and compelling information has significantly changed Commission findings of fact and in their opinion could change some of the conclusions reached by the Commission.



4. The Commission will accept the recommendations from staff and then decide whether to reopen the case in which a final order was issued. This procedure in no way guarantees that the new information would be grounds for overturning or amending an Oil Conservation Commission order. The new information must be such that it contradicts information presented at the initial hearing and could therefore alter the Commission's conclusions. In no case should the applicant present arguments that were rejected by the Commission utilizing the same body of information or projected information that was used initially. In other words, this is not an opportunity for the applicant to reargue its case before staff. The applicant must present this new evidence to staff in written form and be prepared to answer any questions which staff might have.

5. The applicant shall submit a copy of its application to reopen with supporting information to the opposing parties at the original hearing at the same time the application is submitted to the OCD staff. Opposing parties will have 14 days from receipt to respond in writing. The application to reopen and any response will be the only items considered by the Commission in deciding whether to grant the application. No oral argument will be heard at that level. The applicant must also, of course, comply with all applicable notice requirements if the application is granted.

Thanks for your inquiry into Division policy concerning rehearings by the Commission.

Very truly yours,

William J. LeMay
Chairman

WJL/sm

cc: William Carr
James Bruce
Ernest Padilla
Ernest Carroll
Jami Bailey, Commissioner
William Weiss, Commissioner

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:

APPLICATION OF PREMIER OIL & GAS, INC. TO INCLUDE ITS FV-1 WELLBORE AS A QUALIFYING WELLBORE COMMITTED TO AVALON (DELAWARE) UNIT, EDDY COUNTY, NEW MEXICO. **CASE NO. 11838**

FIRST AMENDED APPLICATION OF PREMIER OIL & GAS, INC.

Comes now PREMIER OIL & GAS, INC., ("Premier") by and through its attorney's, Kellahin & Kellahin, for its first amended application, petitions the New Mexico Oil Conservation Division ("Division") for an order including Premier Oil & Gas, Inc.'s FV-1 Well located 1980 feet from the North line and 990 feet from the East line (Unit H) Section 25, Township 20 South, Range 27 East, NMPM, Eddy County, New Mexico, as a qualifying wellbore committed to the Avalon (Delaware) Unit in compliance with the Statutory Unitization Act ("the Act"), Section 70-7-1 NMSA (1978).

And in Support States:

(1) Commission Order R-10460-B, issued March 12, 1996, (Case 11298) approved an statutory unitization application by Exxon Corporation ("Exxon") to involuntarily commit all four Premier tracts in Exxon's Avalon-Delaware Unit Waterflood Project in Eddy County, New Mexico.

(2) Conversation with Exxon confirmed that Exxon wanted both the FV-1 and FV-3 wellbores as unit wellbores.

EXHIBIT
D

(3) Oddly, and without explanation or evidence presented in Case 11298, while Premier has two wells in Tract 6, Exxon included only the FV-3 Wellbore and excluded the FV-1 Wellbore.

(4) Now Exxon has refused to include Premier's FV-1 Well located in Tract 1309 (SE/4NE/4) of Section 25, Township 20 South, Range 27 East, as a wellbore committed to Exxon's Avalon (Delaware) Unit as of October 1, 1997, despite the fact that the Tract 1309 was involuntarily committed into Exxon's Unit by Commission Order R-10460-B.

(5) The Commission in Case 11298 (upon which Order R-10460-B is based) did not address the issue of the exclusion of the FV-1 Wellbore from the Unit nor did Exxon provide any evidence in the record upon which to support excluding FV-1 Wellbore while including FV-3 Wellbore in the list of wellbores to be contributed to the Unit.

(6) Section 70-7-7 NMSA (1979) of the "Statutory Unitization Act" requires:

> "the order providing for unitization and unit operations of a pool or portion of a pool shall be upon terms and conditions that are fair, reasonable and equitable and shall approve **or prescribe** a plan or unit agreement for unit operation which **shall include**:
>
> > J. such additional provision as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste." (emphasis added).

(7) In violation of Section 70-7-6 NMSA (1979), Exxon failed to submit any evidence in Case 11298 to show that **including** Well Tract 1309 in the Unit while **excluding** that tract's wellbore (FV-1) from the Unit "to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners."

(8) Order R-10460-B retained continuing jurisdiction to enter such orders as are deemed necessary.

(9) In accordance with Order R-10460-B and Section 70-7-7 NMSA (1979), it is necessary for the Division to address the arbitrary exclusion of the FV-1 Wellbore from this Unit which is an issue not addressed by the Commission in the prior case.

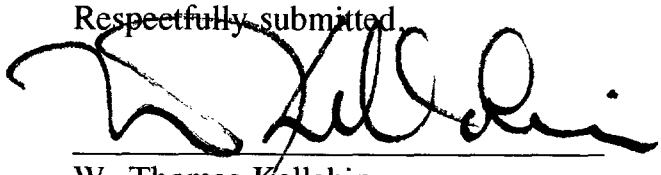
(10) Premier Oil & Gas, Inc.'s FV-1 Well located 1980 feet from the North line and 990 feet from the East line (Unit H) Section 25, Township 20 South, Range 27 East, NMPM, Eddy County, New Mexico is necessary for the carbon dioxide project in the Avalon (Delaware) Unit in order to comply with the Statutory Unitization Act ("the Act"), Section 70-7-1 NMSA (1978),

(11) Premier contends that a supplemental order must be issued pursuant to the Division's "continuing jurisdiction" and in accordance with Section 70-7-7 and Section 70-7-6 NMSA (1979) to require Exxon to include Premier's FV-1 Wellbore in the Unit.

(12) In addition, it is necessary for the Division to take action in this mater prior to October 1, 1997 which is the last date provided for in the Unit Operating Agreement in which to commit wellbores to the unit.

Wherefore, Applicant requests that this matter be set for hearing before the Division's Examiner and that after notice and hearing, the application be granted as requested.

Respectfully submitted,



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