

**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. 6987
CASE NO. 11792**

**AMENDED APPLICATION OF DOYLE HARTMAN
TO GIVE FULL FORCE AND EFFECT TO
COMMISSION ORDER R-6447, TO REVOKE
OR MODIFY ORDER 4-4680-A, TO 2
ALTERNATIVELY TERMINATE THE
MYERS LANGLIE-MATTIX UNIT,
LEA COUNTY, NEW MEXICO**

**HARTMAN'S MOTION TO DISQUALIFY
WILLIAM F. CARR AS COUNSEL**

Applicant Doyle Hartman, Oil Operator ("Hartman") hereby moves the New Mexico Oil Conservation Division ("NMOCD") for its Order Disqualifying William F. Carr, Esquire as counsel for Oxy USA Inc. in these proceedings. As grounds for this Motion, Hartman states as follows:

1. Hartman filed his Application in this matter on April 28, 1997, and filed an Amended Application on May 8, 1997. This is an adjudicatory proceeding wherein the NMOCD will be called upon to decide, inter alia, whether Oxy has violated the New Mexico Statutory Unitization Act and Order R-6447, entered August 27, 1980 by the New Mexico Oil Conservation Commission ("NMOCC"), in Oxy's operation of the Myers Langlie-Mattix Unit ("MLMU") waterflood unit in Lea County, New Mexico.

2. Oxy is represented in this proceeding by William F. Carr and W. Thomas Kellahin. Oxy has filed a Motion to Dismiss Hartman's Application arguing, inter alia, that Hartman's working interest in the MLMU was not affected by NMOCC Order R-6447 and that he has no standing to enforce the Order.

3. Mr. Carr was counsel for Getty Oil Company ("Getty") in connection with the 1980 Application in Case No. 6987 for approval by the NMOCC of statutory unitization of the MLMU. Mr. Carr is a witness with personal knowledge of the circumstances leading to Getty's application, and was a sender and recipient of correspondence from the NMOCC concerning that application. Getty is no longer in business, and Hartman is unaware of the present location of any former Getty employee with personal knowledge regarding the 1980 Application in Case No. 6987 which lead to the entry of Order R-6447.

4. Mr. Carr will be a necessary witness in this case on issues concerning:

(a) Getty's application for statutory unitization in 1980, and the evidence it presented at the hearing on such application;

(b) several other Division cases in which Mr. Carr has participated as counsel for proponents or opponents of statutory unitization in which positions have been advanced contrary to those advanced by Oxy in this case;

(c) the drafting and presentation to the New Mexico legislature of the Statutory Unitization Act and policy of the Division and Commission regarding enactment and implementation of that law.

5. Oxy has already put in issue in this proceeding the purpose and intent of Getty in connection with the statutory unitization proceeding, arguing, without

any basis in fact, that Getty did not seek, and the NMOCC did not approve, statutory unitization affecting the interest of voluntary participants in the MLMU. The only evidence cited by Getty in support of this contention is a transmittal letter from Mr. Carr to the NMOCC dated June 19, 1980. See Oxy's Motion to Dismiss, pp. 1-8.

6. The Rules of Professional Conduct for the State of New Mexico provide, in Rule 16-307, that a lawyer shall not act as an advocate at trial in which the lawyer is likely to be a necessary witness except where: (1) the testimony relates to an uncontested issue; or (2) the testimony relates to the nature and value of legal services rendered in the case. This adjudicatory proceeding is a trial within the meaning of Rule 16-307. Shovelin v. Central New Mexico Electric Cooperative, 115 N.M. 293, 850 P.2d 996 (1993) (adjudicatory proceeding is one where agency is acting in judicial capacity).

7. The NMOCD has the power and authority to regulate the practice of counsel before it. Under these circumstances, Mr. Carr should be disqualified as counsel for Oxy in this matter.

8. Hartman is informed and believes that Mr. Carr has previously served as attorney for the Division, has for approaching twenty years been one of a small group of lawyers who appears in cases at every hearing docket and has testified as an expert witness before the Division and Commission. By reason of this, Mr. Carr occupies a status where unusual weight or credence might be given to his positions and arguments and be considered as "evidence" of facts, practices, interpretation of the law, and custom in the oil and gas industry. Mr. Carr's representations to this body, cloaked as briefing or argument of counsel, should be subject to test and challenge by discovery and cross examination as is the case with any material witness.

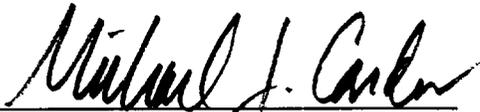
9. Failure to disqualify Mr. Carr as counsel will unduly prejudice Hartman. By signing the Motion to Dismiss, Mr. Carr has stated facts and opinions on a highly contested issue in this case. Hartman is entitled to cross-examine Mr. Carr as to prior statements and positions inconsistent with the one now taken and on all issues concerning the 1980 NMOCC proceeding in Case No. 6987 which resulted in the entry of Order R-6447. Ennen v. Southwest Potash Co., 65 N.M. 307, 336 P.2d 1062 (1959).

10. Oxy will suffer no prejudice if this motion is granted. Mr. Kellahin, an experienced attorney who regularly practices before the NMOCD, is capable of representing Oxy without the assistance of Mr. Carr.

WHEREFORE, based on the foregoing points and authorities, Hartman respectfully request that the NMOCD enter its Order disqualifying William F. Carr from serving as counsel for Oxy in this proceeding.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

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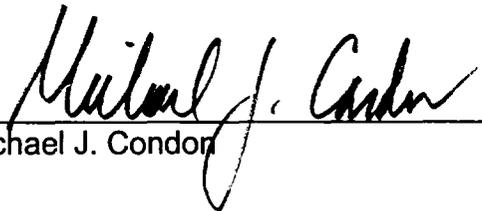
(505) 983-6686

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Hartman's Motion to Disqualify William F. Carr as Counsel to be hand-delivered on this 17th day of June, 1997 to the following counsel of record:

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