

**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. 12391
ORDER NO. R-11377**

**APPLICATION OF OXY USA INC. FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on May 4, 2000, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 17th day of May, 2000, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

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

(2) The applicant, Oxy USA, Inc. ("Oxy"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Pennsylvanian formation underlying the following described acreage in Section 9, Township 25 South, Range 26 East, NMPM, Eddy County, New Mexico, in the following manner:

(a) all of Section 9 forming a standard 640-acre gas spacing and proration unit for any and all formations and/or pools spaced on 640 acres within this vertical extent, including the White City-Pennsylvanian Gas Pool;

(b) the N/2 of Section 9 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within this vertical extent, including but not limited to the Undesignated Chosa Draw-

Morrow Gas Pool and Undesignated Sage Draw-Wolfcamp Gas Pool; and

(c) the SE/4 NW/4 of Section 9 forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools spaced on 40 acres within this vertical extent.

These units are to be dedicated to the applicant's proposed Esperanza Well No. 1 (API No. 30-015-30958) to be drilled at a standard location within the SE/4 NW/4 of Section 9.

(3) This case was styled such that "***In the absence of objection this matter will be taken under advisement.***"

(4) The applicant appeared at the hearing through legal counsel. No other party appeared at the hearing.

(5) The applicant has the right to drill and proposes to drill its Esperanza Well No. 1 at a standard location within the SE/4 NW/4 of Section 9.

(6) Division records and the evidence presented by the applicant demonstrate that:

(a) the Esperanza Well No. 1 is located within one mile of the outer boundary of the White City-Pennsylvanian Gas Pool. This pool is currently governed by special pool rules as set forth by Division Order No. R-2429-A, as amended; and

(b) Rule (6) of the Special Rules and Regulations for the White City-Pennsylvanian Gas Pool provides that the special pool rules shall only apply **within the horizontal boundaries of the pool.**

(7) The proposed Esperanza Well No. 1 is not located within the current boundaries of the White City-Pennsylvanian Gas Pool, therefore the well is not subject to 640-acre gas spacing.

(8) That portion of the application seeking to pool all of Section 9 thereby forming a standard 640-acre gas spacing and proration unit for the White City-Pennsylvanian Gas Pool should be **denied**.

(9) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the proration units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the N/2 and SE/4 NW/4 of Section 9.

(10) Oxy USA Inc. should be designated the operator of the subject well and units.

(11) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(12) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in drilling the well.

(13) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(14) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(15) The applicant requested that reasonable charges for supervision (combined fixed rates) of \$6385.00 per month while drilling and \$630.00 per month while producing be adopted in this case. The applicant however presented no evidence to show that the proposed overhead rates are reasonable or justified.

(16) The 1999-2000 Ernst & Young Fixed-Rate Overhead Survey shows mean rates of \$4741.00 per month while drilling and \$598.00 per month while producing. These rates should be utilized in this case.

(17) Reasonable charges for supervision (combined fixed rates) should be fixed at \$4741.00 per month while drilling and \$598.00 per month while producing, provided that this rate should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedures-Joint Operations.*" The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(18) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(19) If the operator of the pooled units fails to commence drilling the well to which the units are dedicated on or before August 15, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

(20) The operator of the well and units should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The application of Oxy USA, Inc. for an order pooling all uncommitted mineral interests from the surface to the base of the Pennsylvanian formation underlying all of Section 9, Township 25 South, Range 26 East, NMPM, Eddy County, New Mexico, thereby forming a standard 640-acre gas spacing and proration unit for the White City-Pennsylvanian Gas Pool, said unit to be dedicated to its proposed Esperanza Well No. 1 to be drilled at a standard gas well location in the SE/4 NW/4 of Section 9, is hereby **denied**.

(2) The application of Oxy USA, Inc., for an order pooling all uncommitted mineral interests from the surface to the base of the Pennsylvanian formation underlying the following described acreage in Section 9, Township 25 South, Range 26 East, NMPM, Eddy County, New Mexico, is hereby approved:

(a) the N/2 of Section 9 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools spaced on 320 acres within this vertical extent, including but not limited to the Undesignated Chosa Draw-

Morrow Gas Pool and Undesignated Sage Draw-Wolfcamp Gas Pool; and

(b) the SE/4 NW/4 of Section 9 forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools spaced on 40 acres within this vertical extent.

These units shall be dedicated to the applicant's Esperanza Well No. 1 (**API No. 30-015-30958**) to be drilled at a standard location within the SE/4 NW/4 of Section 9.

(3) The operator of the units shall commence drilling the proposed well on or before August 15, 2000, and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(4) In the event the operator does not commence drilling the well on or before August 15, 2000, Ordering Paragraph (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(5) Should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (2) should not be rescinded.

(6) Oxy USA Inc. is hereby designated the operator of the subject well and units.

(7) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. After the effective date of this order and within 90 days prior to commencing the well, the operator shall furnish the Division and each known non-consenting working interest owner in the units an itemized schedule of estimated well costs.

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(9) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection

to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and

(b) as a charge for the risk involved in drilling the well, 200 percent of the above costs.

(12) The operator shall distribute the costs and charges withheld from production to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) shall be fixed at \$4741.00 per month while drilling and \$598.00 per month while producing, provided that this rate shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedures-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(14) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order.

(15) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

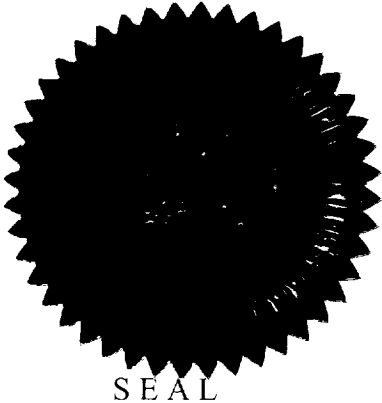
(16) All proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(18) The operator of the well and units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(19) 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.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director