



February 26, 2004

RECEIVED

**HAND DELIVERY**

FEB 26 2004

Ms. Lori Wrotenbery, Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**IMMEDIATE ACTION REQUIRED**

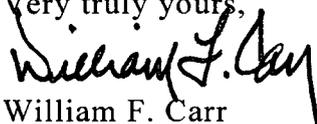
Re: Application of OXY USA WTP, Limited Partnership for rescission of the approval of an application for permit to drill and for compulsory pooling, Eddy County, New Mexico.

Dear Ms. Wrotenbery:

Enclosed in triplicate is the Motion for stay of Drilling Permit of OXY USA WTP, Limited Partnership Application in the Above-referenced case. A copy of this Motion has been served on James Bruce, attorney for Tom Brown Inc.

I am available for a hearing on this motion at any time. OXY requests that the Division expedite this matter to the fullest extent possible for we understand that Tom Brown is preparing to commence the drilling of a well on the acreage that is the subject of this application. OXY therefore requests that the Division enter the stay at the earliest possible time to maintain the status quo until its application for compulsory pooling can be heard on March 4th and the issues raised by this application decided by the Division

Very truly yours,

  
William F. Carr

Enclosures

cc: James Bruce, Esq.  
Gail MacQuesten, Esq.  
Mr. Rick Foppiano

**RECEIVED**

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**IN THE MATTER OF THE APPLICATION OF OXY USA WTP LIMITED PARTNERSHIP FOR RESCISSION OF THE APPROVAL OF AN APPLICATION FOR PERMIT TO DRILL AND FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

**CASE NO. 13226**

**MOTION FOR STAY OF DRILLING PERMIT**

OXY USA WTP Limited Partnership ("OXY"), through its undersigned attorneys, hereby moves the Oil Conservation Division for an order staying the drilling permit filed by Tom Brown Inc. ("Tom Brown") on January 21, 2004 for the Forni Well No. 2 to be drilled at a location 660 feet from the South and West lines of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico and in support of its motion states:

1. OXY is the owner of oil and gas working interest in the W/2 of Section 15, Township 22 South, Range 27 East, NMPM and has the right to drill thereon.
2. Tom Brown is the operator of a standard gas spacing unit comprised of the E/2 of Section 15 that is dedicated to its Forni Well No. 1 which is a commercial well producing natural gas from the Wolfcamp formation.
3. By letter dated January 15, 2003, OXY proposed to Tom Brown the drilling of the Redemption Well No. 1 on a spacing unit comprised of the W/2 of

Section 15 and enclosed a Joint Operating Agreement and AFE for the well. OXY proposes to drill at a standard well location 660 feet from the South and West lines of Section 15 and to drill to an approximate total depth of 12,400 feet to test any and all formations from the surface through the base of the Morrow formation – including the Wolfcamp formation.

4. Instead of responding to the OXY well proposal, Tom Brown filed an Application for Permit To Drill its Forni Well No. 2. Tom Brown proposes to drill at the same location as the OXY well. However, Tom Brown dedicates a S/2 spacing unit to the well comprised entirely of acreage that is owned by Tom Brown. Tom Brown's proposed spacing unit includes the SE/4 of the Section even though this acreage is already dedicated in the Wolfcamp formation to the Forni Well No. 1.

5. On January 23, 2004, OXY mailed its Application for Permit to Drill the Redemption Well No. 1 (Form C-101), an Acreage Dedication Plat (Form C-102) and its H2S Plan to the Division's District Office in Artesia. On January 30, 2004 the OXY APD was denied because Tom Brown already filed an APD for a well at this location.

6. In this case OXY has filed an application with the Division seeking an order (1) rescinding the Tom Brown ADP, and (2) pooling the W/2 of Section 15 for the OXY Redemption Well No. 1.

7. On February 25, 2004, OXY has discovered that, instead of waiting for the Division hearing on its compulsory pooling application, Tom Brown is

building the well location for a well 660 feet from the South and West lines of Section 15 and is now preparing to commence drilling prior to the March 4th examiner hearing.

8. In New Mexico, interests in oil and gas rights are constitutionally protected property rights. Pursuant to the Oil and Gas Act, these rights include “the opportunity afforded...to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool ....” NMSA 1978, § 70-2-33 (H). The Oil Conservation Commission recently found that “[I]f drilling in accordance with the APD violates federal law or a property right, approval of the APD does not constitute any colorable authority for such violation.” Order No. R-12093-A, dated February 12th, 2004.

9. Tom Brown is unilaterally proceeding to drill its Forni Well No. 2 under the colorable authority of an APD while there is a pending case where the Division is asked to rescind this APD and to otherwise exercise its statutory authority to protect the property rights of OXY.

10. At the March 4th Division Examiner hearing OXY will present testimony that will establish that:

- A. Economic Morrow reserves in Section 15 underlay the W/2 only. Tom Brown’s plan to develop these reserves with two lay-down spacing units dilutes OXY’s interest in these reserves, and violates OXY’s correlative rights in the Morrow;

- B. the best producing well in the subject area is the Tom Brown Forni Well No. 1 that produces from the Wolfcamp formation on a spacing unit comprised of the E/2 of Section 15;
- C. a principal objective in any well drilled 660 feet from the South and West lines of Section 15 will be the Wolfcamp formation and that a standard 320-acre spacing unit in Section 15 comprised of the W/2 of the section is available and can be dedicated to the well;
- D. if Tom Brown drills its well pursuant to the current APD and completes the well in the Wolfcamp formation, 50% of the acreage dedicated to the well will already be dedicated to another Wolfcamp well and Tom Brown will have to either form a W/2 unit for the well or ask the Division to create a non-standard unit for the well which would exclude the acreage of OXY; and
- E. inclusion of the NW/4 of Section 15 in a W/2 spacing unit will not impair the correlative rights of Tom Brown by dedicating non-productive acreage to the well to be drilled thereon. Data currently available shows that the NW/4 of this section should be commercially productive as evidenced by the fact that Tom Brown has filed an Application for Permit to drill another deep gas well in the NW/4 of this section.

11. OXY's evidence will raise issues that directly affect the prudent development of this acreage and matters that have a direct impact on OXY's correlative rights in Section 15. At the March 4th hearing, OXY will ask the Division to:

- A. rule on the validity of the Tom Brown Application for Permit to Drill and determine if it was complete when filed and therefore properly approved by the Division;
- B. determine if the proposed acreage dedication constitutes imprudent and wasteful operations;
- C. determine if the proposal to form a S/2 spacing unit for this well is based on prudent operational concerns or if the proposed overlapping Wolfcamp spacing units are simply an attempt to gerrymander the dedicated acreage to exclude acreage owned by OXY and thereby keep OXY from receiving its just and reasonable share of the reserves under its acreage;
- D. consider a compulsory pooling application that is properly before the Division and contains none of the problems set out hereinabove.

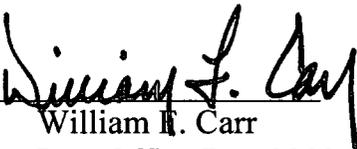
12. Unless the Oil Conservation Division stays this APD, Tom Brown Inc. will proceed with the drilling of the Forni Well No. 2 in total disregard of the currently scheduled Division proceedings where the very nature of the impact of

this unilateral action on the correlative rights of other owners in the subject section will be at issue. Furthermore, by refusing to stay the drilling of this well until the property issues involved by this action can be reviewed, the Division would be ignoring its statutory mandate to protect the correlative rights of OXY in the subject lands.

13. The Director of the Division has primary jurisdiction over the approval of APD's and must now take action to preclude Tom Brown from commencing drilling of the Forni Well No. 2 pending the entry of an order Division Case No. 13226.

WHEREFORE, OXY USA WTP, Limited Partnership request that the Division enter its order staying the Application for Permit to Drill for the Tom Brown Inc. Forni Well No. 2 which was approved by the Division's district office on January 30, 2004, until the there has been a hearing on its application for compulsory pooling and the issues raised by its application in this case have been resolved.

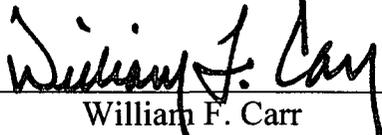
Respectfully submitted,  
HOLLAND & HART LLP

By:   
William H. Carr  
Post Office Box 2208  
Santa Fe, New Mexico 87504  
Telephone: (505) 988-4421

ATTORNEYS FOR OXY USA WTP LIMITED  
PARTNERSHIP

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of this Motion for Stay of Drilling Permit to be hand delivered to James Bruce, attorney for Tom Brown Inc., on this 26th day of February 2004.

  
\_\_\_\_\_  
William F. Carr