



January 25, 2010

**VIA HAND DELIVERY**

Mark E. Fesmire, PE, JD  
Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1200 South Saint Francis Drive  
Santa Fe, New Mexico 87505

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**Re: Application of Reliant Exploration and Production Company, LLC, for cancellation of two permits to drill ("APD") issued to OXY USA, Inc. and for compulsory pooling, Harding County, New Mexico.**

Dear Mr. Fesmire:

Enclosed is OXY USA, Inc.'s Motion to Dismiss the above referenced application. Oxy requests that this motion be set for argument at the earliest possible date.

Very truly yours,

William F. Carr

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Elizabeth Bush-Ivie  
OXY USA, Inc.


**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. 14412**

**APPLICATION OF RELIANT EXPLORATION  
AND PRODUCTION COMPANY, LLC, FOR  
CANCELLATION OF TWO PERMITS TO  
DRILL ("APD") ISSUED TO OXY USA, INC.  
AND FOR COMPULSORY POOLING IN  
HARDING COUNTY, NEW MEXICO.**

**MOTION TO DISMISS**

In this case, Reliant Exploration and Production LLC ("Reliant") seeks an order cancelling two drilling permits (APD's) issued to OXY USA Inc. ("OXY") or, alternatively, seeks the compulsory pooling of Sections 2 and 11 of Township 18 North, Range 31 East, NMPM, Harding County, New Mexico. OXY seeks dismissal of this application for Reliant seeks an order that is not authorized by either the Oil and Gas Act or the Rules of the Oil Conservation Division. 

**Undisputed Facts:**

The undisputed facts establish that OXY filed applications to drill the Bravo Dome Unit Wells No. 021 and 111 and, by mistake, proposed to dedicate to these wells 160-acre spacing units instead of 640-acre units. (Application, Paragraph 3) The Oil Conservation Division approved these APD's. (Application, Paragraph 1) Pursuant to these approved APD's, the wells were drilled to total depth in 2007. (Application, Paragraph 2) OXY has shut in these wells and is not producing them pending resolution of these spacing issues. Reliant owns mineral interests in the sections in which each of the subject wells is located. (Application, paragraph 5) OXY has provided a Joint Operating Agreement to Reliant for its consideration. Although there have been extensive negotiations between the parties, no agreement has been reached for the development of these lands. (Application, Paragraph 11).

### **Cancellation of APD's:**

Pursuant to approved APD's, OXY drilled these wells in 2007. Now, more than two years later, Reliant seeks orders cancelling the APD's. In the past, APD's have been cancelled where drilling or re-working operations were not complete. Case No. 13153, Order No. R-12180-C. However, in this case, cancellation of the subject APD's would accomplish nothing for the wells have been drilled.

Once these wells were drilled, the issue became not the rescission of the APD's but how to maintain the wells under Division Rules until the spacing issues are resolved. 19.15.15.10 NMAC provides that "any well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit for the well has been formed and dedicated or until a non-standard spacing unit has been approved." In compliance with this Division rule, OXY is not producing these wells. They are inactive wells<sup>1</sup> and will remain so until the current spacing issues are resolved.

Division Rules provide for inactive wells, like these, to be temporarily abandoned or plugged. 19.15.25.12-14 NMAC. OXY has approved applications to temporarily abandoned each of these wells and is waiting on the weather to complete this work.

### **Waste and Correlative Rights**

Reliant contends that cancelling OXY's APD's would prevent waste and protect correlative rights. (Application Paragraph 7) This argument makes no sense. The subject wells are shut-in and there are no offsetting wells that drain this acreage. On these facts, "waste," as defined by the Oil And Gas Act, cannot occur. See 19.15.2 W(1) NMAC.

Without providing authority for its application in either statute or rule, or otherwise showing how the cancellation of these APD's would cause the subject wells to be completed and produced, Reliant alleges that its correlative rights are impaired since it is "unable to drill any well on its acreage within the 640 acre units as long as the APD's issued to OXY remain in place." (Application Paragraph 6) This statement is untrue. Reliant has the opportunity to develop its reserves if it truly desires to do so. The rules of the Division allow for multiple operators on a spacing unit. 19.15.14.9 NMAC. If Reliant wants to drill a well, it could file a proper pooling application covering the sections at issue and become the second operator on

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<sup>1</sup> "Inactive well" means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over. 19.15.2 I.(4) NMAC

the spacing units (19.15.15.12 NMAC)<sup>2</sup> or it could form a non-standard unit and develop its lands (19.15.15.11 NMAC). This would require Reliant to incur costs and drill a well – something it has not proposed to do.

Without explanation, Reliant asserts that cancelling the OXY permits, years after the wells have been drilled, “will assure compliance with Division rules requiring the timely completion and production of wells.” (Application paragraph 7). What rules? This statement also makes no sense. How could the cancellation of APD’s ensure that wells will be completed and/or produced?

OXY, like Reliant, is anxious to get these tracts developed. It is attempting to resolve the spacing issue with Reliant. On these facts, the dismissal of the APD’s pursuant to which these wells were drilled is not the appropriate remedy and the application of Reliant to cancel these APD’s should be dismissed.

### **Compulsory Pooling**

In the alternative, Reliant seeks an order pooling two spacing units and designating OXY operator of the wells located thereon. Reliant does not want to be subject to a charge for the risk incurred by OXY in the drilling or the completion of these wells, nor has it agreed to voluntarily commit its interests to the wells.

Compulsory pooling requires an exercise of the police power of the state to take an oil and gas interest from its owner and give it to another to drill and produce. It is a power conferred on the Division by the Oil and Gas Act. N.M.S.A. 1978, § 70-2-17.C (2004). Because a pooling order affects constitutionally protected property rights, it is authorized in very specific and limited circumstances. There are preconditions, set by statute, that must be met before the Division may enter a compulsory pooling order. There must be an owner who: (1) has the right to drill, (2) proposes to drill, and (3) and has been unable to reach voluntary agreement with the other interest owners for the development of the proposed pooled unit. N.M.S.A. 1978, § 70-2-17.C (2004). The owner seeking to invoke the Division’s pooling authority must show that each of these preconditions has been met. If it does not meet this burden, the Division cannot enter a pooling order.

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<sup>2</sup> 19.15.15.12 NMAC provides: “An operator who intends to operate a well in a spacing unit containing an existing well or wells operated by another operator shall, prior to filing the application to drill, deepen or plug back for the well, furnish written notification of its intent to the operator of each existing well, and if the unit includes state, federal or tribal minerals, to the state land office or BLM, as applicable...”

Reliant does not propose to drill a well. Reliant seeks an order designating OXY operator of a well OXY has already drilled. (Application, Prayer for Relief) OXY and Reliant have been unable to reach an agreement on a the terms of a Joint Operating Agreement because Reliant is unwilling to pay the cost of processing its gas in OXY owned and operated facilities. The charge for processing gas is a matter of private contract. It is not a compulsory pooling issue and is an issue that would remain unaffected by the pooling order.

Furthermore, Reliant has not proposed the drilling of a well to all interest owners in these sections and, therefore, cannot have attempted to reach a voluntary agreements with all owners for the drilling of a well. These facts alone render pooling unavailable to Reliant. Unless it proposes a well that it plans to drill, it cannot pool the interests of OXY and others. The issues before the Division is a spacing issue not compulsory pooling.

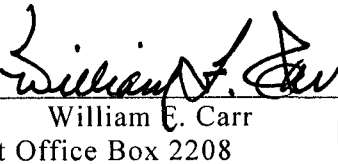
**Conclusion**

The issue in this case involves the appropriate size of the spacing units for the subject wells. OXY has been trying to resolve this issue with Reliant. The subject wells were drilled and have been shut in until this spacing issue is resolved.

Reliant's application cannot be granted because it is contrary to the Oil and Gas Act and to Oil Conservation Division Rules. It must be dismissed.

Respectfully submitted,

Holland & Hart, LLP

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ATTORNEYS FOR OXY USA, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of January 2010, I have caused to be delivered by Facsimile or e-mail a copy of the **Motion to Dismiss** in the above mentioned case to the following counsel of record:

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