

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:

RE-ADVERTISED APPLICATION OF RELIANT CASE NO. 14412
EXPLORATION AND PRODUCTION COMPANY, LLC,
TO TERMINATE THE TEMPORARY ABANDONMENT
STATUS OF TWO CO2 WELLBORES DRILLED BY
OXY USA, INC., AND FOR COMPULSORY POOLING
IN HARDING COUNTY, NEW MEXICO.

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Presiding Examiner
WILLIAM V. JONES, Technical Examiner

April 29, 2010

Santa Fe, New Mexico

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This matter came on for hearing before the
New Mexico Oil Conservation Division, DAVID K. BROOKS,
Presiding Examiner, and WILLIAM V. JONES, Technical
Examiner, on Thursday, April 29, 2010, at the New Mexico
Energy, Minerals and Natural Resources Department, 1220
South St. Francis Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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1 EXAMINER BROOKS: As they say at the
2 movies, it's show time. At this time we'll call Case
3 Number 14412, re-advertised application of Reliant
4 Exploration and Production Company, LLC, to terminate the
5 temporary abandonment status of two CO2 wellbores drilled
6 by OXY USA, Inc., and for compulsory pooling in Harding
7 County, New Mexico. Call for appearances.

8 MR. DEBRINE: Mr. Examiner, I'm Earl
9 DeBrine, with the Modrall, Sperling firm, representing
10 Reliant Exploration and Production.

11 MR. CARR: May it please the Examiner?
12 William F. Carr, with the Santa Fe office of Holland &
13 Hart. We represent OXY USA, Inc., in this matter in
14 opposition of the this application.

15 EXAMINER BROOKS: Very good. Do you want
16 to make an opening statement, Mr. DeBrine?

17 MR. DEBRINE: Yes, very briefly,
18 Mr. Examiner. This case was filled last
19 November. It's a -- has kind of a tortuous history in
20 that it was instituted as a result of OXY drilling two
21 wells in the West Bravo Dome area. The two wells were
22 drilled back in April of 2007 on 160-acre spacing is how
23 they were permitted by the Division.

24 Reliant learned that the wells had been
25 drilled, did an investigation, and determined that the

1 wells had been inappropriately drilled on 160-acre
2 spacing. The Division rules provide for standard
3 640-acre spacing where each of the two wells are located.
4 They informed OXY of the problem. OXY acknowledged the
5 problem. And for a period of some 15 months, the parties
6 tried to negotiate concerning the terms of the Joint
7 Operating Agreement to govern the relative costs of
8 production associated with the improper drilling of those
9 two wells.

10 They were unsuccessful in their efforts to
11 reach an agreement, and last November Reliant filed its
12 application at that time. Nothing has been done with the
13 wells. OXY had refused to bring them on to production.
14 So the application sought an order from the Division
15 asking that the Division require OXY to either produce or
16 temporarily abandon the wells, in accordance with the
17 Division rules, since more than 90 days had passed since
18 the last drilling activity occurred on the wells.

19 Subsequently, at the beginning of this year,
20 we learned that OXY had filed applications with the
21 Division to temporarily abandon the wells. And that was
22 a concern for Reliant, because Reliant has been getting a
23 lot of pressure from its royalty owners with regard to
24 its lease. So it amended its application, asking that
25 the Division suspend the approval that had been given to

1 temporarily abandon the wells.

2 And we also ask to be named operator because
3 OXY has not demonstrated that it was going to act in
4 accordance with the interest of all the parties, best
5 interest of all the parties who had interest in the
6 spacing units that needed to be formed for the two wells.

7 We had a hearing back in February where OXY
8 moved to dismiss the application, arguing that a
9 compulsory pool was unavailable under the statute, and
10 that motion was denied.

11 But in the interim, unbeknownst to us, we
12 learned today that without informing us, OXY went ahead
13 and TA'd the wells. And that presents a problem. It
14 obviously moots the relief that we were seeking with
15 regard to stopping that.

16 We believe it demonstrates an absence of good
17 faith on the part of OXY, and that the Division should
18 enter appropriate sanctions in connection with this
19 proceeding for OXY doing that without informing Reliant
20 of its intent to do that.

21 But we're here today to proceed with respect
22 to the compulsory pooling application, given that the
23 parties are still unable, despite several months in
24 exchange of JOAs, to reach agreement concerning the JOA.
25 There's been no agreement. So we're asking the Division

1 to exercise its authority to order compulsory pooling for
2 the interest of the two parties in these two spacing
3 units.

4 EXAMINER BROOKS: Mr. Carr, do you want to
5 make an opening statement?

6 MR. CARR: Yes, Mr. Examiner. As Mr.
7 DeBrine indicated, in April of 2007, OXY drilled two
8 carbon dioxide wells in the western portion of the Bravo
9 Dome Unit. They drilled those wells by mistake, but
10 pursuant to approved APDs. APDs have been filed with the
11 OCD and approved by OCD.

12 When they discovered the wells were on
13 640-acre spacing and not 160, what they did was the sent
14 a Joint Operating Agreement to Reliant, the other
15 interest owner in the section. As Mr. DeBrine has
16 indicated, no agreement on that has been reached. They
17 also applied for temporarily abandoned status for these
18 wells.

19 It is our understanding that if you are not
20 producing a well, that is what is required under the
21 rules. They were shut in. We applied for and obtained
22 temporarily abandoned status and they temporarily
23 abandoned the wells. You still have every says as to
24 whether or not you will leave that temporarily abandoned
25 status in place.

1 Reliant seeks an order terminating your
2 approval of the temporarily abandoned status of these
3 wells, and we oppose it. We oppose it because, frankly,
4 it will accomplish nothing except to add two noncompliant
5 wells to OXY's noncompliant well list.

6 But while we were following up on the initial
7 notification that we had drilled wells and dedicated an
8 inappropriate spacing unit, we discovered that the rules
9 were temporary in nature; that they allowed up to one
10 well per quarter section.

11 And we advised you and Reliant at the hearing
12 in February that we were developing a case to reduce the
13 spacing in this portion of the West Bravo Dome to
14 160-acre spacing. We filed that case last week. We
15 requested a June 10th hearing. Actually, we believe what
16 comes out of that case is going to really address the
17 threshold issue of what we have to do with these
18 properties.

19 Reliant also seeks a compulsory pooling order
20 that would pool these sections. They're acting under the
21 provisions of the Oil and Gas Act. They seek to be the
22 designated operator of the OXY wells, and OXY opposes
23 those applications. We think the evidence will show that
24 what Reliant seeks is not authorized by the Oil and Gas
25 Act. When you compare what Reliant proposes to the Act,

1 the evidence will show it simply leads to an absurd
2 result.

3 We're here today to understand what Reliant is
4 truly proposing. We want to know why pooling is required
5 to prevent waste, why pooling is required to protect
6 correlative rights, why pooling is required to avoid the
7 drilling of unnecessary wells.

8 If successful, OXY is here today to discover
9 how they plan to operate these wells. We want them to
10 confirm that OXY will be allowed to take its share of the
11 production from the wells in kind. We want to learn how
12 they plan to pay OXY their proportionate share of the
13 costs of the wells, and we also would want to know how
14 they plan to gather the gas, process the gas and market
15 the gas.

16 EXAMINER BROOKS: Thank you. Mr. DeBrine,
17 you may begin your presentation.

18 MR. DEBRINE: Yes, Mr. Examiner. I call
19 Scott Vanderburg as my first witness.

20 EXAMINER BROOKS: Okay. Let's get all the
21 witnesses who are going to testify sworn. At this time
22 would all the witnesses please stand who are going to
23 testify today? Just the two? Very good.

24 (Two witnesses were sworn.)

25 EXAMINER BROOKS: Let the record reflect

1 the names of the witnesses who have been sworn.

2 MR. VANDERBURG: Scott Vanderburg.

3 MS. BUSH-IVIE: Elizabeth Bush-Ivie.

4 MR. DEBRINE: If I may approach, Mr.
5 Examiner? I've got a notebook here of exhibits that I
6 plan to introduce.

7 EXAMINER BROOKS: Mr. Vanderburg, you need
8 to take the witness stand.

9 SCOTT VANDERBURG

10 Having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DEBRINE:

13 Q. Mr. Vanderburg, would you please describe for
14 the Examiner who you are and what your position is with
15 Reliant?

16 A. Yes. My name is Scott Stason Vanderburg, and
17 I'm the president of Reliant Exploration and Production.
18 I'm responsible for executing the business plan and
19 strategy for our partners.

20 Q. Could you give a brief description of your
21 educational background?

22 A. Yes. I have a BS in Chemical Engineering from
23 Texas Tech University.

24 Q. How long have you been involved in the
25 production, gathering, sales of the carbon dioxide

1 business?

2 A. As it pertains to this specific project, since
3 about March of 2007. I started in the CO2 business back
4 in June of '89, working in a business that distributed
5 liquified carbon dioxide to the food and beverage and
6 energy sectors of the business. So I've been doing that
7 since June of '89 in different capacities.

8 Q. How many years has Reliant been operateing
9 CO2 wells in New Mexico?

10 A. Reliant E&P, since March of 2007.

11 Q. Has Reliant been designated the operator of
12 any wells?

13 A. Yes, sir.

14 Q. How many?

15 A. Six wells.

16 Q. Have you been provided an OGRID number by the
17 Division?

18 A. Yes.

19 Q. Has Reliant provided financial assurances as
20 required by Rule 19.15.3.101?

21 A. Yes, sir.

22 Q. Does Reliant own the interests that are the
23 subject of compulsory pooling application we're here on
24 today?

25 A. Yes.

1 Q. If you would open the exhibit book, could you
2 turn to what's listed as Exhibit 1?

3 A. (Witness complies.)

4 Q. Could you tell the Examiner what that
5 instrument is?

6 A. That is our lease with Libby Minerals, LLC.

7 Q. Is that the instrument that defines the extent
8 of Reliant's interest in the West Bravo Dome area?

9 A. Yes, it does.

10 Q. What are Reliant's interests in each of the
11 two spacing units that are the subject of today's
12 proceeding?

13 A. It has an eighth in one of the sections.

14 Q. I think if you turn to Exhibit 5, there's a
15 map of the interests that are at issue here today.

16 A. Yes.

17 Q. Could you describe for the Examiner, in
18 reference to Exhibit 5, what the interests of Reliant are
19 in the outlines of the two spacing units that are at
20 issue?

21 A. Yes. In Section 11, which is to the south of
22 the two sections in question, it's the north half of the
23 northwest quarter.

24 Q. So Reliant's interest on Exhibit 5 is shown in
25 the green there in the northwest corner of Section 11?

1 A. The light green, yes, sir.

2 Q. That is the section that encompasses the Bravo
3 Dome carbon dioxide Unit 111 well that was drilled by
4 OXY?

5 A. That's correct.

6 Q. What about Reliant's section on the top?

7 A. In Section 2 to the north, three-sixteenths.
8 And it's primarily the south half of the southeast
9 quarter and the southeast quarter of the southwest
10 quarter.

11 Q. Were you responsible for determining the
12 parties that owned interests with regard to the two
13 spacing units that will encompass each of the wells here
14 today?

15 A. Yes.

16 Q. Is there any party, other than OXY or Reliant,
17 that owns any interest in either unit?

18 A. Not to our knowledge

19 Q. So as I understand your testimony, Reliant
20 will own a one-sixteenth interest in the spacing unit for
21 Section 2; is that correct?

22 A. Three-sixteenths.

23 Q. And a one-eighth interest in the spacing unit
24 for Section 11?

25 A. That's correct.

1 MR. DEBRINE: We move the admission of
2 Exhibits 1 and 5.

3 MR. CARR: No objection.

4 EXAMINER BROOKS: 1 and 5 are admitted.

5 (Exhibits 1 and 5 were admitted.)

6 Q. (By Mr. DeBrine) Were you the party at
7 Reliant who's responsible for developing drilling program
8 Libby lease?

9 A. Yes.

10 Q. Tell me what your plans were in that regard.

11 A. Our plans are, once we have identified the
12 locations, to develop that in accordance with Reliant,
13 the other Reliant entities' internal needs, and also to
14 develop for a third-party setup.

15 Q. How did it come to your attention that OXY had
16 drilled two wells on acreage that would impact Reliant's
17 development plans?

18 A. It was brought to our attention by the surface
19 and mineral owner, the Libby family.

20 Q. What did Reliant do to try and remedy that
21 problem?

22 A. We immediately contacted Ed Martin, with the
23 OCD, and started due diligence on additional title work
24 on those sections.

25 Q. Before filing the APDs or drilling the wells,

1 did OXY ever contact Reliant to get its consent with
2 regard to the drilling of these wells?

3 A. No.

4 Q. Did you have any discussions with OXY with
5 regard to the improper drilling of the two wells on
6 160-acre spacing?

7 A. Yes. We were given the name of Mark Hodge at
8 the time and had gone through the process of getting in
9 contact with him and started a dialogue about the
10 situation.

11 Q. Did Mr. Hodge acknowledge that the wells had
12 been improperly drilled on 160-acre spacing?

13 A. Yes.

14 Q. Have you seen any written evidence of that
15 acknowledgment?

16 A. Email.

17 Q. Could you turn to Exhibit 2 in the exhibit
18 notebook and identify that document?

19 A. That is the email from Mark Hodge.

20 Q. Did you receive a copy of that email after it
21 was sent to Mr. Kellahin?

22 A. Yes, we did.

23 Q. Is that document part of the regular records
24 kept by Reliant?

25 A. Yes.

1 Q. Could you just read from the top part of that,
2 where it begins, "Mr. Kellahin"?

3 A. Yes. "Mr. Kellahin, thank you for bringing
4 the matter of the incorrect spacing and permitting to
5 OXY's attention. As discussed, based upon an initial
6 review, it appears that in addition to the four wells you
7 identified, the same general circumstances apply to
8 several additional wells that, prior to this finding,
9 OXY had been planning to drill, which plans have now been
10 placed on hold, an including two wells already drilled by
11 OXY on incorrect 160-acre spacing, and Reliant owns
12 leasehold interest in the correct 640-acre area, to-wit."

13 MR. DEBRINE: We move the admission of
14 Exhibit 2.

15 MR. CARR: No objection.

16 EXAMINER BROOKS: Exhibit 2 is admitted.

17 (Exhibit 2 is admitted.)

18 Q. (By Mr. DeBrine) Mr. Vanderburg, as I
19 understand your testimony, after the email was sent by
20 Mr. Hodge, there was an ongoing dialogue between Reliant
21 and OXY concerning the incorrect spacing problem?

22 A. Yes.

23 Q. In any of those discussions, did OXY ever
24 indicate that it planned to try and downspace the area to
25 permit 160-acre spacing for the two wells that it had

1 drilled?

2 A. At some point midway, they did say that that
3 was what they intended to try to do.

4 Q. How soon in the negotiations did that
5 statement get made?

6 A. I don't recall exactly when in the process
7 that was.

8 Q. Was that after they had sent a Joint Operating
9 Agreement for the two wells?

10 A. Like I said, I'm not real sure of the timing
11 in the middle of that.

12 Q. Have you examined the well files of the
13 Division for the two wells in question?

14 A. Yes, I have.

15 Q. And if you'd turn to your exhibit book,
16 Exhibit 3 and Exhibit 4, are those copies of the well
17 file that appear in the Division's records concerning the
18 well 21 and the 111 well?

19 A. Yes.

20 MR. DEBRINE: We would move the admission
21 of Exhibits 3 and 4.

22 MR. CARR: No objection.

23 EXAMINER BROOKS: Exhibits 3 and 4 are
24 admitted.

25 (Exhibits 3 and 4 were admitted.)

1 Q. Turning back to Exhibit 5, which is the
2 locator map that you prepared to identify the spacing
3 units for the two wells in question, could you identify
4 for the Examiner the two wells that are at issue?

5 A. Yes. There's a symbol in the northeast
6 quarter of Section 2 which is the 21 well, OXY's 21 well.
7 And then also in the northeast quarter of Section 11 is
8 the 111 well.

9 Q. And prior to being informed today that the
10 wells had actually been temporarily abandoned, did OXY
11 ever inform anyone at Reliant that it was actually going
12 to follow through and temporarily abandon the wells?

13 A. The correspondence we got said that they had
14 filed and been approved to temporarily abandon, but they
15 were waiting on better weather to do that.

16 Q. Were you responsible for preparing Reliant's
17 amended application in which it sought an order from the
18 Division to stop the temporary abandonment of the wells?

19 A. Yes.

20 Q. At any time, did anyone from OXY, after that
21 application was filed, inform anyone at Reliant that it
22 was actually going to physically temporarily abandon the
23 wells?

24 A. No. It was in the email correspondence.

25 Q. Have there been communications between Reliant

1 and OXY during this period?

2 A. An employee of OXY attempted to contact us
3 after the last hearing in Midland, and we thought it was
4 best -- and we wanted to meet with them and thought it
5 was best to do that with our counsel present. And they
6 were apparently not wanting to come out here and sit down
7 and do that, which is what we desired to do with counsel
8 present. That was the only attempt to contact us by an
9 OXY employee.

10 Q. With respect to Reliant's application, what
11 are the names of the formations that are subject of the
12 application?

13 A. The Fruitland formation.

14 Q. Are there any special rules that are
15 applicable to these two spacing units that are proposing
16 to be pooled for the two wells?

17 A. They are on a 640 spacing.

18 Q. And prior to the application that was filed by
19 Reliant last week, there's been no application, to your
20 knowledge, to change the spacing of the two wells in
21 question?

22 A. No.

23 Q. If you would turn to Exhibit 6 in the hearing
24 notebook, which is Reliant's first amended application,
25 were you responsible for helping to prepare the

1 application that is the subject of today's proceeding?

2 A. Yes.

3 Q. Are you familiar with its contents?

4 A. Yes.

5 MR. DEBRINE: We would move the admission
6 of Exhibit 6.

7 MR. CARR: No objection

8 EXAMINER BROOKS: Six is admitted.

9 (Exhibit 6 was admitted.)

10 Q. (By Mr. DeBrine) Can you please describe for
11 the Examiner all of the steps that Reliant has taken in
12 trying to reach a voluntary agreement with OXY concerning
13 a JOA for the two wells in question?

14 A. Yes. We started the process with the Mark
15 Hodge email and that dialogue back in --

16 Q. That was back in May of 2008 that the first
17 communication occurred?

18 A. That's correct.

19 Q. Have you prepared a chronology to assist you
20 in your recollection of the different dealings?

21 A. Yes.

22 Q. If you would turn to Exhibit 8 in the
23 notebook.

24 A. Okay.

25 Q. Just in reference to Exhibit 8, if you

1 wouldn't mind going through with the Examiner the various
2 dealings that have occurred since May of 2008 up through
3 today's proceeding in trying to reach a voluntary
4 agreement with OXY for pooling of interests for the two
5 wells in question.

6 A. Yes. We received a JOA from OXY and went
7 through our redlines and comments on the JOA, sent that
8 back to OXY.

9 Q. So the JOA that OXY sent back is what is in
10 the exhibit notebook as Exhibit 9; is that correct?

11 A. Yes, that's correct.

12 Q. And attached to the JOA is a transmittal
13 letter to Mr. Hunold from Mr. Hodge; is that correct?

14 A. Yes.

15 Q. So the JOA was for each of the two wells that
16 had been drilled by OXY back in April of 2007?

17 A. Yes.

18 Q. It is showing in that letter, Exhibit 9, a
19 one-eighth working interest in the 640 for Reliant as
20 Reliant's apparent interest. Do you see that?

21 A. Yes.

22 Q. That was the interest reflected by Reliant;
23 correct?

24 A. No, it is not.

25 Q. And as we discussed earlier, Reliant has a

1 one-eighth interest in the bottom section and a
2 three-sixteenths interest in the top section?

3 A. That's correct.

4 MR. DEBRINE: We would move the admission
5 of Exhibit 9, which is the transmittal letter and JOA
6 submitted by OXY in June of 2008.

7 MR. CARR: No objection.

8 EXAMINER BROOKS: 9 is admitted.

9 (Exhibit 9 was admitted.)

10 Q. (By Mr. DeBrine) So following the receipt of
11 the Joint Operating Agreement by OXY, tell the Examiner
12 what happened after that.

13 A. We decided that based on our comments, we
14 wanted to go down and meet with OXY in Houston and review
15 the JOA and have a discussion to see what their thoughts
16 were about resolution of the issues on the acreage that
17 was affected. So we went down and met with OXY and had
18 met with their land people and representatives there.

19 Q. Prior to the meeting, did you actually provide
20 OXY with the comments on the JOA that had been tendered?

21 A. I believe we did.

22 Q. If you could look at Exhibit 10 in the hearing
23 notebook and describe for the Examiner what is Exhibit
24 10?

25 A. Exhibit 10 is Reliant's redlined comments on

1 the JOA that was submitted back to Mark Hodge and OXY.

2 Q. This was sent to OXY prior to the meeting in
3 Houston?

4 A. That's correct.

5 MR. DEBRINE: We would move the admission
6 of Exhibit 10.

7 EXAMINER BROOKS: 10 is admitted.

8 (Exhibit 10 was admitted.)

9 Q. When did the meeting in Houston occur?

10 A. That meeting was on November 12th, 2008.

11 Q. Was there any agreement reached concerning the
12 terms of the Joint Operating Agreement at that meeting?

13 A. No.

14 Q. What was the result of that meeting?

15 A. There was a request made for some additional
16 title opinions on other acreage of what OXY may have.
17 And we were -- we requested to have finalized -- the day
18 the AFE that was presented was presented, it was
19 presented as not final. So we were waiting on the final
20 AFEs to be presented. And, also, they were going to get
21 back to us their comments on our redlined versions of the
22 JOA.

23 Q. Did you make a written request of OXY for a
24 final statement of well costs associated with the
25 drilling of the Number 21 and 111 wells?

1 A. Yes, we did.

2 Q. If you could turn to Exhibit 11 in the exhibit
3 notebook?

4 A. (Witness complies.)

5 Q. Is that the correspondence you were referring
6 to?

7 A. Yes.

8 Q. And what is Exhibit 11, if you would tell the
9 Examiner?

10 A. It's an email between Frank Hunold and Mark
11 Hodge requesting that actual costs incurred in drilling
12 the two wells would be received.

13 Q. This was being sent in April of 2009?

14 A. Yes.

15 Q. Did OXY, prior to the time that Reliant filed
16 its application in this case, ever provide a statement of
17 well costs to Reliant?

18 A. We received that about April 15th.

19 Q. Was there any further written communication
20 from OXY with regard to the discussions about entering
21 into a Joint Operating Agreement covering the two wells
22 prior to Reliant filing its application?

23 A. I don't believe so.

24 Q. Was there an impasse reached in negotiations
25 and a determination made that an agreement was not going

1 to be reached concerning the terms of the JOA for the two
2 wells in question?

3 A. Yes, there was.

4 Q. Had you requested that OXY actually start
5 producing the wells?

6 A. Yes, we had.

7 Q. And what was their response?

8 A. They wouldn't -- they didn't produce the
9 wells.

10 Q. Did they refuse to produce the wells?

11 A. Yes.

12 Q. And as a result of the impasse, what did
13 Reliant decide to do?

14 A. To file an application to take over
15 as -- to compulsory pool the subject sections and take
16 over as operator.

17 Q. Is Reliant prepared to pay its proportionate
18 share of the cost of drilling these two wells --

19 A. Yes.

20 Q. -- once it gets a final statement of costs and
21 an identification of the costs that made up the drilling
22 of the two wells?

23 A. Yes.

24 Q. Can you explain to the Examiner why Reliant
25 was requesting that it be the named operator of the two

1 wells, given that it only has a one-eighth and a
2 three-sixteenths interest in the two spacing units that
3 are to be formed for the wells in question?

4 A. Yes. We believe that we can operate the two
5 wells and produce. It doesn't make a lot of sense to lay
6 an additional flow line to the wellhead, but that's what
7 we're prepared to do. We can use the gas. We have a
8 place to dispose of it on our own.

9 And if that's what it takes to get the wells
10 producing, then that's what we'll do. We think that's
11 the best route. It doesn't make sense, but that's what
12 we're prepared to do. And we do have a need for the gas.

13

14 Q. Have you received any communication from your
15 royalty owner with regard to their objections concerning
16 Reliant's production for the two wells?

17 A. Quite frequently.

18 Q. Could you tell the Examiner what sort of
19 objections have been made?

20 A. They made objections from the get-go that the
21 wells were producing at one point. Then they were locked
22 out, so where was their royalty in relation to this? And
23 we requested that data from OXY and received statements
24 that they were not producing.

25 They requested to know what the resolution of

1 this matter is and why it drug out as long as it has.
2 And it's usually, if not a biweekly, a monthly event to
3 have a discussion about where we're at in these
4 proceedings.

5 MR. DEBRINE: No further questions.

6 EXAMINER BROOKS: Mr. Carr?

7 CROSS-EXAMINATION

8 BY MR. CARR:

9 Q. Mr. Vanderburg, you are the president of
10 Reliant; is that correct?

11 A. Yes. Reliant Exploration and Production.

12 Q. Is Reliant the successor to AmeriGas?

13 A. No, it is not.

14 Q. Were these properties ever operated by
15 AmeriGas?

16 A. No, they were not.

17 Q. You testified that you operate six wells in
18 this area?

19 A. That's correct.

20 Q. Are all six of those wells currently
21 producing?

22 A. No.

23 Q. How many of them are actually producing?

24 A. Four of the wells.

25 Q. Are these wells in the 160-acre spaced portion

1 of Bravo Dome or the 640?

2 A. 160.

3 Q. Are you operating the wells on offsetting
4 160-acre spacing units in certain cases?

5 A. Could you explain what you mean?

6 Q. Are you operating wells on adjoining 160-acre
7 spacing units?

8 A. Yes.

9 Q. And are you able to effectively drain the
10 reserves with those two wells, in your opinion?

11 MR. DEBRINE: Objection, beyond the scope
12 of direct examination.

13 EXAMINER BROOKS: Well, I believe it is.
14 I will sustain the objection.

15 Q. (By Mr. Carr) How are you currently gathering
16 gas from the wells?

17 Q. We have a trunk line system, kind of a
18 wheel-and-spokes system, that comes into our facility
19 there.

20 Q. Do you have to process this gas?

21 A. Yes, we do.

22 Q. And how do you do that?

23 A. The current process is to convert it to a
24 liquid, into a beverage-grade product.

25 Q. Do you do that with your own facilities?

1 A. Yes, we do.

2 Q. You indicated you were providing CO2 to the
3 food and beverage industry?

4 A. That's correct.

5 Q. Is that in the form of dry ice?

6 A. Dry ice and liquid.

7 Q. Now, you testified about the negotiations
8 between Reliant and OXY. OXY did initially send a Joint
9 Operating Agreement to you; is that correct?

10 A. Yes, sir.

11 Q. That was following your initial discussions?

12 A. Yes, sir.

13 Q. And following your initial discussion, I
14 believe you testified that the email that's marked as
15 Exhibit 2 was sent to you by Mr. Hodge?

16 A. Yes, sir.

17 Q. In that email, did Mr. Hodge also identify a
18 number of other OXY wells that were in the same positions
19 as the two or least that had been proposed on 160-acre
20 spacing?

21 A. Yes.

22 Q. Those well are listed on this email, as well?

23 A. Yes, sir.

24 Q. It was at this time, being May 23, 2008, that
25 Mr. Hodge indicated they were preparing and sending you a

1 Joint Operating Agreement with well costs and production
2 volumes to date; correct?

3 A. Yes.

4 Q. That Joint Operating Agreement was for 320
5 acres; was it not? I'm sorry. 640 acres.

6 A. Yes.

7 Q. And you have been exchanging Joint Operating
8 Agreements since that time; have you not?

9 A. We have been. Over the course of the
10 exchange, we kind of did the chronology on that, and it's
11 been in OXY's hands since late 2008.

12 Q. When did you last receive a draft Joint
13 Operating Agreement from OXY?

14 A. April 15th.

15 Q. Of this year?

16 A. Yes.

17 Q. Did that also -- was it an operating agreement
18 for a 640-acre unit?

19 A. I believe so.

20 Q. Did the letter transmitting that offer to meet
21 with you discuss that?

22 A. I'd have to see the letter to refresh exactly
23 what was --

24 Q. Let me hand you a copy of what is marked as
25 OXY Exhibit Number 1. Would you turn to the second page?

1 A. (Witness complies.)

2 Do you recognize this letter? Have you seen this
3 letter?

4 A. Yes, I have.

5 Q. Would you turn to the second page?

6 A. Yes, sir.

7 Q. Would you read the last paragraph?

8 A. Yes. "OXY is willing to meet with
9 representatives of Reliant at a location of your choosing
10 at a mutually agreeable time to discuss this proposal or
11 any other matter Reliant may desire to discuss in an
12 attempt to resolve the issues between the parties
13 concerning the production and processing of the gas from
14 these wells."

15 Q. Have you responded to this letter?

16 A. I don't believe so. What we have done is,
17 through our legal, repeatedly request that we sit down
18 together with our counsel present.

19 Q. Do you know a Mr. John Stout with OXY?

20 A. Yes, I do.

21 Q. Isn't Mr. Stout the person that you
22 indicated -- you indicated you received a call from OXY?

23 A. That's correct.

24 Q. Was it from Mr. Stout?

25 A. Yes.

1 Q. You did not respond to that call either, did
2 you?

3 A. No, we did not. Well, yes, we did respond.
4 What we responded was we immediately contacted our
5 counsel and said, "Look, they're contacting us. OXY is
6 contacting us directly. We'd like to visit and we'd like
7 to come out there with our counsel present." So that's
8 exactly what we responded.

9 Q. Who did you talk to?

10 A. I talked to Frank Hunold, and we got Tom
11 Kellahin on the phone that day.

12 Q. Do you know of any contact from Mr. Kellahin
13 to OXY?

14 A. I've heard of contact with -- I heard back --
15 through an on-the-phone conversation, I know what Mr.
16 Kellahin told us.

17 Q. What was that?

18 MR. DEBRINE: I would caution you not to
19 reveal any communications to be protected by the
20 attorney/client privilege.

21 I think, Mr. Examiner, there have been -- I
22 don't know where Mr. Carr is going with this, but there
23 have been communications between Mr. Kellahin and Mr.
24 Carr and between Mr. Carr and myself. And I don't know
25 that we want to step up to the witness stand and talk

1 about those communications. But I think Mr. Carr is
2 fully aware there has been communications between him and
3 Mr. Kellahin regarding this matter.

4 Q. (By Mr. Carr) My question is, did you respond
5 to Mr. Stout's telephone call?

6 A. Yes, through our lawyers.

7 Q. Do you know if any of those concerns went
8 beyond your lawyer?

9 A. I was told they did.

10 Q. In the letter that you received dated April
11 14th from OXY, did OXY not agree to some of the
12 recommended changes, your recommended changes, in the
13 Joint Operating Agreement?

14 A. Yes, sir.

15 Q. You testified that Reliant had asked OXY to
16 return the wells to production at some point. I believe
17 that was a letter from your counsel?

18 A. Yes.

19 Q. When we talk about these wells, does Reliant
20 desire to take its gas in kind?

21 A. Yes, we do.

22 Q. You don't want to share production proceeds?
23 You want the gas itself?

24 A. Either way.

25 Q. How do you plan to take that gas?

1 A. We would -- as operator, we would have to put
2 in flow lines and take the gas into our facility.

3 Q. And you are prepared to do that?

4 A. That's what we would do.

5 Q. How close to these wells do you have gathering
6 lines?

7 A. We've got several miles.

8 Q. You seek an order designating you operator of
9 these wells. If you are designated operator, how will
10 you handle the OXY gas produced from the wells?

11 A. Our assumption is that depending on what the
12 ultimate resolution of the flow line is, OXY would take
13 their gas in kind, as well.

14 Q. You would extend gathering lines to take a
15 one-eighth share from one well and a three-sixteenths
16 share from the other well?

17 A. Yes, sir.

18 Q. The percentage ownership that OXY had assigned
19 to these wells, I think, was an eighth and an eighth, not
20 the three-sixteenths. Isn't that what you --

21 A. That's correct.

22 Q. Did you ever advise OXY of that?

23 A. No, because I believe it was listed as
24 presumed at that time. So I believe that's the way it
25 was listed, so we assumed throughout the course of that

1 that that was cleared up.

2 Q. Your testimony is that you're prepared to
3 build your own facilities to take the gas from these
4 wells?

5 A. (Witness nods head.)

6 Q. Are you aware of the recent efforts incurred
7 by OXY to improve their facilities in this area?

8 A. Yes, I am.

9 Q. My question, I guess, is, are you interested
10 in having gas produced from these wells and processed in
11 OXY facilities?

12 A. If there's agreeable terms, yes.

13 Q. If there are not agreeable terms, will you be
14 able to take the gas and process it yourself?

15 A. Yes.

16 Q. In your negotiations with OXY, are processing
17 costs the major obstacle in reaching an agreement?

18 A. Yes.

19 Q. If you can't reach an agreement, you still
20 would take your gas?

21 A. Absolutely.

22 Q. If the Joint Operating Agreement terms are
23 worked out and you're unable to reach agreement on
24 processing, will you then be able to go forward with the
25 wells? My question is, is a processing agreement a

1 condition of being able to reach agreement with OXY?

2 A. Yes.

3 Q. You indicated you were prepared to pay your
4 share of the well costs?

5 A. That's correct.

6 Q. You would not want to have anything withheld
7 out of production? You'd simply write OXY a check, based
8 on an agreed-to AFE?

9 A. I think there's been a proposal in our initial
10 petition where we felt that in the manner that these were
11 drilled inappropriately, and we had no input into that
12 process, if that was done, we would think it would need
13 to be done in a manner that took into account the fact
14 that we had no say-so up front on the cost and how we
15 participated. But other than that, yes, we're prepared
16 to --

17 Q. But my question is, would you propose to
18 simply pay your share of the cash, or would you want to
19 have your ownership recouped out of production as
20 provided by the pooling statutes?

21 A. It depends on the ultimate resolution of the
22 issue, who's operating it and which way the gas is going.

23 Q. If you are operating --

24 A. We'd pay our share.

25 Q. With the April 14th letter, there was a

1 summary of drilling and completion costs. Do you have
2 enough data to form an opinion on whether or not you're
3 objecting to those figures or not?

4 A. Yes.

5 Q. You do have enough data?

6 A. Yes, sir.

7 Q. Do you object to those costs?

8 A. We object on the basis that the interests that
9 have been presented here today don't match. As far as
10 the detail, there's not enough detail provided to date
11 for us to object to the reasonability.

12 Q. Now, prior to the time that you discovered
13 these wells on these spacing units drilled by OXY, did
14 you have any plans to drill wells on these sections?

15 A. Yes, we did.

16 Q. Did you have any schedule or timeframe during
17 which you were planning to drill?

18 A. Yes.

19 Q. And what was that?

20 A. It's pretty equal development throughout the
21 term of the lease and based on our own internal needs for
22 third-party demand.

23 Q. And what is the term of the lease?

24 A. The term goes through 2014.

25 Q. You testified that the spacing for these wells

1 was 640 acres?

2 A. Yes, sir.

3 Q. Are you familiar with any temporary rules that
4 establish the spacing for the area?

5 A. Yes.

6 Q. Are you aware that the rules provide that one
7 well can be drilled on each quarter section within the
8 640-acre tract?

9 A. Yes.

10 Q. Were you aware that OXY has filed an
11 application to reopen the spacing?

12 A. Yes.

13 Q. Were you aware that the spacing was going to
14 be reopened at some point in time, in any event, after
15 there was production from the area?

16 A. I don't understand.

17 Q. Were you aware that the spacing unit under the
18 order was going to be reopened for final rules at some
19 time?

20 A. My understanding on the prior was that there
21 was a case to wait for production history out of the
22 existing wells that were in that area. And each time
23 they came back to review production history, those wells
24 weren't being produced, so there wasn't sufficient data.

25 Q. Do you have an engineering staff, or are you

1 the engineering staff?

2 A. I have a brother who's a petroleum engineer,
3 and I'm a chemical engineer.

4 Q. Have you studied the drainage areas for the
5 two wells that are the subject of this case?

6 A. No.

7 Q. Have you made any kind of analysis or
8 comparison of the drainage or the characteristics of the
9 formation in the 160 area where you operate, and the
10 characteristics of the formation in this area?

11 A. No, I have not.

12 Q. Now, these wells are shut in. That's
13 established. Are there any offsetting wells that would
14 be draining this acreage?

15 A. I'm not sure.

16 Q. Do you know of any well that drains this
17 acreage?

18 A. Within the unit, or offset?

19 Q. Just offsetting these wells.

20 A. I'm not sure on these two wells if there are
21 or not.

22 Q. In the application filed in this case, Reliant
23 contends that a pooling order is needed to prevent waste.
24 Are you talking about underground waste?

25 A. We're talking about the fact that the wells

1 have been drilled and there is a need to produce, so they
2 should be produced.

3 Q. You understand "waste" is a defined term in
4 New Mexico?

5 A. I do not.

6 Q. Do you believe that with the wells shut in,
7 that there's any inefficient or improper dissipation of
8 reservoir energy?

9 A. My opinion is limited --

10 MR. DEBRINE: I'll object as beyond the
11 scope of direct examination.

12 EXAMINER BROOKS: I'm going to overrule
13 that objection because I think it's relevant to the
14 issues raised. You may continue.

15 THE WITNESS: Could you repeat the
16 question?

17 Q. (By Mr. Carr) These wells are shut in. And
18 the question is, while they're shut in, in your opinion
19 as a chemical engineer and president of Reliant, with an
20 interest in these sections, can there be inefficient or
21 improper use or dissipation of the reservoir energy at
22 this time, while the wells are shut in?

23 A. At this time I don't know that, whether it
24 could or not.

25 Q. While the wells are shut in, do you believe

1 that it could have an impact on reservoir energy?

2 A. I believe you would need to do the scientific
3 analysis behind that to see what else is going on. As I
4 said, my opinion is limited to the fact that there are
5 two wellbores, the gas is needed, and they're not being
6 produced.

7 Q. Is it fair to say you don't know, based on
8 what you have before you?

9 A. Yes.

10 Q. While the wells are shut in, do you believe
11 that the total quantity of carbon dioxide to be recovered
12 from the pool is being reduced?

13 A. Yes, sir.

14 Q. That do you base that on?

15 A. The production out of the field.

16 Q. Are they draining these wells?

17 A. Those are on a decline.

18 Q. The wells that are shut in?

19 A. No. On the lease.

20 Q. In your application, you indicated that you
21 need to pool to protect your correlative rights.

22 Is it your contention that the existence of
23 OXY wells on these spacing units prevents you from
24 developing reserves on your acreage in these spacing
25 units?

1 A. No. It's our contention that there are
2 multiple locations that have this issue. And it's an
3 issue that we have to resolve because it is very material
4 to our lease.

5 Q. If a well -- you could drill a well in
6 northwest quarter of -- in the quarter sections in which
7 you own an interest in these tracts; could you not?

8 A. I don't know.

9 Q. Well, the rules do provide for one well per
10 quarter section. You stated that; did you not? The
11 temporary rules. Are you aware of the temporary rules,
12 what they provide?

13 A. Yes. The rules for Sections 2 and 11 --

14 Q. Yes.

15 A. -- are on 640, which allow for drilling,
16 correct.

17 Q. So additional wells could be drilled in each
18 of these sections?

19 A. I assume they could. I don't know.

20 Q. Are you familiar with the general rules of the
21 Division for multiple operators on spacing units?

22 A. No, I am not.

23 Q. Did you consider the development of the lands
24 with a nonstandard spacing unit?

25 A. Would we or did we?

1 Q. Have you?

2 A. No.

3 Q. At this point in time, if you are the operator
4 of this acreage, would Reliant be prepared to drill an
5 additional well or wells on these sections if they're
6 needed?

7 A. If they were needed, yes.

8 MR. CARR: That's all I have. No, wait
9 one minute.

10 Q. (By Mr. Carr) Your chronology, is it your
11 testimony that this is a complete listing of all
12 communications between OXY and Reliant?

13 A. I'm not sure what you've got there.

14 Q. You have a chronology, and it lists contacts
15 between OXY and Reliant.

16 A. That doesn't look like the one I have.

17 Q. It's your Exhibit 8.

18 A. Can I compare it with what you've got here?

19 Q. It's got my writing on it, but it's illegible.

20 A. Okay. Yes, they are the same. And no, it's
21 not.

22 Q. Does this include all contacts between the
23 parties?

24 A. I'm not sure that it does. There was other
25 communications. I think there's other communication that

1 related to the matter of processing and those issues
2 beyond the scope of that chronology.

3 MR. CARR: That's all I have. Thank you.

4 EXAMINER BROOKS: I'm trying to think if I
5 have any questions.

6 EXAMINATION

7 BY EXAMINER BROOKS:

8 Q. I made a note to follow up on the
9 reasonableness of costs. However, I believe you
10 testified that OXY did not provide the costs in
11 sufficient detail for you judge their reasonableness; is
12 that correct?

13 A. Yes, sir.

14 Q. Compulsory pooling orders typically provide
15 for a schedule of costs and a time to object. I don't
16 know how much detail you need, but it does not seem to be
17 an issue here today; is that correct? You're not raising
18 any objection to the reasonableness of costs at this
19 point in time?

20 A. With what we're familiar with in the area,
21 they seem to be in line.

22 EXAMINER BROOKS: Mr. Jones?

23 EXAMINATION

24 BY EXAMINER. JONES:

25 Q. It might not be relevant, but what pressure --

1 how do you process your gas? Do you have compression at
2 the well site, or do you have compression at your
3 facility?

4 A. No, sir. It free flows into the facility. As
5 a liquid-producing facility, it needs to have a higher
6 operating pressure to liquify. So right now, the gas
7 free flows into the facility. But we're in the process
8 of putting in compression to allow for multiple scenarios
9 out in the field and still be able to flow off the well
10 pressure sufficiently.

11 Q. Your well pressure, what do you think it would
12 be if you guys took over operatorship of these wells?

13 Q. We would anticipate operating -- I would have
14 to run the back pressure -- the friction curve on it.
15 But we anticipate operating at the suction side of our
16 compressor at around 110 pounds.

17 Q. 110 pounds two miles away?

18 A. Yeah. I need a map, the full map, to show the
19 detail of where we would tie into our -- our current
20 trunk system has been extended somewhat to the south, and
21 that's where we would tie in.

22 Q. What size line would you run?

23 A. I would have to run the calculations on these
24 because there's additional wells out in that area that
25 would be part of the trunk line.

1 Q. You do have other wells?

2 A. Yes. There's additional wells in that
3 direction.

4 Q. What's your closest wells to these? I mean
5 how far away are they?

6 A. They're up by our plant. I think these are
7 two miles south of what we would call the highway that
8 goes across, and we're going to be another six miles. So
9 we're eight miles, and we've got about two miles of main
10 trunk line already laid. So probably six miles down into
11 the area that we would be pushing this pipe to.

12 MR. DEBRINE: Mr. Examiner, I've got a
13 broader map that shows the location, and I can show it to
14 the witness and you.

15 EXAMINER BROOKS: It probably would be
16 helpful.

17 EXAMINER JONES: Maybe it would be.

18 Q. (By Examiner Jones) So you never
19 considered -- I didn't read the specs on your -- you said
20 you want to terminate the TA status of the two OXY wells
21 or, in the alternative, to do compulsory pooling.

22 Would that be a 640 compulsory pooling?

23 A. Yes.

24 Q. You never considered -- I know Mr. Carr just
25 asked this question. You never considered a nonstandard

1 spacing unit of 160 acres?

2 A. No. Our opinion would be if the data
3 supported that and that's what it took to drain the
4 acreage, we're fine with that.

5 Q. What about your interest? Would it be higher
6 in a 160 or higher in a 640?

7 A. It would be higher in the 160.

8 Q. In Section 2 you have one-eighth of a 640; is
9 that correct? And in Section 11 you have
10 three-sixteenths?

11 A. That's correct.

12 Q. But you're saying it would be higher in the
13 160 only?

14 A. On a 160 acre spaced, you'd end up with 50
15 percent in two and 25 in the other, and you'd have three
16 quarters that you would be prospective to.

17 Q. If you did make that argument that it should
18 be an SP for 160, you would have to show some evidence of
19 that, obviously. But you must believe the evidence is
20 not there?

21 A. I honestly don't know whether the evidence is
22 there or not. But, again, we believe that if the
23 evidence supports that today, that's the direction we all
24 should go.

25 Q. The wellhead pressure that you can put these

1 on would determine how much bottom hole reserves you
2 would finally achieve from these wells, obviously.

3 Do you look at this as maybe you could operate
4 as long as practical, and then turn it over to someone
5 with more compression capability to pull the pressure
6 down, and they could actually get more reserves out than
7 you guys could? Would that be an option?

8 A. Yeah. We would anticipate that we'd be the
9 guys to add the compression to continue to produce. Our
10 compression will be set up on -- will be a screw-type
11 compression on the low stage, which is sufficient to
12 operate at low-range suction pressures.

13 Q. Do you have any data on the production that
14 these wells have already produced and what rate they
15 produced at?

16 A. Yes.

17 Q. What were those, just in the ballpark?

18 A. There was about 30-day stint where they flowed
19 around a million a day, I believe.

20 Q. Both were pretty equal?

21 A. Yes.

22 Q. Is that typical, a million a day?

23 A. It seems to be, looking at the records for the
24 field.

25 Q. What's the typical life on these wells?

1 A. The more relevant data we have pertains to
2 that section around the ice plant and really in the
3 middle of the Hess development and OXY's West Bravo.

4 And those wells are a little bit different in
5 nature because they've never been open flow with the
6 pressure into a system like the Bravo Dome unit, because
7 they've gone into the these liquefaction plants. So
8 there's always been back pressure, and it's been driven
9 by the demand of the liquid plant. So it's hard to
10 correlate this to any other area because of the way
11 they've been produced historically.

12 Q. What about water production in this area?

13 A. It seems to be -- I think a good rule of thumb
14 we've seen is about 1,500 barrels per million cubic feet.

15 Q. 1,500, you divide that into 100,000 for GOR.

16 So what is that, do you think?

17 A. That, I'm not sure.

18 Q. Anyway, I think 10 barrels a million is
19 100,000 GORs.

20 What about the costs? You said you were
21 trying to get finalized costs. Do you dispute the costs
22 that you got originally, or do you think you could drill
23 the wells cheaper?

24 A. We think the costs are probably within the
25 range of what the wells should have cost.

1 Our issue is in the presentation and probably
2 the assumption of the percentage. So they went ahead and
3 calculated out, "This is your share," and it doesn't
4 match up to the percentages. So that's where our issue
5 is. That what's been presented.

6 And there's still confusion about, "How did
7 you guys come up with that number? We don't get to the
8 same place."

9 Q. Would you drill the wells in the same spots
10 that OXY drilled them?

11 A. That, I don't know.

12 Q. But you would have drilled wells in these two
13 sections?

14 A. Yes.

15 EXAMINER JONES: Nothing else.

16 EXAMINER BROOKS: Very good.

17 MR. CARR: May it please the Examiner --

18 EXAMINER BROOKS: I think Mr. DeBrine
19 wants to do some re-direct; is that correct?

20 MR. DEBRINE: No. I think that's fine.

21 EXAMINER BROOKS: You have no re-direct?

22 MR. CARR: I just wanted to move the
23 admission of OXY Exhibit 1, if Mr. DeBrine doesn't
24 object. It is simply the letter. The witness has
25 indicated he's familiar with it. It's shown as the last

1 entry on their chronology, and we'd move its admission
2 into evidence.

3 EXAMINER BROOKS: Do we have a copy of it
4 here?

5 MR. CARR: I handed them out.

6 EXAMINER BROOKS: Very good. Do you
7 object?

8 MR. DEBRINE: No, Mr. Examiner. We would
9 also request that the broader map be labeled as Exhibit
10 12.

11 EXAMINER BROOKS: I was going to suggest
12 that. Could you get the copies and make some labels here
13 and give one to the court reporter and give one to Mr.
14 Carr. We don't need one on the examination. If we do,
15 we'll borrow the court reporter's. But we'll need it for
16 the further processing of the case, at which time we'll
17 have the record.

18 Anything further from this witness?

19 (Exhibit 1 was admitted.)

20 (Exhibit 12 was admitted.)

21 MR. DEBRINE: No, Mr. Examiner.

22 EXAMINER BROOKS: The witness may stand
23 down. Anything further from the applicant?

24 MR. DEBRINE: Yes, Mr. Examiner. We would
25 request that the Division refer to the proceeding that

1 was brought by OXY in Case Number 13520, which resulted
2 in Order R-12397. That was a compulsory pooling case
3 brought by OXY for a well in the Bravo Dome area that
4 resulted in the granting of compulsory pooling.

5 The well depth was similar to that. And OXY
6 was requesting, as the overhead rates, 3,500 for overhead
7 well drilling and \$360 per month while producing. And
8 the costs should be comparative.

9 And we would request the Division to consider
10 that case and the order, the same type of well cost order
11 that was done in that case.

12 EXAMINER BROOKS: Any objection to our
13 referring to that case for the limited purpose of
14 establishing reasonable well costs?

15 MR. CARR: Mr. Examiner, I believe you can
16 refer to any of your orders. I have no objection.

17 EXAMINER BROOKS: Very good. We will
18 consider that for the limited purpose of determining
19 reasonable well costs if we reach that issue.

20 Does that conclude the applicant's case in
21 chief?

22 MR. DEBRINE: Yes.

23 EXAMINER BROOKS: Very good. Let us take
24 a 10 minute recess, and we'll resume at 10:45.

25 (A recess was taken.)

1 EXAMINER BROOKS: Mr. Carr?

2 MR. CARR: May it please the Examiner, OXY
3 is not going to call a witness. We are going to close
4 instead.

5 EXAMINER BROOKS: You brought your witness
6 along. I thought you would call her, just so she would
7 get a chance to talk.

8 MS. BUSH-IVIE: I don't need to.

9 EXAMINER BROOKS: Okay. You may make a
10 closing statement then, Mr. DeBrine.

11 MR. DEBRINE: Yes, Mr. Examiner. This is
12 a somewhat unusual compulsory pooling case, but it still
13 meets the requirements of the statutes and the Division
14 rules.

15 What you have here is a party who admittedly
16 drilled wells in the Bravo Dome area where the rules
17 clearly provide for 640-acre spacing. The Commission,
18 when it established those rules, determined that those
19 rules would prevent waste and protect correlative rights.

20 There has been no evidence from OXY in this
21 proceeding that 640 acres are inappropriate in order to
22 efficiently drain the resources in each of the two
23 sections.

24 There is a statutory obligation under 70-2-18
25 that whenever an operator is dedicating lands comprised

1 of standard spacing units, it's their obligation, when
2 there's divided mineral ownership, to reach a voluntary
3 agreement pooling the lands or interests or a Division
4 order pooling the lands, which agreement or order should
5 become effective from the date of first production.

6 That's the statutory obligation on every
7 operator. They're required to either obtain a voluntary
8 agreement or initiate a proceeding with the Division to
9 obtain compulsory pooling if an agreement can't be
10 reached.

11 It was only because OXY has failed to comply
12 with the statutory obligation that Reliant was forced to
13 act. Because we've got evidence that the wells were
14 drilled. They are productive. Reliant has obligations
15 under its lease to develop its acreage. It has its
16 royalty interests breathing down its neck asking where
17 its royalty is. And we've been trying and trying to
18 reach agreement with OXY for over two years now, without
19 success.

20 So as a matter of last resort, we initiated
21 this proceeding in order to obtain compulsory pooling.
22 We would ask that the Division enter a compulsory pooling
23 order.

24 Now, Reliant isn't necessarily wedded to the
25 idea that it should be named operator. That is something

1 for the Division to determine, who would be more
2 appropriately named operator of these two units.

3 But given the fact that OXY has refused to
4 produce the wells, given the fact that it took steps to
5 temporarily abandon the wells; and then without even
6 informing Reliant, actually went forward and accomplished
7 that result; there's been some very questionable conduct
8 by OXY in connection with its handling of these two
9 wells.

10 There were discussions between the parties
11 where the evidence showed that Reliant was trying to get
12 evidence concerning production, and OXY represented that
13 there had been no production. And then we learned later
14 that the wells had been produced, and we believe that OXY
15 was hiding that information from us.

16 You've got evidence of some questionable
17 practices, and we believe that there would be a
18 sufficient basis for the Division to order that Reliant
19 be named the operator of the wells.

20 What we're requesting is that if Reliant is
21 named operator, it will go ahead and pay its
22 proportionate share of the well costs. There's been
23 evidence with regard to the gross well costs.

24 We would ask that there be a period of 60 days
25 for Reliant to obtain information from OXY where it

1 provides the information behind those costs. If there's
2 sufficient objections, there can be a further proceeding
3 to resolve those objections.

4 But if OXY is named the operator, given the
5 fact that these wells were drilled in violation of the
6 Division's rules, we believe that there should be no risk
7 charge associated with the well costs.

8 Reliant didn't have any input with regard to
9 that process, and Reliant should have the option of just
10 essentially a normal payout situation where there is no
11 well, there's no risk charge assessed, and it's only
12 after the costs of drilling the wells are recouped that
13 Reliant would then share in its share of production.

14 We believe that the requirements of the
15 pooling statute and the Division's rules have been met.
16 There's been a clear violation of 7(B)-2-18, and that a
17 compulsory pooling order should be entered consistent
18 with the one entered in Case 13520, where OXY sought a
19 compulsory pooling order in the Bravo Dome area.

20 EXAMINER BROOKS: Okay. I think you
21 clarified it. But you said the wells were drilled in
22 violation of something, and it wasn't clear to me what
23 they were in violation of. But the way I understand the
24 compulsory pooling statutes, it's not a violation to
25 drill a well first and then pool later.

1 Of course, there is the statement in 70-2-18
2 that they have an obligation to consolidate. So I
3 understand that that's your contention, that it was a
4 violation. But that doesn't relate to the drilling,
5 though, does it? Because they can drill first and then
6 consolidate.

7 MR. DEBRINE: Yes, that is true, Mr.
8 Examiner. The violation occurred because there was no
9 effort to comply with the pooling statute or 70-2-18.

10 Then there was a further violation of the
11 Division's rules because there was no effort to bring
12 these wells on to production, and there was more than 90
13 days from the date of last activity, which was the reason
14 why we were initially asking that the APDs for the wells
15 be suspended because OXY had done nothing in order to
16 comply with its obligation to either bring the wells on
17 to production or temporary abandon.

18 So what you see is a series of delays and
19 various violations of the Division rules where OXY has
20 tried to delay these proceedings. And we've gotten
21 nowhere with regard to the negotiation of a voluntary
22 agreement. That was put into evidence, the final JOA
23 that was tendered by OXY on April 15th.

24 We had a hearing back at the beginning of
25 March where the parties were ordered to get together and

1 try and resolve this, and six weeks went by before we
2 received anything from OXY. If you compare the two JOAs
3 that were tendered, OXY agreed to one minor change -- two
4 minor changes in the JOA that it sent a year and a half
5 before, and that was just a change in the definition of
6 gas to include CO2.

7 All of the provision, that are in dispute, OXY
8 tendered the same basic JOA that we did back in 2008.
9 There is no basis for the parties to negotiate where OXY
10 is just taking the same basic position and is really
11 exercising its monopoly power that it has in this area to
12 try and force Reliant to enter into an agreement on terms
13 that would prevent it from selling its share of the gas
14 on an economical basis.

15 So we believe that the time is ripe, the
16 requirements have been made, and the Division should
17 enter a compulsory pooling order.

18 EXAMINER BROOKS: Your proposal for how
19 you're going to do this is you're going to take your
20 share of the gas in kind?

21 MR. DEBRINE: Correct.

22 EXAMINER BROOKS: Okay. Mr. Carr?

23 MR. CARR: May it please the Examiner?

24 I've had a difficult time with this case
25 because I've had a really hard time understanding what it

1 is that Reliant seeks. If you look back through the file
2 you'll find that initially they wanted to cancel our
3 APDs. And then when we argued about that, they amended
4 and wanted to terminate our approval for a temporary
5 abandoned status.

6 We've had statements from their witness today
7 and in the past that the real issue was processing costs,
8 but now they appear to be interested in taking in kind.
9 And now we have some pooling cases where they are not
10 sure they are determined to be the operator of the wells.
11 So we've had some trouble getting our hands around this
12 case.

13 Last week, when we filed our spacing
14 application, we debated whether or not to seek a
15 continuance. But it seemed to us that since the hearing
16 was scheduled, it would be in everyone's best interest to
17 try to figure out what the issues were and what needed to
18 be done.

19 Today in the case there have been a lot of
20 statements, mostly by counsel, assailing OXY and what it
21 has done. But the evidence in the case shows that after
22 OXY erroneously dedicated 160 acres to these wells,
23 instead of 640, and have drilled them pursuant to an
24 approved APD, what they did was shut in the wells, as
25 they're required to do by OCD rules.

1 These are inactive wells, and they sought and
2 obtained authorization to temporarily abandon the wells
3 within the rules. At no time in the course of these
4 proceedings have we ever suggested that once the weather
5 warmed up and we could get to the wells, we were not
6 going to temporarily abandon them.

7 I understand Reliant seems to think there's
8 something wrong with that. But they need to remember
9 what term is. It's temporary abandonment. And we are
10 going to keep them that way until we can figure out how
11 to continue to develop these properties consistent with
12 the science and the rules of the Division.

13 We've also filed an application to downspace,
14 and that will be sent in June. But the point is that OXY
15 is in compliance with the rules. And the other
16 inescapable thing is that the outcome of this dispute is
17 truly going to depend on what is the appropriate spacing
18 in this area, and that will come this summer.

19 The parties stand in different positions
20 before you here today. If you look at Exhibit Number 2,
21 you can see that OXY has had to put on hold a drilling
22 program for 15 wells. They've drilled two wells. We
23 know that; we've borne all the costs. If they've
24 improved their facilities and spent money doing that,
25 that's all in the record.

1 And Reliant, on the other hand, stands before
2 you having expended no funds. They are trying to get a
3 share of a well that they had no definite plan or
4 calendar or no schedule by which they planned to drill
5 the well. They seek an order vacating our temporary
6 abandoned status, pooling these sections, naming them
7 operator, and that's where we stand.

8 Why should the application be denied? I think
9 we have to look at the issues. And, again, it's not real
10 clear what the issues are. As we have moved in the last
11 two years, the issue has been a dispute about processing
12 costs. But today, for the first time, we hear they will
13 lay lines and take their gas in kind. This will
14 completely change the negotiations.

15 And it's an interesting issue, this processing
16 issue, because it's one in which the OCD really doesn't
17 have jurisdiction. It's after wells are drilled and
18 completed. It's actually something that could be taken
19 to the courts. But it's been used as an obstacle to
20 reaching an agreement so we can get these wells on
21 production.

22 If you read the statute, what we're required
23 to do is try and reach a voluntary agreement or then
24 pool. And we're still talking to these people, or at
25 least we're talking to no one, but we're talking and

1 trying to get people to respond.

2 Their concerns, as we've understood them, have
3 been the costs of the well. We had John Stout, the
4 person who is in charge of the accounting numbers, call
5 Reliant on April the 6th at 3:00 p.m., and we have no
6 response. We write them and send them amendments to the
7 JOA, cost figures, the basic outlines of the contracts we
8 would have to have if they are to put the gas in our
9 system and process it through our facilities, and we have
10 no response.

11 And yet we're in bad faith. We haven't
12 exercised good faith in trying to work this out. Those
13 arguments simply don't wash when you hold them up before
14 the facts of this case.

15 There's a big issue about temporary
16 abandonment. I don't know whether or not you have that
17 formal status or not makes any difference about when the
18 well would actually be produced. Cancelling it only
19 would add these wells onto OXY's noncompliant list.
20 That's all I can see.

21 Mr. DeBrine stands here and says we are
22 entitled to a pooling order under the statutes and rules,
23 and we disagree. We debated with you in our motion
24 hearing about whether or not you had to drill or propose
25 to drill before you had the required standing to seek

1 pooling.

2 And we still think that's a valid issue
3 because we think if you're going to read the entire
4 pooling statute together, if you don't say you have to
5 have a proposal to drill or a well to drill, all the
6 accounting provisions are nonsense.

7 But to pool, you have to have more than a
8 dispute on processing costs, a cost which doesn't even
9 fall within the jurisdiction of the OCD. If you look at
10 the statute right after the section talking about where
11 owners have not agreed to pool their interests and where
12 one separate owner or owners has a right to drill and
13 proposes to drill a well on said unit to a common source
14 to apply, the pooling statute says --

15 EXAMINER BROOKS: Let me find it here
16 before -- I've got 72-17, which --

17 MR. CARR: It's in C.

18 EXAMINER BROOKS: Okay.

19 MR. CARR: It says, right at the end of
20 that section, "The Division, to avoid the drilling of
21 unnecessary wells or to protect correlative rights or to
22 prevent waste, shall pool."

23 You have to have more than just a disagreement
24 on processing costs. You have to show that you have to
25 pool to avoid the drilling of unnecessary wells, to

1 protect correlative rights and to prevent waste.

2 The statute says, "The Division shall pool to
3 avoid the drilling of unnecessary wells." We have no
4 drainage information. We have temporary rules that allow
5 one well per 160 acres. We're not going to know the
6 spacing until that case is decided. On this record it is
7 not established that pooling is needed to avoid the
8 drilling of an unnecessary well.

9 "The Division shall pool to protect
10 correlative rights." Correlative rights is the
11 opportunity to produce your fair share. Reliant has that
12 opportunity. They haven't pursued it. They can put a
13 second, a third or a fourth well on this section under
14 the temporary rule. There could be a second operator on
15 a spacing unit.

16 They are not prevented from seeking a
17 nonstandard unit, but all of these options require them
18 to drill a well. And they have never been willing to do
19 that. They don't say they will do it. And we submit it
20 takes them out from under the provisions of the pooling
21 statute.

22 Until they prove a well is needed or is
23 unnecessary, until they can get to the question of what
24 wells drain in this spacing unit, they can't show that
25 their correlative rights have been impaired.

1 The statute says, "The Division shall pool to
2 prevent waste." That is a defined term. And waste with
3 these shut-in wells, to get there, they have to say
4 there's an inefficient, excessive or improper use or
5 dissipation of reservoir energy with shut-in wells.

6 They have to show that the wells have been
7 located, spaced, drilled or operated or produced in a
8 manner that could reduce the total quantity of CO2
9 ultimately recovered from this pool with shut-in wells.

10 On these facts, they have not shown there's
11 waste. Before you can pool, you have to find that
12 pooling is necessary to prevent the drilling of
13 unnecessary wells. You have to show it is necessary to
14 prevent waste, it is necessary to protect correlative
15 rights. On this record those facts don't exist, and the
16 application of Reliant must simply be denied.

17 It seems to me that when you read the pooling
18 statute, it's like other statutes. You should read all
19 sections together to try and avoid an absurd result. If
20 you grant this application, you're pooling lands so that
21 Reliant can pay \$300,000 for one-eighth of a gas well it
22 has to lay miles of gathering line to get to, in a case
23 where they don't even indicate that they're really
24 committed to become the operator of the well.

25 And, you know, it's sort of hard for OXY to

1 understand why we're being called before you and having
2 to be accused of, you know, heavy-handed, monopolistic
3 practices, when the last two times we tried to talk to
4 Reliant, we've received no response. Their application
5 should be denied.

6 EXAMINER BROOKS: Okay. If I'm correctly
7 reading 70-2-18, which Mr. DeBrine has referred to,
8 that's paragraph B. If OXY did produce these wells, it
9 would have to account to Reliant for what Reliant would
10 have gotten under a compulsory pooling order.

11 MR. CARR: Correct

12 EXAMINER BROOKS: Since that's theoretical
13 and there's no actual order, you may have some difficulty
14 in determining what that figure was.

15 MR. CARR: And you account and pay back to
16 the date of first production. That's what we would be
17 required to do.

18 EXAMINER BROOKS: If you were producing.

19 MR. CARR: Yes, if we were producing.
20 They were produced for a very short time. The problem
21 was discovered, and they were immediately shut in because
22 that's what the rules tell us to do when we don't have
23 the right acreage.

24 EXAMINER BROOKS: Okay. I think that's
25 all the questions I have. Do you want to speak in

1 rebuttal?

2 MR. DEBRINE: Yes, Mr. Examiner.

3 We believe that the evidence established here
4 today that OXY has failed to adhere to its obligations
5 under the Oil and Gas Act and the Division's rules. They
6 drilled wells without informing other parties who had an
7 interest in it. And OXY isn't any novice. They are the
8 party who is the operator of the Bravo Dome unit.
9 They're the ones who applied to reopen the spacing rules
10 back in 1991. They clearly know or should know what the
11 proper spacing rules are.

12 They went ahead and drilled these wells
13 without any notice to Reliant. Reliant discovered the
14 problem, brought it to their attention, and since then
15 we've been trying to reach agreement with them for a JOA.
16 And for Mr. Carr to suggest that OXY has been ready,
17 willing and able to negotiate, the record established
18 clearly that it hasn't.

19 Reliant went out to Houston to meet with them
20 at their own expense to try and reach agreement. They
21 don't hear for months from OXY. We have a series of
22 delay tactics in connection with this proceeding. It's
23 filled in November, and OXY does things to try and change
24 the goal line.

25 It files for -- even though there's a pending

1 proceeding, Mr. Carr knows how to get ahold of me or Mr.
2 Kellahin. OXY knows how to get held of Reliant. There
3 is no mention that they're going to apply for temporary
4 abandonment status. Common courtesy would suggest that
5 they ought to do that.

6 Then we amend our application to ask the
7 Division to suspend the approval that's been given
8 because we don't to have to go back in there and remove
9 the bridge plug and incur the expense in order to bring
10 those wells on to production. So we ask the Division to
11 reverse the temporary abandonment status of the wells and
12 we have filed an amended application.

13 OXY knew full well and has known about what
14 we're asking. Unbeknownst to us, we find out here today
15 they actually went there last week or so and they
16 accomplished that without telling us. So we did not have
17 the opportunity to apply for emergency relief from the
18 Division to try and stop that.

19 And the facts show that there is a dispute
20 with regard to what the costs should be and what the
21 sharing should be for these two wells. The parties have
22 been unable to reach agreement. It's not just a dispute
23 as to the processing costs. Reliant is willing to take
24 its share of production in kind. If OXY were to remain
25 the operator, then OXY would have an obligation to

1 Reliant in the event it didn't take its share of
2 production in kind.

3 But those are all issues that are not for the
4 Division to answer in this proceeding. The only question
5 is whether the requirements of 70-2-17 and 18 are met.
6 We submit that OXY has not fulfilled its obligation to
7 voluntary pool or seek a compulsory pooling order for the
8 two wells that it drilled.

9 The 640-acre spacing and the rules that govern
10 it, there's been no presentation here today that 640 acre
11 is inappropriate to sufficiently drain the reservoir for
12 these two wells.

13 If that's OXY's contention, this matter has
14 been pending for several months. The dispute has been
15 going on for over two years. There's been no evidence
16 presented to Reliant that the 640-acre spacing is
17 inappropriate.

18 The Division has already determined that
19 640-acre spacing will prevent waste and protect
20 correlative rights. And if the wells haven't been
21 drilled, then Reliant can in the future drill infield
22 wells. But we have to deal with the wells that have been
23 drilled and the existing rules as they exist today.

24 We don't know what the evidence might show
25 with regard to the proceeding that was filed for these

1 wells or any other wells. We can look at what the
2 science would show.

3 We believe it would be appropriate for the
4 Division to enter an order and say, "Okay. In
5 conjunction with that proceeding, we'll let these wells
6 go forward under the 640-acre spacing that forms the
7 compulsory spacing units for the two wells." And then
8 OXY can report back to you in a type of pilot project
9 that will be helpful for evaluating, in connection with
10 that spacing case, as to what the appropriate acreage
11 should be for wells in this area.

12 But there is no production history. The
13 evidence has clearly shown that. So all we have is
14 640-acre spacing rules, two wells that have been drilled,
15 and that those rules should be adhered to, and the
16 proceeding that OXY filed last week can't retroactively
17 fix that problem.

18 EXAMINER BROOKS: Well, I don't have the
19 order in front of me that established the spacing, so I
20 can't say what the Division found in that order. There's
21 a certain anomaly, it seems to me, to having a 640-acre
22 unit with four wells per unit in a virgin area, because
23 you can't really infer from that spacing decision that
24 the Division concluded anything with regard to what would
25 efficiently drain the reservoir. Of course, that issue

1 was kind of central to this controversy.

2 But does anybody have anything else?

3 MR. DEBRINE: Nothing further.

4 MR. CARR: No.

5 EXAMINER BROOKS: Okay. If there's
6 nothing further, Case Number 14412 will be taken under
7 advisement.

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____.

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_____, Examiner
Oil Conservation Division

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REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on April 29, 2010, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 11th day of May, 2010.



Jacqueline R. Lujan, CCR #91
Expires: 12/31/2010