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March 30, 2012

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Florene Davidson
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: *In The Matter of the Application of Reliant Exploration & Production LLC for compulsory pooling, Harding County, NM*

Dear Ms. Davidson:

Transmitted herewith for filing is a Response to Oxy's Reply on Its Motion to Dismiss in the above-referenced matter.

Thank you for your assistance. Please contact me if you have any questions.

Very truly yours,

Earl E. DeBrine, Jr.

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Enclosure

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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, HARDING COUNTY, NEW MEXICO.

RESPONSE TO OXY'S REPLY ON ITS MOTION TO DISMISS

Reliant Exploration and Production LLC ("Reliant") submits the following Response to OXY USA Inc.'s ("OXY") Reply on its Motion to Dismiss ("Motion"). As demonstrated below, Reliant clearly has standing under the Oil & Gas Act and the Rules of the Oil Conservation Division to file its application seeking compulsory pooling and the Motion should be denied.

I. FACTUAL BACKGROUND.

This case was initiated by Reliant after OXY violated the Oil and Gas Act and Commission rules by drilling two carbon dioxide wells based upon erroneous 160-acre spacing when the spacing required by Order R-7556, established 640-acre spacing units for wells. In its initial application, Reliant sought cancellation of the APDs for the wells because the wells violated the Commission's spacing rules and OXY had failed to comply with the Commission's Rule requiring that the wells be completed and produced or placed in temporary abandonment status. *See* NMAC 19.15.25.8(B). Alternatively, Reliant requested that the Division enter an order requiring Oxy to complete and produce the wells and enter an order pooling OXY's interests with Reliant to form a

640-acre spacing unit for the wells and require OXY to pay Reliant for its proportional share of production in accordance with NMSA 1978, § 70-2-18.

OXY's tried to thwart Reliant's application before the case went to hearing by obtaining, without notice to Reliant, the Division's approval to temporary abandon the ("T/A") these two wellbores and filed its motion to dismiss. As a result, Reliant amended its application seeking to terminate the approvals to T/A the wells and to seek operation of the wellbores. Before the case went to hearing, OXY, again without notice to Reliant, went forward and T/A'd the wellbores. The motion to dismiss was heard and denied at a pretrial conference. After the hearing was held in this case, OXY tried a different tactic to thwart Reliant, filing an application seeking to down-space the area to permit the formation of 160-acre spacing units. Although no motion to stay this case was ever filed, a ruling was apparently deferred due to the pendency of the down-spacing case. Oxy repeatedly continued its down-spacing case for more than a year until finally dismissing it. A decision in this case is long overdue and Oxy's renewed Motion to Dismiss should again be denied.

II. RELIANT HAS STANDING TO SEEK COMPULSORY POOLING.

New Mexico's pooling statute does not contain any language which restricts who may bring an application for compulsory pooling. Instead, it requires the division to order compulsory pooling where the requisite circumstances exist and it is undisputed that those circumstances are present in this case.

OXY's Reply brief only cites to a portion of the compulsory pooling statute, NMSA 1978, §70-2-17. The full text of the statute clearly establishes that Reliant has standing to file an application for compulsory pooling notwithstanding the odd procedural history of this case.

The pooling statute first establishes the Division's authority to establish proration units for a pool and defines what is meant by a proration unit:

> B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

NMSA 1978, §70-2-17. The purpose for establishing a spacing unit is to establish the area that can be efficiently and economically drained by one well and to prevent economic waste and risk associated with drilling and excessive number of wells.

The pooling statute next provides that owners of separately owned tracts embraced within a spacing unit may voluntarily pool their interest to form a spacing or proration unit and describes the circumstances in which the Division is ***required*** to combine them through compulsory pooling:

> C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. **Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.**

NMSA 1978, §70-2-17(C) (emphasis added).

Unlike versions of pooling statutes in other states referred to in Oxy's Reply, New Mexico's pooling statute never contained any limiting language regarding who can seek a

compulsory pooling order. *See* Morris, "Compulsory Pooling of Oil and Gas Interests in New Mexico," 3 Nat.Res.L.J. 316, 321 (October 1963). As a result, the Division has never held that the compulsory pooling power can only be invoked by the operator who formally proposes the well, or, as in this case, drilled it in violation of the Commission's rules.

Lacking any requirement that limits standing to a party that formally proposes a well or drills a well, the pooling statute contains a mandatory directive that the Division "***shall pool***" where the requisite circumstances exist: (1) the failure of owners whose acreage would comprise the spacing unit to agree to pool their interests; and (2) such separate owner or owners with the right to drill has drilled or proposed to drill on the unit to a common source of supply. Subsection C of the pooling statute further provides that the Division is to exercise broad equity powers in entering a pooling order, requiring that "[a]ll orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both." NMSA 1978, §70-2-17(C) (emphasis added).

Reliant's application clearly met the only two requirements of the statute. Oxy drilled two wells which necessarily embraced Reliant's acreage in order to form a legal spacing and proration unit for the wells. Oxy and Reliant were unable to reach agreement to voluntarily pool their interests. Although Reliant did not initially propose the wells (since they were illegally drilled), Reliant's application must be viewed as including a well proposal since it seeks to be declared the operator to produce the wells that Oxy temporarily abandoned if Oxy refuses to do so. An applicant is not required to propose a well on its acreage but must

obtain an order pooling interests within a spacing unit before doing so. That is precisely what Reliant has done.

Additionally, the Section 70-2-17 must be read in conjunction with 70-2-18 which imposed a duty on Oxy to either seek voluntary pooling of the lands embraced within a legal unit or seek an order for compulsory pooling:

> A. Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production. Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or proration units that are dedicated to the affected wells shall share in production from the effective date of the said order.
>
> B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

Oxy violated this statute by drilling the wells without first seeking a pooling order, violating Reliant's correlative rights and seeks to commit economic waste by failing to produce the wells and share production with Reliant or if pooling had occurred Oxy's conduct should not be rewarded by the Division and its renewed motion to dismiss should be denied.

CONCLUSION

When it drilled two wells in violation of the Division's spacing rules, OXY deprived Reliant of an opportunity to drill a well on its acreage or even propose the drilling of another well that is not allowed by the existing spacing rules. The Division has not only the power but the mandatory obligation to issue a compulsory pooling order under the circumstances of this case and Reliant duly has standing and the pooling statute to seek such relief. Accordingly, OXY's Motion to Dismiss is lacking in merit and should be denied.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2012, I have caused to be delivered by Email a copy of the Response to Motion to Dismiss in the above mentioned case to the following counsel of record:

Michael H. Feldewert, Esq.
Attorney for OXY USA Inc.
wcarr@hollandhart.com

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

By: _____
Earl E. DeBrine, Jr.

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