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

APPLICATION OF DEVON ENERGY PRODUCTION COMPANY L.P. TO REVOKE THE INJECTION AUTHORITY GRANTED BY ADMINISTRATIVE ORDER SWD-640, LEA COUNTY, NEW MEXICO.

CASE NO. 15397

OXY's RESPONSE TO DEVON'S MOTION TO PARTIALLY QUASH SUBPOENA

In an effort to discover potentially relevant information on Devon's allegations, Oxy has served a subpoena on Devon that seeks limited categories of documents. Devon's response and motion to "partially quash" is improper for the following reasons:

1. Devon lists a series of "general objections" and then states it will produce "any non-privileged or proprietary documents responsive to these requests." These types of vague objections are improper as reflected by the local rules of the First Judicial District Court, which provide:

> D. Objections. In objecting to an interrogatory, request for production, or request for admission, the objector shall first set out the complete interrogatory or request followed by the reason for the objection. All objections must cite supporting authority. When a party withholds information by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and *shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.*

See LR1-303(D). Accordingly, under general rules of practice, a party may not withhold responsive documents on grounds of privilege unless it describes the documents with sufficient detail so that the other party can assess the applicability of

the privilege. Devon has failed to indicate that it will abide by this requirement if it chooses to withhold any responsive documents.

2. Devon's Application alleges that water flows encountered during drilling at 1,800 feet are the result of Oxy's long-standing injection operations in the Bell Canyon and Upper Cherry Canyon formations at 5,335-5748 feet. Oxy has informed Devon that the most likely source of this water flow is naturally occurring water that exists in pockets throughout the region rather than Oxy's injection operations more than 3,500 feet below Devon's water encounter. Accordingly, Item 7 of Oxy's subpoena seeks information on water flows encountered by Devon during drilling operations in the township where the well is located and the adjacent townships to the West, Southwest, South, Southeast, and East. Devon seeks to arbitrarily limit this examination to only the township where the well is located and the adjacent township to the South claiming, without support, that a more regional approach is "burdensome and excessive." There is nothing overly burdensome or excessive about producing well names, API numbers, depth of water flows, pressures encountered, and required mud weights for drilling operations involving shallow water flows in the surrounding region. This information can be easily retrieved from Devon's files and the retrieval task does not become excessively difficult when six rather than two townships are included in the examination area. Moreover, this information will likely demonstrate that shallow water flows exist in isolated pockets throughout the region and is therefore highly relevant to Oxy's defense of Devon's claims. A discovery request is overly broad and unduly burdensome only when the objection party demonstrates the burden to produce the documents outweighs the potential benefit of the discovery. *See* Rule 1-026(B)(2)(c)

NMRA; *Rich v. Martin Marietta Corp.*, 522 F.2d 333, 343 (10th Cir. 1975). This is because the presumption is in favor of discovery. *See Marchiondo v. Brown*, 1982-NMSC-076, ¶ 13, 98 N.M. 394, 397. The fact that the production of documents may involve some level of inconvenience is not sufficient to refuse discovery which is otherwise appropriate. While Devon may have a right to file its Application with the Division, it does not have the right to then dictate the appropriate area of study or limit Oxy's access to potentially relevant information without offering proof that the scope is unreasonably burdensome. *See United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶ 267, 96 N.M.155, 217 (quoting *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292 (E.D. Pa. 1980)) ("General objections without specific support may result in waiver of the objections.")

WHEREFORE Oxy requests that Devon be compelled to produce the documents sought under the subpoena and that if any responsive documents are withheld on grounds of privilege or other reason, that a privilege log be produced describing the nature of the document in a manner that, without revealing the privileged information, will enable Oxy to assess the applicability of the privilege or protection.

Respectfully submitted,
HOLLAND & HART LLP

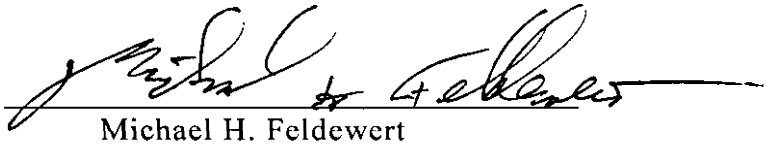
Michael H. Feldewert
Post Office Box 2208
Santa Fe, NM 87504-2208
505-988-5521
505-983-6043 Facsimile
mfeldewert@hollandhart.com

ATTORNEYS FOR OXY USA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2015, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043
jamesbruc@aol.com



Michael H. Feldewert