

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

**IN THE MATTER OF THE APPLICATION OF OXY USA WTP, LLC AND CANAAN
RESOURCES DRILLING COMPANY, LLC TO REOPEN AND AMEND
ORDER NO. R-20279 *NUNC PRO TUNC***

UNDERLYING MATTER:

**IN THE MATTER OF THE APPLICATION OF CENTENNIAL RESOURCE
PRODUCTION, LLC TO REOPEN CASE NO. 16265 TO ADD ADDITIONAL INITIAL
WELLS UNDER THE TERMS OF COMPULSORY POOLING ORDER NO. R-20001,
LEA COUNTY, NEW MEXICO**

CASE NO. 16265 (REOPENED)

APPLICATION

OXY USA WTP, LLC (“OXY”) and CANAAN RESOURCES DRILLING COMPANY, LLC, through undersigned counsel, pursuant to section 19.15.4.8 NMAC and the Division’s retention of jurisdiction to enter such further orders as the Division may deem necessary, applies to the Division to reopen Order No. R-20279 (the “Order”) to amend paragraph (13) of the Order *nunc pro tunc* to clarify OXY’s and CANAAN’s rights, as a pooled working interest owners, to pay in advance their share of estimated wells costs, rather than having the operator withhold those costs from OXY’s and/or CANAAN’s share of production, along with a risk charge as provided in paragraph (16) of the Order. To comply with 19.15.4.8(A)(3) NMAC, this application seeks no changes in the description of the area affected by the existing Order. OXY and CANAAN request that this application be set for hearing on the July 11, 2019 hearing examiner docket. In support of this Application, OXY and CANAAN state as follows regarding the nature of the amended order sought in this Application and the reasons for the proposed amendment:

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1. Under the Oil and Gas Act, pooling orders “. . . shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purposes not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well” § 70-2-17(C) NMSA 1978. Under this language, only an owner *who does not elect* to pay his proportionate share of costs in advance is subject to a charge for risk.

2. The Division’s rules provide that an Order for compulsory pooling “may provide for the recovery, out of the share of production allocable to the working interest of a party *that elects not to pay its proportionate share of well costs in advance*, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-completion of each unit well for which the order provides.” 19.15.13.8(A) NMAC (emphasis added). Under this rule, a pooled working interest owner is subject to a charge for risk only if the pooled working interest owner *elects not* to pay its proportionate share of well costs in advance.

3. The Division’s orders contain conditions which address how a pooled working interest owner may exercise its right to elect in advance to pay its proportionate share of well costs, rather than be charged a risk premium. Standard conditions in Division orders require that the operator furnish to the Division and each known pooled working interest owner in the unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed wells. The standard conditions then provide a timeframe for the pooled working interest owner to elect

to pay or not pay its proportionate share of well costs in advance, based upon the costs estimated by the operator.

4. One form of standard condition language used both before and after the subject

Order provides as follows:

Within 30 days from its receipt of the schedule of estimated well costs for any well, any pooled working interest owner shall have the right to pay its share of estimated well costs of such well to the operator in lieu of paying its share of reasonable well costs as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above for any well shall remain liable for operating costs but shall not be liable for risk charges for such well. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as “non-consenting working interest owners.”

A recent example of this language is in paragraph (12) of Order No. R-20526 issued May 10, 2019.

5. The subject Order contains different language addressing this issue in paragraph (13):

Within 30 days from the date the schedule of estimated well costs for any well is furnished, any pooled working interest owner shall have the right to elect to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided. Payment shall be rendered within 90 days after expiration of the 30-day election period and any such owner who pays its share of estimated well costs as provided above for any well shall remain liable for operating costs but shall not be liable for risk charges to the extent computed based on costs of such well. Pooled working interest owners who do not elect to pay their share of estimated well costs, or who do not render timely payment to the operator, as provided in this paragraph shall thereafter be referred to as “non-consenting working interest owners.”

Whereas the language in paragraph 4 above indicates that the pooled working interest owner must make its election by paying the estimated costs within 30 days of receipt of the schedule, the language in the subject Order provides that the pooled working interest owner must make an election to pay “within 30 days from the date the schedule of

estimated well costs for any well is *furnished*—presumably by giving notice of that election to the operator--and then has an additional 90 days to make payment.

6. The first version (paragraph 4 above) is clear that the 30-day period for the election runs from when the schedule of estimated well costs is *received* by the pooled working interest owner.

7. Standard industry practice is for such timeframes to run from when a notice is received, and for notices to be sent by certified mail, return receipt requested, or overnight mail, so there is evidence of when the notice was received.

8. In the Division's rules, timeframe for action also run from receipt of a notice. Examples are (1) a pooled working interest owner's election to participate in an infill well proposed by the operator under 19.15.13.10.B NMAC (election due within 30 days after the owner receives the proposal); (2) an operator's election to propose an infill well after receipt of a proposal by pooled working interest owner (proposal due within 60 days after the operator's receipt of notice).

9. The second version of order language, as contained in the subject Order, (paragraph 5 above) states that the 30-day period runs from the date that the estimated cost schedule is "furnished." There is no known rule definition or guidance to suggest that "furnished" means anything other than receipt of a notice. Based on standard industry practice, parties would expect that "furnished" means "received." OXY and CANAAN also are aware of nothing in the record regarding this Order or other proceedings indicating that there is any reason--or that the Division intends--that "furnished" means anything other than "received." Indeed, it would be confusing to all

parties for OCD to issue orders with two different approaches to when the 30-day period for elections runs, and there is no valid reason to do so.

10. OXY holds a working interest in the lands subject to the Order. OXY assigned 100% of its wellbore interest in the Duck Hunt 1 State Com No. 301H, No. 501H and No. 601H wells to Canaan Resources Drilling Company, LLC (“Canaan”) under that certain Wellbore Assignment and Bill of Sale dated effective March 12, 2019. Consequently, under the conditions of the Order, OXY and CANAAN are “pooled working interest owners” as defined in paragraph (12) of the Order, with rights under the Oil and Gas Act and the applicable rule to pay their proportionate share of well costs unless they elect not to pay them in advance.

11. OXY and/or CANAAN received an itemized schedule of estimated costs of drilling, completing, and equipping the Duck Hunt 1 State Com No. 301H, No. 501H and No. 601H wells from the operator on February 12, 2019.

12. CANAAN provided written notice to the operator of its election to pay the estimated costs in advance within 30 days of its receipt of the schedule of estimated costs provided by the operator, as provided by paragraph (13) of the Order.

13. Despite CANAAN’s election to pay the estimated costs to the operator, the operator has refused to acknowledge CANAAN’s election. Instead, operator seeks to withhold CANAAN’s share of costs out of CANAANs share of production, in addition to a risk charge.

14. To clarify CANAAN’s rights under paragraph (13) of the Order, consistent with the Oil and Gas Act and 19.15.13.8(A) NMAC, OXY requests that the Division amend paragraph (130) of the Order, *nunc pro tunc*, to read as follows (changes from existing language shown by ~~strikeout~~ and underline):

Within 30 days from the date the schedule of estimated well costs for any well is ~~furnished~~received by a pooled working interest owner, any pooled working

interest owner shall have the right to elect to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided. Payment shall be rendered within 90 days after expiration of the 30-day election period and any such owner who pays its share of estimated well costs as provided above for any well shall remain liable for operating costs but shall not be liable for risk charges to the extent computed based on costs of such well. Pooled working interest owners who do not elect to pay their share of estimated well costs, or who do not render timely payment to the operator, as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

15. OXY and CANAAN further request that the Division declare that CANAAN timely exercised the right to elect pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production along with any applicable penalties and that CANAAN is not subject to a risk charge.

16. Attached is OXY's and CANAAN's proposed legal notice for publication by the Division.

RESPECTFULLY SUBMITTED

Gallagher & Kennedy, P.A.

By  _____

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COMPANY, LLC

Proposed Legal Notice for Adjudicatory Hearing

CASE 16265:
(REOPENED)

Application of OXY USA WTP, LLC and CANAAN RESOURCES DRILLING COMPANY, LLC for an amendment of Order R-20279 *nunc pro tunc*. Applicant in the above-styled cause seeks an amendment of Order R-20279, paragraph (13) to clarify OXY's and CANAAN's rights, as pooled working interest owners, to pay in advance their share of estimated wells costs, rather than having the operator withhold those costs from OXY's and/or CANAAN's share of production, along with a risk charge as provided in paragraph (16) of the Order. OXY and CANAAN further ask for a declaration that CANAAN timely exercised its right to pay costs to the operator and that they are not required to pay a risk charge. Order R-20279 creates a 240-acre, more or less, spacing and proration unit comprised of the E/2 SE/4 of Section 12, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, and pools all mineral interests in the Bone Spring formation underlying this acreage. Said area is located approximately 18 miles southwest of Eunice, New Mexico.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 7th day of June, 2019 via e-mail:

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