

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (PHONE)
(505) 660-6612 (CELL)
(505) 982-2151 (FAX)

jamesbruc@aol.com

March 24, 2003

Hand Delivered

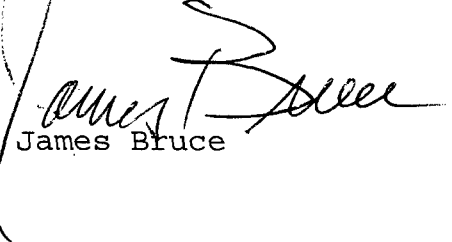
Michael E. Stogner
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 13,226 (OXY/Tom Brown)

Dear Mr. Stogner:

Enclosed is Tom Brown's proposed order, in hard copy and on disk.

Very truly yours,


James Bruce

RECEIVED

MAR 24 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

cc: William F. Carr w/encl.

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:

APPLICATION OF OXY USA WTP LIMITED
PARTNERSHIP FOR RESCISSION OF THE
APPROVAL OF AN APPLICATION FOR PERMIT
TO DRILL, AND FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.

Case No. 13,226
Order No. R-

ORDER OF THE DIVISION

(Proposed by Tom Brown, Inc.)

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 4, 2004 at Santa Fe, New Mexico before Examiner Michael E. Stogner.

NOW, on this _____ day of April, 2004, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) The applicant, OXY USA WTP Limited Partnership ("OXY"), seeks an order: (a) rescinding the Application for Permit to Drill ("APD") issued by the Division to Tom Brown, Inc. ("Tom Brown") for its Forni Well No. 2 (API No. 30-015-33204), located 660 feet from the south and west lines of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico. The S½ of Section 15 is dedicated to the Forni Well No. 2; and (b) pooling all mineral interests from the surface to the base of the Morrow formation underlying the W½ of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico, to form a standard 320-acre gas spacing and proration unit for all pools and/or formations developed on 320 acre spacing within this vertical extent, including the South Carlsbad-Morrow Gas Pool. The W½ of Section 15 is to be dedicated to OXY's proposed Redemption Well No. 1 (API No. 30-015-33206), to be located at the same location as Tom Brown's Forni Well No. 2.

(2) Tom Brown appeared at the hearing in opposition to the application.

(3) Ownership of Section 15 is summarized below:

<u>Tract No./Royalty Ownership</u>	<u>Working Interest Ownership</u>
1/Bindel	100% Tom Brown (all depths)
2/Ginanni	100% OXY et al. (all depths)
3/Ginanni et al.	100% OXY et al. (all depths)
4/Forni	(a) SW $\frac{1}{4}$ and 34.5 acres in the <u>SW$\frac{1}{4}$NW$\frac{1}{4}$</u> 100% Nearburg et al. (surface to base of Wolfcamp) 100% Tom Brown (below base of Wolfcamp formation) (b) <u>SE$\frac{1}{4}$</u> 100% Tom Brown (all depths)

Tom Brown Exhibit 9. Tom Brown recently verbally agreed to acquire some interests in the Wolfcamp formation in Tract 4(a).

(4) There is one producing well in Section 15, Tom Brown's Forni Well No. 1, which is producing from the Wolfcamp formation. The E $\frac{1}{2}$ of Section 15 is dedicated to this well.

(5) The land testimony presented at hearing by both parties shows the following:

- (a) In July 2003 Matador Petroleum Corporation was approached by Devon Energy Production Company, L.P. regarding forming a working interest unit comprised of the S $\frac{1}{2}$ of Section 15 and the N $\frac{1}{2}$ of Section 22. Since then, Tom Brown has been considering drilling a Morrow well with a laydown S $\frac{1}{2}$ unit.
- (b) At about the same time, Matador Petroleum Corporation was acquired by Tom Brown, which delayed discussions regarding the working interest unit and the drilling of Tom Brown's well.
- (c) After numerous discussions, Tom Brown decided in early January 2004 not to join in the working interest unit. By that time, Tom Brown had already obtained accurate title data on all of Section 15.

- (d) On January 9, 2004, Tom Brown placed the Forni Well No. 2 on its drilling schedule for early March 2004. **Tom Brown Exhibit 2.** Tom Brown planned its well as a Strawn/Atoka/Morrow test.
 - (e) On January 15, 2004 OXY mailed a well proposal to Tom Brown on the Redemption Well No. 1. **OXY Exhibit 11.**
 - (f) On January 21, 2004 Tom Brown filed its APD, which was approved by the Division. **OXY Exhibit 15.**
 - (g) On January 26, 2004 OXY filed its APD. Approval was denied by the Division because of the Tom Brown APD. **OXY Exhibits 14 and 16.**
 - (h) On February 10, 2004 OXY filed its application herein. Only Tom Brown was notified of the pooling application. **OXY Exhibit 13.** At the time the application was filed, OXY had no accurate title data on Section 15. Other interest owners in the Wolfcamp formation in the W½ of Section 15 have not been notified of OXY's pooling application.
 - (i) At Tom Brown's request, the parties met on March 1, 2004. OXY had never followed up on its proposal letter by calling Tom Brown.
 - (k) There is no dominant orientation for 320 acre well units in Township 22 South, Range 27 East: There are both standup and laydown units. **Tom Brown Exhibit 3.**
- (6) The geologic and engineering evidence presented by Tom Brown shows the following:
- (a) The Marbob Energy Corporation Walterthon Well No. 1, located in the NE¼NE¼ of offsetting Section 21, is a prolific producer from the Lower Morrow formation. **Tom Brown Exhibit 3.**
 - (b) Based on the results of the Walterthon Well No. 1, the Morrow formation is the primary zone of interest for any well located in the SW¼ of Section 15.
 - (c) The Wolfcamp and Strawn formations are secondary targets for a well located in the SW¼ of Section 15. The Wolfcamp and Strawn reservoirs trend northeast-southwest in this township. **Tom Brown Exhibit 4.**

- (d) The Morrow formation in this township trends northwest-southeast. **Tom Brown Exhibit 5.** The Morrow formation is discontinuous and lenticular in nature. Where the Morrow reservoir is well developed, the gas-water contact is not important.
- (e) Approximately the southern 80% of Section 15 is potentially productive from the Morrow formation.
- (f) The "Walterthon Sand" reservoir is limited in extent, and does not extend into the NW¼ of Section 15.
- (7) The geologic evidence presented by OXY shows the following:
 - (a) The Wolfcamp reservoir underlies all of Section 15. Therefore, the orientation of well units in the Wolfcamp formation can be either standup or laydown.
 - (b) The Morrow "Walterthon Sand" reservoir trends northeast-southwest, and is wet as you move eastward. **OXY Exhibit 4.** However, there is no Morrow control in Section 15 and to the east in Section 14. In addition, two wells are currently being drilled to test the Morrow formation in areas that OXY predicts are water-bearing (the Marbob Energy Corporation Butterfinger Fee Well No. 2, in the SE¼ of Section 10, and the Chi Operating, Inc. Henry Well No. 3, in the SW¼ of Section 22). Therefore, information on a theoretical gas-water contact is unreliable.
- (8) Tom Brown has proposed its Forni Well No. 3 in the NW¼ of Section 15, to test the Morrow formation, with the N½ of Section 15 to be dedicated to the well. Two laydown Morrow units will more adequately protect the correlative rights of all royalty owners in Section 15.
- (9) Division regulations do not bar contrasting standup and laydown units in different formations.
- (10) OXY has not demonstrated that standup units are required to protect its correlative rights. Moreover, OXY has not made a good faith effort to obtain the voluntary joinder of all interest owners in its proposed well.
- (11) OXY contends that Tom Brown's APD was improper when filed, and thus should not have been approved. The evidence shows that there were minor discrepancies in both Tom Brown's APD and OXY's APD. These defects are non-material, and do not warrant revoking Tom Brown's APD.

Case No. 13,226
Order No. R-
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(12) OXY's application should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The application of OXY USA WTP Limited Partnership to rescind approval of an application for permit to drill, and for compulsory pooling, is hereby denied.

(2) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

CAROL LEACH
Acting Director

SEAL

HOLLAND & HART^{LLP}



William F. Carr
wcarr@hollandhart.com

March 8, 2004

HAND DELIVERED

RECEIVED

MAR 8 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Michael E. Stogner, Hearing Examiner
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: **Oil Conservation Division Case No. 13226:** Application of OXY USA
WTP Limited Partnership, for rescission of the approval of an application
for permit to drill and for compulsory pooling, Eddy County, New Mexico.

Dear Mr. Stogner,

Enclosed for your consideration is OXY USA WTP Limited Partnership's Proposed Order of the Division in the above-referenced case. I am providing this proposed order on disc and by e-mail.

If you need any additional information from OXY to assist you with your consideration of this application, please advise.

Very truly yours,

William F. Carr

enc.

cc: James Bruce, Esq. w/enc.
Mr. Rick Foppiano w/enc.
Mr. Robert L. Doty w/enc.

Holland & Hart^{LLP}

Phone [505] 988-4421 Fax [505] 983-6043 www.hollandhart.com

110 North Guadalupe Suite 1 Santa Fe, NM 87501 Mailing Address P.O. Box 2208 Santa Fe, NM 87504-2208

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ♻

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

RECEIVED

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

MAR 8 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

APPLICATION OF OXY USA WTP LIMITED PARTNERSHIP FOR
RESCISSION OF THE APPROVAL OF AN APPLICATION FOR PERMIT TO
DRILL AND FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 13226

ORDER NO. R-_____

**OXY USA WTP LIMITED PARTNERSHIP'S
PROPOSED ORDER OF THE DIVISION**

BY THE DIVISION:

This cause came on for hearing at 8:15 a. m. on March 4, 2004 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this ____ day of March, 2004, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, OXY USA WTP Limited Partnership ("OXY") seeks an order (i) rescinding Oil Conservation Division approval of the Tom Brown Inc. ("Tom Brown") Application for Permit to Drill its proposed Forni Well No. 2 (API No. 30-015-33204) at a standard gas well location 660 feet from the South and West lines of Section 15, Township 22 South, Range 27 East, NMPM to be dedicated to a standard 320-acre gas spacing and proration unit comprised of the S/2 of Section 15 (OXY Exhibit 15), and (ii) the re-instatement of the Division's January 28, 2004 approval of OXY's Application for Permit to Drill its Redemption Well No. 1 (API No. 30-015-33206) ("Redemption

Well”) at a standard gas well location 660 feet from the South and West lines of said Section 15 to be dedicated to a standard gas spacing and proration unit comprised of the W/2 of Section 15 (*OXY Exhibit 14*). OXY also seeks an order pooling all mineral interests in the W/2 of Section 15 in all formations and/or pools developed on 320-acre spacing and proration units which includes but is not necessarily limited to the Undesignated South Carlsbad-Morrow Gas Pool (73960) for its Redemption Well.

(3) In this case OXY contends that approval of the Tom Brown APD for the Forni Well No. 2 impairs its correlative rights in the Morrow Formation under Section 15 and that the Division’s cancellation of OXY’s Application for Permit to Drill the Redemption Well and approval of Tom Brown Inc.’s Application for Permit to drill its Forni No. 2 was improper for it was based on incomplete and inaccurate data filed by Tom Brown Inc.

BACKGROUND FACTS:

(4) Tom Brown Inc. owns the working interest in the Morrow formation in all of Section 15 except under two tracts in the NW/4 of this section where the working interest is owned by OXY, Cactus Energy, Inc. and Saguaro Resources, Inc. (Cactus and Saguaro have signed the OXY AFE for the Redemption Well and are hereinafter collectively referred to as “OXY”). The royalty owners under the OXY tracts (Ginanni and Ellison) do not own royalty interests in any other tracts in Section 15. *Oxy Exhibit 2, Tom Brown Exhibit A.*

(5) Section 15 has been developed with standup spacing units with the E/2 of the section currently dedicated to the Tom Brown Inc. Forni Well No. 1 located in Unit I which produces from the Wolfcamp formation. The W/2 of the Section has previously been dedicated to the Nearburg Sueno 15 Well No. 1 located in Unit E of this section. *OXY Exhibit 1.*

(6) On January 13, 2004, the location for the Redemption Well was surveyed and staked. By letter dated January 15, 2004, OXY proposed the drilling of the Redemption Well to Tom Brown and enclosed an Authorization for Expenditure and Joint Operating Agreement for the well. *OXY Exhibit 10.* The well was proposed to a depth of approximately 12,000 feet to test all formations developed on 320-acre spacing under a standard gas spacing unit comprised of the W/2 of Section 15. *OXY Exhibit 11.* OXY proposed the well to Tom Brown, Cactus and Saguaro based on a title check and then ordered a title opinion covering the W/2 of this section. *Testimony of Hurlbutt. On*

(7) Tom Brown did not respond to OXY’s proposal but, instead, on January 21, 2004, filed an Application for Permit to Drill its proposed Forni Well No. 2 to be

dedicated to a S/2 lay-down unit (*Oxy Exhibit 15*) and on February 6, 2004, filed an Application to drill its proposed Forni Well No. 3 to be drilled 1980 feet from the North line and 660 feet from the West line of Section 15 to be dedicated to a N/2 lay-down spacing and proration unit. *Testimony of Mathis*. The orientation of these spacing units is inconsistent with the current development pattern for Wolfcamp wells in this section.

(8) When OXY discovered that Tom Brown was proceeding with its plans to drill on a proposed S/2 unit, it filed its application in this case based on the best data available to it on the ownership of the mineral rights in Section 15. *Testimony of Doty and Hurlbutt*. If OXY had delayed filing until it received the title opinion it had ordered, Tom Brown would have been drilling and OXY would have lost its opportunity to have the Division review the impact of lay-down Morrow spacing and proration units on its correlative rights. *Testimony of Hurlbutt*.

(9) On February 25, 2004, OXY learned that Tom Brown was building a location 660 feet from the South and West lines of Section 15 and filed its motion to stay the Tom Brown drilling permit pending a hearing on its application. Tom Brown opposed the stay of its drilling permit and advised the Division that it "...owns no Wolfcamp rights in the SW/4 of Section 15, where the proposed well is located, so there can be no S/2 Wolfcamp unit." The Division Denied the Motion for Stay.

(10) Contrary to its representations to the Examiner in its response to OXY's Motion to Stay Drilling Permit, Tom Brown's evidence shows that it has reached an agreement with the owner of most if not all of the shallow rights in the SW/4 of Section 15 to acquire those rights within 10 days. *Testimony of Robertson*.

CORRELATIVE RIGHTS:

(11) The New Mexico Oil and Gas Act directs the Oil Conservation Division to protect the correlative rights of each interest owner in a pool. *NMSA 1978, § 70-2-11 (1935)*. "Correlative Rights" is defined by this statute as "...the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, **being an amount**, so far as can be practicably determined and so far as can be practicably obtained without waste, **substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool** and for such purpose, to use his just and equitable share of the reservoir energy." *NMSA 1978, § 70-2-33.H (1935)*. (Emphasis Added).

(12) OXY contends that the E/2 of Section 15 is down structure, wet and will not contribute Morrow reserves to wells drilled in the W/2 of Section 15. OXY

therefore believes that the development of the Morrow formation on lay-down spacing units as proposed by Tom Brown impairs the correlative rights of all working interest owners and all royalty interest owners in the NW/4 of Section 15 by sharing the recoverable reserves under this property with non-productive acreage in the E/2 of the section. *Testimony of Doty.*

(13) OXY presented evidence regarding the impact of lay-down Morrow spacing and proration units on the correlative rights of the owners of oil and gas rights in the NW/4 of Section 15. This evidence shows that:

- (a) the lower Morrow structure drops to the east across Section 15 with the E/2 of the section being below the gas/water contact and therefore wet and non-productive (*OXY Exhibit 4: Lower Morrow Structure Map and Walterthon Sand Gross Sand Isopach Map; OXY Exhibit 5: Lower Morrow Gross Section A-A'*), and
- (b) data from Morrow completions in the nine sections surrounding the proposed wells demonstrates that the owners of reserves in the NW/4 of Section 15 would lose approximately 50% of the recoverable Morrow reserves under their property under the development plan of Tom Brown (*OXY Exhibit 6: "Loss to Oxy and Royalty Owners"*).

(14) Tom Brown contends that all of Section 15 will contribute Morrow reserves to the Forni Wells and that lay-down units will not impair the correlative rights of the interest owners in this Section. *Testimony of Robertson.*

(15) Tom Brown's presented evidence regarding the impact on correlative rights of its proposal to develop the Morrow reserves under Section 15 with lay-down units. This evidence showed that :

- (a) Morrow reserves in this area are found in well developed Morrow sands and are not dependent on structural elevation as shown on its isopach map of the Morrow C4 Sand (*Testimony of Woods, Tom Brown Exhibit 5*), and
- (b) well developed Morrow sands are present under the E/2 of Section 15 as well as under the W/2 of the section (*Testimony of Woods, Tom Brown Exhibit 5*).

(16) Tom Brown's interpretation of well developed Morrow sands under the E/2 of Section 15 is based on data from the Santa Fe Energy Corporation's Walker Well No. 1 located in Unit I of Section 21, and Gandhi Well No. 1 located in Unit E of Section

22 of Township 22 South, Range 27 East, NMPM. However, when Tom Brown's Net Sand Isopach of the C4 Morrow Sand is compared to the well logs from each of these wells on Oxy's Morrow Cross Section, it shows that the C4 Morrow Sand in each of these Santa Fe Energy Corporation wells was below the gas/water contact, has been tested and is wet. *Testimony of Woods, OXY Exhibit 5, Tom Brown Exhibit 5*. This data establishes that the E/2 of Section 15 is wet and will not contribute Morrow reserves to wells drilled in the W/2 of this section.

(17) Although Tom Brown disputes OXY's evidence that shows producible Morrow reserves are found only under the W/2 of this section and contends that the entire section contains recoverable Morrow reserves, the Morrow wells it proposes to drill are located as far to the west on Section 15 as permitted by Division rules. *Testimony of Mathis*.

FINDING 1: **The Morrow formation in the E/2 of Section 15 is below the gas/water contact in the reservoir and will not contribute recoverable reserves to the wells Tom Brown proposes to drill 660 feet from the West line of this section.**

FINDING 2: **Development of the Morrow formation under Section 15 with lay-down spacing and proration units dilutes the oil and gas mineral interests of the working interest owners and the royalty interest owners in the NW/4 of Section 15 and thereby denies these owners the opportunity to produce their just and equitable share of the recoverable reserves under their lands and impairs correlative rights.**

ORIENTATION OF SPACING UNITS:

(18) The evidence establishes that there currently is no Morrow production from Section 15 and that the section can be developed with either standup or lay-down spacing and proration units.

(19) The evidence also shows that Tom Brown's Forni Well No. 1 Well produces from the Wolfcamp formation on a 320-acre standard gas spacing unit comprised of the E/2 of Section 15 and, in the past, the W/2 of this section was dedicated to the Nearburg Sueno 15 Well No. 1 to which a standard 320-acre W/2 spacing unit was dedicated. *Testimony of Doty*.

(20) The parties agree that the Morrow, Wolfcamp and Strawn formations are each a potential producing formation under Section 15 and that all potentially productive

formations should be considered when determining whether or not to drill a well. (*Testimony of Doty and Wood*) However, Tom Brown contends that, since it owns no interest in the SW/4 of Section 15, the Wolfcamp formation is immaterial to this case.

(21) Contrary to the statements of Tom Brown, the evidence shows that Tom Brown has reached an agreement with the owners of the shallower rights under the lands in the W/2 of Section 15 that are not leased to OXY and that Tom Brown should acquire these rights within 10 days. *Testimony of Robertson*. If Tom Brown acquires these rights and completes a well in the Wolfcamp formation in either its proposed Forni No. 2 or 3 wells, it will have to form a W/2 spacing unit for these wells in the Wolfcamp formation. *Testimony of Wood*.

FINDING 3: The development of Section 15 with lay down spacing and proration units for Morrow and Strawn production and standup spacing units for Wolfcamp production will result in an irregular development pattern that will impair correlative rights and does not assure that this production will be shared in a just and equitable way by those who pay the costs of developing these properties and those who own working and royalty interest in this section.

FINDING 4: The development of all gas producing formations in the W/2 of Section 15 on stand-up 320-acre spacing and proration units as proposed by OXY will protect correlative rights for each owner of oil and gas rights in this section will receive its just and equitable share of the reserves under its property.

FINDING 5: The deep gas formations under Section 15 should be developed on stand-up spacing and proration units.

RESCISSION OF THE TOM BROWN APPLICATION FOR PERMIT TO DRILL:

(22) Oil Conservation Division Rule 1102.B provides that the well location on the acreage dedication plat (Division Form C-102) filed with the Application for Permit to Drill shall "...be plotted from the outer boundaries of the section and certified by a professional surveyor,..." *OXY Exhibit 17*.

(23) Instead of responding to the OXY well proposal for its Redemption Well No. 1, on January 21, 2004, Tom Brown Inc., electrically submitted to the Division an

Application for Permit to Drill and Acreage Dedication Plat for its Forni Well No. 2. This application was incomplete and inaccurate for it failed to comply with the requirements of Rule 1102.B. This Application for Permit to drill has never been corrected by Tom Brown Inc. *Testimony of Foppiano, OXY Exhibit No. 15.*

(24) On January 26, 2004, OXY submitted to the Division an accurate and complete Application for Permit to Drill with attached Acreage Dedication Plat for its Redemption Well No. 1 which was approved by the Division on **January 28, 2004**. *OXY Exhibit 14.*

(25) At some time after January 28, 2004, the Oil Conservation Division rescinded its approval of the OXY APD because it determined "...that Tom Brown , Inc. has submitted an APD at the same location prior to your submittal on January 26, 2004." *OXY Exhibit 16.*

(26) The Division approved the incomplete and inaccurate APD of Tom Brown Inc. on **January 30, 2004**. *OXY Exhibit 15.*

(27) In support of its request that the Division enter an order canceling the APD approved for Tom Brown Inc. on January 30, 2004 and reinstating the APD approved for OXY on January 28, 2004, OXY asserts that:

- (i) OXY cannot be precluded from developing its property interests in the W/2 of Section 15 because another owner of oil and gas rights in the W/2 of this section previously filed an inaccurate and incomplete Application for Permit to Drill (*Testimony of Foppiano*),
- (ii) if OXY's right to drill is determined by which owner first makes application to the Division for approval of a Permit to Drill, at a minimum, the Division must require that the first filed application for Permit to Drill comply with Division Rules and that it be both complete and accurate (*Testimony of Foppiano*), and
- (iii) Tom Brown submitted its incomplete APD not to win the race to drill the well but to win the race to permit the location and thereby prevent OXY from drilling (*Testimony of Foppiano*).

(28) Tom Brown testified that it had been considering the development of the Morrow reserves under the S/2 of Section 15 since July 2003 and that it was planning to drill a well in the S/2 of this Section. *Testimony of Robertson.*

(29) However, the evidence established that Tom Brown's efforts to develop the S/2 of Section 15 consisted of (i) several rejections of proposals from Devon Energy Corporation for the formation of a working interest unit covering this acreage and, (ii) after Devon decided to proceed alone with the drilling of a well in Section 22 only 660 feet from Tom Brown's acreage, Tom Brown placing an offset well on its drilling schedule to be drilled if Devon has "positive results". *Testimony of Robertson, Tom Brown Exhibit 1.*

FINDING 6: **An Application for Permit to Drill is not properly submitted to the Division until it is complete, accurate and contains all information required by the rules of the Division.**

FINDING 7: **OXY's Application for Permit to Drill its Redemption Well was the first complete and accurate APD submitted to the Division for a Morrow well in the S/2 of Section 15.**

FINDING 8: **The Drilling Permit approved for OXY's Redemption Well No. 1 was properly approved.**

FINDING 9: **Tom Brown Inc.'s Application for Permit to Drill its Forni Well No. 2 was not complete and therefore not properly approved by the Division.**

FINDING 10: **The APD for Tom Brown Inc.'s Forni Well No. 2 should be rescinded and the APD for the OXY Redemption Well No.1 should be reinstated.**

COMPULSORY POOLING:

(30) There are two or more tracts embraced within the W/2 of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico and there are royalty interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned. *Tom Brown Exhibit A.*

(31) Applicant, OXY USA WTP Limited Partnership, is an owner of oil and gas working interest within the W/2 of said Section 15, has the right to drill thereon and proposes to drill the Redemption Well to test all formations developed on 320-acre spacing and proration units under this land..

(32) There are interest owners in the proposed spacing and proration unit that have not agreed to pool their interests.

(33) At the time OXY filed its application for compulsory pooling of the W/2 of Section 15, its title date showed that Tom Brown Inc. owned all working interest in the W/2 of Section 15 that has not been committed to its Redemption Well. *Testimony of Hurlbutt.*

(34) Division Rule 1207.A provides in part that notice of compulsory pooling shall be given to the owner of an interest in the mineral estate whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application and whose interest has not been voluntarily committed to the area proposed to be pooled.

(35) Since Tom Brown was unwilling to stay the drilling of a well in the S/2 of Section 15 until the issues raised by OXY's application could be decided by the Division and because Tom Brown was proceeding with its plans to drill under the color of authority of its approved APD, OXY was required to file its compulsory pooling application prior to receiving the Title Opinion it had ordered on the W/2 of this section or lose an opportunity for hearing before the Division prior to the drilling of the well. *Testimony of Hurlbutt.*

(36) To avoid the drilling of unnecessary wells, to protect correlative rights, prevent waste and afford to the owner of each interest in the spacing and proration unit the opportunity to recover or receive without unnecessary expense its just and equitable share of the oil or gas or both under their property, the application of OXY should be approved by pooling all interests of Tom Brown Inc. in the W/2 of Section 15.

(37) If Tom Brown acquires the remaining working interest in the W/2 of Section 15 by closing the agreement it has reached with other owners in this acreage, no further pooling order will be required. If OXY's Title Opinion shows that there are additional owners of interest in this land., OXY will have to commit these interests to the Redemption Well either by voluntary agreement or by compulsory pooling. *NMSA 1978, §70-2-18.A.*

FINDING 11: **The application of OXY USA WTP Limited Partnership, for an order compulsory pooling the W/2 of Section 15, Township 22 South, Range 27 East, NMPM, Eddy County, New Mexico should be granted.**

(38) To avoid the drilling of unnecessary wells, to protect correlative rights, to prevent waste and to afford to the owner of each interest in the W/2 of said Section 15 the

opportunity to recover or receive without waste its just and equitable share of hydrocarbon production in any pool resulting from this order, this application should be approved by pooling all mineral interests, whatever they may be, within the units.

(39) OXY USA WTP Limited Partnership, should be designated operator of the well and subject unit.

(40) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(41) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(42) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(43) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(44) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,500 per month while drilling and \$550 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(45) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the owner thereof upon demand and proof of ownership.

(46) If the operator of the pooled units fails to commence drilling the well thereon on or before April 1, 2004 or if all the parties to this forced pooling reach voluntary agreement subsequent to the entry of this order, this order should become of no effect.

(47) The operator of the well and units should notify the Director in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of his order.

IT IS THEREFORE ORDERED THAT:

- (1) Pursuant to the application of OXY USA WTP Limited Partnership, ("OXY"), all uncommitted interests, whatever they may be, whose owners received notice of this application as required by Division Rules, in oil and gas in all formations developed on 320-acre spacing and proration units underlying the W/2 of Section 15, Township 22 South, Range 27 East, NMPM, are hereby pooled to form a standard 320-acre spacing and proration unit for all formation or pools spaced on 320 acres within this vertical extent, which presently includes but is not necessarily limited to the Undesignated South Carlsbad-Morrow Gas Pool (73960). These pooled units shall be dedicated to the OXY USA WTP, Limited Partnership, Redemption Well No. 1 to be drilled at a standard Gas well location 660 feet from the South and West lines (Unit M) of Section 15.
- (2) The operator shall commence the drilling of said well on or before the ____ day of July, 2004, and shall thereafter continue the drilling of said well with diligence to a depth sufficient to test the Morrow formation.
- (3) In the event said operator does not commence the drilling of said well on or before the ____ day of July, 2004, Ordering Paragraph No. (1) shall be of no further effect, unless said operator obtains a time extension from the Division Director for good cause shown.
- (4) Should the subject well not be drilled to completion, or abandonment, within 120 days after commencement thereof, Ordering paragraph (1) shall be of no further effect, and the unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.
- (5) Upon final plugging and abandonment of the subject well, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations.
- (6) OXY USA WTP Limited Partnership, is hereby designated operator of the subject well and units.
- (7) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement

governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of re-entering, drilling, completing and equipping the subject well ("well costs").

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right 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, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. 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."

(9) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,500.00 per month while drilling and \$550.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled

"Accounting Procedure-Joint Operations." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(17) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(18) OXY USA WTP Limited Partnership's APD for the Redemption Well No. 1 dated January 23, 2004 and previously approved by the Division on January 28, 2004, is hereby re-instated.

(19) Tom Brown Inc.'s APD for the Forni Well No. 2 dated January 30, 2004 is hereby cancelled *ab initio*.

(20) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director