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

2010 JUN -3 P 2:50

IN THE MATTER OF THE APPLICATION OF OXY USA, INC. TO REOPEN CASE NO. 8352 TO CONTRACT THE WEST BRAVO DOME CARBON DIOXIDE GAS AREA TO EXCLUDE ACREAGE IN THE BRAVO DOME CARBON DIOXIDE GAS UNIT AND FOR THE ADOPTION OF PERMANENT SPECIAL POOL RULES AND REGULATIONS FOR THE ACREAGE EXCLUDED FROM THE WEST BRAVO DOME CARBON DIOXIDE GAS AREA INCLUDING PROVISIONS FOR 160-ACRE SPACING UNITS, HARDING COUNTY, NEW MEXICO

Case No. 8352 (reopened)

INTERVENER T.E. MITCHELL & SON, INC.S' PREHEARING STATEMENT

Pursuant to 19.15.4.13(B) NMAC, Intervener T.E. Mitchell & Son, Inc. ("Mitchell"), by and through its counsel, submits its Prehearing Statement.

**I. Parties**

Intervener Mitchell is represented by the undersigned counsel, Frank M. Bond and Kelcey C. Nichols of The Simons Firm, L.L.P.

Applicant OXY USA, Inc. (Oxy") is represented by William F. Carr of Holland & Hart, L.L.P.

As of the time of filing, Mitchell is unaware of additional interveners.

**II. Concise Statement of the Case**

Mitchell owns property in the West Bravo Dome Carbon Dioxide Gas Unit that will be adversely affected by any adoption of rules or provisions providing for 160-acre, rather than the present 640-acre, spacing units. Mitchell opposes the adoption of 160-acre spacing units for the following reasons:

- 1) As a practical matter, 160-acre spacing units will require additional and

duplicative infrastructure and make it impracticable to develop carbon dioxide wells on a significant amount of Mitchell's property.

2) The adoption of 160-acre spacing units will prevent Mitchell from receiving royalties based on ownership of property within the present 640-acre spacing units.

3) The adoption of 160-acre spacing units is inconsistent with the 640-acre spacing units in the West Bravo Dome Carbon Dioxide Gas Unit and will grant an unfair advantage to Oxy, which developed carbon dioxide wells in the area prior to the filing of its application.

4) Mitchell received Oxy's application on May 27, 2010 and has had insufficient time to review the application and assess the impacts on all of Mitchell's land, royalty payments and other potentially adverse consequences.

5) Mitchell will be denied due process of law if the application is heard and evidence presented before Mitchell has had an opportunity to thoroughly review the application, obtain an expert opinion and prepare its case.

6) Mitchell requests that the hearing on the application be continued by 45 days to allow Mitchell adequate time to evaluate the application and prepare its case.

### **III. Mitchell's Witnesses**

Mitchell will present Terry R. Mitchell, President of T.E. Mitchell & Son, Inc., in support of its opposition to the application:

### **IV. Mitchell's Case Presentation**

Mitchell anticipates that it will take approximately thirty (30) minutes to present its opposition to the application, excluding time for the cross-examination of the applicant's witnesses.

**V. Unresolved Procedural Matters**

The application provided inadequate notice and therefore no evidence should be heard, nor witnesses presented, at the June 10, 2010 hearing in support of the application.

THE SIMONS FIRM, LLP

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above pleading was sent on June 3, 2010, via electronic mail and U.S. mail, postage prepaid, to:

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