

Davidson, Florene, EMNRD

From: jamesbruc@aol.com
Sent: Thursday, February 18, 2016 11:38 AM
To: Davidson, Florene, EMNRD; Goetze, Phillip, EMNRD; Brooks, David K, EMNRD
Cc: mfeldewert@hollandhart.com; jlkessler@hollandhart.com; cari.allen@dvn.com; stephen.cargill@dvn.com
Subject: Case 15397 -- Devon/OXY
Attachments: devon-motion to compel.pdf

Attached is a motion to compel production of documents.

Jim

BEFORE THE NEW MEXICO 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

MOTION TO COMPEL PRODUCTION

Devon Energy Production Company, L.P. ("Devon") hereby moves the Division for an order requiring OXY USA Inc. ("OXY") to produce subpoenaed data that has been withheld by OXY. In support thereof, Devon states:

A. SUBPOENAS.

1. The following two subpoenas have been issued by the Division at Devon's request, directed to OXY: One dated November 10, 2015 (**Attachment 1**), and one dated December 22, 2015 (**Attachment 2**).¹

2. The subpoenas requested certain types of data, including:

(a) All of OXY's correspondence and notes generated as a result of discussions with Devon personnel since August 1, 2015 regarding the Well. **Item 1 of Exhibit A to the December 22, 2015 subpoena.**

(b) All tests conducted on the Well, *etc.* **Item 2 of Exhibit A to the November 10, 2015 subpoena.**

3. Devon asserts that not all data described in Paragraph 2 above was turned over to Devon. As a result counsel for Devon sent an e-mail to counsel for OXY on February 4, 2015 requesting, *inter alia*, such data. By e-mail dated February 12, 2015 counsel for OXY responded. **Attachment 3** (Devon's requests are numbered, and OXY's responses are in capital letters).

¹ Another subpoena, dated February 16, 2016, is not at issue in this motion. OXY also subpoenaed data from Devon.

B. OXY's Correspondence and Notes.

4. In numbered paragraph 4 of Attachment 3, Devon notes that OXY removed certain correspondence from that turned over to Devon (highlighted in orange). OXY responded that the correspondence was protected by "investigative privilege" and was "generated in anticipation of litigation" (highlighted in green).

5. There is no such thing as investigative privilege in a case like this. Also, pending litigation is a baseless excuse to withhold documents unless OXY can show any correspondence was between attorney and client. Thus, the withheld correspondence must be provided to Devon.

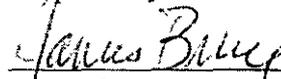
C. Daily WellView Reports.

6. In numbered paragraph 1 of Attachment 3, Devon requested WellView reports for daily operations conducted on the subject SWD well beginning on September 9, 2015 and ending on September 16, 2015 (highlighted in orange). OXY responded that the reports were not within the scope of either subpoena issued against OXY at that time (highlighted in green).

3. As noted above, Devon requested "all tests conducted on the Well." Devon asserts that "all tests" is broad enough to cover the requested reports, and they should be provided to Devon.

WHEREFORE, Devon requests that OXY's be required to produce the data described above.

Respectfully submitted,



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

Attorney for Devon Energy Production
Company, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 18th day of February, 2016 by e-mail:

Michael H. Feldewert
mfeldewert@hollandhart.com

Jordan L. Kessler
jlkessler@hollandhart.com



James Bruce

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

RECEIVED OGD

APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. TO REVOKE THE INJECTION AUTHORITY GRANTED BY ADMINISTRATIVE ORDER SWD-640, LEA COUNTY, NEW MEXICO. 2015 NOV 10 P 2:41

Case No. 15397

SUBPOENA DUCES TECUM

To: OXY USA Inc.
c/o Michael H. Feldewert
and Jordan L. Kessler
P.O. Box 2208
Santa Fe, New Mexico 87504

Pursuant to NMSA 1978 §70-2-8 and Oil Conservation Division Rule NMAC 19.15.4.16, you are hereby ordered to appear at 9:00 a.m. on Friday, November 20, 2015, at the offices of the Oil Conservation Division, 1220 South St. Francis Drive (Third Floor), Santa Fe, New Mexico 87505, and to produce the documents, data, information, and items specified in Exhibit A attached hereto, and to make available all of said documents, *etc.* available to Devon Energy Production Company, L.P. or its attorney, James Bruce, for examination and copying.

This subpoena is issued on the application of Devon Energy Production Company, L.P., through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504.

Dated this _____ day of November, 2015.

NEW MEXICO OIL CONSERVATION
DIVISION

By:

David R. Catam

Date:

11/10/15

Attachment

1

EXHIBIT A
TO SUBPOENA DUCES TECUM

The following documents, data, information, and items in your possession, custody, or control regarding the Diamond 34 State Well No. 1 (API No. 30-025-33387), a salt water disposal well located 990 feet from the South line and 1,650 feet from the West line (Unit Letter N) of Section 34, Township 22 South, Range 33 East, N.M.P.M., Lea County, New Mexico (the "Well"):

1. The complete file for the Well, including but not limited to drilling records and cement bond logs.
2. All tests conducted on the Well, including but not limited to static temperature logs, water flow logs, and an isolation scanner (if conducted).
3. Documents or information on dates and times of injection, and volumes injected, into the Well since August 15, 2015 to a current date.
4. All data on injection pressures for the Well.
5. Details on all frac jobs performed on the Well, including date pumped, rate, volumes (fluid and sand), and maximum and average treating pressures.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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2015 DEC 21 P 4 10

Case No. 15397

SUBPOENA DUCES TECUM

To: OXY USA Inc.
c/o Michael H. Feldewert
and Jordan L. Kessler
P.O. Box 2208
Santa Fe, New Mexico 87504

Pursuant to NMSA 1978 §70-2-8 and Oil Conservation Division Rule NMAC 19.15.4.16, you are hereby ordered to appear at 9:00 a.m. on Friday, January 8, 2016, at the offices of the Oil Conservation Division, 1220 South St. Francis Drive (Third Floor), Santa Fe, New Mexico 87505, and to produce the documents, data, information, and items specified in Exhibit A attached hereto, and to make available all of said documents, *etc.* available to Devon Energy Production Company, L.P. or its attorney, James Bruce, for examination and copying.

This subpoena is issued on the application of Devon Energy Production Company, L.P., through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504.

NEW MEXICO OIL CONSERVATION
DIVISION

By: David R. Catant

Date: 12/22/15

EXHIBIT A

TO SUBPOENA DUCES TECUM

The following documents, data, information, and items in your possession, custody, or control regarding the Diamond 34 State Well No. 1 (API No. 30-025-33387), a salt water disposal well located 990 feet from the South line and 1,650 feet from the West line (Unit Letter N) of Section 34, Township 22 South, Range 33 East, N.M.P.M., Lea County, New Mexico (the "Well"):

1. All of OXY's correspondence and notes generated as a result of discussions with Devon personnel since August 1, 2015 regarding the Well.
2. Records identifying water flows encountered by OXY during drilling operations within Township 22 South, Range 33 East, NMPM and Township 23 South, Range 33 East, NMPM, including well names, API numbers, depths of water flows, pressures encountered, and required mud weights associated with well control operations.
3. All documents and exhibits OXY intends to introduce at the hearing in Case No. 15397, and those which it believes support the positions it will assert in its presentation.

From: Michael Feldewert <MFeldewert@hollandhart.com>
 To: jamesbruc <jamesbruc@aol.com>
 Cc: Neil_Patten <Neil_Patten@oxy.com>; Thomas_Clifford <Thomas_Clifford@oxy.com>
 Subject: Devon/OXY discovery issues
 Date: Fri, Feb 12, 2016 11:47 am

Jim: Please see my comments in CAPS following each paragraph below.

Attachment 3

From: jamesbruc@aol.com [mailto:jamesbruc@aol.com]
 Sent: Thursday, February 04, 2016 2:00 PM
 To: Michael Feldewert
 Subject: Devon/OXY

Mike: I have spoken with Devon. They have not recieved any documents marked as "Exhibits." If some of the documents received are the hearing exhibits, we would appreciate OXY ID'ng them as such. Otherwise, please provide OXY's hearing exhibits.

Also, Devon believes the foillowing documents are required to be turned over by the subpoenas:

1. OXY had a workover rig on its SWD well from 9/9/15 through 9/16/15 to repair something. They filled a summary of their operations in the C-103 dated by OXY on 11/19/15 and approved by the OCD on 12/1/15. Devon needs WellView reports for these operations. They had to have done this work in response to the problems Devon was having on its well. Also, was any additional work done on the well with respect to this test other than that reported to the OCD?

I CANNOT LOCATE A PARAGRAPH UNDER EITHER OF DEVON'S SUBPOENAS THAT REQUEST PRODUCTION OF THE "WELLVIEW REPORTS" FOR THESE DAILY OPERATIONS. MOREOVER, THE FILED C-103 IDENTIFIES THE ACTUAL WORK DONE ON THE WELL. THE MIT TEST AND BRADENHEAD TEST RESULTS FOLLOWING THESE WORKOVER OPERATIONS HAVE BEEN PROVIDED UNDER OXY 124-125.

2. Devon is entitled to any pressure testing diagnostic work on its well after the prssure kick in Devon's well. Document OXY-125 shows "0" psi pressure on the surface casing and production casing, but this doesn't capture the pressure on the intermediate casing. This data was taken after the SWD well was worked over.

NO SUCH TESTING WAS PERFORMED BY OXY, SO IT HAS NO RESPONSIVE DOCUMENTS OTHER THAN THE MIT AND BRADENHEAD TESTS

3. There was a rig on OXY's well for months, and obviously the SWD well was worked on, or test were taken, over that period. The subpoenas specifically apply to any such tests or documents or information, and must be promptly provided to Devon.

I HAVE CONFIRMED THAT THE RESULTS OF ALL TESTS PERFORMED ON THE WELL HAVE BEEN PROVIDED PURSUANT TO PARAGRAPHS 5 AND 6 OF THE EXHIBIT D-2 SUBPOENA.

4. In your letter to me of January 29th, you state that you "removed for reasons of privilege emails that relate to Oxy's preparation for this case, Oxy's internal investigation of Devon's allegations, and internal discussions about addressing Devon's various requests for meetings and information." Devon provided to OXY its internal discussions, which are within the scope of both OXY's and Devon's subpoenas, and Devon is entitled to OXY's

discussions/documents by its employees unless there is some attorney-client information or discussions.
Please provide that data.

I DISAGREE. OXY'S INTERNAL DISCUSSIONS FOLLOWING AND CONCERNING DEVON'S ALLEGATIONS, DEVON'S REQUESTS FOR INFORMATION, OXY'S INTERNAL INVESTIGATION AND OXY'S PREPARATION FOR THE HEARING ARE PROTECTED FROM DISCLOSURE UNDER THE INVESTIGATIVE PRIVILEGE AND BECAUSE THEY WERE GENERATED IN ANTICIPATION OF LITIGATION.

Jim