

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION

APPLICATION OF PREMIER OIL & GAS, INC.
TO HAVE THE DIVISION ORDER EXXON COMPANY
U.S.A TO APPEAR AND SHOW CAUSE WHY ITS
AVALON (DELAWARE) UNIT OPERATING AGREEMENT
SHOULD NOT BE AMENDED TO CONFORM TO THE
REQUIREMENTS OF THE STATUTORY UNITIZATION
ACT, EDDY COUNTY, NEW MEXICO.

1998

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No. 11838 (de novo)

EXXON CORPORATION'S SUPPLEMENTAL MOTION TO DISMISS

On February 23, 1998 Exxon Corporation ("Exxon")¹ and Yates Petroleum Corporation ("Yates") filed a motion to dismiss the application of Premier Oil & Gas, Inc. ("Premier"). That motion is based on certain legal principles, set forth in the brief accompanying the motion.

Exxon submits this supplemental motion to dismiss, based upon the facts presented to the Commission in the unitization hearing.

I. FACTS.

Exxon is the operator of the Avalon (Delaware) Unit ("the Unit"), located in Eddy County, New Mexico. The Unit was approved by Division Order No. R-10460, and affirmed by Commission Order No. R-10460-B ("the Order").

The Order approved the Unit Operating Agreement² for the Unit. Article 10.1.1 of the Unit Operating Agreement states:

Wells and Well Equipment. All wells listed on Exhibit "H" and associated well equipment shall be delivered subject to the terms of Article 11 hereof, provided that: (i) Exhibit "H" may be amended to add or delete wells by vote of the Working Interest Owners as provided herein....

¹Exxon Company U.S.A. is a division of Exxon Corporation.

²Exxon Exhibit 3 at the Commission hearing.

Exhibit H listed wells which were considered potentially useful for Unit operations. Exhibit H does not include Premier's FV1 well, which is located 1980 feet from the North line and 990 feet from the East line (SE~~¼~~NE~~¼~~) of Section 25, Township 20 South, Range 27 East, NMPM (within the boundaries of the Unit).

Premier's application requests the Division or the Commission to order Exxon to include the FV1 well in the Unit. Premier (in a filing made with the Division) asserted that: (1) evidence was not presented at the Commission hearing supporting the exclusion of the FV1 well from the Unit; and (2) the Commission did not adjudicate this issue. Therefore, Premier contends, the Division (or the Commission) retains continuing jurisdiction to review this matter and rule thereon. Premier is wrong on both counts.

II. EVIDENCE IN THE RECORD SUPPORTS EXCLUSION OF THE FV1 WELL FROM THE UNIT.

Premier asserts that there is no evidence in the record to support the exclusion of the FV1 well from the Unit. As an initial matter, Exxon was required at hearing to support, with admissible evidence, the allegations in its unitization application. It was not required to disprove everything it did not request. Exxon never requested that the FV1 well be included in the Unit. **See Exhibit H to the Unit Operating Agreement.** To allow Premier's application to proceed to hearing will create a dangerous evidentiary burden for applicants in cases before the Division: In the future, applicants will need to disprove everything they do not request, as well as prove the relief they do request.

Regardless, there is abundant evidence in the record supporting the exclusion of the FV1 well from the Unit:

- (a) Exxon Exhibit 28 (copy attached), submitted to the Commission, is the proposed CO₂ flood pattern for the Unit. It does not include the FV1 well.³
- (b) The testimony of Exxon's engineer, regarding Exxon Exhibit 28 and the basis for attributing CO₂ reserves to exterior Unit tracts, makes it clear that CO₂ project wells in Premier's tract will be 660 feet from the East line of Section 25. That is the basis for reducing the contributing CO₂ reserve value of the SE~~1~~⁴NE~~4~~ of Section 25 by a factor of 0.5.⁴ **Testimony of G. Beuhler, Commission Transcript ("Tr."), Vol. I at pp. 135-136, 138-139, 152-154, and 189-191.** Since the FV1 well is 990 feet from the East line of Section 25, it does not fit the CO₂ flood pattern for the Unit.
- (c) Premier's own engineer proposed moving the CO₂ project wells on Premier's tract further west than 660 feet from the East line of Section 25, so that Premier would be attributed a larger proportion of CO₂ reserves. **Testimony of T. Payne, Commission Tr., Vol. II at pp. 430-435.** His theory was refuted by Yates' expert, who testified that moving CO₂ project wells further west

³Exxon Exhibit 25 (copy attached), the plat of the waterflood project, also does not include the FV1 well.

⁴A well 660 feet from the East line of Section 25 will recover 50% of the CO₂ project oil under a 40 acre tract.

would reduce the project's recovery efficiency.
**Testimony of D. Boneau, Commission Tr., Vol. II at pp.
486-488.**

This evidence clearly supports the exclusion of the FV1 well from the Unit, because it is located too far west, does not fit the CO₂ flood pattern, and will not be beneficial to the Unit.

Moreover, in order to be a useable wellbore under the Unit Operating Agreement, a well "must be completed in the Unitized Formation, and not completed outside the Unitized Formation." **Unit Operating Agreement, Articles 11.1 and 11.1.1.** Ken Jones, Premier's owner, stated at the Commission hearing:

[The FV1] well is making some gas out of the first Bone Springs sand. This lease was purchased because of the Bone Springs and the Delaware, and we're currently working up in the Bone Springs right now. We still have another pay for that well.

Commission Tr., Vol. II at p. 306. Thus, the FV1 well does not meet the "useable wellbore" requirement of the Unit Operating Agreement because it is completed outside the Unitized Formation.

The foregoing citations to the record demonstrate that there is substantial evidence to support the exclusion of the FV1 well from the Unit, and Premier's application must be dismissed.

III. THIS ISSUE WAS PREVIOUSLY ADJUDICATED BY THE COMMISSION.

Premier, in its response filed with the Division, asserts that at no point "did Exxon alert either Premier or the Commission that it intended to exclude" the FV1 well from the Unit. **Premier's Response at p. 3.** As demonstrated above, it was, and is, clear from the plain terms of the Unit Operating Agreement that the FV1

well would be excluded from the Unit. Premier was provided with a copy of the Unit Operating Agreement in early 1995, and could have raised this issue before either the Division or Commission, but failed to do so. Thus, the issue has been adjudicated by the Commission, and there is no basis to re-open the case.

In addition, Premier's only support for its assertion that it thought the FV1 well would be included in the Unit is a claim to a 1993 conversation between Exxon and Premier. **See Premier's Response at p. 5, ¶(c).** That does not constitute new evidence which would justify re-opening this matter or amending the Order.

IV. THE ORDER CONFORMS WITH THE STATUTORY UNITIZATION ACT.

Premier also asserted that the FV1 well must be included in the Unit since it is located on a unitized tract. As noted above, the FV1 well (a) does not conform to the CO₂ flood pattern, and (b) is not completed in the Unitized Formation. The Statutory Unitization Act does not require that every well on a unit tract be included in a unit. The Act merely requires that the Unit Operating Agreement include a provision making credits for wells which are "contributed to unit operations." **NMSA 1978 §70-7-7.D (1995 Repl. Pamp.)**. The FV1 well is not contributed to Unit operations, and thus Articles 10 and 11 of the Unit Operating Agreement comply with the Statutory Unitization Act.

WHEREFORE, there is no basis for the Commission to force the FV1 well into the Unit, and Exxon requests that the Commission dismiss the application and deny Premier permission to amend its application.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon counsel of record this 6th day of April, 1998, in the following manner:

Via Fax and U.S. Mail

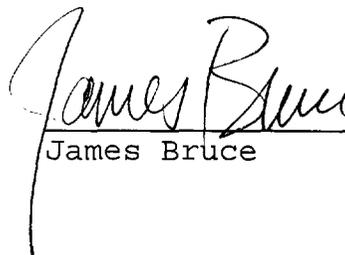
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James Bruce

POTENTIAL DEVELOPMENT PLAN: CO₂ FLOOD

- **Scope**
 - 37 patterns, 2100 acres expanding into outer ring
 - Earliest start 1999
- **Issues**
 - Attain miscibility pressure and reduce gas saturation: 3+ years
 - CO₂ injectivity test
 - Oil price

WELL SYMBOL LEGEND

●	Oil Well
○	Oil Well (Proposed for CO ₂ Flood)
⦿	Water Phase Injector (Conversion)
⦿	Water Phase Injector (Proposed)
▲	CO ₂ Phase Injector (Proposed for CO ₂ Flood)
x	Water Source Well
*	Disposal Well

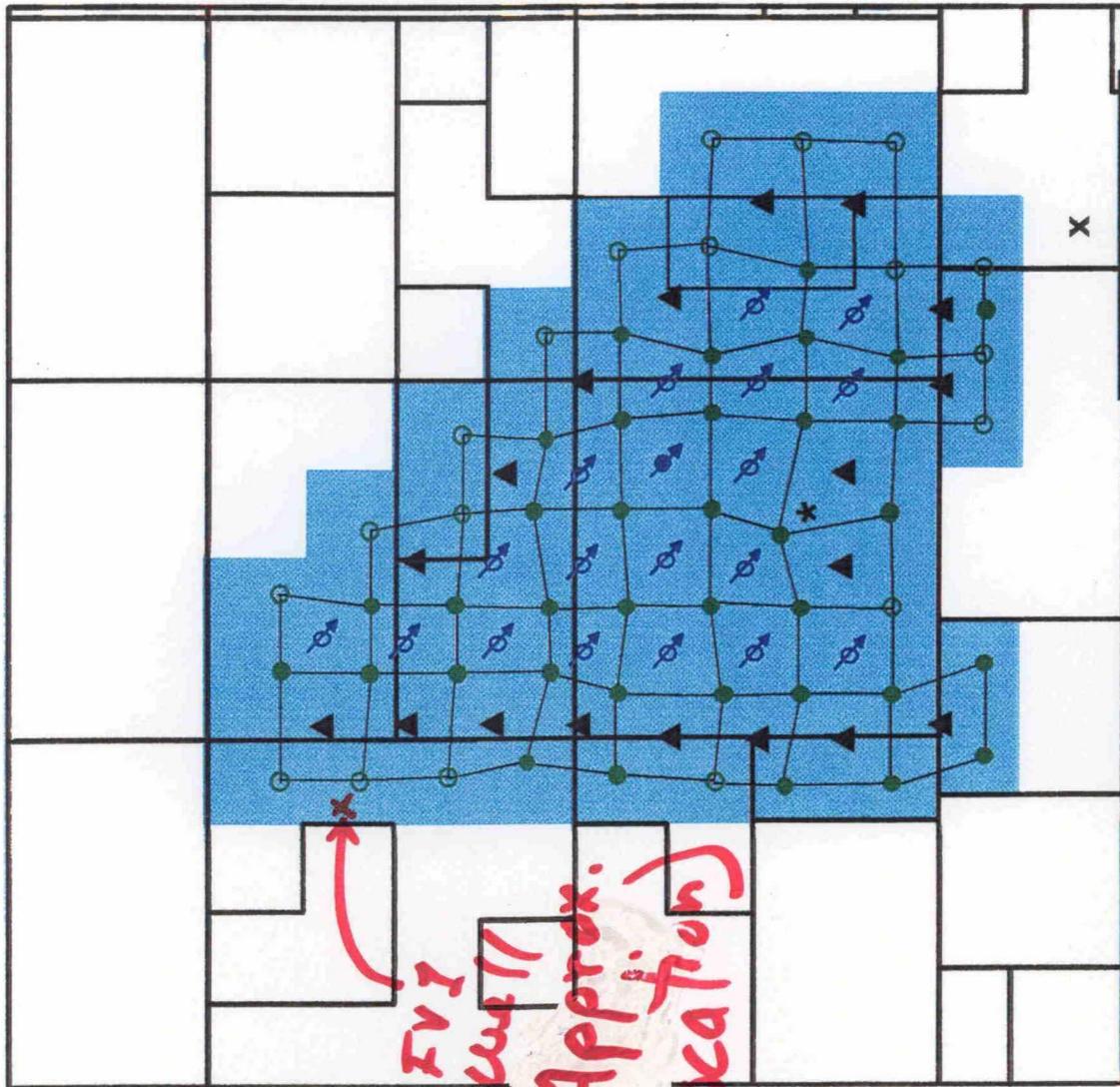


Exhibit No. **28**
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date December 14, 1995

Order No. R-10460

NMOCD Hearing

AVALON (DELAWARE) UNIT

DEVELOPMENT PLAN: WATERFLOOD

- **Scope**
 - 19 water injection patterns, 1100 acres in developed area
 - 18 injector drillwells/1 conversion
 - Water treating and injection facilities
 - Estimated start 2 months after unit approval

WELL SYMBOL LEGEND

- Oil Well
- ⊕ Injector (Conversion)
- ⊕ Injector (Proposed)
- X Water Source Well
- Well for Future Use
- * Disposal Well

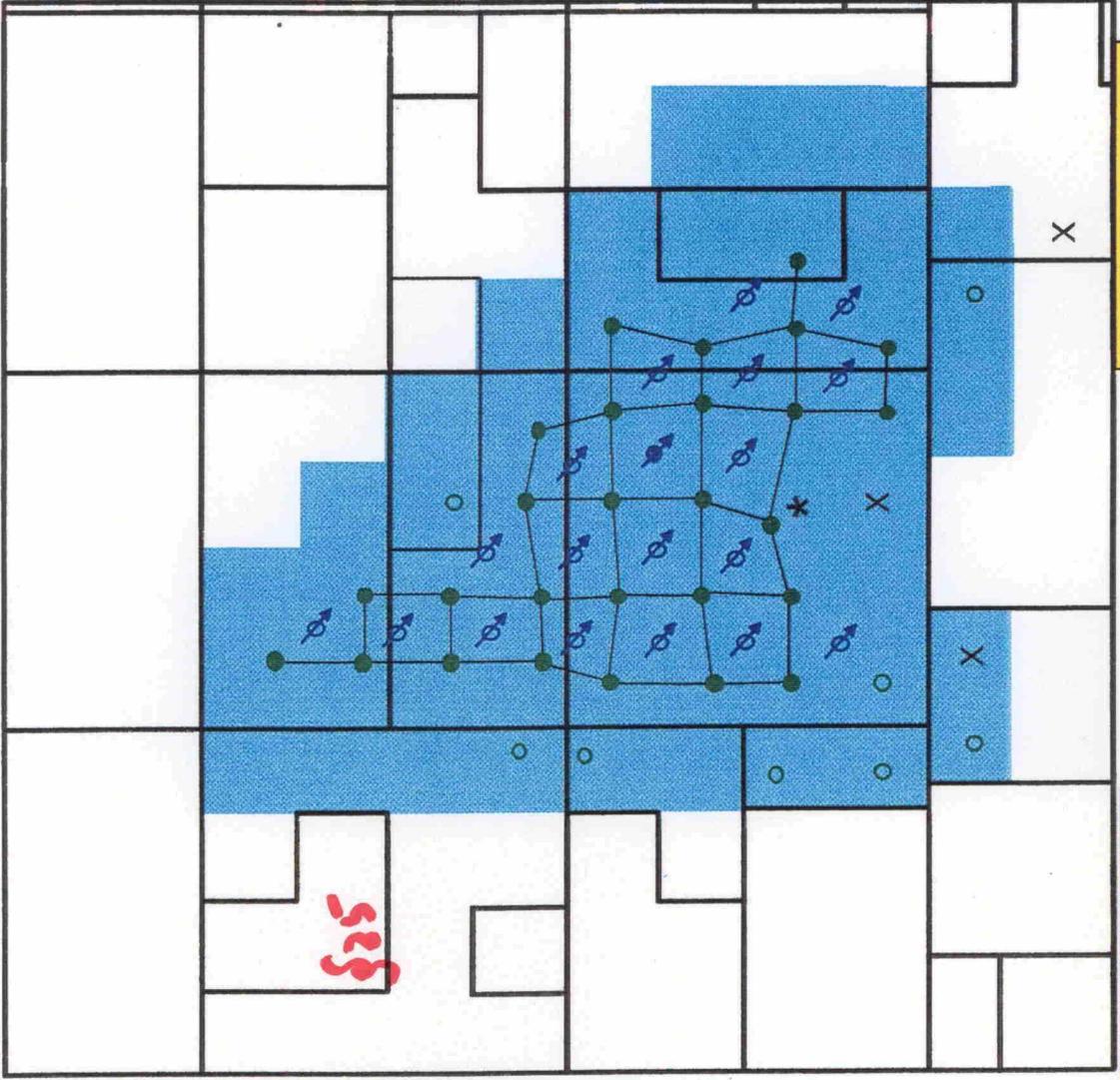


Exhibit No. **25**
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date December 14, 1995

Order No. R-10460

NMOCD Hearing