

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF KCS MEDALLION
RESOURCES, INC. FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.

No. 11,926

RESPONSE OF KCS MEDALLION RESOURCES, INC.
IN OPPOSITION TO MOTION TO DISMISS

KCS Medallion Resources, Inc. ("KCS") filed an application to pool all mineral interests from the surface to the base of the Morrow formation underlying the W½ of Section 33, Township 19 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, to form a standup gas well unit for formations spaced on 320 acres. The primary target of KCS's well is the **Morrow** formation. OXY USA Inc. ("OXY") is operator of a **Wolfcamp** well, which has a laydown S½ unit dedicated to it.¹ OXY has filed a motion to dismiss KCS's application. OXY asserts that an operating agreement covers the working interests in the S½ of Section 33 as to the Morrow formation, and thus KCS cannot pool the W½ of Section 33. OXY's motion should be denied, for the following reasons:

1. The W½ is Not Subject to a Voluntary Agreement as to the Morrow Formation: OXY asserts that there is a voluntary agreement covering the S½ of Section 33. That is only partly true: There is an operating agreement covering the working interests only in the S½ of Section 33. Presumably, there is also a pooling agreement covering all interests in the Wolfcamp formation underlying the S½ of Section 33. However, there is no voluntary agreement covering all working, royalty, and overriding royalty interests in the

¹KCS withdraws any request to pool the W½ of Section 33 as to the Wolfcamp formation.

Morrow formation in the S½ or W½ of Section 33.

OXY states that Order No. R-10651 prevents the Division from granting KCS's application. That is incorrect. That order is only an unorthodox location order, and does not pool the S½ of Section 33; a voluntary agreement among all interest owners, or a compulsory pooling order, is necessary to commit all interests in the S½ of Section 33 to a Morrow formation well. OXY has not provided any such agreement or order.

Therefore, the Division has the authority under NMSA (1978) §70-2-17 to pool a W½ well unit.

2. A Compulsory Pooling Order Supersedes a Voluntary Agreement: A compulsory pooling order issued by the Division supersedes a voluntary agreement among interest owners. **Everett v. Phillips Petroleum Co.**, 218 La. 835, 51 S.2d 87 (1950) (private contractual rights are superseded by valid orders of the Commissioner of Conservation).² Thus, the Division can enter an order pooling a portion of the acreage covered by the operating agreement into KCS's proposed well unit.

Even if there was a voluntary agreement covering the Morrow formation under the S½ of Section 33, the Division has the authority to re-orient a well unit where necessary to prevent waste and protect correlative rights. **Amoco Production Company v. North Dakota Ind. Comm'n**, 307 N.W.2d 839 (N.D. 1981) (a voluntary laydown unit was changed by the Commission to a stand-up unit). As

²The Louisiana conservation statutes embody "the best features of New Mexico" conservation statutes. **Nunez v. Wainoco Oil & Gas Company**, 488 So.2d 955, 961 (La. 1986), cert. denied 479 U.S. 925 (1986).

discussed below, only one Morrow well is necessary in the W½ of Section 33, and thus the Division has the authority to pool a standup unit. Regardless, as noted above, there is no voluntary agreement covering all interests in the Morrow formation in either the S½ or W½ of Section 33, and KCS should be allowed to proceed with its application.

3. Only One Well is Necessary in the W½ of Section 1: KCS will present evidence at hearing that the SE¼ of Section 33 is unproductive in the Morrow formation, and only one well is necessary to develop the W½ of Section 33.³ Granting OXY's motion will potentially lead to two wells being drilled in the W½ of Section 33, which will cause physical and economic waste. This violates the Division's primary duty, to prevent waste. **NMSA (1978) §70-2-11**. As a result, OXY's motion must be denied.

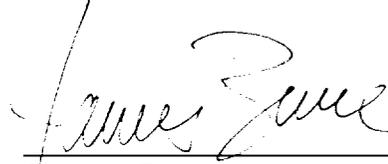
4. OXY has Delayed Development of Section 33: KCS first contacted OXY about a well in the SW¼ of Section 33 in June 1997, and proposed its well to OXY in October 1997. Due to OXY's lack of a response, KCS (which owns an interest in the SW¼ of Section 33) filed its pooling application in late January 1998. Now, a few days before the scheduled hearing, OXY has staked a well in the SW¼ of Section 33. KCS has in good faith sought to obtain the voluntary joinder of the mineral interest owners in the W½ of Section 33 to drill a well. OXY is simply delaying the development

³OXY states that its well in the SE¼ of Section 33 has Morrow potential behind pipe, but then states that it has staked a well in the SW¼ of Section 33. Obviously, the SE¼ well is unproductive in the Morrow (and other Pennsylvanian zones), or a well in the SW¼ would be unnecessary.

of this prospect, and its actions should not be condoned by the Division.

WHEREFORE, KCS requests that the Division deny OXY's motion.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for KCS Medallion Resources,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 15th day of February, 1998:

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-2047

Rand L. Carroll
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505



James Bruce